



Number 14 of 2002

COMPETITION ACT 2002

REVISED

Updated to 27 September 2023

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AN ACT TO MAKE NEW PROVISION, BY ANALOGY WITH ARTICLES 81 AND 82 OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY, AND IN THE INTERESTS OF THE COMMON GOOD, FOR THE PROHIBITION OF ACTIVITIES WHICH PREVENT, RESTRICT OR DISTORT COMPETITION IN TRADE IN THE STATE OR WHICH CONSTITUTE AN ABUSE OF A DOMINANT POSITION IN SUCH TRADE, TO COMPLEMENT THE POWERS AVAILABLE TO THE COMMISSION OF THE EUROPEAN COMMUNITIES WITH REGARD TO THE ENFORCEMENT OF THE SAID ARTICLES 81 AND 82, TO MAKE NEW PROVISION, IN THE INTERESTS OF THE COMMON GOOD, FOR THE CONTROL OF CERTAIN MERGERS OR ACQUISITIONS, TO CONTINUE IN BEING THE COMPETITION AUTHORITY AND MAKE NEW PROVISION ABOUT ITS FUNCTIONS, TO REPEAL THE COMPETITION ACTS, 1991 AND 1996, THE MERGERS AND TAKEOVERS (CONTROL) ACTS, 1978 TO 1996, AND CERTAIN OTHER ENACTMENTS, TO AMEND THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1893, WITH RESPECT TO THE REQUIREMENTS FOR CERTAIN SPECIAL RESOLUTIONS THEREUNDER, AND TO PROVIDE FOR RELATED MATTERS. [10th April, 2002]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

- Short title. **1.**—This Act may be cited as the **Competition Act, 2002**.
- Commencement. **2.**—This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.
- Interpretation. **3.**—(1) In this Act, unless the context otherwise requires—
F1[“Act of 2002” means the **Communications Regulation Act 2002**;]
F2[“Act of 2009” means the **Broadcasting Act 2009**];
F1[“Act of 2014” means the **Competition and Consumer Protection Act 2014**;
“administrative sanctions” means the following sanctions imposed by an adjudication officer under *Part 2D*—
(a) structural or behavioural remedies,

(b) administrative financial sanctions under *section 15AA*, or

(c) periodic penalty payments,

and "administrative sanctions proceedings" shall be interpreted accordingly;

"Article 16(1) periodic penalty payment" has the meaning assigned to it in *section 15AD*;

"Article 16(2) periodic penalty payment" has the meaning assigned to it in *section 15AD*;

F3["associated facilities", in relation to an electronic communications undertaking, has the same meaning as in section 2(1) of the *Communications Regulation Act 2002* (No. 20 of 2002);]

F4["authorised officer" —

(a) in relation to the functions performed by the Competition and Consumer Protection Commission, has the same meaning as it has in the Act of 2014, and

(b) in relation to the functions performed by the Commission for Communications Regulation under this Act, has the same meaning it has in section 39 of the Act of 2002;]

"Authority" means the Competition Authority continued in being by *section 29*;

F6[...]

F1["breach of a procedural requirement" refers to any of the following contraventions by an undertaking, or by an association of undertakings, of an obligation or requirement imposed by a competent authority in connection with an investigation under *Part 2C*:

(a) obstructing or impeding the exercise by—

(i) an authorised officer, within the meaning of the Act of 2014, of a power referred to in section 37 or 37A of that Act, or

(ii) an authorised officer, within the meaning of the Act of 2002, of a power referred to in section 39 or 39A of that Act;

(b) breaking a seal affixed by an authorised officer, within the meaning of the Act of 2002 or the Act of 2014, as the case may be, or other accompanying person authorised or appointed by the competent authority, for the purpose of securing any document, record, data equipment, computer or place referred to in—

(i) section 37(2)(c) of the Act of 2014, or

(ii) section 39(3B)(c) of the Act of 2002;

(c) giving a false or misleading answer, failing to answer without reasonable excuse, refusing to provide a complete answer to, or otherwise failing to comply with, a requirement referred to in—

(i) section 37(2) of the Act of 2014, or

(ii) section 39(3B) of the Act of 2002;

(d) providing false, incomplete or misleading information, or failing, without reasonable excuse, to supply information, including books, documents and records, in the power or control of the undertaking or association of undertakings within the time limit specified by the competent authority—

- (i) in response to an examination, requirement or notice referred to in paragraph (b), (c) or (d) of section 18(1) or section 37A of the Act of 2014, or
- (ii) in response to a requirement under section 38A of the Act of 2002;
- (e) failing without reasonable excuse to attend before the competent authority in response to—
 - (i) a summons referred to in section 18(1)(a) of the Act of 2014,
 - (ii) a requirement referred to in section 37A of the Act of 2014, or
 - (iii) a requirement under section 38A of the Act of 2002;

“bid-rigging” has the meaning assigned to it by *section 4*;

“cartel” means an agreement or concerted practice between two or more competing undertakings aimed at coordinating their competitive behaviour on the market or influencing the relevant parameters of competition through practices including the following:

- (a) the fixing or coordination of purchase or selling prices or other trading conditions, including in relation to intellectual property rights;
- (b) the allocation of production or sales quotas;
- (c) the sharing of markets;
- (d) the sharing of customers;
- (e) bid-rigging;
- (f) restrictions of imports or exports;
- (g) anti-competitive actions against other competing undertakings;

“commercially sensitive information” means information the disclosure of which could reasonably be expected to—

- (a) substantially and materially prejudice or harm the commercial, financial or industrial interests of the undertaking or person to which it relates,
- (b) substantially prejudice or harm any other interests of a person in the conduct of the person’s business, profession or occupation, or
- (c) substantially prejudice or harm the interests of the State or a public body (within the meaning of *section 28N(5)*);]

F3[F5[“Commission” means the Competition and Consumer Protection Commission;]

“competent authority”—

- (a) except as provided by paragraph (b), means the Competition Authority, and
- (b) if the Competition Authority and the F5[Commission for Communications Regulation] have, under *section 47E*, agreed that the F5[Commission for Communications Regulation] should, in relation to a particular matter, perform the functions conferred on the relevant authority by *Part 2*, or the Minister has made a determination under that section that the F5[Commission for Communications Regulation] should exercise those functions in relation to that matter, also means the F5[Commission for Communications Regulation];

“Competition Authority” means the Authority continued by *section 29*;]

“conditional determination” shall be construed in accordance with [section 22](#);

“contravention” includes, in relation to any provision, a failure to comply with that provision and “contravene” shall be construed accordingly;

“Council” means the Council of the European Communities;

F2[“Council Regulation” means Council Regulation (EC) No. 139/2004 of 20 January 2004¹ on the control of concentrations between undertakings;]

“court”, where used without qualification, means the District Court, the Circuit Court or the High Court as appropriate, or, in the case of an appeal, the Circuit Court, the High Court or the Supreme Court as appropriate;

F1[“Directive” means Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018² to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market;]

“director” includes a person in accordance with whose directions or instructions the directors of the undertaking concerned are accustomed to act but does not include such a person if the directors are accustomed so to act by reason only that they do so on advice given by the person in a professional capacity;

F3[F5[“electronic communications network” has the same meaning as it has in the Act of 2009;]

“electronic communications service” has the same meaning as in [section 2](#) of the [Communications Regulation Act 2002](#);

“electronic communications undertaking” means an undertaking that provides an electronic communications network or an electronic communications service or associated facilities;]

F1[“enforcement proceedings” means proceedings before an adjudication officer or court for the application of relevant competition law, but does not include proceedings—

(a) that are closed by the competent authority under this Act,

(b) in relation to which the competent authority has concluded that there are no grounds for further action, or

(c) in relation to which the European Commission has made a decision under Chapter III of Council Regulation (EC) No 1/2003 of 16 December 2002³ on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty;]

“functions” includes powers and duties and a reference to the performance of functions includes, with respect to powers and duties, a reference to the exercise of the powers and the carrying out of the duties;

F1[“hearing requirement” means a requirement imposed by an adjudication officer on an undertaking or association of undertakings under [section 15V](#) or [15W](#);

“hearing requirement periodic penalty payment” has the meaning assigned to it in [section 15AD](#);]

“Minister” means the Minister for Enterprise, Trade and Employment;

F1[“notified undertaking” means an undertaking, or an association of undertakings, as the case may be, to which a prohibition notice has been issued;

¹ O.J. No. L 24, 29.1.2004, p.1.

² OJ No. L 11 14.1.2019, p. 3

³ OJ No. L 1 4.1.2003, p. 1

“periodic penalty payment” has the meaning assigned to it by *section 15AD* and, where used without qualification, includes an Article 16(1) periodic penalty payment, an Article 16(2) periodic penalty payment and a hearing requirement periodic penalty payment;]

“prescribed” means prescribed by regulations made by the Minister under this Act;

F1[“prohibition notice” has the meaning assigned to it by *section 15H*;]

“publish”, in relation to a matter, includes to place a notice in relation to it in a national newspaper and to post a notice in relation to it on a website maintained by the Authority, any Minister of the Government or a statutory body;

F1[“relevant competition law” means any of the following provisions:

(a) *section 4*;

(b) *section 5*;

(c) Article 101 of the Treaty on the Functioning of the European Union;

(d) Article 102 of the Treaty on the Functioning of the European Union;

“relevant Minister” shall be interpreted in accordance with *section 52(3)*;

“relevant recipient”, in relation to a statement of objections, means an undertaking or an association of undertakings, as the case may be, on which the statement of objections has been served;

“settlement submission” means a submission by, or on behalf of, an undertaking to a competent authority—

(a) describing the undertaking’s acknowledgement of, or renouncing any right of the undertaking to dispute its participation in, an infringement of relevant competition law and its responsibility for that infringement, and

(b) made for the purpose of requesting that the competent authority make a referral, in relation to that infringement, referred to in *section 15L(5)(d)*;

“structural or behavioural remedy” has the meaning assigned to it by *section 15Z*;]

“statutory body” means a person specified in *column (1) of Schedule 1*;

“Treaty” means the Treaty establishing the European Community;

F5[“undertaking” means a person being an individual, a body corporate or an unincorporated body of persons engaged for gain in the production, supply or distribution of goods or the provision of a service and, where the context so admits, shall include an association of undertakings.]

(2) In this Act references, however expressed, to an agreement being concluded in respect of a merger or acquisition shall be construed as including references to an agreement (of whatever kind and whether expressed to be in respect of a merger or acquisition or not) being entered into the result of which will, if the agreement is implemented, be that a merger or acquisition occurs.

(3) Where—

(a) proof of any matter is, by any provision of this Act, placed on the defendant in the proceedings concerned it shall be sufficient, for the purposes of that provision, for the defendant to prove the matter on the balance of probabilities,

(b) any provision of this Act provides that any specified matter or matters is or are presumed to be fact unless the contrary is shown (as distinct from being

presumed to be fact unless or until the contrary is proved) the provision shall be construed as placing on the defendant in the proceedings concerned an evidential burden only with respect to the matter or matters.

(4) In this Act references, however expressed, to an act that is done with the consent of a person shall be construed as including references to an act that is done with the connivance of a person.

(5) In this Act a reference to a section or Schedule is a reference to a section of, or Schedule to, this Act, unless it is indicated that a reference to some other provision is intended.

(6) In this Act a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to another provision is intended.

(7) In this Act a reference to any other enactment shall be construed as a reference to that enactment as amended, extended or adapted by or under any subsequent enactment (including this Act).

PART 2

COMPETITION RULES AND ENFORCEMENT

Anti-competitive agreements, decisions and concerted practices.

4.—(1) Subject to the provisions of this section, all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in the State or in any part of the State are prohibited and void, including in particular, without prejudice to the generality of this subsection, those which—

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions,
- (b) limit or control production, markets, technical development or investment,
- (c) share markets or sources of supply,
- (d) apply dissimilar conditions to equivalent transactions with other trading parties thereby placing them at a competitive disadvantage,
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which by their nature or according to commercial usage have no connection with the F7[subject of such contracts, or]

F8[(f) are concerned with bid-rigging.]

(2) An agreement, decision or concerted practice shall not be prohibited under *subsection (1)* if it complies with the conditions referred to in *subsection (5)* or falls within a category of agreements, decisions, or concerted practices the subject of a declaration for the time being in force under *subsection (3)*.

F9[(3) Either competent authority may in writing declare that in its opinion a specified category of agreements, decisions or concerted practices complies with the conditions referred to in *subsection (5)*, but only with the concurrence of the other competent authority. If the competent authority that made the declaration later forms the opinion that the category no longer complies with those conditions, it may revoke the declaration, but only with the concurrence of the other competent authority.]

(4) F9[The competent authority] shall publish, in such manner as it thinks fit, notice of the making of a declaration under *subsection (3)*, and of any revocation by it of such a declaration.

(5) The conditions mentioned in *subsections (2) and (3)* are that the agreement, decision or concerted practice or category of agreement, decision or concerted practice, having regard to all relevant market conditions, contributes to improving the production or distribution of goods or provision of services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit and does not—

(a) impose on the undertakings concerned terms which are not indispensable to the attainment of those objectives,

(b) afford undertakings the possibility of eliminating competition in respect of a substantial part of the products or services in question.

(6) The prohibition in *subsection (1)* shall not prevent the court, in exercising any jurisdiction conferred on it by this Act concerning an agreement, decision or concerted practice which contravenes that prohibition and which creates or, but for this Act, would have created legal relations between the parties thereto, from applying, where appropriate, any relevant rules of law as to the severance of those terms of that agreement, decision or concerted practice which contravene that prohibition from those which do not.

(7) In respect of an agreement, decision or concerted practice such as is referred to in *subsection (6)* a court of competent jurisdiction may make such order as to recovery, restitution or otherwise between the parties to such agreement, decision or concerted practice as may in all the circumstances seem just, having regard in particular to any consideration or benefit given or received by such parties on foot thereof.

(8) The putting into effect of a merger or acquisition in accordance with the provisions of *Part 3* of this Act, together with any arrangements constituting restrictions which are directly related and necessary to the implementation of the merger or acquisition and are referred to in the notification of the merger or acquisition under *subsection (1) or (3) of section 18*, shall not be prohibited under *subsection (1)*.

(9) For the avoidance of doubt, references in this Part of this Act to the parties to an agreement, decision or concerted practice of a kind referred to in *subsection (1)* include references to one or more of the parties to such an agreement, decision or concerted practice.

(10) *Subsection (9)* is without prejudice to section 11(a) of the *Interpretation Act, 1937*.

F8[(11) In this section—

"bid-rigging" means the formation or continuation of an agreement or concerted practice between undertakings concerning or relating to their participation or non-participation in a relevant bidding process without informing the person requesting bids or tenders, and without prejudice to the generality of the foregoing includes the following:

(a) an agreement whereby one or more undertakings agree not to submit a bid or tender in a relevant bidding process, or agree to withdraw a bid or tender submitted as part of such a process;

(b) an agreement whereby one or more undertakings submit a bid or tender, as part of a relevant bidding process, on terms, or subject to conditions, arrived at in accordance with the agreement or concerted practice between such undertakings;

(c) collusive tendering;

"relevant bidding process" means a process by which bids or tenders to supply a product or service, to produce a product or to enter into a concession contract are requested.]

Abuse of dominant position.

5.—(1) Any abuse by one or more undertakings of a dominant position in trade for any goods or services in the State or in any part of the State is prohibited.

(2) Without prejudice to the generality of *subsection (1)*, such abuse may, in particular, consist in—

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions,
- (b) limiting production, markets or technical development to the prejudice of consumers,
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage,
- (d) making the conclusion of contracts subject to the acceptance by other parties of supplementary obligations which by their nature or according to commercial usage have no connection with the subject of such contracts.

(3) The putting into effect of a merger or acquisition in accordance with the provisions of *Part 3* of this Act, together with any arrangements constituting restrictions which are directly related and necessary to the implementation of the merger or acquisition and are referred to in the notification of the merger or acquisition under *subsection (1)* or (3) of *section 18*, shall not be prohibited under *subsection (1)*.

Offence in respect of breach of *section 4(1)* or Article 81(1) of the Treaty.

6.—F10[(1) An undertaking that—

- (a) enters into, or implements, an agreement,
- (b) makes or implements a decision, or
- (c) engages in a concerted practice,

that is prohibited by *section 4(1)* or by Article 101(1) of the Treaty on the Functioning of the European Union, and that—

- (i) intentionally or recklessly acts to prevent, restrict or distort competition, or
- (ii) intentionally or recklessly makes omissions having the effect of preventing, restricting or distorting competition,

shall be guilty of an offence.]

(2) In proceedings for an offence under *subsection (1)*, it shall be presumed that an agreement between competing undertakings, a decision made by an association of competing undertakings or a concerted practice engaged in by competing undertakings the purpose of which is to—

- (a) directly or indirectly fix prices with respect to the provision of goods or services to persons not party to the agreement, decision or concerted practice,
- (b) limit output or F10[sales,]
- (c) share markets or F10[customers, or]

F11[(d) engage in bid-rigging.]

has as its object the prevention, restriction or distortion of competition in trade in any goods or services in the State or in any part of the State or within the common market, as the case may be, unless the defendant proves otherwise.

(3) In proceedings for an offence under *subsection (1)* in which it is alleged that an agreement, decision or concerted practice contravened the prohibition in *section 4(1)*, it shall be a good defence to prove that the agreement, decision or concerted practice in question did not contravene that prohibition by virtue of *section 4(2)*.

(4) In proceedings for an offence under *subsection (1)* in which it is alleged that an agreement, decision or concerted practice contravened the prohibition in Article 81(1) of the Treaty, it shall be a good defence to prove that—

- (a) there was in force, at the material time, in respect of the particular agreement, decision or concerted practice an exemption granted by the F12[European Commission] pursuant to Article 81(3) of the Treaty,
- (b) at the material time the agreement, decision or concerted practice benefited from the terms of an exemption provided for by, or granted under, a regulation made by the Council or the F12[European Commission] pursuant to that Article 81(3), or
- (c) the agreement, decision or concerted practice did not contravene that prohibition by virtue of that Article 81(3).

(5) In proceedings for an offence under *subsection (1)*, it shall be a good defence to prove that the act or acts concerned was or were done pursuant to a determination made or a direction given by a statutory body.

(6) For the purpose of determining liability for an offence under *subsection (1)*, any act done by an officer or an employee of an undertaking for the purposes of, or in connection with, the business or affairs of the undertaking shall be regarded as an act done by the undertaking.

F13[(7) In this section "competing undertakings" means undertakings that provide or are capable of providing goods or services to the same purchaser or purchasers.]

Offence in respect of breach of *section 5(1)* or Article 82 of the Treaty.

7.—F14[(1) An undertaking that acts in a manner prohibited by *section 5(1)* or by Article 102 of the Treaty on the Functioning of the European Union, and which—

- (a) intentionally or recklessly acts to prevent, restrict or distort competition, or
- (b) intentionally or recklessly makes omissions having the effect of preventing, restricting or distorting competition,

shall be guilty of an offence.]

(2) In proceedings for an offence under *subsection (1)*, it shall be a good defence to prove that the act or acts concerned was or were done pursuant to a determination made or a direction given by a statutory body.

(3) For the purpose of determining liability for an offence under *subsection (1)*, any act done by an officer or an employee of an undertaking for the purposes of, or in connection with, the business or affairs of the undertaking shall be regarded as an act done by the undertaking.

F15[Limitation of certain prosecutions

7A.—An undertaking shall not be prosecuted for an offence under *section 6* unless the offence—

- (a) relates to agreements between undertakings, decisions by associations of undertakings or concerted practices, and
- (b) involves—

- (i) price fixing,
- (ii) market sharing,
- (iii) output restrictions,
- (iv) bid-rigging,
- (v) collective boycott agreements,
- (vi) sharing information concerning future prices and future quantities of production, or
- (vii) restricting the ability of undertakings to carry out research and development or to continue to use their own technology for future research and development.]

F16[Defences -
administrative
proceedings

7B.—(1) In administrative proceedings in respect of a breach of *section 4* or Article 101 of the Treaty on the Functioning of the European Union—

- (a) it shall be presumed that an agreement between competing undertakings, a decision made by an association of competing undertakings or a concerted practice engaged in by competing undertakings the purpose of which is to—
 - (i) directly or indirectly fix prices with respect to the provision of goods or services to persons not party to the agreement, decision or concerted practice,
 - (ii) engage in bid-rigging,
 - (iii) limit output or sales, or
 - (iv) share markets or customers,
 has as its object the prevention, restriction or distortion of competition in trade in any goods or services in the State or in any part of the State or within the common market, as the case may be, unless the defendant proves otherwise,
- (b) it shall be a good defence to prove that the agreement, decision or concerted practice in question did not contravene that prohibition by virtue of *section 4(2)*, and
- (c) in which it is alleged that an agreement, decision or concerted practice contravened the prohibition in Article 101(1) of the Treaty on the Functioning of the European Union, it shall be a good defence to prove that—
 - (i) there was in force, at the material time, in respect of the particular agreement, decision or concerted practice an exemption granted by the European Commission pursuant to Article 101(3) of the Treaty on the Functioning of the European Union,
 - (ii) at the material time the agreement, decision or concerted practice benefited from the terms of an exemption provided for by, or granted under, a regulation made by the Council or the European Commission pursuant to Article 101(3) of the Treaty on the Functioning of the European Union, or
 - (iii) the agreement, decision or concerted practice did not contravene that prohibition by virtue of Article 101(3) of the Treaty on the Functioning of the European Union.

(2) In administrative proceedings in respect of a breach of *section 4* or *5* or of Article 101 or Article 102 of the Treaty on the Functioning of the European Union—

- (a) it shall be a good defence to prove that the act concerned was done pursuant to a determination made or a direction given by a statutory body, and
- (b) for the purpose of determining liability, any act done by an officer or an employee of an undertaking for the purposes of, or in connection with, the business or affairs of the undertaking shall be regarded as an act done by the undertaking.

(3) In this section—

"administrative proceedings" means proceedings, including proceedings before an adjudication officer or court, relating to any of the following:

- (a) a prohibition notice;
- (b) a statement of objections under *section 15L*;
- (c) a referral to an adjudication officer under *section 15M*;
- (d) administrative sanctions;

"competing undertakings" means undertakings that provide or are capable of providing goods or services to the same purchaser or purchasers.]

Penalties and proceedings in relation to offences under *section 6* and 7.

8.—(1) An undertaking guilty of an offence under *section 6* (being an offence involving an agreement, decision or concerted practice to which *subsection (2)* of that section applies) shall be liable—

(a) on summary conviction—

- (i) in the case of an undertaking that is not an individual, to a F17[class A fine] or
- (ii) in the case of an individual, to such a fine or to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment,

F18[(b) on conviction on indictment—

- (i) in the case of an undertaking that is not an individual, to a fine not exceeding the greater of €50,000,000, or 20 per cent of the turnover of the undertaking in the financial year ending in the 12 months prior to the conviction, or
- (ii) in the case of an individual, to a fine not exceeding whichever of the following amounts is the greater, namely, €50,000,000, or 20 per cent of the turnover of the individual in the financial year ending in the 12 months prior to the conviction or to imprisonment for a term not exceeding 10 years or to both such fine (that is to say a fine not exceeding the greater of the foregoing monetary amounts) and such imprisonment.]

(2) An undertaking guilty of an offence under *section 6* (other than one to which *subsection (1)* applies) or *section 7* shall, whether the undertaking is an individual or otherwise, be liable—

(a) on summary conviction, to a F17[class A fine] or

F18[(b) on conviction on indictment, to a fine not exceeding the greater of €50,000,000, or 20 per cent of the turnover of the undertaking in the financial year ending in the 12 months prior to the conviction.]

(3) *Sections 6* and *7* operate so that if the contravention concerned continues one or more days after the date of its first occurrence the undertaking referred to in *section 6* or *7*, as the case may be, is guilty of a separate offence under that section for each day that the contravention occurs; but in respect of the second or subsequent

offence of which the undertaking is guilty by reason of that continued contravention, *subsections (1) and (2)* shall have effect as if—

(a) in the case of *subsection (1)*—

F17[(i) in paragraph (a), "class E fine" were substituted for "class A fine" and references to imprisonment were disregarded, and]

(ii) in *paragraph (b)*—

(I) references to a fine not exceeding F17[€50,000] were substituted for the references to a fine not exceeding the greater of the monetary amounts mentioned therein, and

(II) references to imprisonment were disregarded,

and

(b) in the case of *subsection (2)*—

F17[(i) in paragraph (a), "class E fine" were substituted for "class A fine", and]

(ii) in *paragraph (b)*, a reference to a fine not exceeding F17[€50,000] were substituted for the reference to a fine not exceeding the greater of the monetary amounts mentioned therein.

(4) Where a court imposes a fine or affirms or varies a fine imposed by another court for an offence under *section 6* or 7 in proceedings brought by F19[the competent authority], it shall, on the application of F19[that authority] (made before the time of such imposition, affirmation or variation), provide by order for the payment of the amount of the fine to F19[that authority] and such payment may be enforced by F19[that authority] as if the payment were due to F19[that authority] on foot of a decree or order made by the court in civil proceedings.

(5) The amount of any fine paid to, or recovered by, F19[the competent authority] under *subsection (4)* shall be disposed of by it in such manner as the Minister for Finance directs.

(6) Where an offence under *section 6* or 7 has been committed by an undertaking and the doing of the acts that constituted the offence has been authorised, or consented to, by a person, being a director, manager, or other similar officer of the undertaking, or a person who purports to act in any such capacity, that person as well as the undertaking shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(7) Where a person is proceeded against as aforesaid for such an offence and it is proved that, at the material time, he or she was a director of the undertaking concerned or a person employed by it whose duties included making decisions that, to a significant extent, could have affected the management of the undertaking, or a person who purported to act in any such capacity, it shall be presumed, until the contrary is proved, that that person consented to the doing of the acts by the undertaking which constituted the commission by it of the offence concerned under *section 6* or 7.

(8) Where the affairs of a body corporate are managed by its members, *subsections (6) and (7)* shall apply in relation to the acts or defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

(9) Summary proceedings in relation to an offence under *section 6* or 7 may be brought by F19[the competent authority].

(10) An action under F17[*section 14 or section 14A*] may be brought whether or not there has been a prosecution for an offence under *section 6* or 7 in relation to the matter concerned and such an action shall not prejudice the initiation of a prosecution for any such offence.

(11) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under *section 6* or 7 may be instituted within 2 years after the day on which the offence was committed.

F20[(11A) *Section 1(1) of the Probation of Offenders Act 1907 shall not apply in relation to an offence under section 6 or 7.*

(11B) F21[...]

(11C) F21[...]

(12) In this section “turnover” does not include any payment in respect of value-added tax on sales or the provision of services or in respect of duty of excise.

Provisions as respects expert evidence.

9.—(1) In proceedings under this Act, the opinion of any witness F22[*who appears to the court or adjudication officer, as the case may be,*] to possess the appropriate qualifications or experience as respects the matter to which his or her evidence relates shall, subject to *subsection (2)*, be admissible in evidence as regards any matter calling for expertise or special knowledge that is relevant to the proceedings and, in particular and without prejudice to the generality of the foregoing, the following matters, namely—

- (a) the effects that types of agreements, decisions or concerted practices may have, or that specific agreements, decisions or concerted practices have had, on competition in trade,
- (b) an F22[*explanation to the court or adjudication officer, as the case may be,*] of any relevant economic principles or the application of such principles in practice, where such an explanation would be of F22[*assistance to the judge, adjudication officer or jury, as the case may be.*]

(2) Notwithstanding anything contained in *subsection (1)*, F22[*a court or adjudication officer, as the case may be, may,*] where in its opinion the interests of justice require it to so direct in the proceedings concerned, direct that evidence of a general or specific kind referred to in the said subsection shall not be F22[*admissible in proceedings under this Act*] or shall be admissible in such proceedings for specified purposes only.

Provision of information to juries.

10.—In a trial on indictment of an offence under *section 6* or 7, the trial judge may order that copies of any or all of the following documents shall be given to the jury in any form that the judge considers appropriate:

- (a) any document admitted in evidence at the trial,
- (b) the transcript of the opening speeches of counsel,
- (c) any charts, diagrams, graphics, schedules or agreed summaries of evidence produced at the trial,
- (d) the transcript of the whole or any part of the evidence given at the trial,
- (e) the transcript of the closing speeches of counsel,
- (f) the transcript of the trial judge's charge to the jury.

Trial of persons for certain offences by Central Criminal Court.

11.—A person indicted (whether as a principal or an accessory) for an offence under [section 6](#) or 7 or the offence of attempting to commit such an offence or the offence of conspiracy to commit such an offence shall be tried by the Central Criminal Court.

Presumptions.

12.—(1) The presumptions specified in this section shall apply in any proceedings, F23[[whether criminal or civil, including proceedings under Parts 2C to 2H](#)], under this Act.

(2) Where a document purports to have been created by a person it shall be presumed, unless the contrary is shown, that the document was created by that person and that any statement contained therein, unless the document expressly attributes its making to some other person, was made by that person.

(3) Where a document purports to have been created by a person and addressed and sent to a second person, it shall be presumed, unless the contrary is shown, that the document was created and sent by the first person and received by the second person, and that any statement contained therein—

(a) unless the document expressly attributes its making to some other person, was made by the first person, and

(b) came to the notice of the second person.

(4) Where a document is retrieved from an electronic storage and retrieval system, it shall be presumed, unless the contrary is shown, that the author of the document is the person who ordinarily uses that electronic storage and retrieval system in the course of his or her business.

(5) Where an authorised officer who, in the exercise of his or her powers F24[[under section 37 of the Competition and Consumer Protection Act 2014](#)], has removed one or more documents from any place, gives evidence in any proceedings under this Act that, to the best of the authorised officer's knowledge and belief, the material is the property of any person, then the material shall be presumed, unless the contrary is shown, to be the property of that person.

(6) Where, in accordance with *subsection (5)*, material is presumed in proceedings under this Act to be the property of a person and the authorised officer concerned gives evidence that, to the best of the authorised officer's knowledge and belief, the material is material which relates to any trade, profession, or, as the case may be, other activity, carried on by that person, the material shall be presumed, unless the contrary is proved, to be material which relates to that trade, profession, or, as the case may be, other activity, carried on by that person.

(7) References in this section to a document are references to a document in written, mechanical or electronic form and, for this purpose, “written” includes any form of notation or code whether by hand or otherwise and regardless of the method by which, or medium in or on which, the document concerned is recorded.

Admissibility of statements contained in certain documents.

13.—F25[...]

Right of action for breaches of competition rules.

14.—(1) Any person who is aggrieved in consequence of any agreement, decision, concerted practice or abuse which is F26[[prohibited under section 4 or 5, or by Article 101 or 102 of the Treaty on the Functioning of the European Union](#)], shall have a right of action under this subsection for relief against either or both of the following, namely—

(a) any undertaking which is or has at any material time been a party to such an agreement, decision or concerted practice or has done any act that constituted such an abuse,

(b) any director, manager or other officer of such an undertaking, or a person who purported to act in any such capacity, who authorised or consented to, as the case may be, the entry by the undertaking into, or the implementation by it of, the agreement or decision, the engaging by it in the concerted practice or the doing by it of the act that constituted the abuse.

(2) F27[...]

(3) Subject to *subsection (4)*, an action under *subsection (1)* F27[...] may be brought in the Circuit Court or in the High Court.

(4) Where an action under *subsection (1)* is brought in the Circuit Court any relief by way of damages F28[...] shall not, except by consent of the necessary parties in such form as may be provided for by rules of court, be in excess of the limit of the jurisdiction of the Circuit Court in an action founded on tort.

(5) F26[The following reliefs, or any of them, may be granted to the plaintiff in an action under *subsection (1)*]:

(a) relief by way of injunction or F26[declaration (including a declaration in respect of a contravention of section 4 or 5 or Article 101 or 102 of the Treaty on the Functioning of the European Union that has ceased)],

(b) damages F29[...].

(6) F27[...]

F26[(7) Without prejudice to *subsection (5)*, where in an action under *subsection (1)* it is finally decided by the Court that an undertaking has, contrary to *section 5*, or Article 102 of the Treaty on the Functioning of the European Union, abused a dominant position, the Court may, by order, either—

(a) require the undertaking to discontinue the abuse, or

(b) require the undertaking to adopt such measures for the purpose of—

(i) its ceasing to be in a dominant position, or

(ii) securing an adjustment of that position,

as may be specified in the order (including measures consisting of the sale of assets of the undertaking) within such period as may be so specified.]

(8) Where in an action under *subsection (1)* F30[...] it is proved that the act complained of was done by an undertaking it shall be presumed, until the contrary is proved, that each (if any) director of the undertaking and person employed by it whose duties included making decisions that, to a significant extent, could have affected the management of the undertaking, and any other person who purported to act in any such capacity at the material time, consented to the doing of the said act.

(9) In an action under *subsection (1)* for damages, it shall be a good defence to prove that the act complained of was done pursuant to a determination made or a direction given by a statutory body.

F31[(10) In this section "injunction" means—

(a) an interim injunction,

(b) an interlocutory injunction, or

(c) an injunction of definite or indefinite duration.]

F32[Right of action of competent authority.

14A.—(1) The competent authority shall, in respect of any agreement, decision, concerted practice or abuse that is prohibited under *section 4* or *5*, or by Article 101 or 102 of the Treaty on the Functioning of the European Union, have a right of action under this subsection for relief against either or both of the following:

- (a) any undertaking which is or has at any material time been a party to such an agreement, decision or concerted practice or has done any act that constituted such an abuse;
- (b) any director, manager or other officer of such an undertaking, or a person who purported to act in any such capacity, who authorised or consented to, as the case may be, the entry by the undertaking into, or the implementation by it, of the agreement or decision, the engaging by it in the concerted practice or the doing by it of the act that constituted the abuse.

(2) An action under *subsection (1)* may be brought in the Circuit Court or in the High Court.

(3) Relief by way of injunction or declaration (including a declaration in respect of a contravention of *section 4* or *5* or Article 101 or 102 of the Treaty on the Functioning of the European Union that has ceased) may be granted to the competent authority in an action under *subsection (1)*.

(4) Without prejudice to *subsection (3)*, where in an action under *subsection (1)* it is finally decided by the Court that an undertaking has, contrary to *section 5*, or Article 102 of the Treaty on the Functioning of the European Union, abused a dominant position, the Court may, by order either—

- (a) require the undertaking to discontinue the abuse, or
- (b) require the undertaking to adopt such measures for the purpose of—
 - (i) its ceasing to be in a dominant position, or
 - (ii) securing an adjustment of that position,

as may be specified in the order (including measures consisting of the sale of assets of the undertaking) within such period as may be so specified.

(5) Where in an action under *subsection (1)* it is proved that the act complained of was done by an undertaking it shall be presumed, until the contrary is proved, that each (if any) director of the undertaking and person employed by it whose duties included making decisions that, to a significant extent, could have affected the management of the undertaking, and any other person who purported to act in any such capacity at the material time, consented to the doing of the said act.

F33[(5A)(a) Where, in an action under *subsection (1)*, the competent authority seeks relief by way of interlocutory injunction, the Court shall not, save in exceptional circumstances, as a condition of granting the injunction, require the competent authority to lodge an undertaking in respect of damages with the Court.

- (b) For the avoidance of doubt, where in an action under *subsection (1)*, the competent authority seeks relief by way of interim injunction, nothing in *paragraph (a)* shall be construed as imposing an obligation on the Court to require a competent authority to lodge an undertaking in respect of damages as a condition of granting the injunction.]

(6) In this section "injunction" means—

- (a) an interim injunction,

(b) an interlocutory injunction, or

(c) an injunction of definite or indefinite duration.]

F34[Applications to High Court for orders in relation to certain agreements.

14B.—F35[...]]

Appeal to High Court against declaration under section 4(3).

15.—(1) Any undertaking or association of undertakings concerned or any other person aggrieved by the making of the particular declaration may appeal to the High Court against the making of a declaration under section 4(3).

(2) Such an appeal shall be made to the High Court within 28 days after the date of the publication of the notice under section 4(4) in relation to the declaration or such greater period as the High Court may, on application being made to it, specify for the purposes of this subsection in relation to the particular appeal.

(3) On the hearing of an appeal under this section, the High Court may confirm, amend or annul the declaration concerned.

(4) The High Court, on application being made to it, may by order provide that, pending the hearing and determination of an appeal under this section in relation to a declaration, the declaration shall not have effect for the purposes of section 4(2).

F36[PART 2A

COMPETITION IN GROCERY GOODS TRADE

Definitions and operation of this Part.

15A.— (1) In this Part—

"allowance" includes any discount, rebate, price concession or other advantage that is collateral to a sale or purchase of grocery goods but is not applied directly to the selling or purchase price;

"grocery goods" means any food or drink for human consumption that is intended to be sold as groceries, and includes—

(a) any substance or thing sold or represented for use as food or drink for human consumption,

(b) any substance or thing sold or represented for use as an additive, ingredient or processing aid in the preparation or production of food or drink for human consumption, and

(c) intoxicating liquors;

"grocery goods undertaking" means, subject to subsections (2) and (3), an undertaking that is engaged for gain in the production, supply or distribution of grocery goods, whether or not the undertaking is engaged in the direct sale of those goods to the public;

"retailer" means a grocery goods undertaking that sells or resells grocery goods directly to the public.

(2) For the purposes of this Part, an undertaking that produces, supplies or distributes an additive, ingredient or processing aid referred to in paragraph (b) of the definition of "grocery goods" in subsection (1) is not a grocery goods undertaking unless the additive, ingredient or processing aid is intended to be sold by a retailer as an additive, ingredient or processing aid.

(3) *Subsection (2)* applies only to the extent that the undertaking does not otherwise fall within the definition of "grocery goods undertaking" in *subsection (1)*.

(4) For the avoidance of doubt, this Part does not apply to that part of an undertaking's operation the business of which is to do any of the following:

- (a) serve or supply food or drink in the course of providing catering, restaurant or take-away services or any similar hospitality services;
- (b) serve or supply intoxicating liquor for consumption on the premises.

(5) This Part operates without prejudice to *Part 2*.]

F37[Anti-competitive conduct in grocery goods trading.

15B.— (1) Subject to *subsection (5)*, a grocery goods undertaking shall not directly or indirectly attempt to compel or coerce another grocery goods undertaking, whether by threat, promise or any like means, to resell or advertise for resale any grocery goods at—

- (a) a price fixed directly or indirectly by the first mentioned grocery goods undertaking, or
- (b) a price above a minimum price fixed directly or indirectly by the first mentioned grocery goods undertaking.

(2) Subject to *subsection (5)*, a grocery goods undertaking shall not apply dissimilar conditions to equivalent transactions with any other grocery goods undertaking.

(3) Subject to *subsection (5)*, a grocery goods undertaking shall not directly or indirectly compel or coerce, whether by threat, promise or any like means, another grocery goods undertaking to make any payment or grant any allowance for the advertising or display of grocery goods.

(4) Subject to *subsection (5)* and without limiting the generality of *subsection (3)*, a retailer shall not directly or indirectly compel or coerce, whether by threat, promise or any like means, another grocery goods undertaking to make any payment or grant any allowance to the retailer in consideration of any of the following matters:

- (a) providing space for grocery goods within a new retail outlet on or within the first 60 days after its opening to the public;
- (b) providing space for grocery goods within a newly expanded or extended retail outlet on or within the first 60 days after the opening to the public of the expanded or extended part of the outlet;
- (c) providing space for grocery goods within a retail outlet on or within the first 60 days after its opening to the public under new ownership.

(5) Conduct described in *subsections (1) to (4)* shall not be prohibited unless it has as its object or effect the prevention, restriction or distortion of competition in trade in any grocery goods in the State or in any part of the State.]

F38[Right of action for breach of *section 15B*.

15C.— (1) Any person who is aggrieved in consequence of any conduct which is prohibited under *section 15B* shall have a right of action under this subsection for relief against any of the following:

- (a) any grocery goods undertaking which is or has at any material time been a party to the prohibited conduct;
- (b) any director, manager or other officer of such an undertaking, or a person who purported to act in any such capacity, who authorised or consented to, as the case may be, the prohibited conduct.

(2) The Authority shall have a right of action under this subsection in respect of conduct which is prohibited under *section 15B*.

F39[(3) Subject to *subsection (4)*, an action under *subsection (1)* may be brought in the Circuit Court or in the High Court.]

F40[(3A) Subject to *subsection (5)*, an action under *subsection (2)* may be brought in the Circuit Court or in the High Court.]

F39[(4) *Subsections (4), (5), (8) and (9) of section 14* apply with the necessary changes for the purposes of an action under *subsection (1)* of this section and, for that purpose, a reference in *subsections (4), (5), (8) and (9) of section 14* to an action under *subsection (1)* of that section is to be read as a reference to an action under *subsection (1)* of this section.]]

F40[(5) *Subsections (3) and (5) of section 14A* (inserted by *section 4* of the *Competition (Amendment) Act 2012*) apply with the necessary changes for the purposes of an action under *subsection (2)* of this section and, for that purpose, a reference in *subsections (3) and (5) of section 14A* to an action under *subsection (1)* of that section is to be read as a reference to an action under *subsection (2)* of this section.]

F41[PART 2B

APPLICATION OF *SECTION 4* TO COLLECTIVE BARGAINING AND AGREEMENTS IN RESPECT OF CERTAIN CATEGORIES OF WORKERS]

F41[Definitions. **15D.** In this Part—

"collective bargaining" has the same meaning as it has in the *Industrial Relations (Amendment) Act 2001*;

"false self-employed worker" means an individual who—

- (a) performs for a person ("other person"), under a contract (whether express or implied and if express, whether orally or in writing), the same activity or service as an employee of the other person,
- (b) has a relationship of subordination in relation to the other person for the duration of the contractual relationship,
- (c) is required to follow the instructions of the other person regarding the time, place and content of his or her work,
- (d) does not share in the other person's commercial risk,
- (e) has no independence as regards the determination of the time schedule, place and manner of performing the tasks assigned to him or her, and
- (f) for the duration of the contractual relationship, forms an integral part of the other person's undertaking;

"fully dependent self-employed worker" means an individual—

- (a) who performs services for another person (whether or not the person for whom the service is being performed is also an employer of employees) under a contract (whether express or implied, and if express, whether orally or in writing), and
- (b) whose main income in respect of the performance of such services under contract is derived from not more than 2 persons;

"relevant category of self-employed worker" means—

(a) a class of worker specified in *Schedule 4*, or

(b) a class of false self-employed worker or fully dependent self-employed worker specified in an order made by the Minister under *section 15F*;

"trade union" has the same meaning as it has in the *Industrial Relations Act 1946*.]

F42[Collective bargaining and agreements in respect of certain categories of workers.

15E.— *Section 4* shall not apply to collective bargaining and agreements in respect of a relevant category of self-employed worker.]

F43[Prescribed relevant category of self-employed worker

15F.— (1) A trade union which represents a class of—

(a) false self-employed worker, or

(b) fully dependent self-employed worker,

may, for the purposes of collective bargaining and agreements on behalf of the class of worker so represented, apply to the Minister in accordance with this section, to prescribe such class of false self-employed worker or fully dependent self-employed worker for the purposes of this Part.

(2) An application by a trade union under *subsection (1)* shall be made in the manner specified by the Minister and shall be accompanied by evidence to show—

(a) that the class of false self-employed worker or fully dependent self-employed worker, as the case may be, the subject of the application, falls within the definition of false self-employed worker or fully dependent self-employed worker, as the case may be, and

(b) that the prescribing of such class of false self-employed worker or fully dependent self-employed worker, as the case may be—

(i) will have no or minimal economic effect on the market in which the class of self-employed worker concerned operates,

(ii) will not lead to or result in significant costs to the State, and

(iii) will not otherwise contravene the requirements of this Act or any other enactment or rule of law (including the law in relation to the European Union) relating to the prohibition on the prevention, restriction or distortion of competition in trade in any goods or services.

(3) Subject to *subsection (5)*, where, in relation to an application under *subsection (1)*, the Minister is satisfied—

(a) of the matters referred to in *paragraphs (a) and (b) of subsection (2)*, and

(b) that it is appropriate to do so,

he or she may prescribe by order the class of false self-employed worker or fully dependent self-employed worker, as the case may be, as a relevant category of self-employed worker.

(4) Where the Minister is not satisfied in accordance with *subsection (3)*, he or she shall refuse an application under *subsection (2)*.

(5) An order under *subsection (3)* shall only be made after consultation by the Minister with—

(a) such other Minister of the Government who, in the opinion of the Minister, having regard to the functions of that other Minister of the Government, ought to be consulted, and

(b) any other person or body who, in the opinion of the Minister, having regard to the functions of that other person or body, ought to be consulted.

(6) Where a class of false self-employed worker or fully dependent self-employed worker has been prescribed by the Minister under this section and, since the making of the order—

(a) the market conditions or circumstances which pertained to the making of that order have changed substantially, or

(b) new information relevant to the application which was the subject of the order becomes available to the Minister,

the Minister may, if he or she is of the opinion that it is no longer appropriate for the class of false self-employed worker or fully dependent self-employed worker concerned to be so prescribed, revoke the prescription of the relevant category of self-employed worker by order.

(7) Whenever the Minister proposes to make an order under *subsection (6)*, he or she—

(a) shall inform in writing the trade union who made the application concerned of the proposal and of the reasons for it and he or she may specify a period for the making of a submission under *subsection (8)*,

(b) may invite such other persons as he or she considers appropriate to make submissions in respect of his or her proposal within such a period as he or she may specify,

(c) shall, in a case where the Minister consulted another Minister of the Government or other person or body under *subsection (5)* in respect of the making of an order under *subsection (3)*, the subject of the proposal, consult with that Minister of the Government or person or body in respect of the proposal concerned, and

(d) shall cause notice of the proposal to be published on the Department's website and in one national newspaper circulating within the State.

(8) A trade union notified under *subsection (7) (a)* or other person or body referred to in *subsection (7)(b)* may make a submission to the Minister within the period (if any) specified by the Minister under *subsection (7) (a) or (b)*, as may be appropriate, regarding the proposal setting out the reasons why the order should or should not be made.

(9) The Minister shall consider any submission made to him or her under *subsection (8)* before making an order under *subsection (6)*.

(10) Where the Minister makes an order under *subsection (3) or (6)*, he or she shall cause notice of the making of the order to be published on the Department's website and in one national newspaper circulating within the State.]

F44[PART 2C

INVESTIGATIONS

Conduct of
certain
investigations

15G.—(1) One or more authorised officers may or, where directed to do so by the competent authority, shall, carry out an investigation into any suspected infringement of relevant competition law.

(2) Subject to this Act and any regulations made under it and—

(a) in the case of the Competition and Consumer Protection Commission, the Consumer Protection Act 2007 and the Act of 2014 and any regulations made thereunder, and

(b) in the case of the Commission for Communications Regulation, the Act of 2002 and any regulations made thereunder,

the competent authority may regulate its procedures, by rules or otherwise, for conducting such investigations in such manner as it shall from time to time determine, including the scope and terms of the investigation to be carried out, whether as respects the matters or the period to which an investigation is to extend or otherwise, and may, in particular, limit the investigation to matters connected with particular circumstances or particular issues.]

F45[Prohibition
notice

15H.—(1) Where, at any time during an investigation under this Part, the competent authority suspects that there is a risk that, by virtue of conduct which may give rise to an infringement of relevant competition law, an undertaking or association of undertakings will cause serious and irreparable harm to competition, the competent authority may issue a notice in writing to the undertaking, or association of undertakings, concerned (in this Act referred to as a "prohibition notice").

(2) A prohibition notice—

(a) shall state that the competent authority suspects that there is a risk that a notified undertaking will cause serious and irreparable harm to competition,

(b) shall state the reasons for that suspicion,

(c) shall specify the nature of the infringement of relevant competition law that the competent authority suspects has occurred or may be occurring,

(d) may, where the competent authority considers it appropriate to do so, specify directions as to measures to be taken, and a date before which, or a range of dates within which, they shall be taken, by the notified undertaking in order to—

(i) remedy any suspected infringement of relevant competition law to which the notice relates,

(ii) avoid or limit serious and irreparable harm to competition, or

(iii) otherwise comply with, or address matters specified in, the notice,

(e) shall prohibit the carrying on of the suspected infringement of relevant competition law to which the notice relates for such period as may be specified in the notice,

(f) shall specify a period within which the notified undertaking may make written submissions to the competent authority on the content of the prohibition notice, and

(g) shall be signed and dated by the competent authority.

(3) An undertaking to which a prohibition notice has been issued may, within such period as is specified in the prohibition notice, make written submissions to the competent authority on the content of the prohibition notice.

(4) As soon as is practicable after—

(a) receiving submissions under *subsection (3)*, or

(b) where no submissions under *subsection (3)* are received, the expiry of the period within which such submissions may be made,

the competent authority shall issue a written notice to the notified undertaking—

(i) confirming that the measures specified in the prohibition notice are required to be put into effect by the notified undertaking in accordance with that notice, with or without modification, or

(ii) withdrawing the prohibition notice.

(5) Subject to *subsections (6) and (7)*, and to any suspension or order made by the High Court under *section 15AY*, a prohibition notice shall take effect on such date or time as may be specified in the notice, and remain in effect until the earlier of the expiry of the period specified in the notice (including such period as stands extended under *subsection (6)*) or the date on which the effect of the prohibition notice is ended under *section 15J*.

(6) The competent authority may, where it considers it necessary to do so, extend a period referred to in a prohibition notice for such further period as it may specify by written notice issued to the notified undertaking, provided such notice is issued—

(a) in the case of the first such notice, before the expiry of the period specified in the prohibition notice, or

(b) where the period referred to in the prohibition notice stands extended by a notice under this subsection, before the expiry of the period as so extended.

(7) An appeal made against a prohibition notice shall not suspend its effect unless an order is made under *section 15AY(14)(b)*.

(8) A notified undertaking shall not, for the period during which a prohibition notice has effect, carry on any suspected infringement of relevant competition law specified in the prohibition notice as being prohibited.

(9) The competent authority may, at any time during which a prohibition notice has effect, where it is of the opinion that the prohibition notice was issued in error or was incorrect in a material respect, issue written notice to a notified undertaking amending the prohibition notice, which notice shall specify the date from which such amendment shall have effect, and the prohibition notice shall have effect as if such amendment was included in the prohibition notice from the day specified in the second-mentioned notice.

(10) The competent authority shall, after issuing a prohibition notice to an undertaking or association of undertakings in accordance with this section, inform the European Competition Network (within the meaning of the Directive).]

F46[Appeal
against
prohibition notice

15I.—A notified undertaking may appeal against a prohibition notice in accordance with *section 15AY*.]

F47[Ending of
effect of
prohibition notice

15J.—(1) Subject to *subsection (2)* and *section 15H(5)*, a prohibition notice shall cease to have effect on and from the earlier of the date on which—

(a) the competent authority issues a written notice to the notified undertaking stating that the prohibition notice is withdrawn, or

(b) the court under *section 15AY* or *15AZ*, as the case may be, confirms the decision of an adjudication officer under *section 15X* on the matter to which the prohibition notice relates.

(2) Where a prohibition notice was issued in error, or subject to a material error of fact or law, the competent authority may issue a written notice to the notified

undertaking stating that the prohibition notice is cancelled, and a prohibition notice in relation to which notice under this subsection is so issued shall be deemed never to have been issued.]

F48[Choice of enforcement mechanism

15K.—(1) Where, at any time during an investigation under this Part, the competent authority forms a preliminary view that an infringement of relevant competition law may have occurred, or may be occurring, and forms the view that the matter is to be treated as a criminal matter, the competent authority may—

- (a) refer the matter to the Director of Public Prosecutions for the purpose of considering commencing criminal proceedings under *section 6* or *7*, or
- (b) bring summary proceedings under *section 8(9)*.

(2) Where, at any stage during an investigation under this Part, the competent authority forms a preliminary view that an infringement of relevant competition law may have occurred, or may be occurring, and that the matter is not to be treated as a criminal matter, the competent authority shall—

- (a) issue a statement of objections under *section 15L* to the undertaking or association of undertakings that, in its view, is responsible for such infringement, or
- (b) seek relief against an undertaking by way of an action under *section 14A*.

(3) Where a matter is referred to the Director of Public Prosecutions under *subsection (1)(a)* and the Director of Public Prosecutions, in relation to that matter—

- (a) commences criminal proceedings in respect of an offence under *section 6* or *7* against an undertaking or association of undertakings that are struck out, concluded, discontinued or otherwise determined other than by way of nolle prosequi, the competent authority shall not pursue the proceedings referred to in *subsection (1)(b)* or *(6)* against such undertaking or association of undertakings in respect of the same matter,
- (b) commences criminal proceedings in respect of an offence under *section 6* or *7* against an undertaking or association of undertakings, which are determined by way of nolle prosequi, the competent authority may pursue, against such undertaking or association of undertakings in respect of the same matter, either—
 - (i) proceedings referred to in *subsection (1)(b)*, or
 - (ii) one or more of the proceedings referred to in *subsection (6)*,
 or
- (c) decides not to commence criminal proceedings in respect of an offence under *section 6* or *7* against an undertaking or association of undertakings, the competent authority may pursue any one of the proceedings referred to in *subsections (1)(b)* or *(6)* against such undertaking or association of undertakings in respect of the same matter.

(4) Where the competent authority initiates proceedings referred to in *subsection (6)* against an undertaking or association of undertakings and the proceedings are not withdrawn before a decision under *section 15X* is made, the competent authority may not subsequently pursue any of the proceedings referred to in *subsection (1)*, or *paragraphs (b) to (d) of subsection (6)*, against the same undertaking or association of undertakings in respect of the same matter where—

- (a) the adjudication officer finds that there has been no infringement of relevant competition law by the undertaking or association of undertakings,

- (b) the adjudication officer finds that there has been an infringement of relevant competition law by the undertaking or association of undertakings and no administrative sanctions have been imposed,
 - (c) the adjudication officer finds that there has been an infringement of relevant competition law by an undertaking or association of undertakings and administrative sanctions have been imposed, or
 - (d) the proceedings have been otherwise determined, including by operation of commitments entered into under *section 15AE* or structural or behavioural remedies imposed under *section 15X* in accordance with *section 15Z*.
- (5) For the avoidance of doubt, a preliminary view under *subsections (1) or (2)* may be formed in relation to conduct that is no longer ongoing.
- (6) The proceedings referred to in this subsection are proceedings relating to the following:
- (a) administrative financial sanctions under *section 15AA*;
 - (b) commitments in accordance with *section 15AE*;
 - (c) structural or behavioural remedies under *section 15Z*;
 - (d) *section 14A or 15C*.]

F49[Statement of objections

15L.—(1) A statement of objections shall be in writing and shall—

- (a) inform the relevant recipient that the competent authority has formed a preliminary view that—
 - (i) an infringement of relevant competition law may have occurred or may be occurring,
 - (ii) a breach of a procedural requirement may have occurred or may be occurring,
 - (iii) the undertaking or association of undertakings concerned has failed to comply with commitments entered into under *section 15AE*,
 - (iv) the undertaking or association of undertakings concerned has failed to comply with a structural or behavioural remedy imposed under *section 15X* in accordance with *section 15Z*, or
 - (v) the undertaking or association of undertakings concerned has failed to comply with a prohibition notice issued under *section 15H*,
- (b) set out the competent authority's reasons for forming that preliminary view,
- (c) provide the relevant recipient with an explanation of how it is responsible, in the preliminary view of the competent authority, for the matter referred to in *paragraph (a)* in sufficient detail to allow the relevant recipient to fully respond to the statement of objections in accordance with *subsection (2)*, and
- (d) inform the relevant recipient of its right to make submissions under *subsection (3)*, and the period within which that right may be exercised.

(2) The competent authority shall, as soon as is practicable after issuing the statement of objections, give the relevant recipient a copy of, or access to, any material relied upon by the competent authority for the purpose of issuing the statement of objections, subject to such redactions as the competent authority may consider necessary and appropriate in order to protect the rights of the parties or any other

person, to protect commercially sensitive information, or for any other good and sufficient reason.

(3) Subject to *subsection (4)*, a relevant recipient may, within such period as is specified in the statement of objections, make written submissions to the competent authority on the content of the statement of objections.

(4) Notwithstanding the period specified in the statement of objections in accordance with *subsection (1)(d)*, the competent authority may, where it is appropriate to do so in the circumstances of the case, extend the period within which written submissions may be made and shall notify the relevant recipient in writing of the revised period.

(5) Where a statement of objections relates wholly to the matter referred to in *subsection (1)(a)(i)*, the competent authority may, as it considers appropriate and as soon as is practicable after receiving written submissions, if any, on the content of the statement of objections from the relevant recipient under *subsection (3)* or, where no such submissions are received, as soon as is practicable after the expiry of the period within which such submissions may be made under this section—

- (a) carry out further analysis or otherwise continue the investigation into the matter in question,
- (b) close the investigation and not take any further action in respect of the matter,
- (c) enter into commitments with the relevant recipient under *section 15AE*,
- (d) agree, at any time prior to a decision being made by an adjudication officer under *section 15X*, a settlement with the relevant recipient concerned and make a referral to an adjudication officer in accordance with *section 15M* for an order on consent under *section 15X(8)*, or
- (e) determine that it should prepare a full investigation report in accordance with *subsection (9)* for the purpose of considering whether to make a referral to an adjudication officer in accordance with *section 15M*.

(6) Where a statement of objections relates wholly or partly to a matter referred to in *subsection (1)(a)(ii) to (v)*, the competent authority may, as it considers appropriate and as soon as is practicable after receiving written submissions, if any, on the content of the statement of objections from the relevant recipient under *subsection (3)* or, where no such submissions are received, as soon as is practicable after the expiry of the period within which such submissions may be made under this section—

- (a) not take any further action in respect of the matter, or
 - (b) determine that it should prepare a full investigation report in accordance with *subsection (9)* for the purpose of considering whether to make a referral to an adjudication officer in accordance with *section 15M*.
- (7) (a) Where the competent authority, having issued a statement of objections, identifies new or different points of fact or law, or new evidence, having a material impact on its analysis set out in the statement of objections, the competent authority shall issue a supplementary statement of objections to the relevant recipient.
- (b) The supplementary statement of objections referred to in *paragraph (a)* shall—
- (i) summarise the new or different points of fact or law or new evidence that have been identified by the competent authority and the material impact of such points of fact or law or such evidence on the competent authority's analysis, and

- (ii) inform the relevant recipient of its right to make written submissions under *paragraph (c)*, and specify the period within which that right may be exercised.
 - (c) Subject to *paragraph (d)*, the relevant recipient to which a supplementary statement of objections is provided may, within such period as is specified in the supplementary statement of objections, make written submissions to the competent authority on the content of the supplementary statement of objections.
 - (d) Notwithstanding the period specified in the supplementary statement of objections in accordance with *paragraph (b)(ii)*, the competent authority may, where it is appropriate to do so in the circumstances of the case, extend the period within which the relevant recipient may make written submissions under *paragraph (c)* and shall notify the relevant recipient in writing of the revised period.
- (8) Where a competent authority agrees a settlement with an undertaking or association of undertakings and makes a referral referred to in *subsection (5)(d)*, the competent authority shall—
- (a) prepare a simplified investigation report containing—
 - (i) a summary of the facts of the case,
 - (ii) the allegations against the undertaking or association of undertakings concerned,
 - (iii) the specific administrative financial sanction or structural or behavioural remedy which the competent authority is seeking to be imposed by the adjudication officer, and
 - (iv) a statement that the competent authority and the undertaking or association of undertakings concerned consent to the imposition of the administrative financial sanction or structural or behavioural remedy specified in the simplified investigation report,
 - (b) give a copy of the simplified investigation report referred to in *paragraph (a)* to the undertaking or association of undertakings concerned, and
 - (c) refer the matter to an adjudication officer in accordance with *section 15M(1)* for an order on consent under *section 15X(8)*.
- (9) Where a competent authority makes a referral to an adjudication officer in accordance with *section 15M*, the competent authority shall—
- (a) prepare a full investigation report containing—
 - (i) a detailed description of the relevant facts of the case,
 - (ii) the allegations against the undertaking or association of undertakings concerned,
 - (iii) an outline of the facts and evidence on which the competent authority is relying for the purpose of referring the matter to an adjudication officer under *section 15M*,
 - (iv) a summary of any submissions made by the undertaking or association of undertakings concerned to the competent authority during the investigation, including in response to the statement of objections or a supplementary statement of objections, and
 - (v) any other information that the competent authority considers would be relevant for the adjudication officer to make a decision under *section 15X(2)*,

(b) as soon as is practicable after preparing the full investigation report, give the undertaking or association of undertakings—

(i) a copy of the full investigation report, and

(ii) a copy of, or access to, any material (other than material that has already been provided to the undertaking) relied upon by the competent authority for the purpose of referring the matter to an adjudication officer under *section 15M*, subject to such redactions as the competent authority considers necessary and appropriate in order to protect commercially sensitive information, protect the rights of the parties or any other person, or for any other good and sufficient reason,

and

(c) if the competent authority forms an opinion in accordance with *section 15M(2)(a)*, refer the matter to an adjudication officer under *section 15M(2)*.

(10) The competent authority shall not make any recommendation, or express any opinion, in a full investigation report prepared under *subsection (9)*, as to the amount of any administrative financial sanction which may be imposed under *section 15X* in the event that an adjudication officer is satisfied that the undertaking or association of undertakings has committed an infringement or a breach of procedural requirement or has failed to comply with commitments or with a structural or behavioural remedy.

(11) The competent authority may provide a copy of the full investigation report prepared under *subsection (9)*, and any such submissions, to such other persons as the competent authority considers appropriate.

(12) A person who receives—

(a) a full investigation report and any submissions under *subsection (9)*, or

(b) copies of material under *subsection (2)*,

shall not, without the prior authorisation of the competent authority, disclose the existence or the content of the material or report or submissions to any other person.

(13) A person who contravenes *subsection (12)* shall be guilty of an offence and shall be liable on summary conviction to a class A fine.

(14) The undertaking or association of undertakings which has been provided with the material specified in *subsection (9)(b)(ii)* may appeal against the decision of the competent authority to impose redactions under that subparagraph—

(a) within 12 working days of the undertaking or association of undertakings receiving a copy of the notice specified in *section 15U(1)*, and

(b) by application to the adjudication officer to whom the matter has been referred under *subsection (9)(c)*, provided that the adjudication officer may at any point refer the appeal to the Chief Adjudication Officer for re-assignment to and determination by another adjudication officer.]

F50[Referral

15M.—(1) Where the competent authority has agreed a settlement in accordance with *section 15L(5)(d)* with the undertaking or association of undertakings concerned as to the imposition of an administrative financial sanction or structural or behavioural remedy, and has prepared a simplified investigation report under *section 15L*, the competent authority shall—

(a) refer the matter to an adjudication officer for an order on consent under *section 15X(8)*, and

(b) furnish the adjudication officer with a copy of the simplified investigation report.

(2) Where, having prepared a full investigation report under *section 15L(9)*, the competent authority—

(a) forms a provisional opinion that—

- (i) an undertaking or association of undertakings has infringed or is infringing relevant competition law,
- (ii) there has been a breach of a procedural requirement by an undertaking or association of undertakings,
- (iii) an undertaking or association of undertakings has failed to comply with commitments entered into under *section 15AE*,
- (iv) an undertaking or association of undertakings has failed to comply with a structural or behavioural remedy ordered under *section 15X* in accordance with *section 15Z*, or
- (v) an undertaking or association of undertakings has failed to comply with a prohibition notice,

and

(b) has elected to bring proceedings under this section or Part 2D in respect of any matter referred to in *paragraph (a)*,

the competent authority shall refer the matter for decision by an adjudication officer under *section 15X*.

(3) Where the competent authority refers a matter for decision to an adjudication officer under *subsection (2)*, the competent authority shall furnish each such adjudication officer with—

- (a) the statement of objections, and any supplementary statement of objections, issued by the competent authority under *section 15L*,
- (b) the full investigation report prepared by the competent authority under *section 15L*,
- (c) a copy of all material relied upon by the competent authority in referring the matter for decision, and
- (d) any submissions made by the undertaking or association of undertakings concerned to the competent authority during the investigation, including in response to the statement of objections issued under *section 15L*.

(4) Notwithstanding *subsection (2)*, the competent authority may, at any time after making a referral under this section, exercise its power under *section 15AE* to enter into legally binding commitments with the undertaking or association of undertakings.

(5) The relevant Minister may prescribe—

- (a) the procedure for making a referral under this section,
- (b) the procedure for withdrawing a referral under *section 15N*, and
- (c) the procedure for making an order on consent under *section 15X(8)*.

(6) The competent authority may, subject to this Act and to any regulations made under *subsection (5)*, make rules detailing—

- (a) the procedure for making a referral under this section,
- (b) the procedure for withdrawing a referral under *section 15N*, and
- (c) the procedure for making an order on consent under *section 15X(8)*.]

F51[Withdrawal
of referral

15N.—(1) A referral under *section 15M* may be withdrawn by the competent authority while it is being or before it has been considered by the adjudication officer.

(2) Where a referral is withdrawn under this section, the adjudication officer shall—

- (a) notify the undertaking or association of undertakings of the withdrawal, and
- (b) take no further action in relation to the matter.]

F52[PART 2D

ADJUDICATION OFFICERS

Appointment of
adjudication
officers

15O.—(1) A competent authority, as a national administrative competition authority, shall nominate, for appointment by the relevant Minister under this section, persons (referred to in this Act as "adjudication officers") to make decisions on behalf of the competent authority under *section 15X* and otherwise to exercise functions under this Act.

(2) The relevant Minister may make regulations providing—

- (a) for the creation of a panel of adjudication officers to exercise the functions of adjudication officers in relation to relevant competition law in respect of the Commission, the Commission for Communications Regulation, or both,
- (b) for the requirements and qualifications necessary for appointment under *subsection (1)*, and
- (c) for the relevant Minister to appoint—
 - (i) a Chief Adjudication Officer in respect of either or both competent authorities, or
 - (ii) a Chief Adjudication Officer in respect of each respective competent authority.

(3) The relevant Minister shall appoint a person nominated by a competent authority under this section unless the relevant Minister—

- (a) is not satisfied that the nominated person meets the requirements and qualifications prescribed by the relevant Minister, or
- (b) considers that the nominated person does not have the independence necessary to be appointed as an adjudication officer.]

F53[Independence
of adjudication
officers

15P.—(1) (a) Adjudication officers shall be independent in the performance of their functions.

(b) The competent authority shall put in place measures to ensure—

- (i) the independence of adjudication officers in the performance of their functions, and
- (ii) the effective implementation of and adherence to any regulations made under *section 15Q*.
- (c) Where an adjudication officer believes that performing any of his or her functions as an adjudication officer would—
 - (i) potentially create a conflict of interest, the adjudication officer shall recuse himself or herself from the functions or proceedings in question and shall

notify the competent authority and the undertakings concerned of the recusal, or

- (ii) give rise to the perception of any potential conflict of interest, the adjudication officer shall disclose that fact to the competent authority and to the undertakings concerned in the matter with which the adjudication officer is dealing, and shall, having regard to any submissions received from the undertakings concerned or from the competent authority, consider whether it is necessary to recuse himself or herself from the functions or proceedings in question.
- (d) (i) An adjudication officer shall not make a decision under *section 15X* where the adjudication officer has been involved in decisions of the competent authority as to whether to exercise any of the powers conferred on the competent authority under, or to bring proceedings under, *Part 2, 2C, 2E or 2F* or sections 18 or 37 of the Act of 2014, in relation to the investigation.
- (ii) An adjudication officer shall not draw up or decide upon—
 - (I) guidelines under *section 15AF*, or
 - (II) the policy of the competent authority or of the relevant Minister concerning—
 - (A) the procedures, conduct or selection of investigations under *Part 2C*,
 - (B) referrals under *section 15M*,
 - (C) the choice of enforcement mechanism under *section 15K*,
 - (D) the level of administrative financial sanctions that may be imposed under *section 15X*, or
 - (E) the level of reduction of administrative financial sanctions under *Part 2E*,

but may be consulted in the drawing up or deciding upon of such policy or guidelines, as the case may be.

- (iii) Where a decision of a competent authority referred to in *subparagraph (i)* is made as a college, or in any other manner whereby a decision of a competent authority is treated as having been made by all members of the competent authority, a member of the competent authority who recused himself or herself from the process of making that decision shall, for the purposes of *subparagraph (i)*, be deemed not to have been involved in that decision, provided that the recusal took place at a point and in a manner which does not compromise the independence of the member of a competent authority as an adjudication officer.

(2) Save where otherwise provided in this Act or in regulations made under this Act, adjudication officers shall not be subject to the direction of or accountable to or otherwise answerable to any other person in the performance of their functions under this Act.

- (3) (a) The chairperson of a competent authority shall not during his or her term of office serve as an adjudication officer.
- (b) A member of a competent authority may not during his or her term of office serve as Chief Adjudication Officer.
- (4) (a) A member of the competent authority or a member of staff of the competent authority who is appointed as an adjudication officer or is appointed to assist

an adjudication officer under *section 15R* shall not be required by the competent authority or by any other person to perform any duty, including any statutory duty, of a member of the competent authority, a member of staff of the competent authority, an authorised officer or an adjudication officer the performance of which is inconsistent with his or her independence as an adjudication officer or, in the case of a person appointed to assist an adjudication officer under *section 15R*, the independence of an adjudication officer whom he or she is assisting or may assist.

- (b) If a member of a competent authority or a member of staff of the competent authority is requested to perform a duty, including any statutory duty, of the competent authority, a member of staff of the competent authority, an authorised officer or an adjudication officer the performance of which he or she considers is inconsistent with his or her independence as an adjudication officer or, in the case of a person appointed to assist an adjudication officer under *section 15R*, the independence of an adjudication officer whom he or she is assisting or may assist, he or she shall refuse to perform the duty and shall inform the Chief Adjudication Officer of the request and of his or her refusal.]

F54[Regulations for appointment and independence of adjudication officers

15Q.—(1) The relevant Minister shall make regulations—

- (a) prescribing requirements upon the competent authority and adjudication officers to implement *sections 15O* and *15P*, and
- (b) providing that adjudication officers shall not be involved in investigations of suspected infringements of relevant competition law, and shall not act as authorised officers under—
 - (i) *section 15G*,
 - (ii) *section 35* (insofar as it relates to investigations of suspected infringements of relevant competition law) of the Act of 2014, or
 - (iii) the Act of 2002.

(2) In a manner ensuring the independence of adjudication officers in the performance of their functions, the regulations referred to in *subsection (1)* shall—

- (a) identify categories of, and criteria for, persons eligible for nomination by the competent authority for appointment by the relevant Minister as adjudication officers (including a Chief Adjudication Officer) and criteria for renewal of appointment of adjudication officers by the Minister, which persons may, subject to *section 15P*, include—
 - (i) members of the competent authority,
 - (ii) employees of the competent authority,
 - (iii) persons who are legally qualified,
 - (iv) such other persons as have, in the opinion of the competent authority and the Minister, sufficient expertise in matters of competition law, competition economics, or both, to merit such appointment, and
 - (v) such other persons as have, in the opinion of the competent authority and the Minister, the relevant expertise in matters likely to come before an adjudication officer,

and without prejudice to the generality of the foregoing, the competent authority may nominate, and the relevant Minister may appoint as an adjudication officer (including the Chief Adjudication Officer), a person who is not a member or employee of the competent authority,

(b) provide for—

- (i) the term of appointment (including the term of appointment of a Chief Adjudication Officer), which term shall be specified in the instrument of appointment, and may be—
 - (I) fixed and non-renewable, or
 - (II) fixed and renewable based upon objective, competence-based and independently-assessed criteria referred to in *paragraph (a)*,
- (ii) the remuneration of the Chief Adjudication Officer and other adjudication officers, which remuneration may—
 - (I) not be reduced during the term of their appointment save in accordance with law,
 - (II) vary depending on the category of person appointed under *paragraph (a)*, and
 - (III) be paid per diem, per piece, or periodically,
- (iii) such prohibitions on the remuneration of adjudication officers during their term of office, by persons or bodies other than the competent authority, as are necessary to ensure that actual or perceived conflicts of interest do not arise in the performance of the adjudication officer's functions,
- (iv) the resignation from office of adjudication officers,
- (v) procedures and criteria whereby the revocation of appointments of adjudication officers may only take place upon decision by the Government after independent assessment and recommendation by persons outside the competent authority with relevant experience and expertise and where—
 - (I) the adjudication officer concerned has become incapable through ill-health of effectively performing his or her functions,
 - (II) the adjudication officer concerned has engaged in serious misconduct, or
 - (III) the competent authority has been notified of an adjudication officer's conflict of interest in more than one matter which conflict of interest is assessed to be likely to continue,without prejudice to the automatic removal from office as an adjudication officer of an employee of the competent authority upon cessation of that employment,
- (vi) the functions of the Chief Adjudication Officer and, where no Chief Adjudication Officer stands appointed, the procedure for designation of an adjudication officer to perform the functions of a Chief Adjudication Officer under this Act,
- (vii) the rules concerning designation by a Chief Adjudication Officer of adjudication officers to divisions for any particular period or for any particular case or category of cases,
- (viii) the rules concerning decisions by a division of adjudication officers, including the appointment and functions of chairpersons and deputy chairpersons of such divisions,
- (ix) the rules concerning promotion and increments of employees of the competent authority who act as adjudication officers,

- (x) the rules concerning the tasking of any employee of the competent authority to assist an adjudication officer in the performance of his or her functions under this Act, and
 - (xi) the rules concerning the appointment of consultants or advisers for the purpose of assisting an adjudication officer in the performance of his or her functions under this Act,
- (c) make further provision for the independence of adjudication officers (including an effective internal separation between the functions of the competent authority and the functions of adjudication officers) and any such regulation shall include provision (where appropriate)—
- (i) that adjudication officers and employees of the competent authority tasked with assisting adjudication officers shall not communicate with authorised officers, employees and members of the competent authority in respect of any proceeding relating to relevant competition law before the competent authority arising under this Act save on notice to the undertakings concerned in those proceedings the subject of a referral under *section 15M*, or as otherwise permitted by regulations, which may include communications relating to investigations in which the adjudication officers, and employees of the competent authority tasked with assisting the adjudication officers, have not been nor will be involved in any decision under *section 15X* or in any related referral under *section 15M*,
 - (ii) that documentation and other information concerning an investigation conducted under *Part 2C* which have been obtained by the competent authority in the exercise of its functions under this Act and the Act of 2014, shall not be disclosed to adjudication officers that have been directed to make a decision under *section 15X* in relation to that same investigation or to employees of the competent authority or other persons (including any consultant or adviser) tasked with assisting such adjudication officers save in accordance with this Act and upon notice to the undertakings concerned in any referral under *section 15M*,
 - (iii) for arrangements for oversight by specified members or employees of the competent authority for compliance by the competent authority with *section 15P* and the regulations made thereunder,
 - (iv) for reporting to the relevant Minister or the competent authority by specified members or employees of the competent authority or by adjudication officers of any breach of *section 15P* and the regulations made thereunder, and mechanisms for remedying any such breach,
 - (v) for specification of the functions of the competent authority which an adjudication officer can perform,
 - (vi) for the structure of the competent authority,
 - (vii) for the policies, practices and functions of the competent authority, and
 - (viii) for arrangements for working conditions within the competent authority,
- (d) require the competent authority to publish policies and implement measures sufficient to identify and manage conflicts of interest on the part of—
- (i) adjudication officers, and
 - (ii) any employee of the competent authority or other person (including any consultant or adviser) tasked with assisting an adjudication officer in the performance of his or her functions under this Act,
- and

- (e) require the Chief Adjudication Officer and the competent authority to report annually to the relevant Minister on the compliance by the competent authority and the adjudication officers with the principle of independence under *section 15P* and any regulations made hereunder and the policies the adjudication officers or the competent authority have adopted in order to do so.]

F55[Appointment
of assistants to
adjudication
officers

15R.—(1) (a) The competent authority may from time to time—

- (i) require any employee of the competent authority, or
 - (ii) appoint such persons (including any consultant or adviser) as it considers necessary,
- to assist adjudication officers, or an individual adjudication officer (including the Chief Adjudication Officer), in the performance of their, or his or her, functions under this Act.
- (b) Persons assisting an adjudication officer under *paragraph (a)* shall not provide such assistance in connection with any matter in which they have or may have a conflict of interest.
 - (c) The Chief Adjudication Officer may at any time direct that an employee required to assist the adjudication officers, or an individual adjudication officer, under *subsection (1)(a)(i)* in the performance of their powers and functions under this Act, be reassigned by the competent authority.

(2) Persons required to, or appointed to as the case may be, assist adjudication officers under *subsection (1)* may perform other tasks on behalf of the competent authority, including performing tasks in any investigation in which they have not been, and will not be, involved in assisting an adjudication officer under this section, but they shall be solely responsible to the Chief Adjudication Officer, or to the adjudication officer or adjudication officers to which they have been individually assigned, in relation to their performance of the tasks referred to in *subsection (1)*.

(3) (a) Employees of the competent authority who have been required to assist adjudication officers under *subsection (1)(a)*, and persons appointed by the competent authority to assist adjudication officers under *subsection (1)(a)*, shall not be subject to the direction of any member or employee of the competent authority in relation to the performance of the functions referred to in that subsection.

(b) Nothing in *paragraph (a)* shall preclude an employee of the competent authority or other person appointed by the competent authority being subject to the direction of a member or employee of the competent authority in relation to the performance of tasks not referred to in *subsection (1)(a)*.

(4) Without prejudice to the responsibility of the competent authority for employment and for entering into contracts and determining all matters relevant thereto, where an adjudication officer has made a determination that specific assistance is required in a particular matter referred to an adjudication officer for a decision under *section 15M*, the adjudication officer shall be consulted on decisions concerning the appointment and assignment of persons to provide assistance to adjudication officers under *subsection (1)*.

(5) (a) The relevant Minister may prescribe detailed requirements governing the appointment and assignment of persons to assist adjudication officers under *subsection (1)*.

(b) The relevant Minister may, where it is necessary to enable the proper functioning of the competent authority, make regulations prescribing such limited exceptional circumstances in which persons referred to in *subsection (3)(a)* may be subject to a direction referred to in that subsection.]

F56[Effect of appointment of an adjudication officer upon terms of employment or contract

15S.—(1) Nothing in this Part shall preclude the competent authority from relying on any aspect of a contract of service or for services in relation to the performance or non-performance of functions other than—

- (a) the functions of an adjudication officer under this Act, and
- (b) the functions of a person appointed to assist an adjudication officer under *section 15R(1)(a)* when assisting an adjudication officer.

(2) (a) The appointment of a person as an adjudication officer shall not in itself—

- (i) constitute employment by or within the competent authority,
- (ii) constitute the holding of a position in the civil service, or
- (iii) otherwise create a contract between an adjudication officer on the one part and the Minister or the competent authority on the other part.

(b) Save in relation to the application of independence requirements to an adjudication officer, nothing in this Part shall alter the terms and conditions of employment of an adjudication officer who is an employee of the competent authority on the date on which *section 13* of the Competition (Amendment) Act 2022 comes into operation.

(3) Save for limited exceptions consistent with the independence of adjudication officers in the exercise of their functions which the relevant Minister may prescribe, nothing in this Part shall prevent the application by the competent authority of disciplinary procedures under a contract of employment save in respect of—

- (a) the tasks of an adjudication officer under this Act, and
- (b) the tasks of a person appointed to assist an adjudication officer under *section 15R(1)(a)* when assisting an adjudication officer.

(4) The relevant Minister may make regulations to give further effect to this section.]

F57[Division of adjudication officers

15T.—(1) At the discretion of the Chief Adjudication Officer, adjudication officers may (in a particular proceeding or otherwise) sit as a division, and in such circumstances references to an adjudication officer in this Act shall be considered to be references to a division of adjudication officers.

(2) (a) A division of the adjudication officers referred to in *subsection (1)* shall consist of such uneven number of adjudication officers as the Chief Adjudication Officer may determine either for any particular proceeding or group of proceedings or for any type of proceedings as the Chief Adjudication Officer shall consider appropriate.

(b) When establishing a division, the Chief Adjudication Officer shall have regard to the complexity of the anticipated proceedings, the potential for a balance of skills amongst the adjudication officers in such proceedings, and the need for consistent decision-making.]

F58[Action by adjudication officer after receiving referral

15U.—(1) As soon as practicable after a referral has been made under *section 15M*, the adjudication officer shall, subject to *subsection (3)*, give the undertaking or association of undertakings—

- (a) a copy of this section,
- (b) in respect of a referral under *section 15M(2)*, a written notice stating that the undertaking or association of undertakings may make submissions in writing to the adjudication officer on the full investigation report prepared under *section 15L* within the period of 30 working days from the date the undertaking or association of undertakings receives the notice, or such further

period, not exceeding 15 working days, as the adjudication officer may allow, and

- (c) in respect of a referral under *section 15M(1)*, a notice stating that the matter has been referred for an order on consent under *section 15X(8)* and asking the undertaking or association of undertakings to confirm the matters set out in *paragraphs (a) and (b) of section 15X(8)* within the period of 15 working days from the day the undertaking or association of undertakings receives the notice, or such further period, not exceeding 7 working days, as the adjudication officer may allow.

(2) The adjudication officer may do any of the following that he or she considers necessary to resolve an issue of fact or otherwise enable the adjudication officer to make a decision under *section 15X*:

- (a) exercise any of the powers under *section 15W*;
- (b) request further information from the undertaking or association of undertakings;
- (c) request further information from any other person, and may, for the purposes of doing so, provide, with due regard for the protection of commercially sensitive information, a copy of the full investigation report prepared under *section 15L* to the person;
- (d) conduct an oral hearing.

(3) Where an oral hearing takes place at which an undertaking or association of undertakings may make submissions to the adjudication officer on the full investigation report prepared under *section 15L(9)*, the adjudication officer shall not be required to give to the undertaking, or association of undertakings, the material referred to in *subsection (1)*.

(4) As soon as practicable after making a request under *subsection (2)(c)*, the adjudication officer shall give to the competent authority, and shall, with due regard for the protection of commercially sensitive information, give to the undertaking or association of undertakings a copy of the request.

(5) As soon as practicable after receiving any information pursuant to a request under *subsection (2)(c)*, the adjudication officer shall, with due regard for the protection of commercially sensitive information, give the competent authority and the undertaking or association of undertakings—

- (a) a copy of the information or, where the protection of commercially sensitive information means that such information cannot be provided in full, a summary of such information, and
- (b) written notice stating that the competent authority and the undertaking or association of undertakings may make submissions in writing to the adjudication officer on the information within the period of 20 working days from the day the undertaking or association of undertakings receives the notice, or such further period, not exceeding 10 working days, as the adjudication officer may allow.

(6) A person who receives a copy of a report under *subsection (2)(c)* shall not, without the prior authorisation of the adjudication officer, disclose the existence or the content of the report to any other person.

(7) A person who contravenes *subsection (6)* shall be guilty of an offence and shall be liable on summary conviction to a class A fine.

(8) An adjudication officer may direct an employee of the competent authority required to assist with his or her functions to make any communication on his or her behalf.]

F59[Admissibility of evidence and rules for oral hearings

15V.—(1) This section applies to an oral hearing before an adjudication officer under *section 15U*.

(2) An adjudication officer may, by notice in writing—

(a) summon a witness (including an authorised officer) to appear to give evidence, or to produce before the adjudication officer any books, documents or records in such person's power or control, or to do both, and

(b) require the witness to attend an oral hearing from day to day unless excused, or released from further attendance, by the adjudication officer.

(3) An adjudication officer may require evidence to be given on oath, and may for that purpose—

(a) require a witness to take an oath, and

(b) administer an oath to the witness orally or permit the witness to affirm.

(4) The oath to be taken by a witness for the purposes of this section is an oath that the evidence the witness will give shall be true.

(5) The adjudication officer may allow a witness at the oral hearing to give evidence by tendering a written statement, provided such statement is verified on oath.

(6) Without prejudice to *subsections (1) to (5)*, the adjudication officer has the same powers, rights and privileges as a judge of the High Court when hearing civil proceedings on the occasion of that action including with respect to:

(a) the attendance and examination of witnesses on oath or otherwise (including witnesses who are outside the State);

(b) compelling the production (including discovery) of records or an identified category or categories of records.

(7) An oral hearing under this section may, at the discretion of the adjudication officer, be held remotely (including in an online format), and evidence may be tendered as permitted by regulations or by an adjudication officer.

(8) At the oral hearing before the adjudication officer—

(a) an authorised officer or other representative of the competent authority or any other person, with leave of the adjudication officer, shall present the evidence in support of the referral, and

(b) the testimony of witnesses attending the oral hearing shall be given in accordance with this section and any regulations made thereunder.

(9) (a) A person to whom notice is given under *subsection (2)* may be examined and cross-examined at the oral hearing.

(b) At any oral hearing before an adjudication officer, there shall be a right to cross-examine witnesses and call evidence in defence and reply.

(10) (a) An oral hearing before an adjudication officer shall be held in public unless the adjudication officer is satisfied that, given the existence of special circumstances (which shall include whether information given or likely to be given in evidence is commercially sensitive information), the hearing or part of the hearing should be held otherwise than in public.

(b) If special circumstances exist (which shall include whether information given or likely to be given in evidence is commercially sensitive information), an adjudication officer may impose restrictions on the reporting or distribution of information given at the hearing.

(11) The payment or reimbursement of, or of any part of, the reasonable travelling and subsistence expenses of a witness required to attend an oral hearing, is at the discretion of the adjudication officer and such expenses shall be discharged by the competent authority.

(12) The rules of evidence shall apply to an oral hearing before an adjudication officer save as may be otherwise prescribed.

(13) Nothing in this section or *section 15W* compels the disclosure by any person of any information that the person would be entitled to refuse to produce on the grounds of legal professional privilege or authorises the inspection or copying of any document containing such information that is in the person's possession, power or control.

(14) (a) The relevant Minister may make regulations setting out further details or conditions for the receipt of evidence or the conduct of oral hearings under this section.

(b) Subject to any regulations under *paragraph (a)*, the competent authority shall make rules providing for the conduct of an oral hearing under this section and shall publish such rules on a website maintained by it or on its behalf.

(c) Rules made under *paragraph (b)* shall not have effect until they are published.]

F60[Powers and offences

15W.—(1) At any time after a referral under *section 15M(2)*, an adjudication officer may, whether on application by the competent authority, by an undertaking or association of undertakings concerned in the matter which is the subject of the referral or of the adjudication officer's own motion, and where the adjudication officer is satisfied that such direction is necessary to the determination of the issues before the adjudication officer—

(a) direct authorised officers of the competent authority, or the undertaking or association of undertakings concerned, (each of which, in this section, is referred to as a 'party'), to answer (whether on oath or otherwise) an identified question in whatever manner or form the adjudication officer may specify,

(b) direct a party to adduce evidence or produce books, documents and records in its power or control, and

(c) direct a party to clarify any issue of fact that an adjudication officer may deem necessary.

(2) An answer to a question put to a person in response to a requirement under *subsection (1)(a)* is not admissible as evidence against the person in criminal proceedings, other than proceedings for perjury in circumstances where the contested response or information was provided on oath.

(3) A summons issued by the adjudication officer for the purpose of an oral hearing under *section 15V* may be substituted for and is the equivalent of any formal process capable of being issued in an action for enforcing the attendance of witnesses and compelling the production of records.

(4) A person the subject of a direction under this section shall be entitled to the same immunities and privileges in respect of compliance with any requirement referred to in this section as a witness appearing in proceedings before the Court.

(5) A person is guilty of an offence if the person—

(a) to whom notice is given under *section 15V* does not comply with a requirement referred to in that section,

- (b) subject to a direction under *subsection (1)*, fails to comply with a requirement of that subsection,
- (c) having been duly summoned to attend before an adjudication officer under *section 15V(2)(a)* fails without reasonable excuse to attend at the time and place indicated on the summons,
- (d) while attending as a witness before an adjudication officer at an oral hearing under *section 15V* refuses to—
 - (i) give evidence in the manner lawfully required by the adjudication officer to be taken,
 - (ii) produce any record in the person's power or control that the person is lawfully required by the adjudication officer to produce, or
 - (iii) answer any question that the person is lawfully required by the adjudication officer to answer,or
- (e) while attending before the adjudication officer engages in any conduct that, if the adjudication officer were a court of law having power to punish for contempt, would be contempt of court.

(6) The Court may, where a person fails to comply with a requirement under *section 15V(2)*, with a direction under *subsection (1)*, with a summons to attend before an adjudication officer, or refuses, while attending as a witness before the adjudication officer, to do anything referred to in *subsection (5)* that the person is lawfully required by an adjudication officer to do, or otherwise fails to comply with a direction or order of the adjudication officer, on summary application by a party on notice to that person—

- (a) by order require the person to attend before the adjudication officer or to do the thing that the person refused to do, as the case may be, within a period to be specified by the Court, and
- (b) make such interim or interlocutory orders as it considers necessary for that purpose.

(7) A person is guilty of an offence if, having been or in anticipation of being required to produce a book, document or record under *subsection (1)(b)* or under *section 15V(2)(a)*, he or she intentionally or recklessly destroys or otherwise disposes of, falsifies or conceals such book, document or record or causes or permits its destruction, disposal, falsification or concealment.

(8) If information or evidence is provided by a person to an adjudication officer in connection with any function of an adjudication officer under this Part, that person is guilty of an offence if—

- (a) the information or evidence is false or misleading in a material respect, and
- (b) the person knows, or ought reasonably to know, that it is false or misleading in a material respect.

(9) A person who provides any information to another person, knowing the information to be false or misleading in a material respect, or who recklessly provides any information to another person which is false or misleading in a material respect, knowing the information is to be used for the purpose of providing information to an adjudication officer in connection with any of his or her functions under this Act, is guilty of an offence.

(10) A person guilty of an offence under *subsection (5)*, (7), (8) or (9) is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine not exceeding €250,000 or both.

(11) Proceedings may be brought for an offence under this section regardless of whether or not an order has been made, or has been applied for, under subsection (6).

(12) (a) An adjudication officer may refer to the Director of Public Prosecutions a suspected breach of a hearing requirement under this section or *section 15V* without the necessity for an investigation by the competent authority.

(b) Subject to *section 15X*, an adjudication officer may impose a periodic penalty payment under *section 15AD(1)(b)* in respect of a breach of a hearing requirement without the necessity for an investigation by the competent authority and without a referral under *section 15M* separate to the proceedings in which the breach has arisen.

(13) The relevant Minister may make regulations setting out further details or conditions for the exercise of the powers of adjudication officers and the competent authority under this section.

(14) In this section, "Court" means the High Court.]

F61[Decision by the adjudication officer

15X.—(1) An adjudication officer shall consider the following when making a decision referred to him or her under *section 15M(2)* in relation to any alleged infringement of relevant competition law, breach of a procedural requirement, failure to comply with a structural or behavioural remedy, failure to comply with commitments entered into under *section 15AE* or failure to comply with a prohibition notice:

(a) the statement of objections (and any supplementary statement of objections) prepared by the competent authority;

(b) the full investigation report prepared by the competent authority under *section 15L(9)*;

(c) any written submissions made by the undertaking or association of undertakings concerned on the content of the statement of objections and the full investigation report;

(d) any submissions, statements, admissions, information, records or other evidence provided to the adjudication officer in the course of the proceedings;

(e) any prior relevant decision of an adjudication officer under this Act, other than insofar as such decision has not been confirmed by the High Court under *section 15AY* or *15AZ*.

(2) In any matter referred to an adjudication officer for decision under *section 15M(2)*, an adjudication officer—

(a) may make a decision as to whether, on the balance of probabilities—

(i) an undertaking or association of undertakings has or has not intentionally, recklessly or negligently committed an infringement of relevant competition law, and whether that infringement is continuing,

(ii) an undertaking or association of undertakings has or has not intentionally, recklessly or negligently breached a procedural requirement or a hearing requirement, and whether that breach is continuing,

- (iii) an undertaking or association of undertakings has or has not intentionally, recklessly or negligently failed to comply with commitments entered into under *section 15AE*, and whether that failure is ongoing,
 - (iv) an undertaking or association of undertakings has or has not intentionally, recklessly or negligently failed to comply with a structural or behavioural remedy imposed under this section in accordance with *section 15Z*, and whether that failure is ongoing, or
 - (v) an undertaking or association of undertakings has or has not intentionally, recklessly or negligently failed to comply with a prohibition notice issued under *section 15H*, and whether that failure is ongoing,
- and
- (b) may, having made a decision under *paragraph (a)*, do one or more of the following:
- (i) impose structural or behavioural remedies on the undertaking or association of undertakings concerned in accordance with *section 15Z*;
 - (ii) impose an administrative financial sanction on the undertaking or association of undertakings concerned in accordance with *section 15AA*;
 - (iii) impose periodic penalty payments on the undertaking or association of undertakings concerned in accordance with *section 15AD*.
- (3) (a) For the avoidance of doubt, a decision under *subsection (2)* may be formed in relation to conduct that is no longer ongoing.
- (b) (i) After reaching a decision under *subsection (2)(a)* and prior to making a decision under *paragraph (b)* of that subsection, the adjudication officer shall provide the competent authority and the undertaking or association of undertakings with a copy of the decision under *subsection (2)(a)* and shall inform the competent authority and the undertaking or association of undertakings of—
- (I) if any, the structural or behavioural remedies that the adjudication officer proposes to impose on the undertaking or association of undertakings, and
 - (II) the amount of any periodic penalty payment or administrative financial sanction that the adjudication officer proposes to impose, and the criteria that the adjudication officer considers applicable to the determination of such amount.
- (ii) The adjudication officer may invite written submissions from the competent authority and the undertaking or association of undertakings in accordance with *subparagraph (iii)*.
- (iii) The competent authority and the undertaking or association of undertakings may, within a period of 15 working days from the date of being informed of the matter described in *subparagraph (i)*, or such further period as is considered appropriate by the adjudication officer, make submissions in writing to the adjudication officer in relation to the application of the criteria in *section 15Z*, *15AA*, *15AB* or *15AD* and may make submissions in regard to guidelines made by the competent authority under *section 15AF*.
- (iv) The adjudication officer may by notice in writing request the undertaking or association of undertakings to provide, in writing, within a period specified in the notice, such information as the adjudication officer considers appropriate for the purpose of determining the sanction to be imposed.

- (v) Nothing in this paragraph shall preclude the adjudication officer from imposing a structural or behavioural remedy or administrative financial sanction or periodic penalty payments different to that proposed, or outside the range of that proposed, under *subparagraph (i)*.
 - (vi) Where an adjudication officer imposes a periodic penalty payment on an undertaking or association of undertakings under this section, the amount of the periodic penalty payment shall be calculated in accordance with *section 15AD* and shall be reckoned from the date of the decision under *subsection (2)(a)*.
 - (vii) Without prejudice to the reckoning of time under *subparagraph (vi)* of this subsection, a decision under *subsection (2)* shall not have effect, be questioned under *section 15AY* or be the subject of a notice under *section 15Y* until a decision under both *subsection (2)(a)* and, where applicable, *subsection (2)(b)* has been made.
- (4) In determining the amount of any administrative financial sanction to be imposed, the adjudication officer shall have regard to—
- (a) the matters outlined in *sections 15AB* and *15AC*, and
 - (b) the imposition of any structural or behavioural remedies in accordance with *section 15Z*.
- (5) A decision under *subsection (2)* shall include details in relation to—
- (a) the decision made,
 - (b) the date of the decision,
 - (c) the reasons for the decision,
 - (d) the statement of objections, information, records, documents, statements, admissions, evidence and written and oral submissions considered,
 - (e) the right of appeal provided for under *section 15AY* where a final decision under *subsection (2)* has been made,
 - (f) the time limits within which the undertaking or association of undertakings is required, in default of any relevant appeal, to pay the administrative financial sanction or periodic penalty payment, or give effect to the structural or behavioural remedy imposed, as the case may be,
 - (g) the name of the undertaking or association of undertakings concerned, and
 - (h) such other particulars or material as the adjudication officer considers appropriate.
- (6) The relevant Minister may make regulations setting out detailed requirements to implement this section and otherwise for the conduct of proceedings before an adjudication officer in any matter referred to an adjudication officer for decision (in this section referred to as "proceedings"), having regard to the need for efficiency and the rights of the defence, including but not limited to all or any of the following:
- (a) the form and manner of provision of a statement of objections or supplementary statement of objections prepared by the competent authority in accordance with *section 15L*;
 - (b) the form and manner of provision of information, records, documents, statements, admissions and evidence to be provided to the competent authority or to the adjudication officer;
 - (c) time limits to apply to the making and conduct of proceedings;

- (d) the attendance of witnesses at an oral hearing;
- (e) the form and manner of making of requests by an adjudication officer for information, discovery or disclosure from a party to a proceeding, or a person other than a party;
- (f) the provision by the competent authority or by an adjudication officer to a party to a proceeding, or a person other than a party to proceedings, of information received by the adjudication officer or the competent authority;
- (g) procedures for the consolidation and hearing of two or more proceedings together;
- (h) procedures for the separation of proceedings;
- (i) the publication on a website maintained by or on behalf of the competent authority of information and documents provided, for the purposes of proceedings, by a party to a proceeding or by a person other than a party to proceedings;
- (j) the form and manner in which a proceeding may be withdrawn;
- (k) any consequential, supplementary or transitional provisions as appear to the Minister to be necessary or expedient for the purpose of giving effect to the regulations.

(7) In accordance with *section 15AF*, a competent authority shall, on a website maintained by or on behalf of the competent authority, publish guidelines on the conduct of proceedings and may publish guidelines on any of the matters the subject of *subsection (6)*.

(8) At any time after a referral under *section 15M*, and with the consent of the competent authority, an adjudication officer may impose on the undertaking or association of undertakings the subject of the referral an administrative financial sanction, a structural or behavioural remedy or both such sanction and such remedy, if—

- (a) the undertaking or association of undertakings the subject of a referral under *section 15M(1)* acknowledges that it is committing or has committed an infringement of relevant competition law, and
- (b) such undertaking or association of undertakings consents to the imposition of a specific administrative financial sanction, the specific structural or behavioural remedy, or both, as the case may be.

(9) No order as to costs shall be made in proceedings before an adjudication officer, save that an adjudication officer may in his or her discretion award the costs of proceedings before an adjudication officer—

- (a) against the undertaking or association of undertakings, in the event that it is found to have infringed relevant competition law and if the adjudication officer finds that the undertaking or association of undertakings has engaged in improper, irregular, unfair, or unsatisfactory conduct in connection with the investigation of the alleged infringement or in the conduct of its defence before an adjudication officer, or
- (b) against the competent authority in the event that no infringement is found and if the adjudication officer finds that the competent authority has engaged in improper, irregular, unfair, or unsatisfactory conduct in connection with the investigation of the alleged infringement or in its conduct of the proceedings before the adjudication officer.]

F62[Notice of decision

15Y.—(1) As soon as practicable after the adjudication officer has made a decision under *section 15X* (including, in respect of a decision under *section 15X(2)*, both the decision under *section 15X(2)(a)* and, where applicable, the decision under *section 15X(2)(b)*), the adjudication officer shall furnish the competent authority with the decision.

(2) (a) The competent authority shall, within 7 working days of receipt of the decision referred to in *subsection (1)*, give notice in writing of the decision to the undertaking or association of undertakings concerned.

(b) The notice under *paragraph (a)* shall—

(i) include a copy of the decision referred to in *subsection (1)*,

(ii) state that, in respect of an administrative financial sanction, an Article 16(2) periodic penalty payment, a hearing requirement periodic penalty payment or a structural or behavioural remedy, the decision does not take effect unless it is confirmed by the court in accordance with *section 15AY* or *15AZ*, as the case may be, and

(iii) state that, in respect of an administrative financial sanction, an Article 16(2) periodic penalty payment or a behavioural or structural remedy, if the undertaking or association of undertakings does not appeal under *section 15AY*, the competent authority must, as soon as is practicable after the expiration of the period for the making of an appeal, make an application for confirmation of the decision in accordance with *section 15AZ*.

(c) The competent authority may provide a copy of a notice referred to in *subsection (1)* to a person other than the undertaking or association of undertakings where it considers it appropriate to do so.

(3) A copy of the decision or order referred to in *subsection (1)* shall be published on a website maintained by or on behalf of the competent authority.

(4) A decision or order referred to in *subsection (1)* or published under *subsection (3)* may contain such redactions as the adjudication officer considers necessary and appropriate, in respect of *subsection (1)* on his or her own motion, or in respect of *subsections (2) and (3)* upon application of the competent authority or any undertaking or association of undertakings concerned—

(a) to protect commercially sensitive information,

(b) to protect the rights of the undertaking or association of undertakings concerned or any other person, or

(c) for any other good and sufficient reason.

(5) (a) A person who receives a copy of a notice under *subsection (2)* prior to the publication of the decision under *subsection (3)* shall not, without the prior authorisation of the adjudication officer, disclose the existence or the content of the notice to any other person.

(b) A person who receives a copy of a notice under *subsection (2)* which contains material redacted from publication under *subsection (3)* shall not, without the prior authorisation of the adjudication officer, disclose the content of the redacted material to any other person.

(6) A person who fails to comply with a request to provide information under *section 15X(3)(b)(iv)*, or a person who contravenes *subsection (5)*, shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine not exceeding €250,000, or both.

(7) Summary proceedings in relation to an offence under *subsection (6)* may be brought by the competent authority.]

F63[Structural or behavioural remedies

15Z.—(1) Where an adjudication officer makes a decision under *section 15X* to impose a structural or behavioural remedy on an undertaking or association of undertakings, such remedy shall be imposed in accordance with this section.

(2) In this Act, "structural or behavioural remedy" means any remedy or obligation requiring an undertaking or association of undertakings to take, or to refrain from taking, any action relating to the behaviour or structure of an undertaking or association of undertakings and includes requiring the undertaking or association of undertakings in question to do one or more of the following:

- (a) to sell or divest itself of any matter, including business, assets, shares, real property or intellectual property;
- (b) to modify or constrain its conduct in specified ways;
- (c) to grant specified undertakings access to assets, facilities, technology, infrastructure, information or services;
- (d) to implement ring-fencing arrangements to prevent the sharing of specified competitively sensitive information;
- (e) to cease a specified conduct or practice;
- (f) to unbundle two or more products which were previously offered to customers jointly;
- (g) to discontinue customer rebate schemes, or a part of any such schemes;
- (h) to prevent the flow of competitively sensitive information between undertakings or within divisions, units, departments or other organisational units within an undertaking.

(3) The adjudication officer shall not impose a structural or behavioural remedy on an undertaking or association of undertakings under this section unless—

- (a) imposing the remedy is necessary to bring an existing infringement of relevant competition law to an end or to prevent a similar infringement of relevant competition law from reoccurring in future, and
- (b) the remedy imposed is proportionate to the infringement of relevant competition law committed.

(4) Where more than one structural or behavioural remedy would be equally effective for the purpose of bringing the infringement of relevant competition law in question to an end, the adjudication officer shall choose the remedy that is least burdensome for the undertaking or association of undertakings in question.

(5) A decision to impose a structural or behavioural remedy shall not take effect unless the decision is confirmed by the High Court under *section 15AY* or *15AZ*.]

F64[Administrative financial sanctions

15AA.—(1) An adjudication officer may, in accordance with *section 15X*, impose administrative financial sanctions on undertakings and associations of undertakings, which sanctions shall be effective, proportionate and dissuasive, where the adjudication officer determines—

- (a) under *section 15X(2)(a)(i)* that the undertaking or association of undertakings committed an infringement of relevant competition law, including where the adjudication officer determined that the infringement is ongoing,
- (b) under *section 15X(2)(a)(ii)* that the undertaking or association of undertakings breached a procedural requirement, including where the adjudication officer determined that the breach is ongoing,
- (c) under *section 15X(2)(a)(iii)* that the undertaking or association of undertakings failed to comply with commitments entered into under *section 15AE*, including where the adjudication officer determined that the failure to comply is ongoing,
- (d) under *section 15X(2)(a)(iv)* that the undertaking or association of undertakings failed to comply with a structural or behavioural remedy ordered under *section 15X* in accordance with *section 15Z*, including where the adjudication officer determined that the failure to comply is ongoing, or
- (e) under *section 15X(2)(a)(v)* that the undertaking or association of undertakings failed to comply with a prohibition notice issued under *section 15H*, including where the adjudication officer determined that the infringement is ongoing.

(2) Where an adjudication officer makes a decision under *section 15X* and the provision of relevant competition law, or the alleged breach of a procedural requirement, in respect of which the decision was made is a provision the breach of which would constitute an offence, the undertaking or association of undertakings in respect of which the decision was made is not liable to be prosecuted or punished for the offence in respect of the conduct to which the decision relates.

(3) An adjudication officer may not impose an administrative financial sanction on an undertaking or association of undertakings for an infringement of relevant competition law or a breach of a procedural requirement—

- (a) if the undertaking or association of undertakings has been charged with having committed an offence under a law of the State,
 - (b) if—
 - (i) criminal proceedings are ongoing in respect of the infringement,
 - (ii) that undertaking or association of undertakings has been found guilty of having committed the offence, or
 - (iii) that undertaking or association of undertakings has been found not guilty of having committed the offence where proceedings have determined other than by way of *nolle prosequi*,
- and
- (c) if the offence involves the same infringement or a breach of a procedural requirement as is before the adjudication officer.

(4) A decision to impose an administrative financial sanction shall not take effect unless the decision is confirmed by the High Court under *section 15AY* or *15AZ*, as the case may be.

(5) The adjudication officer may, having imposed an administrative financial sanction under this section on an undertaking (in this subsection referred to as the "sanctioned undertaking"), and where he or she considers that it is necessary to do so in order for that sanction to be effective, proportionate or dissuasive, impose the sanction (either jointly with or separately to the sanctioned undertaking) on one or more of the following:

- (a) a person or undertaking that exercises direct or indirect control over the sanctioned undertaking;
- (b) an undertaking of which the sanctioned undertaking is a subsidiary or parent undertaking;
- (c) an undertaking the directors, shareholders or partners of which, or any other persons exercising control over which, knew or ought reasonably to have known about the matter in respect of which the administrative financial sanction was imposed on the sanctioned undertaking;
- (d) a person, company, undertaking or any other entity forming part of the same economic unit as the sanctioned undertaking.]

F65[Calculation of administrative financial sanctions

15AB.—(1) When determining the amount of the administrative financial sanction to be imposed in respect of the matters set out in *section 15AA(1)*, an adjudication officer shall have regard to—

- (a) the need to ensure that any administrative financial sanction imposed is effective, proportionate and dissuasive,
- (b) the gravity of the matter in respect of which an administrative financial sanction is imposed,
- (c) in respect of an infringement of relevant competition law—
 - (i) the duration of the infringement,
 - (ii) the value of the undertaking's sales of the goods and services to which the infringement directly or indirectly relates, and
 - (iii) where applicable, the amount of any compensation paid as a result of a consensual settlement in accordance with Article 18(3) of Directive 2014/104/EU⁴,
- (d) any specific factors, criteria or methodology relevant to *paragraphs (a), (b) and (c)* which are prescribed by the relevant Minister to be taken into account by an adjudication officer in the calculation of the amount of administrative financial sanctions, and
- (e) any guidelines issued by the competent authority under *section 15AF* in respect of specific factors, criteria or methodology relevant to the calculation of the amount of administrative financial sanctions.

(2) Where an administrative financial sanction is imposed on an association of undertakings under *section 15AA* in respect of an infringement of relevant competition law under *Parts 2C to 2G*, and such sanction is imposed not only on the association of undertakings but also on its members, the turnover of the members on which an administrative financial sanction is imposed shall not be taken into account when calculating the administrative financial sanction to be imposed on the association.

(3) (a) Where—

- (i) an administrative financial sanction is imposed on an association of undertakings under *section 15AA* in respect of an infringement of relevant competition law under *Parts 2C to 2G*, and the infringement relates to the activities of its members, and
- (ii) an administrative financial sanction is not also imposed on the individual members of the association,

an adjudication officer may consider the value of the sales of goods and services to which the infringement directly or indirectly relates by the

⁴ O.J. No. L 349, 5.12.2014, p. 1

undertakings that are members of the association when calculating the administrative financial sanction to be imposed on the association of undertakings.

- (b) If *paragraph (a)* is applied, in circumstances where the association of undertakings is not solvent, the association shall call for contributions from its members to cover the amount of the administrative financial sanction imposed.

(4) Where, following a decision confirming an administrative financial sanction under *section 15AY* or *15AZ*, as the case may be, contributions referred to in *subsection (3)* have not been made in full to the association of undertakings within the time limit fixed by the High Court, the competent authority may refer the matter back to an adjudication officer who may require any of the undertakings whose agents or representatives were members of the decision-making bodies of that association to pay the administrative financial sanction.

(5) Where necessary to ensure full payment of the administrative financial sanction referred to in *subsection (4)*, after the adjudication officer has required payment from such undertakings, the adjudication officer may also require the payment (on a joint and several basis) of the outstanding amount of the administrative financial sanction by any of the members of the association that were active on the market on which the infringement of relevant competition law occurred notwithstanding any decision made by the adjudication officer under *section 15X(2)* that such members of the association had not intentionally, recklessly or negligently committed the relevant infringement.

(6) The provisions of *sections 15AY* or *15AZ* shall apply, *mutatis mutandis*, to a decision or requirement of an adjudication officer under *subsections (4)* or *(5)*.

(7) Payment under *subsection (5)* shall not be required from an undertaking that proves, in accordance with such procedures as may be prescribed, on the balance of probabilities that—

- (a) it did not implement the infringement of relevant competition law of the association of undertakings, and

(b) it—

(i) was not aware of the existence of the infringement, or

(ii) actively distanced itself from the infringement before the investigation under *Part 2C* commenced.

(8) (a) After determining the amount of the administrative financial sanction to be imposed on an undertaking or association of undertakings, and prior to making a decision under *section 15X(2)(b)(iii)*, the adjudication officer shall apply any decision made by the competent authority under *Part 2E* in respect of such undertaking or association of undertakings regarding—

(i) immunity from administrative financial sanctions, or

(ii) a reduction in the amount of administrative financial sanctions.

(b) An adjudication officer shall not vary any decision of the competent authority made under *Part 2E* regarding the level of reduction to be applied to the administrative financial sanctions that would otherwise have been imposed on the undertaking or association of undertakings concerned.

(9) The relevant Minister may prescribe rules for the purposes of the implementation of this section.]

F66[Maximum amount of administrative financial sanctions

15AC.—(1) The maximum amount of an administrative financial sanction that an adjudication officer may impose under this Part in respect of an infringement of relevant competition law, for failure to comply with commitments entered into under *section 15AE*, for failure to comply with a structural or behavioural remedy or for failure to comply with a prohibition notice issued under *section 15H* shall be the greater of €10 million or 10 per cent of the total worldwide turnover of the undertaking or association of undertakings in the financial year preceding the decision.

(2) Where an infringement of relevant competition law, failure to comply with commitments entered into under *section 15AE*, failure to comply with a structural or behavioural remedy or a failure to comply with a prohibition notice issued under *section 15H* by an association of undertakings relates to the activities of its members, the maximum amount of the administrative financial sanction shall be €10 million or 10 per cent of the sum of the total worldwide turnover (whichever is greater) of each member active on the market affected by the infringement of the association.

(3) The maximum amount of an administrative financial sanction that an adjudication officer may impose with respect to a breach of a procedural requirement in accordance with *section 15AA* shall be €1 million or 1 per cent of the total worldwide turnover (whichever is greater) of the undertaking or association of undertakings in the financial year preceding the decision.

(4) Where the breach of the procedural requirement by an association of undertakings relates to the activities of its members, the maximum amount of the administrative financial sanction shall be €1 million or 1 per cent of the sum of the total worldwide turnover (whichever is greater) of each member active on the market affected by the infringement of the association.

(5) The financial liability of each undertaking in respect of the payment of the administrative financial sanction shall not exceed the maximum amounts specified in *subsection (2)* or *subsection (3)*, as the case may be, and shall be reduced by an adjudication officer in accordance with any decision made in respect of that undertaking under *Part 2E*.]

F67[Periodic penalty payments

15AD.—(1) (a) An adjudication officer may impose a payment (in this Act referred to as a "periodic penalty payment") on an undertaking or association of undertakings in order to compel such an undertaking or association of undertakings to do one or more of the following:

- (i) comply with a search conducted by an authorised officer, or otherwise allow for the exercise of the powers of an authorised officer, under *section 39* of the Act of 2002 or *section 37* of the Act of 2014, as the case may be;
- (ii) provide complete and correct information in response to a requirement under *section 39A* of the Act of 2002 or *section 18(1)(d)* or *37A* of the Act of 2014 or, as the case may be;
- (iii) attend at an interview, or otherwise give evidence or produce information or documentation, before the competent authority under *section 38A* of the Act of 2002 or *section 18* or *37A* of the Act of 2014, as the case may be;
- (iv) comply with a prohibition notice;
- (v) comply with commitments entered into with the competent authority under *section 15AE*;
- (vi) comply with structural or behavioural remedies.

- (b) (i) An adjudication officer may impose a periodic penalty payment on an undertaking or association of undertakings in order to compel such an undertaking or association of undertakings to comply with any hearing requirement imposed by an adjudication officer in the course of a referral

under *section 15M*, without a referral under that section separate to the proceedings in which the breach of the hearing requirement has arisen.

(ii) Where an adjudication officer imposes a hearing requirement periodic penalty payment under *subparagraph (i)*, subject to this section such a decision shall be made under *section 15X* and this Act shall apply accordingly.

(iii) Where an adjudication officer considers it necessary in the interests of justice, an adjudication officer who apprehends that there has been a failure to comply with a hearing requirement made by that adjudication officer in the course of a referral under *section 15M* may refer to the Chief Adjudication Officer for assignment to another adjudication officer the decision under *subparagraph (i)*.

(2) (a) Before an adjudication officer makes a decision to impose a periodic penalty payment in accordance with *subsection (1)(a)*, the competent authority shall issue to the undertaking or association of undertakings concerned a notice which shall—

(i) specify the date by, or period within, which the undertaking or association of undertakings shall comply with the obligation concerned,

(ii) state the intention of the competent authority to refer the matter, under *section 15M*, to an adjudication officer for a decision to impose a periodic penalty payment from a specified date if by that date the undertaking or association of undertakings concerned has not complied with the obligation concerned, and

(iii) specify the maximum daily amount of the periodic penalty payment that may be imposed from the specified date if the undertaking or association of undertakings concerned has not complied with the obligation concerned.

(b) Before an adjudication officer makes a decision to impose a hearing requirement periodic penalty payment in accordance with *subsection (1)(b)*, the adjudication officer shall issue to the undertaking or association of undertakings concerned a notice which shall—

(i) state the intention of the adjudication officer to impose a periodic penalty payment from a specified date if by that date the undertaking or association of undertakings concerned has not complied with the obligation concerned, and

(ii) specify the information referred to in *subparagraphs (i) and (iii) of paragraph (a)*.

(c) If, before the date, or before the expiration of the period, as the case may be, specified in a notice issued under *paragraph (a) or (b)*, as the case may be, the undertaking or association of undertakings requests, in writing, an extension to the specified date or period, the competent authority or adjudication officer, as the case may be, may where it considers it appropriate to do so, extend that date or period and an undertaking or association of undertakings to which such an extension is granted shall comply with the obligation by the date, or within the specified period, as so extended.

(3) The maximum amount of a periodic penalty payment imposed per day during which the failure is ongoing in accordance with *subsection (1)* shall not exceed 5 per cent of the average daily total worldwide turnover of the undertaking or association of undertakings concerned in the preceding financial year.

(4) Where the undertaking or association of undertakings has failed to comply with the obligation concerned before the date, or before the expiration of the period, specified in a notice issued under *subsection (2)*—

- (a) in respect of the matters set out in *subsection (1)(a)*, the competent authority—
- (i) shall prepare a statement of objections and give a copy of it to the undertaking or association of undertakings concerned in accordance with *section 15L*, and
 - (ii) may refer the matter to an adjudication officer for decision in accordance with *section 15M*,
- or
- (b) in respect of the matters set out in *subsection (1)(b)*, an adjudication officer may make a decision under *section 15X* on his or her own motion.
- (5) (a) Where an adjudication officer has decided to impose a periodic penalty payment under *section 15X* on or before the date, or within the period, specified in a notice issued under *paragraph (a) or (b) of subsection (2)*, an adjudication officer shall determine the periodic penalty payment to be imposed on the undertaking or association of undertakings concerned and shall impose such periodic penalty payment on such undertaking or association of undertakings under *section 15X(2)(b)(iii)*.
- (b) The definitive amount of the periodic penalty payment shall be calculated from the date on which the period specified in the notice issued under *paragraph (a) or (b) of subsection (2)* expired until the date on which the adjudication officer is satisfied that the relevant obligation was complied with by the undertaking.
- (c) An adjudication officer may fix the definitive amount of the periodic penalty payment at a figure lower than that which would arise under the notice issued under *subsection (2)*.
- (6) The imposition of a periodic penalty payment under this section is without prejudice to—
- (a) the imposition of administrative financial sanctions for—
- (i) a breach of a procedural requirement,
 - (ii) a failure to comply with commitments entered into under *section 15AE*,
 - (iii) a failure to comply with a structural or behavioural remedy, or
 - (iv) a failure to comply with a prohibition notice,
- (b) the imposition of a structural or behavioural remedy under *section 15X* in accordance with *section 15Z*, or
- (c) issuing a prohibition notice issued under *section 15H*.
- (7) A decision to impose an Article 16(2) periodic penalty payment or a hearing requirement periodic penalty payment shall not take effect unless the decision is confirmed by the High Court under *section 15AY* or *section 15AZ*.
- (8) In this section—
- "Article 16(1) periodic penalty payment" means a periodic penalty payment imposed, in whole or in part, for the purposes of compelling an undertaking or association of undertakings to comply with the matters referred to in *subsection (1)(a)(ii) and (iii)*;
- "Article 16(2) periodic penalty payment" means a periodic penalty payment imposed for the purposes of compelling an undertaking or association of undertakings to comply with the matters referred to in *subsection (1)(a)(i) and (iv) to (vi)*;

"hearing requirement periodic penalty payment" means a periodic penalty payment imposed under *subsection (1)(b)(i)*.]

F68[Commitments **15AE.**—(1) At any time during an investigation carried out by the competent authority into suspected or alleged infringements of relevant competition law, including at any time prior to a decision being made in criminal or civil proceedings (including proceedings under *Parts 2C to 2H*) under this Act, the undertaking or association of undertakings to which the investigation relates may, in writing, propose to the competent authority measures appropriately addressing the suspected or alleged infringement.

(2) Where the competent authority receives a proposal under *subsection (1)*, it may—

- (a) consult to the extent that it sees fit in relation to the proposal, including consulting publicly or consulting undertakings, or other persons participating in the market or markets concerned,
- (b) where it is of the opinion that it requires further information in order to consider the proposal, by notice in writing served on the undertaking or association of undertakings that made the proposal, require the undertaking or association of undertakings to give to it within a specified period specified information, and
- (c) where it considers it necessary to do so, at any time before the proposal is made subject to a commitment agreement under this section, propose to the undertaking or association of undertakings modifications, alterations, additions or other changes to the proposal.

(3) Where the competent authority—

- (a) has complied with the requirements of *subsection (4)*, and
- (b) is satisfied that the terms of the proposal (subject to any modifications, alterations, additions or other changes made to the proposal under *subsection (2)*)—
 - (i) appropriately address the matters to which the investigation relates or any findings resulting from the investigation, and
 - (ii) are clear and unambiguous and capable of being complied with,

it may notify the undertaking or association of undertakings in writing that the proposal is agreed by the competent authority.

(4) Before notifying an undertaking or association of undertakings under *subsection (3)*, the competent authority shall inform the undertaking or association of undertakings—

- (a) that the undertaking or association of undertakings is entitled to obtain legal advice on the terms of the proposal, and
- (b) that failure to comply with the commitments may result in legal consequences for the undertaking or association of undertakings, including the imposition of administrative financial sanctions under *section 15AA*.

(5) Where the undertaking or association of undertakings in receipt of a notification under *subsection (3)* consents to the terms of the proposal as agreed by the competent authority, it shall notify the competent authority of that fact.

(6) Where a proposal has been consented to by an undertaking or association of undertakings under *subsection (5)* and an agreement (in this section referred to as a "commitment agreement") in respect of such proposal has been entered into by that undertaking or association of undertakings and the competent authority, the

commitment agreement shall (save where such publication would, in the opinion of the competent authority, prejudice the achievement of the objectives of this Act) be published on a website maintained by or on behalf of the relevant Minister or by the competent authority, with due regard for the protection of commercially sensitive information, as soon as practicable after the commitment agreement has been signed by the undertaking or association of undertakings and the competent authority.

(7) A commitment agreement shall be binding on an undertaking or association of undertakings entering into it for the period beginning on the date specified in the commitment agreement and ending on the date specified in the commitment agreement.

(8) Subject to *subsection (9)*, the competent authority shall not, during the period for which a commitment agreement is binding on an undertaking or association of undertakings and in respect of the matters addressed in the commitment agreement—

- (a) issue a prohibition notice to the undertaking or association of undertakings,
- (b) refer the matter for decision by an adjudication officer under *section 15M*, or
- (c) continue any proceedings under this Act (whether criminal or civil proceedings, including proceedings under *Parts 2C to 2H*) that are already in progress against the undertaking or association of undertakings,

other than where the competent authority has formed a preliminary view, or an adjudication officer has decided, that the undertaking or association of undertakings has failed to comply with the commitment agreement.

(9) The competent authority may, notwithstanding *subsection (7)*—

- (a) amend or terminate a commitment agreement where the undertaking or association of undertakings that has entered into the commitment agreement has consented to such amendment or termination and the competent authority is satisfied that there has been a material change to the facts on which the commitment agreement was based,
- (b) terminate a commitment agreement where the circumstances of the undertaking or association of undertakings, or of the market in which the undertaking or association of undertakings operates, mean that the commitment agreement is no longer necessary,
- (c) terminate a commitment agreement where the undertaking or association of undertakings concerned has acted contrary to the terms of the commitment agreement, or
- (d) terminate a commitment agreement where an undertaking or association of undertakings which has entered into a commitment agreement has submitted information to the competent authority in connection with a proposal or commitment agreement under this section that is false, incomplete, incorrect or misleading in a material respect.

(10) The competent authority may monitor and review commitments, conditions or other terms contained in a commitment agreement.]

F69[Guidelines

15AF.—(1) The competent authority may, subject to this Act and any regulations made thereunder, and having regard to the fairness and efficiency of the procedures under this Part, *Part 2C*, *Part 2E* and *Part 2G*, prepare and make guidelines with respect to any matter provided for in or under this Part or *Part 2C*, *2E* or *2G*, including in relation to—

- (a) the conduct of oral hearings,

- (b) the imposition of administrative sanctions (including the factors applicable to any order or administrative financial sanction to be imposed under *section 15X* and the method of calculation of administrative financial sanctions and periodic penalty payments),
 - (c) the conduct of investigations,
 - (d) the general policies of the competent authority, and
 - (e) any matter prescribed by the relevant Minister under this Part, *Part 2C*, *Part 2E* or *Part 2G*.
- (2) In making a decision under *section 15X*, an adjudication officer shall—
- (a) have regard to guidelines, if any, made and published by the competent authority under *subsection (1)*, and
 - (b) apply guidelines made and published by the competent authority under *paragraph (a)* and *(b)* of *subsection (1)* unless the adjudication officer considers that, having regard to all the circumstances of the case, there is a reason not to do so.
- (3) The competent authority may amend or revoke guidelines made under *subsection (1)*.
- (4) The competent authority shall publish any guidelines made under this section, and any amendment to or revocation of those guidelines, on a website maintained by it or on its behalf.
- (5) The competent authorities may make guidelines under this section jointly or separately.]

F70[Conduct of investigations

15AG.—Subject to this Part and *Part 2C*, any rules made under *section 15V(14)* and any guidelines made under *section 15AF*, competent authorities and authorised officers may follow such procedures for the conduct of an investigation as they consider appropriate.]

F71[PART 2E

LENIENCY PROGRAMME

Definitions (Part 2E)

15AH.—In this Part—

"applicant" means an undertaking that submits a leniency statement under this Part;

"competent prosecuting authority" means—

- (a) in respect of civil proceedings under this Act, including proceedings under *Parts 2C* to *2H*, the competent authority,
- (b) in respect of criminal proceedings in respect of an infringement of relevant competition law tried on indictment in accordance with *section 8*, the Director of Public Prosecutions, or
- (c) in respect of criminal proceedings in respect of an infringement of relevant competition law tried summarily in accordance with *section 8*, the competent authority or the Director of Public Prosecutions, as the case may be;

"immunity from administrative financial sanctions" means an exemption granted by a competent authority, in accordance with a leniency programme, from an administrative financial sanction that would otherwise be imposed on an undertaking for its participation in a cartel;

"leniency" includes immunity from administrative financial sanctions and a reduction in administrative financial sanctions;

"marker" has the meaning it has in *section 15AM*.]

F72[Immunity from administrative financial sanctions

15AI.—(1) Each competent authority shall put in place a programme (in this Part referred to as a "leniency programme") enabling it to grant leniency to undertakings in exchange for—

- (a) disclosing their participation in a cartel, and
- (b) voluntarily cooperating, independently of the other undertakings involved in the cartel, with an investigation of the competent authority concerning the application of relevant competition law.

(2) Each competent authority shall prepare a policy as to how it will operate its leniency programme, which policy may include different policies or approaches in respect of different sectors or economic activities.

(3) The leniency programme may also address the approach of the competent authority when exercising its power to grant leniency in respect of other infringements of relevant competition law.

(4) Each competent authority shall publish its leniency programme by placing a notice in relation to it, together with the entire text of the programme, on a website maintained by or on behalf of the competent authority.

(5) A competent authority may grant an undertaking immunity from any administrative financial sanction which would otherwise have been imposed provided that—

- (a) the undertaking discloses to the competent authority the fact of its participation in the cartel concerned, together with all the details thereof, in accordance with *section 15AK(1)(b)*,
- (b) the undertaking is the first undertaking in an alleged cartel to submit evidence to the competent authority which—
 - (i) in the view of the competent authority at the time it evaluates the application for immunity from administrative financial sanctions, will enable the competent authority to carry out searches in connection with an alleged cartel, provided that the competent authority did not at the time of the application, already have sufficient evidence to carry out such a search or sufficient evidence to seek a warrant for such a search or had not already carried out a search in connection with the alleged cartel, or
 - (ii) in the view of the competent authority, is sufficient to ground a finding of an infringement of relevant competition law covered by the leniency programme, provided that the competent authority did not have in its possession sufficient evidence to find such an infringement and that no other undertaking previously qualified for immunity from administrative financial sanctions in relation to the same cartel,
- (c) the conditions for leniency set out in *section 15AK* are satisfied,
- (d) the undertaking has not taken steps to coerce other undertakings to join a cartel or to remain in it,
- (e) the undertaking provides the competent authority with any information reasonably required by the competent authority, and
- (f) the other competent authority has not already granted the undertaking immunity in respect of the same matter or conduct.

- (6) (a) A competent authority may decide to grant an undertaking immunity from administrative financial sanctions conditional on it fulfilling the conditions in this Part.
- (b) The competent authority shall notify the undertaking of a decision made under *paragraph (a)*.
- (c) Where the competent authority notifies an undertaking that it has been granted conditional immunity from administrative financial sanctions under *paragraph (a)*, the undertaking shall be informed of the period it has to fulfil the conditions concerned.
- (7) The competent authority shall, where it is requested to do so by the applicant, notify a decision under *subsection (5)* to the applicant in writing.
- (8) An applicant, after it is notified that a decision was made under *subsection (6)(a)* not to grant it immunity from administrative financial sanctions, may request the competent authority concerned to consider its application as an application for reduction of administrative financial sanctions under *section 15AJ*.
- (9) (a) The Commission and the Commission for Communications Regulation may, to the extent required for the purposes of this Part—
- (i) cooperate, including by sharing information and evidence between them, in relation to a leniency statement submitted to either one of them,
 - (ii) co-ordinate their leniency programmes, in whole or in part,
 - (iii) take steps to agree procedures, or align their respective policies, as to how such programmes shall operate,
 - (iv) agree that either the Commission or the Commission for Communications Regulation, but not both, shall—
 - (I) assess a particular leniency statement, or a class of leniency statements, and
 - (II) decide whether to grant leniency to a particular applicant or to any other members of the alleged cartel of which the applicant is allegedly part,
 - (v) transfer a leniency statement, and all supporting documents or material relating to the statement, received by one competent authority under this Part to the other competent authority in order to allow the second-mentioned competent authority to assess the leniency statement, and
 - (vi) conclude cooperation agreements that will—
 - (I) facilitate the performance of their respective functions under this Part and in particular the assessment of leniency applications, and
 - (II) if necessary, provide for procedures for the transfer of leniency statements received by one competent authority under this Part to the other competent authority.
- (b) An agreement made under *paragraph (a)(iv)* shall be published, on a website maintained by them or on their behalf, by the Commission or the Commission for Communications Regulation or both.]

F73[Reduction of administrative financial sanctions

15AJ.—(1) Undertakings that do not qualify for immunity from administrative financial sanctions under *section 15AI* may be granted a reduction, in accordance with this section, of any administrative financial sanction that would otherwise have been imposed conditional on the undertaking fulfilling the conditions in this Part.

(2) A competent authority shall include in the leniency programme provision for reducing the amount of an administrative financial sanction that would otherwise be imposed on an undertaking that does not qualify for immunity from administrative financial sanctions for its participation in a cartel, in exchange for, or in order to acknowledge, its cooperation with a competent authority under the leniency programme.

(3) Where a competent authority determines that an undertaking is entitled to a reduction of an administrative financial sanction, the adjudication officer and the High Court shall apply the reduction determined by the competent authority to the administrative financial sanction imposed by a decision under *section 15X* and confirmed by the Court, and the decision of the competent authority as to whether the conditions for the reduction of an administrative financial sanction under *subsection (5)* are satisfied may not be impugned by the adjudication officer or Court.

(4) The competent authority shall publish, on a website maintained by it or on its behalf, its leniency programme allowing for a reduction of administrative financial sanctions.

(5) In order to qualify for a reduction of administrative financial sanctions, an undertaking shall—

- (a) disclose its participation in the cartel,
- (b) provide the competent authority with evidence of the alleged cartel which, in the view of the competent authority, represents significant added value relative to the evidence already in the possession of the competent authority at the time of the application, and
- (c) otherwise satisfy the requirements set out in *section 15AK*.

(6) If an undertaking that has applied for a reduction of an administrative financial sanction submits compelling evidence which the competent authority uses to establish additional facts which lead to an increase of the amount of the administrative financial sanction imposed on other undertakings or associations of undertakings, such additional facts shall not be taken into account by an adjudication officer when setting the amount of any administrative financial sanction to be imposed on the undertaking that provided this evidence.

(7) In order to determine the appropriate level of reduction of the administrative financial sanction, the competent authority shall take into account—

- (a) the time at which the evidence was submitted (including the placing of the applicant in the chronological order of undertakings to apply for leniency), and
- (b) the assessment of the competent authority as to the overall value added to its investigation by that evidence.

(8) Reductions granted to an applicant under this section shall not exceed 50 per cent of the administrative financial sanction which would otherwise have been imposed.

(9) If the competent authority finds that one or more of the conditions specified in *subsection (5)* has not been fulfilled, the undertaking shall not benefit from any favourable treatment under this programme in respect of the same cartel.

- (10) (a) In this Part, the "significant added value" of evidence shall be assessed by the competent authority in terms of the extent to which the evidence provided to the competent authority strengthens, by its nature or in its level of detail, the ability of the competent authority to prove the existence of the alleged cartel.

- (b) The competent authority may publish, on a website maintained by it or on its behalf, guidelines on the assessment of the "significant added value" of evidence and on the concept of "compelling evidence" under *subsection (6)*.]

F74[General
conditions for
leniency

15AK.—(1) In order to qualify for leniency for participation in a cartel an undertaking that has applied to the competent authority for leniency shall—

- (a) end its involvement in the alleged cartel at the latest immediately following the submission of its leniency statement, except in cases where a delay would, in the view of the competent authority, be reasonably necessary to preserve the integrity of its investigation,
 - (b) cooperate genuinely, fully, and on a continuous basis and expeditiously with the competent authority from the time of its application until the competent authority has closed its enforcement proceedings against all parties under investigation by reason of a decision under *section 15X* or has otherwise terminated its enforcement proceedings (including continuing to so cooperate where required until the determination of any subsequent proceedings under *Part 2H*), and such cooperation includes the following:
 - (i) providing the competent authority promptly with all relevant information and evidence relating to the alleged cartel that comes into the applicant's possession or is accessible to it, in particular—
 - (I) the name and address of the applicant,
 - (II) the names of all other undertakings that participate or participated in the alleged cartel,
 - (III) a detailed description of the alleged cartel, including the affected goods or services, the affected territories, the duration, and the nature of the alleged cartel conduct,
 - (IV) evidence of the alleged cartel in its possession or under its control (in particular any contemporaneous evidence), and
 - (V) information on any past or possible future leniency statements made to any other competent authorities, competition authorities of member states, the European Commission, or competition authorities of third countries in relation to the alleged cartel;
 - (ii) remaining at the disposal of the competent authority to promptly reply to any requests that may contribute to the establishment of the relevant facts;
 - (iii) making current directors, managers and other members of staff available for interviews with the competent authority and making reasonable efforts to make former directors, managers and other members of staff available for interviews with the competent authority;
 - (iv) not destroying, falsifying or concealing relevant information or evidence;
 - (v) unless and to the extent otherwise explicitly authorised by the competent authority, not disclosing the fact of, or any of the content of, its leniency statement before the competent authority has issued a statement of objections in the enforcement proceedings before it,
- and
- (c) not have—
 - (i) destroyed, falsified or concealed evidence which falls within the scope of the application, or

(ii) disclosed, directly or indirectly, the fact of, or any of the content of the application it is contemplating except to other competent authorities or any competition authorities of member states or the European Commission or competition authorities of third countries.

(2) The competent authority shall, where it is requested to do so by the applicant, communicate a decision in relation to a leniency statement under *section 15AI* or *15AJ* to the applicant in writing.

(3) An undertaking that fails to satisfy all of the requirements specified in *subsection (1)* shall not be eligible for leniency under *section 15AI* or *15AJ*.

(4) Where a competent authority accedes to an application for leniency under *section 15AI* or *15AJ*, such grant of leniency may be withdrawn where evidence is subsequently obtained by the competent authority which establishes that the undertaking concerned did not satisfy each of the conditions for leniency specified in *subsection (1)*.

(5) Where a competent authority deems that an applicant for leniency does not satisfy each of the conditions for leniency laid down in *subsection (1)*, or withdraws a grant of leniency pursuant to *subsection (4)*, a competent authority may initiate whatever proceedings against the undertaking concerned as the competent authority deems fit.

(6) An undertaking, and the servants or agents of an undertaking, shall be guilty of an offence where, in the context of an application for immunity from administrative financial sanctions under *section 15AI*, or reduction of administrative financial sanctions under *section 15AJ*, or a summary application for leniency under *section 15AN*, it intentionally or negligently—

(a) provides the competent authority with information that is false or misleading in a material respect, or

(b) fails to comply with the obligation in *subsection (1)(b)(iv)*.

(7) An undertaking or other person guilty of an offence under this section is liable—

(a) on summary conviction—

(i) in the case of an undertaking that is not an individual, to a class A fine, or

(ii) in the case of an individual, to a class A fine and to imprisonment for a term not exceeding 6 months, or to both,

or

(b) on conviction on indictment—

(i) in the case of an undertaking that is not an individual, to a fine not exceeding whichever of the following amounts is the greater, €250,000 or 10 per cent of the turnover of the undertaking in the financial year ending in the 12 months prior to the conviction, or

(ii) in the case of an individual, to a fine not exceeding whichever of the following amounts is the greater, namely €250,000 or 10 per cent of the turnover of the individual in the financial year ending in the 12 months prior to the conviction or to imprisonment for a term not exceeding 5 years or to both such fine (that is to say a fine not exceeding the greater of the foregoing monetary amounts) and such imprisonment.

(8) The competent authority may publish, on a website maintained by it or on its behalf, guidance as to applications for leniency including the procedures applicable to and appropriate scales for decisions by a competent authority to grant immunity

from administrative sanctions to or to reduce administrative financial sanctions on undertakings that cooperate with the investigation of a competent authority in respect of any infringement of relevant competition law.

(9) The relevant Minister may make regulations setting out further details or conditions for the grant of leniency from administrative financial sanction.]

F75[Form of leniency statements

15AL.—(1) An undertaking may apply for leniency by submitting to the competent authority, whether orally or in writing, a statement (in this Part referred to as a "leniency statement") describing the role the applicant had in, and knowledge the applicant had regarding, a cartel.

(2) The precise form of applications for leniency shall be set out in guidelines published by the competent authorities, on a website maintained by them or on their behalf.

(3) A leniency statement, whether or not it has been withdrawn, shall not be admissible in evidence in proceedings under this Act or otherwise, save in accordance with *section 15AM(4)*.]

F76[Markers for applications for leniency from administrative financial sanctions

15AM.—(1) Protection (in this section referred to as a "marker") may be afforded to an applicant for leniency under *section 15AJ* or *15AJ* by, and at the discretion of, the competent authority for a specified period whereby the applicant is given time to gather necessary information and evidence in order to meet the relevant evidential threshold for leniency, in consequence of which the applicant retains his or her place in the queue of applicants for leniency determined by valid chronological application.

(2) (a) An undertaking that intends to make an application for immunity may apply to a competent authority for a marker.

(b) To be eligible to secure a marker, either when the application for a marker is made or within a period granted by the competent authority upon request of the applicant (which period may be extended by the competent authority), the applicant shall provide the competent authority with its name and address, the information referred to in *section 15AK(1)(b)(i)*, an outline of the facts which led to the application for a marker, and any other information reasonably required by the competent authority.

(c) Any information and evidence provided by the applicant within the period specified in accordance with *paragraph (b)* is deemed to have been submitted at the time of the initial request.

(3) The competent authorities shall, jointly or separately, publish, on a website maintained by them or on their behalf, guidance on the procedures which shall apply to applications for markers.

(4) Where the competent authority refuses to grant a marker, and where immunity from administrative financial sanctions is refused and an administrative financial sanction is imposed, the applicant may later rely on the contents of its application for leniency in proceedings under this Act (whether criminal or civil, including proceedings under *Parts 2C to 2H*) or in an appeal under *section 15AY* and the contents of any such application shall be provided to the High Court on any application under *section 15AZ*.

(5) For the avoidance of doubt, an undertaking wishing to make an application for the reduction of administrative financial sanctions under *section 15AJ* may also apply to the competent authority for a marker.]

F77[Summary applications for leniency

15AN.—(1) A competent authority shall accept summary applications for leniency (in this section referred to as a "summary application") from applicants that have

applied to the European Commission for leniency, either by applying for a marker or by submitting a full application in relation to the same alleged cartel.

(2) A summary application shall only be accepted by a competent authority provided that the application to the European Commission covers more than 3 member states as affected territories.

(3) With a view to enabling the competent authority to determine an application for leniency, a summary application shall consist of a short description of each of the following:

- (a) the name and address of the applicant;
- (b) the names of other parties to the alleged cartel;
- (c) the affected products and territories;
- (d) the duration and the nature of the alleged cartel conduct;
- (e) the Member States in which the evidence of the alleged cartel is likely to be located;
- (f) information on any past or possible future leniency statements made to any other competition authorities or competition authorities of third countries in relation to the alleged cartel.

(4) A summary application shall be accompanied by a copy of the application made to the European Commission and any written confirmation of same received.

(5) The relevant Minister may prescribe rules and procedures governing summary applications for leniency, including procedures and decisions concerning upgrading summary applications to full applications, and guidelines for the exercise of the discretion of the competent authority under this section, and any such regulations shall address the following matters:

- (a) the precise form of summary applications for leniency;
- (b) the grant of summary application markers;
- (c) the process for verifying whether another application or other applications has or have been received in relation to the same cartel and for informing an applicant that it is the first applicant for a marker;
- (d) consultation between the competent authority and the European Commission in connection with summary applications for leniency;
- (e) the power of the competent authority to request further information in the context of summary applications for leniency;
- (f) the power of the competent authority to give directions to undertakings concerning submissions, the provision of information and related matters in the context of summary applications for leniency;
- (g) the circumstances in which the competent authority may direct that a summary applicant for leniency may be required to submit a full application and the power of the competent authority to give directions in that regard.]

F78[Relationship between applications for immunity from administrative financial sanctions and sanctions on natural persons

15AO.—(1) Where the conditions in *subsection (2)* are met, the following individuals are fully protected from any sanctions that may be imposed in administrative and non-criminal judicial proceedings, in relation to their involvement in the cartel covered by an application for immunity from administrative financial sanctions for infringements of relevant competition law:

- (a) current and former directors of the undertaking concerned;
- (b) managers of the undertaking concerned;
- (c) other members of staff of the undertaking concerned.

(2) The conditions referred to in *subsection (1)* are as follows:

- (a) that the application for immunity from administrative financial sanctions of the undertaking to the relevant competent authority fulfils the requirements in accordance with *paragraphs (a) and (b) of section 15AI(5)*;
- (b) that the individuals referred to in *paragraphs (a), (b) and (c) of subsection (1)* actively cooperate in this respect with the competent authority concerned;
- (c) that the application for immunity from administrative financial sanctions of the undertaking predates the time when the individuals referred to in *paragraphs (a), (b) and (c) of subsection (1)* were made aware by the competent authority of the proceedings leading to the imposition of sanctions referred to in *subsection (1)*.

(3) The individuals referred to in *paragraphs (a), (b) and (c) of subsection (1)* shall not be subject to criminal prosecution in relation to their involvement in the cartel covered by the application for immunity from administrative financial sanctions, for infringements of *sections 4 or 5*, if they meet the conditions set out in guidelines made under *subsection (4)* and actively cooperate with the competent prosecuting authority.

(4) The competent prosecuting authority or the competent authority, as the case may be, may publish guidelines on the cooperation of individuals with the relevant authorities required under this section.

(5) Where the condition of cooperation with the competent authority, in accordance with *subsection (3)*, is not fulfilled, the competent prosecuting authority may proceed with the investigation, including prosecution of the individual or individuals concerned.

(6) Where the competent authority has opened an investigation into a cartel following a leniency statement received under this Part, and a competition authority or prosecuting authority of another member state is also seised in its jurisdiction of any aspect of the same cartel, the competent authority shall ensure contacts between its authorised officers and the competition authority or prosecuting authority of the other Member State.

(7) The competent authorities may publish, on a website maintained by them or on their behalf, guidance as to the procedures applicable to and appropriate scales for decisions by a competent authority in respect of the operation of immunity from administrative financial sanctions in circumstances where another Member State is investigating in its jurisdiction any aspect of the same cartel.】

F79[Leniency programme for other infringements

15AP.—(1) The competent authority may put in place a leniency programme, whether as part of a leniency programme under *section 15AI* or as a separate programme, for infringements of relevant competition law other than cartels to grant immunity from administrative sanctions to or to reduce administrative financial sanctions on undertakings in exchange for—

- (a) disclosing that they have infringed relevant competition law other than by participating in a cartel, and

- (b) voluntarily cooperating with an investigation by the competent authority concerning the application of relevant competition law.
- (2) (a) The relevant Minister may prescribe the applicable procedures, conditions, appropriate scales, and factors relevant to decisions by a competent authority under *subsection (1)* to grant immunity from administrative sanctions to or to reduce administrative financial sanctions on undertakings.
- (b) The competent authority may publish, on a website maintained by it or on its behalf, guidance as to the matters set out at *paragraph (a)*.]

F80[PART 2F

MUTUAL ASSISTANCE

Cooperation with
other
competition
authorities

15AQ. (1) A competent authority may request a competition authority of another Member State to carry out an inspection, interview or other fact-finding measure on its behalf.

(2) A competent authority may, on the request of a competition authority of another Member State, or the European Commission (each of which is in this Part referred to as a "requesting competition authority"), carry out an inspection, interview or other fact-finding measure on behalf of the requesting competition authority pursuant to—

- (a) this Act,
- (b) Article 22 of Regulation (EC) No 1/2003 of 16 December 2002⁵ on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty,
- (c) section 11, 18, 37 or 37A of the Act of 2014,
- (d) section 38A, 39 or 39A of the Act of 2002, or
- (e) any other relevant power conferred by law on the competent authority.

(3) The competent authority and the competition authority of another Member State may exchange and use in evidence any material, including confidential information, for the purpose of this section, subject to the following limitations:

- (a) information provided to the competent authority by the competition authority concerned pursuant to this section shall only be used in evidence for the purpose of applying Article 101 or Article 102 of the Treaty on the Functioning of the European Union and in connection with the subject-matter for which it was collected by the competition authority concerned, save that the information may also be used for the purpose of applying *section 4* or *5* in the same proceedings;
- (b) information provided to the competent authority by the competition authority concerned pursuant to this section may be used in evidence to impose sanctions on a natural person where—
 - (i) the law of the Member State providing the information provides for sanctions of a similar kind in relation to an infringement of Article 101 or Article 102 of the Treaty on the Functioning of the European Union, or
 - (ii) the information has been collected in a way that affords the same level of protection of the rights of defence of natural persons as is provided for under the law of the State but, in these circumstances, the information provided to the competent authority may not be used in subsequent

⁵ OJ No. L 1, 4.1.2003, p. 1

proceedings before the courts to impose custodial sanctions on a natural person.

- (4) (a) A competent authority may appoint as an authorised officer under section 35 of the Act of 2014 or section 39 of the Act of 2002 any person authorised to be so appointed by a competition authority of another Member State.
- (b) To the extent to which a competent authority may confer any of its powers and functions under this Act, the Act of 2014 or the Act of 2002 on an authorised officer, it may so confer same upon an authorised officer appointed in accordance with this subsection.
- (c) An authorised officer appointed under section 35 of the Act of 2014 or section 39 of the Act of 2002 in accordance with this subsection shall be accountable to the competent authority for the conduct of their duties in the same manner as an authorised officer not authorised or appointed by the competition authority of another Member State.
- (d) The relevant Minister may provide by regulations, and (subject to any such regulations) the competent authorities may provide by rules and guidelines, for the appointment of authorised officers in accordance with this subsection.

(5) Where the European Commission conducts an inspection in the State under Article 20 or 21 of Regulation (EC) No. 1/2003 of 16 December 2002⁶ on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, the competent authority shall, where requested to do so by the European Commission, assist the European Commission in carrying out such an inspection.]

F81[Requests for the notification of preliminary objections and other documents

15AR.—(1) A competent authority may request a competition authority of another Member State to notify an undertaking or association of undertakings, on behalf of the competent authority, of—

- (a) any preliminary objections that the undertaking or association of undertakings has infringed relevant competition law, or any decisions made by an adjudication officer under *section 15X* that an infringement of relevant competition law has occurred or is occurring,
- (b) any procedural act adopted in the context of enforcement proceedings which the undertaking or association of undertakings concerned is entitled to be notified of under the law of the State, and
- (c) any relevant document, including documents which relate to the enforcement of decisions imposing administrative financial sanctions or periodic penalty payments, related to the application of relevant competition law insofar as the documents concern an infringement by the undertaking or association of undertakings referred by the competent authority.

(2) A competent authority shall, without undue delay following receipt of a request from a competition authority of another Member State and subject to *section 15AT(16)*, notify an undertaking or association of undertakings, on behalf of the requesting competition authority, of—

- (a) any complaint that the undertaking or association of undertakings has infringed Article 101 or Article 102 of the Treaty on the Functioning of the European Union or any decisions made by the referring competition authority that an infringement of Article 101 or Article 102 of the Treaty on the Functioning of the European Union has taken place,
- (b) any procedural act adopted in the context of enforcement proceedings of which the undertaking or association of undertakings concerned would be entitled to be notified under the law of the State,

⁶ OJ No. L 1,4.1.2003, p. 1-25.

- (c) any relevant document, including documents which relate to the enforcement of decisions imposing administrative fines or periodic penalty payments, related to the application of Article 101 or Article 102 of the Treaty on the Functioning of the European Union insofar as the documents concern an infringement by the undertaking or association of undertakings which has been referred by the referring competition authority.

(3) This section is without prejudice to any other form of notification made by a requesting competition authority in accordance with the law applicable in the Member State concerned.]

F82[Requests for the enforcement of decisions imposing administrative financial sanctions or periodic penalty payments

15AS.—(1) A competent authority may request a competition authority of another Member State to enforce a decision of an adjudication officer under *section 15X* which has become final.

(2) A competent authority shall, without undue delay following receipt of a request of a competition authority in another Member State, take steps to enforce a final decision of that authority imposing administrative fines or periodic penalty payments adopted in accordance with Article 13 or 16 of the Directive.

(3) *Subsection (2)* shall apply only to the extent that the requesting competition authority has made reasonable efforts to ascertain that the undertaking or association of undertakings against which the administrative fine or periodic penalty payment is enforceable does not have sufficient assets in the Member State of the requesting competition authority to enable recovery of such administrative fine or periodic penalty.

(4) In circumstances other than those set out in *subsections (2) and (3)* a competent authority may, subject to a request from a requesting competition authority, take steps to enforce a decision of that requesting competition authority to impose administrative fines or periodic penalty payments adopted in accordance with Articles 13 or 16 of the Directive including in circumstances where the undertaking or association of undertakings subject to such decision is not established in the Member State of the requesting competition authority.

(5) *Section 15AT(3)(e)* shall not apply to a request under *subsection (4)*.

(6) *Subsections (2) and (4)* shall apply only to decisions of the requesting competition authority that are not, or are no longer, capable of being appealed.

(7) (a) A competent authority to which a request has been made under *subsection (2) or (4)* shall, subject to *section 15AT(16)*, on notice to the undertaking or undertakings concerned, apply to the High Court for confirmation that the competent authority may execute that request.

(b) *Section 15AZ* shall apply, mutatis mutandis, to an application for confirmation under this subsection, save that—

(i) *subsections (3), (4) and (8) of that section* shall not apply, and *subsection (8) of this section* shall apply, and

(ii) *subsection (7) of that section* shall not apply, and the Court shall make no order as to costs.

(c) Rules of court may make provision for applications for confirmation under this section, and for the expeditious hearing thereof and any such rules shall be in accordance with the procedure set out in *section 15AZ*.

(8) In an application under *subsection (7)* for confirmation that a competent authority may execute a request to enforce the decision of a competition authority of another Member State, the High Court shall confirm that the competent authority may execute the decision unless—

(a) it considers that the request does not comply with the requirements of *section 15AT*, or

(b) the execution of the request would be manifestly contrary to the public policy of the State.

(9) Applications for the enforcement of a decision of a competition authority of another Member State under *subsections (2) and (4)* shall be made within a period of 6 years from the date of the decision sought to be enforced.]

F83[General principles of cooperation

15AT.—(1) The requests referred to in *sections 15AR and 15AS* shall be executed by means of a notice which shall be accompanied by a copy of the preliminary objections, procedural act or other act, or a copy of the decision imposing administrative financial sanctions or periodic penalty payments to be notified or enforced, as the case may be.

(2) The notice referred to in *subsection (1)* shall indicate:

(a) the name and known address of the undertaking or association of undertakings concerned, and any other relevant information for the identification of the undertaking or association of undertakings concerned;

(b) a summary of the relevant facts and circumstances;

(c) a summary of the attached copy of the preliminary objections, procedural act or other act, or the attached copy of the decision imposing administrative fines or periodic penalty payments to be notified or enforced;

(d) the name, address and other contact details of the competent authority or of the requesting competition authority;

(e) the period within which notification or enforcement should be effected, such as statutory deadlines or limitation periods.

(3) A request under *section 15AS* shall, in addition to the requirements set out in *subsection (2)*, provide the following:

(a) information about the decision permitting enforcement in the Member State of the requesting competition authority;

(b) the date when the decision became final;

(c) in the case of an administrative financial sanction imposed by a competent authority, the amount of the administrative financial sanction;

(d) in the case of an administrative fine imposed by the requesting competition authority, the amount of the administrative fine;

(e) the amount of the periodic penalty payment;

(f) information showing the reasonable efforts made by the requesting competition authority to enforce the decision in its own territory.

(4) The competent authority shall take all necessary measures for the execution of the request under this section, subject to *subsection (16)* and *section 15AS(8)*.

(5) The notice referred to in *subsection (1)* shall be in one of the official languages of the State, unless the competent authority and the requesting competition authority agree on a case-by-case basis that it may be in another official language of the European Union.

(6) When required by the competent authority, the requesting competition authority shall provide a translation of the matter to be notified or the decision permitting

enforcement of the administrative fine or periodic penalty payment into one of the official languages of the State.

(7) *Subsection (6)* is without prejudice to the right of the competent authority and the requesting competition authority to agree on a case-by-case basis that such translation may be provided in another official language of the European Union.

(8) Where the High Court, on an application for confirmation under *section 15AS(7)*, declines to confirm a decision of a requesting competition authority in accordance with *section 15AS(8)*, the competent authority shall notify the requesting competition authority of that decision.

(9) The Court may, on an application for confirmation under *section 15AS(7)*, direct the competent authority to request additional information from the requesting competition authority.

(10) (a) The competent authority may request the reimbursement by the requesting competition authority of all reasonable additional costs in full, including translation, labour and administrative costs, that the competent authority has incurred in responding to requests made to the competent authority under *section 15AQ(2)* or *15AR(2)*.

(b) The competent authority shall, where requested to do so by the competition authority to whom the competent authority has made a request under *section 15AQ(1)* or *15AR(1)*, reimburse all reasonable additional costs in full, including translation, labour and administrative costs, incurred by that competition authority in relation to that request.

(11) The competent authority may recover the full costs that it has incurred in relation to actions taken to enforce a decision of a requesting competition authority under *section 15AS* from the administrative fines or periodic penalty payments it has collected on behalf of such requesting competition authority, including translation, labour and administrative costs.

(12) Where, having taken steps to enforce a decision of a requesting competition authority in accordance with *section 15AS*, the competent authority is unsuccessful in collecting the administrative fines or periodic penalty payments on behalf of such requesting competition authority, the competent authority may request the requesting competition authority to bear the costs that the competent authority has incurred in doing so.

(13) (a) The competent authority may recover the costs incurred in relation to the enforcement of a decision under *section 15AS* from the undertaking or association of undertakings against which the administrative fine or periodic penalty payment is enforceable.

(b) (i) Where the competent authority fails, within a reasonable period, to recover the costs incurred in relation to the enforcement of a decision under *section 15AS* from the undertaking or association of undertakings against which the administrative fine or periodic payment is enforceable, the competent authority may initiate proceedings for recovery of same.

(ii) The High Court shall determine the costs of any such proceeding.

(14) The competent authority shall recover the amounts referred to in this section in euro.

(15) The competent authority shall, if necessary, convert the administrative fines or periodic penalty payments referred to in this section into euro at the rate of exchange applying on the date on which the administrative fines or periodic penalty payments were imposed.

(16) The competent authority may not give effect to a request under *section 15AR* where—

- (a) it considers that the request does not comply with the requirements of this section, or
- (b) the execution of the request would be manifestly contrary to the public policy of the State.]

F84[PART 2G

PROCEDURAL PROVISIONS

Access to file by parties and limitations on the use of information

15AV.—(1) Where a competent authority or authorised officer requires a natural person to provide a statement or admission on the basis of measures referred to in applicable provisions, any such statement or admission may not be admissible in evidence against that person in criminal proceedings other than criminal proceedings for an offence under section 11(3)(d), 18(4)(c), 35(8)(c) or 36(6) of the Act of 2014, or an offence under *section 50(5)* of this Act, or for perjury where such statement or admission was provided under oath.

(2) Subject to *subsection (3)*, and save in accordance with law, an adjudication officer, an authorised officer, a competent authority and its respective servants or agents shall not disclose to any person—

- (a) any confidential information obtained by virtue of the exercise of powers conferred by or under this Act, or
- (b) any information obtained by virtue of the exercise of powers conferred by or under *Part 2D* or section 18 of the Act of 2014 in relation to an investigation under section 10(1)(c) of that Act where that information was given under power of compulsion.

(3) Notwithstanding *subsection (2)* an adjudication officer, a competent authority and its servants or agents may disclose information obtained by virtue of the exercise of powers conferred by or under this Act where such disclosure is—

- (a) permitted by *section 15AX*,
- (b) otherwise permitted by law, or
- (c) duly authorised by the competent authority or an adjudication officer in the performance of his or her functions.

(4) Information provided to any person pursuant to *subsection (3)* may contain such redactions as an adjudication officer or a competent authority may consider necessary and appropriate—

- (a) to protect commercially sensitive information,
- (b) to protect the rights of the parties or any other person, or
- (c) for any other good and sufficient reason.

(5) A person who contravenes *subsection (2)* commits an offence and shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or both.

(6) Subject to this section, the competent authority shall not disclose, or otherwise grant access to, a leniency statement or a settlement submission to any person other than the undertaking or association of undertakings to which the statement or submission relates, other than where such disclosure or access is required to be provided to an undertaking or association of undertakings—

- (a) that is a party to proceedings under *Part 2D* or *2E*, or

(b) that is a party to proceedings under *Part 2H*, other than an undertaking or association of undertakings referred to in *section 15AY(1)(b)*.

(7) Access to a leniency statement or a settlement submission shall only be granted to the undertaking or association of undertakings referred to in *subsection (6)* for the purpose of defending proceedings before the competent authority under *Part 2D* or *2E* or in any subsequent proceeding under *Part 2H*.

(8) Where an undertaking or association of undertakings referred to in *subsection (6)* has been given access to a leniency statement or a settlement submission for the purposes of exercising its right of defence under *subsection (7)*, the undertaking or association of undertakings concerned shall be deemed to have given an undertaking that any such information to which it has been given access shall only be used in proceedings that are directly related to those in which access has been granted, and shall not be retained, stored or otherwise kept following the end of those proceedings or any subsequent proceeding under *Part 2H*.

(9) *Subsection (6)* shall only apply where the proceedings concern—

(a) the allocation between cartel participants of an administrative financial sanction imposed jointly and severally on them in proceedings under this Act, or

(b) the review, under *Part 2H*, of a decision by which an infringement of relevant competition law was found by the competent authority.

(10) The following categories of information obtained by a party during investigations by a competent authority under this Act, or administrative sanctions proceedings before an adjudication officer under this Act, shall not be used by that party in proceedings before a court prior to the competent authority or an adjudication officer, as the case may be, having closed such proceedings with respect to all parties under investigation, whether by making a decision under *section 15X* or *15AE*:

(a) information that was prepared by persons specifically for investigations by the competent authority or administrative sanctions proceedings before an adjudication officer;

(b) information that the competent authority or an adjudication officer has drawn up and sent to the parties in the course of an investigation or administrative financial sanctions proceedings;

(c) settlement submissions that have been withdrawn.

(11) A leniency statement shall only be exchanged between a competent authority and the competition authority of another Member State or the European Commission pursuant to Article 12 of Regulation (EC) No 1/2003⁷—

(a) with the consent of the applicant (within the meaning of *Part 2F*),

(b) where the competition authority or the European Commission has also received a leniency application relating to the same infringement from the same applicant as the competent authority transmitting the leniency statement, or

(c) subject to *subsection (12)*, where the competent authority has also received a leniency statement relating to the same infringement from the same applicant as the European Commission or the competition authority transmitting the leniency statement.

(12) *Subsection (11)(c)* shall only apply where, at the time the leniency statement is sent, it is not open to the applicant to withdraw the information which it has submitted to the national competition authority receiving the leniency statement.

⁷ OJ No. L 1, 4.1.2003, p.1

(13) The form in which the leniency statement is submitted under *section 15AL* shall not affect the application of *subsections (5) to (11)*.

(14) In this section, "applicable provisions" means—

(a) sections 18, 37(2)(d)(ii) and 37A of the Act of 2014, and

(b) sections 38A, 39(3A) and (3B) and 39A of the Act of 2002.]

F85[Admissibility
of evidence

15AW.—(1) The types of proof that are admissible as evidence in proceedings under this Act (whether criminal or civil, including proceedings under *Part 2* and *Parts 2C to 2F* before a court or an adjudication officer) shall include relevant documents, oral statements, electronic messages, recordings and all other objects containing information, irrespective of the form it takes and the medium on which information is stored, provided that the proof would be admissible before a court.

(2) If a document contains a statement by a person referred to in *subsection (3)* asserting that an act has been done, or is or was proposed to be done, by another person, being an act (the "relevant act") that relates to—

(a) the entry into or the making or implementation of an agreement or decision, or the engaging in of a concerted practice, the subject of proceedings under this Act, or

(b) the doing of the act or acts that constitute an abuse of a dominant position, the subject of proceedings under this Act,

then, subject to the conditions specified in *subsection (4)* being satisfied, that statement shall be admissible as evidence in the proceedings referred to in *paragraph (a) or (b)* that the relevant act was done by that other person or was proposed (at the time the statement was made or, as the case may be, at a previous time) to be done by him or her.

(3) The first-mentioned person in *subsection (2)* is a person who has done an act of the kind referred to in that subsection in relation to the agreement, decision, concerted practice or abuse of dominant position concerned (whether or not the same act which the second-mentioned person referred to in that subsection is alleged to have done or proposed to do).

(4) The conditions mentioned in *subsection (2)* are that the document referred to in that subsection—

(a) has come into existence before the commencement of the proceedings under this Act in which it is sought to tender the document in evidence, and

(b) has been prepared otherwise than in response to any enquiry made or question put by a member or officer of the competent authority, a member of the Garda Síochána, an officer of the European Commission, or an authorised officer relative to any matter the subject of those proceedings.

(5) In estimating the weight, if any, to be attached to evidence admitted by virtue of this section, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise.

(6) Where the proof admitted in evidence by virtue of this section is comprised of a statement by a person—

(a) any evidence which, if the person who made the statement had been called as a witness, would have been admissible as relevant to his or her credibility as a witness shall be admissible for that purpose,

(b) evidence may, with the leave of the court or adjudication officer seised of the proceedings, be given of any matter which, if that person had been called as a witness, could have been put to him or her in cross-examination as relevant

to his or her credibility but of which evidence could not be adduced by the cross-examining party, and

- (c) evidence tending to prove that that person, whether before or after making the statement, made (whether orally or not) a statement which is inconsistent with it shall, if not already admissible by virtue of any rule of law or other enactment, be admissible for the purpose of showing that he or she has contradicted himself or herself.

(7) Nothing in this section shall prejudice the admissibility in any proceedings under this Act before a court or an adjudication officer of any document, as evidence of any matters stated in it—

- (a) that is so admissible by virtue of this Act, any rule of law or any other enactment, or
- (b) in respect of adjudication officers, that would be admissible before a Court hearing civil proceedings by virtue of this Act, any rule of law or any other enactment.

(8) The provisions of Chapter 3 of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 shall apply to proceedings under this Act (whether criminal or civil, including proceedings under *Parts 2C to 2H* of this Act).]

F86[Confidentiality rings 15AX.—(1) Where, in accordance with a provision to which this section applies, a competent authority provides, or otherwise makes available, a document to any person or undertaking, the competent authority may notify the person or undertaking concerned that such document, or such part of the document as it may specify, is provided subject to this section.

(2) A document, or part of a document, provided subject to this section may not be viewed by, or shared with, any person other than one or more of the following, as the competent authority may specify:

- (a) the person or undertaking to whom the document is provided or otherwise made available;
- (b) a legal adviser, or other professional adviser, of the person or undertaking to whom the document is provided or otherwise made available;
- (c) such other person as the competent authority may specify.

(3) This section applies to the following provisions:

- (a) *section 15L*;
- (b) *Part 2E*;
- (c) *Part 2F*.

(4) A person who allows a document provided to the person subject to this section to be viewed by, or shared with, a person other than in accordance with this section shall be guilty of an offence and shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both.].

F87[PART 2H

APPEALS, CONFIRMATIONS AND JUDICIAL REVIEW

Appeal against certain decisions

15AY.—(1) (a) (i) An undertaking or association of undertakings the subject of a decision under *section 15X* (including a decision on the basis of which an

Article 16(1) periodic penalty payment is imposed), other than *section 15X(8)*, may appeal to the Court against that decision not later than 28 working days after the undertaking or association of undertakings receives notice of such decision under *section 15Y*.

- (ii) An undertaking or association of undertakings the subject of an order on consent under *section 15X(8)* may appeal to the Court against that decision not later than 12 working days after the undertaking or association of undertakings receives notice of such decision under *section 15Y*.
- (iii) A decision of an adjudication officer under *section 15X* shall not be questioned, including as to its validity, other than by way of an appeal under this section, and no proceedings questioning such a decision (including an application for judicial review referred to in *section 15AAA* or otherwise) may be brought before the courts other than an appeal under this section or an application for confirmation under *section 15AZ*.
- (b) An undertaking or association of undertakings affected by, but not the subject of, a decision under *section 15X* may, not later than 14 working days after that decision is published, apply to the Court for leave to appeal to the Court against that decision.
- (c) A notified undertaking may appeal to the Court against a prohibition notice not later than 12 working days after the notified undertaking was served with the prohibition notice.
- (d) The respondent to an appeal under this section shall be the competent authority.
- (2) (a) On application, the Court may extend the period within which an appeal may be brought under *subsection (1)(a)* or *(c)*, or within which an application for leave to appeal may be brought under *subsection (1)(b)*, where it is satisfied that—
 - (i) there is exceptional, good and sufficient reason for doing so,
 - (ii) the circumstances that resulted in the failure to bring an appeal within the period provided for in *subsection (1)* were outside the control of the applicant for the extension, and
 - (iii) if an application for confirmation has been brought under *section 15AZ*—
 - (I) the Court has not heard the application for confirmation of the decision, and
 - (II) the Court has not determined the application for confirmation of the decision,
- (b) Where an application for confirmation has been brought pursuant to *section 15AZ* the Court may, upon application or of its own motion, stay the proceedings under *section 15AZ*.
- (c) (i) An application for leave under *subsection (1)(b)* shall be made by motion *ex parte* and shall be grounded in the manner specified in rules of court in respect of an *ex parte* motion for leave.
- (ii) The Court hearing the *ex parte* application for leave may decide, having regard to the issues arising, the likely impact of the proceedings on the competent authority or the undertaking or association of undertakings concerned or another party, or for other good and sufficient reason, that the application for leave should be conducted on an *inter partes* basis, and may adjourn the application on such terms as it may direct in order that a notice may be served on that person.

- (iii) If the Court directs that the leave hearing is to be conducted on an *inter partes* basis it shall be by motion on notice (grounded in the manner specified in the order in respect of an *ex parte* motion for leave) to any person specified for that purpose by order of the Court.
 - (d) An undertaking or association of undertakings that appeals under *subsection (1)*, or makes an application under *subsection (14)*—
 - (i) may include in such appeal or application, as the case may be, any ground that could, but for *section 15AAA(2)*, be relied upon by the notified undertaking in an application seeking judicial review, and
 - (ii) shall, on the same date as it makes such appeal or application, as the case may be, notify the respondent of the fact that it has made the appeal or application, and of the grounds on which it has made the appeal or application.
 - (e) The Court may—
 - (i) on the consent of all of the parties to an application for leave under *subsection (1)(b)* (including notice parties), or
 - (ii) where there is good and sufficient reason for so doing and it is just and equitable in all the circumstances,

treat the application as if it were the hearing of the appeal and may for that purpose adjourn the hearing on such terms as it may direct.
 - (f) The Court shall not grant leave under *subsection (1)(b)* unless it is satisfied that—
 - (i) there are substantial grounds for contending that the decision concerned is invalid or ought to be quashed, including any of the grounds of challenge that could have been raised by the undertaking in judicial review proceedings but for *section 15AY(1)(a)*, and
 - (ii) the applicant is materially affected by the decision or otherwise has a sufficient interest in the matter which is the subject of the application.
 - (g) A sufficient interest for the purposes of *paragraph (f)(ii)* of this subsection is not limited to a financial interest.
 - (h) If the Court grants leave to appeal under *subsection (1)(b)*, no grounds shall be relied upon in the appeal under the order other than those determined by the Court to be substantial under *paragraph (f)(i)* of this subsection.
- (3) The Court may, for the purpose of ensuring the efficient, fair and timely determination of an appeal, issue directions in respect of the conduct of the appeal.
- (4) An appellant shall, when making an appeal or an application for leave to appeal, precisely state all of the grounds in law and fact upon which the appeal is made and shall provide to the Court all of the documents and evidence which it is alleged support the granting of the appeal or upon which he or she intends to rely to support those grounds.
- (5) A party to an appeal other than the appellant shall, when responding to an appeal, state all of the grounds upon which he or she responds to the appeal and provide to the Court all of the documents and evidence upon which he or she intends to rely to support those grounds.
- (6) Subject to *subsection (7)*, a party to an appeal shall not be entitled during the course of an appeal to make submissions to the Court other than submissions related to the grounds stated, or documents and evidence provided, under *subsections (4)* and *(5)*.

- (7) (a) The Court may, upon application and where it considers it necessary for the fair and proper determination of an appeal, require or permit a party to an appeal to—
- (i) make submissions to the Court other than submissions related to the grounds stated or documents and evidence provided under *subsections (4) and (5)*, and
 - (ii) provide documents or evidence to the Court other than documents or evidence provided under *subsections (4) and (5)*,
- (b) The Court shall refuse to consider submissions, documents or evidence where—
- (i) the submissions, documents or evidence are not relevant to the appeal, or
 - (ii) it is considered appropriate so as to avoid undue repetition of submissions.
- (c) Where the Court has granted leave to deliver additional submissions, documents or evidence in an application under *paragraph (a)*, the Court shall give directions as to the scope, form and timeframe for delivery of such additional submissions, documents or evidence.
- (d) The Court may receive such evidence by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner.
- (8) The Court, on hearing an appeal under *subsection (1)*, may consider—
- (a) whether the decision made is supported by the evidence including evidence admitted in accordance with *subsections (7) and (9)*,
 - (b) whether the law was correctly applied in reaching the decision,
 - (c) whether an appropriate and proportionate sanction or prohibition notice was imposed, and
 - (d) whether the jurisdiction existed to make the decision against which an appeal has been brought.
- (9) (a) In considering an appeal, the Court—
- (i) shall have regard to the record of the decision the subject of the appeal, and
 - (ii) shall have regard to any submissions, documents or evidence admitted under *subsection (7)*.
- (b) The Court may draw inferences of fact in accordance with law.
- (10) The Court may, on the hearing of an appeal under *subsection (1)*—
- (a) confirm the decision or prohibition notice the subject of the appeal, or
 - (b) where it is satisfied by reference to the grounds of appeal that a serious and significant error of law or fact, or a series of minor errors of law or fact which when taken together amount to a serious and significant error, was made in making the decision, or that the decision was made without complying with fair procedures—
 - (i) annul the decision in its totality or in part, and—
 - (I) remit the decision for reconsideration by the adjudication officer or competent authority as the case may be, subject to such directions as the Court considers appropriate and, in the case of a decision by an

adjudication officer, including whether the decision should be reconsidered by another adjudication officer, or

(II) vary the decision and substitute such other decision as the Court considers appropriate,

and

(ii) direct how the costs of the appeal or the application for leave to appeal are to be borne.

(11) The Court shall, in determining an appeal or an application for leave to appeal under *subsection (1)*, act as expeditiously as possible consistent with the administration of justice, and shall have particular regard to the need for expedition in appeals under *subsection (1)(c)*.

(12) Rules of court may make provision for the conduct of appeals under this section including—

(a) for the expeditious hearing thereof,

(b) for the procedures concerning the hearing of appeals and applications for leave to appeal,

(c) for the manner in which the issues on any such appeal or application for leave to appeal may be pleaded and evidence adduced in connection therewith, and

(d) for expedited hearings of appeals in respect of the imposition of a prohibition notice, or the imposition of a periodic penalty payment under *section 15X*.

(13) The making of an appeal under *subsection (1)(c)*, or an application for leave to appeal under *subsection (1)(b)*, does not suspend the effect of the decision to which the appeal relates unless the Court, on application by the undertaking bringing the appeal, places a stay on the decision.

(14) Where an appeal is made under *subsection (1)(c)*—

(a) the appellant may apply to the Court to have the effect of the prohibition notice suspended until such time as the appeal is determined, and

(b) the Court may, if it considers it appropriate to do so having regard to all the circumstances, order that the effect of the prohibition notice, or such particular effects as the Court may order, be suspended until the appeal is determined, or until such other time as the Court may order.

(15) Where the Court confirms, or substitutes its own decision for, the decision of an adjudication officer imposing an administrative financial sanction or periodic penalty payment, the Court may set a time limit for the payment of the administrative financial sanction or periodic penalty payment concerned.

(16) The Court may award the costs of an appeal in accordance with *subsection (9)* of *section 15X*.

(17) In this section, "Court" means the High Court.]

F88[Court confirmation of decision on certain administrative sanctions

15AZ.—(1) (a) Where an undertaking or association of undertakings does not, within the period provided for in *section 15AY(1)*, appeal to the Court against a decision under *section 15X* imposing an administrative financial sanction, an Article 16(2) periodic penalty payment, a hearing requirement periodic penalty payment or structural or behavioural remedies, the competent authority shall, as soon as practicable after the expiration of the period allowed for an appeal under *section 15AY(1)*, make an application to the Court for the confirmation of that decision.

- (b) The application under *paragraph (a)* may be made by the competent authority on an *ex parte* basis provided that the undertaking or association of undertakings to which the application relates informs the competent authority in writing that it agrees to the application being made *ex parte*.
- (2) (a) An application by the competent authority under *subsection (1)* shall include the decision under *section 15X* together with the documents and evidence before the adjudication officer which are referred to in that decision, and may include any other documents and evidence which were before the adjudication officer.
- (b) Notice of an application under *subsection (1)* shall be served by the competent authority on the undertaking or association of undertakings the subject of a decision under *section 15X* within 7 working days of the competent authority lodging the application in Court.
- (c) The notice referred to in *paragraph (b)* shall specify the time fixed by the Court for the hearing of the application, and shall enclose copies of all the papers lodged in Court in relation to the application under *subsection (1)*.
- (3) The Court shall, on the hearing of an application under *subsection (1)*, confirm the decision the subject of the application unless the Court, on the basis of the findings of fact in the decision of the adjudication officer (which are to be accepted as final by the Court), determines that—
- (a) the decision of the adjudication officer contains an error of law which is—
- (i) manifest from the record of the decision, and
 - (ii) fundamental so as to deprive the decision of its basis,
- or
- (b) the sanction or remedy imposed was manifestly—
- (i) disproportionate,
 - (ii) in excess of the sanction or remedy required to be dissuasive, or
 - (iii) in excess of the sanction or remedy required to be effective.
- (4) The Court—
- (a) where it makes a determination referred to in *subsection (3)(a)*, or a determination under *subsection (3)(a)* and (b), in relation to an application under *subsection (1)*, shall remit the matter for reconsideration by an adjudication officer, subject to such directions as the Court considers appropriate including, as the Court sees fit, directions as to whether or not—
- (i) the adjudication officer should be limited to reconsidering a specific aspect of a decision made under *section 15X*, and
 - (ii) the matter should be reconsidered by another adjudication officer,
- or
- (b) where it makes a determination referred to in *subsection (3)(b)*, but not a determination referred to in *subsection (3)(a)*, in relation to an application under *subsection (1)*, may—
- (i) where the application does not relate to an order under *section 15X(8)*, order that a lower amount shall be substituted for the amount of the periodic penalty payment or administrative financial sanction specified in the decision, and confirm the decision subject to such substitution, and

- (ii) where the Court does not make an order referred to in *subparagraph (i)* and considers that the interests of justice so require, remit the matter for reconsideration by an adjudication officer, subject to such directions as the Court considers appropriate including, as the Court sees fit, directions as to whether or not—
 - (I) the adjudication officer should be limited to reconsidering a specific aspect of a decision made under *section 15X*, and
 - (II) the matter should be reconsidered by another adjudication officer.
- (5) The Court shall hear the application under *subsection (1)* on the evidence before the adjudication officer.
- (6) The Court shall, in determining an application under *subsection (1)*, act as expeditiously as possible consistent with the administration of justice.
- (7) (a) The Court may direct how the costs of an application under this section are to be borne.
- (b) Without prejudice to the application by the Court of costs rules under other enactments (including the Rules of the Superior Courts), the Court may in its discretion award the costs of an application under this section as if *section 15X(9)* applied to an award of costs under this section.
- (8) A decision made under *section 15X* imposing an administrative financial sanction, an Article 16(2) periodic penalty payment or structural or behavioural remedies in accordance with *section 15Z* shall not have effect until the later of—
 - (a) where the Court does not grant leave to appeal to the Court of Appeal under *section 15AAB*—
 - (i) where an appeal is not brought within the time for appealing against that decision under *section 15AY*, the date on which the Court makes an order under this section confirming the decision, or
 - (ii) where an appeal under *section 15AY* has been brought, the date on which the Court confirms the decision in accordance with *subsection (10)* of that section, or
 - (b) where the Court grants leave to appeal to the Court of Appeal under *section 15AAB*—
 - (i) the date on which any appeal to the Court of Appeal under *section 15AAB* and further appeal in relation to the decision has been decided, or has otherwise ended, without the decision being overturned, annulled or otherwise prevented from coming into effect by order of the Court of Appeal,
 - or
 - (ii) the date on which the time for appealing against the result of the appeal under *section 15AAB* has expired without an appeal having been brought.
- (9) Rules of court may make provision for the conduct of applications for confirmation under this section, and for the expeditious hearing thereof.
- (10) Where the Court confirms, or substitutes its own decision for, the decision of an adjudication officer imposing an administrative financial sanction or an Article 16(2) periodic penalty payment the Court may set a time limit for the payment of the administrative financial sanction or Article 16(2) periodic penalty payment concerned.
- (11) In this section, "Court" means the High Court.]

F89[Judicial
review

15AAA.—(1) (a) An adjudication officer may, on her or his own initiative or at the request of the competent authority or an undertaking or association of undertakings the subject of a referral under *section 15M*, refer to the Court for decision by way of case-stated a question of law arising at a hearing on a referral under *section 15M*.

(b) Where a question has been referred under *subsection (1)*, the adjudication officer shall not, in relation to a referral under *section 15M* to which the hearing relates—

(i) make a decision under *section 15X* to which the question is relevant while the reference to the Court is pending, or

(ii) proceed in a manner, or make a decision under *section 15X*, that is inconsistent with the Court's opinion on the question.

(c) Where a question is referred to the Court under *subsection (1)*—

(i) the adjudication officer shall send to the Court all documents before the adjudication officer that are relevant to the matter in question, and

(ii) at the end of the proceeding in the Court in relation to the reference, the Court shall cause the documents to be returned to the adjudication officer.

(2) The validity of a decision made or an act done by a competent authority (including an authorised officer and an adjudication officer) in the performance of a function under *Parts 2C to 2G* (whether such function is performed by way of powers conferred by or under this Act, the Act of 2014 or the Act of 2002) shall not be questioned other than—

(a) by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) (in this section referred to as "Order 84"), and in accordance with this section, or

(b) in accordance with a process provided for in this Act (including *section 15AY(1)*), the Act of 2002 or the Act of 2014 by which the validity of such decision or act may be questioned.

(3) At any time after the bringing of an application for leave to apply for judicial review of any decision or other act to which *subsection (2)* applies and which relates to a matter for the time being before the competent authority (including a matter before an adjudication officer), the competent authority may apply to the Court to stay the proceedings pending the making of a decision by the competent authority (including a decision by an adjudication officer) in relation to the matter concerned.

(4) On the making of such an application, the Court may, where it considers that the matter before the competent authority (including an adjudication officer and an authorised officer) is within the jurisdiction of the competent authority (including an adjudication officer and an authorised officer), make an order staying the proceedings concerned on such terms as it thinks fit.

(5) Subject to *subsection (6)*, an application for leave to apply for judicial review under Order 84 in respect of a decision or other act to which *subsection (2)* applies shall be made—

(a) in respect of decisions or other acts under *Parts 2C, 2D and 2G*, not later than 28 working days, or

(b) in respect of decisions or other acts under *Parts 2E and 2F*, not later than 8 weeks,

from the date on which the notice of the decision or act was first sent or published as the case may be or, if notice of the decision or act was not sent or published, from the date on which the undertaking or person became aware of the decision or act.

(6) The Court may extend the period provided for in *subsection (5)* within which an application for leave referred to in that subsection may be made but shall only do so if it is satisfied that—

- (a) there is good and sufficient reason for doing so, and
- (b) the circumstances that resulted in the failure to make the application for leave within the period so provided were outside the control of the applicant for the extension.

(7) References in this section to Order 84 shall be construed as including references to Order 84 as amended or replaced (with or without modification) by rules of court.

(8) (a) An application for leave under this section shall be made by motion *ex parte* and shall be grounded in the manner specified in Order 84 in respect of an *ex parte* motion for leave.

(b) The Court hearing the *ex parte* application for leave may decide, having regard to the issues arising, the likely impact of the proceedings on the competent authority or the undertaking or association of undertakings concerned or another party, or for other good and sufficient reason, that the application for leave should be conducted on an *inter partes* basis and may adjourn the application on such terms as it may direct in order that a notice may be served on that person.

(c) If the Court directs that the leave hearing is to be conducted on an *inter partes* basis it shall be by motion on notice (grounded in the manner specified in Order 84 in respect of an *ex parte* motion for leave)—

(i) if the application relates to a decision made or other act done by a competent authority (including an adjudication officer and an authorised officer) in the performance or purported performance of a function under this Act, the Act of 2002 or the Act of 2014, to the competent authority (including an adjudication officer and an authorised officer) concerned, and

(ii) to any other person specified for that purpose by order of the Court.

(9) The Court may—

- (a) on the consent of all of the parties, or
- (b) where there is good and sufficient reason for so doing and it is just and equitable in all the circumstances,

treat the application for leave as if it were the hearing of the application for judicial review and may for that purpose adjourn the hearing on such terms as it may direct.

(10) The Court shall not grant leave under this section unless it is satisfied that—

- (a) there are substantial grounds for contending that the decision or act concerned is invalid or ought to be quashed,
- (b) the applicant is materially affected by or has a sufficient interest in the matter which is the subject of the application, and
- (c) the matter does not relate to a decision by an adjudication officer under *section 15X*.

(11) If the Court grants leave under this section, no grounds shall be relied upon in the application for judicial review under Order 84 other than those determined by the Court to be substantial under *subsection (10)(a)*.

(12) The Court may, as a condition for granting leave under this section, require the applicant for such leave to give an undertaking as to damages.

(13) If an application is made for judicial review under Order 84 in respect of part only of a decision or other act to which *subsection (2)* applies, the Court may, if it thinks fit, declare to be invalid or quash the part concerned or any provision thereof without declaring invalid or quashing the remainder of the decision or other act or part of the decision or other act, and if the Court does so, it may make any consequential amendments to the remainder of the decision or other act or the part thereof that it considers appropriate.

(14) The Court shall, in determining an application under this section or an application for judicial review on foot of such leave—

- (a) act as expeditiously as possible consistent with the administration of justice, and
- (b) give such priority as it reasonably can, having regard to all the circumstances, to the disposal of proceedings in that Court under this section.

(15) Rules of court may make provision for the expeditious hearing of references to the Court by adjudication officers under *subsection (1)*, for applications for leave under this section and applications for judicial review on foot of such leave.

(16) In this section, "Court" means the High Court.]

F90[Appeals to the Court of Appeal

15AAB.—(1) An appeal to the Court of Appeal shall lie in respect of a determination of the High Court on an appeal under *section 15AY* in respect of a decision by an adjudication officer under *section 15X*.

(2) The determination of the High Court on—

- (a) an appeal under *section 15AY* against a prohibition notice,
- (b) an application for confirmation under *section 15AZ*,
- (c) an application for confirmation under *section 15AS(7)*,
- (d) an application for judicial review of any other decision made or act done under this Act by the competent authority (including decisions made or acts done under this Act by an authorised officer or by an adjudication officer), or
- (e) a reference to the Court by way of case-stated by an adjudication officer under *section 15AAA(1)*,

shall be final and no appeal shall lie from the decision of the High Court to the Court of Appeal in any such case save with leave of the High Court, which leave shall only be granted where the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be made to the Court of Appeal.

(3) In respect of an application for confirmation under *section 15AZ*, where the point of law which would otherwise be certified is a point that could have been brought by way of an appeal under *section 15AY*, the High Court may only in exceptional circumstances grant leave to appeal to the Court of Appeal under *subsection (2)*.

- (4) (a) *Subsection (2)* shall not apply to a determination of the High Court in so far as it involves a question as to the validity of any law having regard to the Constitution.
- (b) Nothing in *subsection (2)* shall be construed as preventing or restricting a competent authority from bringing an appeal against a refusal of the District Court to issue a warrant under section 37 of the Act of 2014 or section 39, 40 or 40A of the Act of 2002.

(5) On an appeal from a determination of the High Court to which *subsection (2)* applies, the Court of Appeal shall—

(a) have jurisdiction to determine only the point of law certified by the High Court under *subsection (2)* (and to make only such order in the proceedings as follows from such determination), and

(b) in determining the appeal, act as expeditiously as possible consistent with the administration of justice.

(6) Nothing in this section shall affect the jurisdiction of the Supreme Court.

(7) Except in the case of an appeal against the imposition, or the amount, of an administrative financial sanction, the making of an appeal under this section does not suspend the effect of the decision to which the appeal relates unless a court so directs (including upon an application under *section 15AY(14)*).

(8) Rules of court may make provision for the expeditious hearing of appeals under this section to the Court of Appeal and otherwise under this Act to the Supreme Court.]

F91[Conduct of proceedings

15AAC.—The whole or part of any court proceedings under this part and of any appeal against any order of court may be heard otherwise than in public if the court seised of the proceedings or appeal, in the interests of justice, considers that it would be appropriate in the circumstances to hold the hearing or part of the hearing otherwise than in public.]

F92[Treatment of amounts paid in respect of administrative financial sanctions

15AAD.—A payment received by the competent authority of any amount due to it pursuant to a decision confirmed or replaced under *section 15AY* or confirmed under *section 15AZ* or pursuant to a decision under *section 15X* in respect of periodic penalty payments shall be paid into, or disposed of for the benefit of, the Exchequer in such manner as the Minister for Finance may direct.]

F93[Recovery of amounts of administrative financial sanctions and periodic penalty payments due

15AAE.—The competent authority may recover as a simple contract debt in any court of competent jurisdiction, any administrative financial sanction or periodic penalty payment imposed under this Act.]

PART 3

MERGERS AND ACQUISITIONS

Mergers and acquisitions for the purposes of Act.

16.—(1) For the purposes of this Act, a merger or acquisition occurs if—

(a) 2 or more undertakings, previously independent of one another, merge, or

F94[(b) one or more individuals who already control one or more undertakings, or one or more undertakings, acquire direct or indirect control of the whole or part of one or more other undertakings, or, and]

F94[(c) the acquisition of part of an undertaking, although not involving the acquisition of a corporate legal entity, involves the acquisition of assets that constitute a business to which a turnover can be attributed, and for the purposes of this paragraph "assets" includes goodwill.]

(2) For the purposes of this Act, control, in relation to an undertaking, shall be regarded as existing if, by reason of securities, contracts or any other means, or any combination of securities, contracts or other means, decisive influence is capable of being exercised with regard to the activities of the undertaking and, in particular, by—

- (a) ownership of, or the right to use all or part of, the assets of an undertaking, or
 - (b) rights or contracts which enable decisive influence to be exercised with regard to the composition, voting or decisions of the organs of an undertaking.
- (3) For the purposes of this Act, control is acquired by an individual or other undertaking if he or she or it—
- (a) becomes holder of the rights or contracts, or entitled to use the other means, referred to in *subsection (2)*, or
 - (b) although not becoming such a holder or entitled to use those other means, acquires the power to exercise the rights derived therefrom.
- (4) The creation of a joint venture to perform, F94[on a lasting basis], all the functions of an autonomous economic entity shall constitute a merger falling within *subsection (1)(b)*.
- (5) In determining whether influence of the kind referred to in *subsection (2)* is capable of being exercised regard shall be had to all the circumstances of the matter and not solely to the legal effect of any instrument, deed, transfer, assignment or other act done or made.
- (6) For the purposes of this Act, a merger or acquisition shall not be deemed to occur if—
- (a) the person acquiring control is a receiver or liquidator acting as such or is an underwriter or jobber acting as such, or
 - (b) all of the undertakings involved in the merger or acquisition are, directly or indirectly, under the control of the same undertaking, or
 - (c) control is acquired solely as a result of a testamentary disposition, intestacy or the right of survivorship under a joint tenancy, or
 - (d) control is acquired by an undertaking referred to in *subsection (7)* in the circumstances specified in *subsection (8)*.
- (7) The undertaking mentioned in *subsection (6)(d)* is an undertaking the normal activities of which include the carrying out of transactions and dealings in securities for its own account or for the account of others.
- (8) The circumstances mentioned in *subsection (6)(d)* are that the control concerned is constituted by the undertaking's holding, on a temporary basis, securities acquired in another undertaking and any exercise by the undertaking of voting rights in respect of those securities, whilst that control subsists, is for the purpose of arranging for the disposal, within the specified period, of all or part of the other undertaking or its assets or securities and not for the purpose of determining the manner in which any activities of the other undertaking, being activities that could affect competition in markets for goods or services in the State, are carried on.
- F95[(8A) *Subsection (6)* shall not apply where the undertaking referred to in *subsection (7)* has acquired control on the basis of the future onward sale of the business to an ultimate buyer, in circumstances where the ultimate buyer bears the major part of the economic risks.]
- (9) In *subsection (8)* “specified period” means—
- (a) the period of 1 year from the date on which control of the other undertaking was acquired, or
 - (b) if in a particular case the undertaking shows that it is not reasonably possible to effect the disposal concerned within the period referred to in *paragraph*

(a), within such longer period as the Authority determines and specifies with respect to that case.

F96[Application of sections 18 to 22

17.— (1) Sections 18 to 22 are subject to *Part 3A* (inserted by section 74 of the Competition and Consumer Protection Act 2014).

(2) Notwithstanding *subsection (1)*, any commitments or conditions in a determination made under this Part shall not be revoked or amended by the Minister for Communications, Energy and Natural Resources in his or her determination under *Part 3A*.

(3) The Minister for Communications, Energy and Natural Resources may however impose additional conditions in his or her determination under *Part 3A*.]

Obligation to notify certain mergers and acquisitions.

18.—F97[(1) Where—

(a) in relation to a proposed merger or acquisition, in the most recent financial year—

(i) the aggregate turnover in the State of the undertakings involved is not less than F98[€60,000,000], and

(ii) the turnover in the State of each of 2 or more of the undertakings involved is not less than F98[€10,000,000], or

(b) a proposed merger or acquisition falls within a class of merger or acquisition specified in an order under *subsection (5)*,

each of the undertakings involved in the merger or acquisition shall notify the Commission in writing, and provide full details, of the proposal to put the merger or acquisition into effect.

(1A) A notification under *subsection (1)*—

(a) shall be made before the proposed merger or acquisition is put into effect, and

(b) may be made after any of the following applicable events occurs:

(i) one of the undertakings involved has publicly announced an intention to make a public bid or a public bid is made but not yet accepted;

(ii) the undertakings involved demonstrate to the Commission a good faith intention to conclude an agreement or a merger or acquisition is agreed;

(iii) in relation to a scheme of arrangement, a scheme document is posted to shareholders.]

(2) For the purpose of *subsection (1)*—

(a) “turnover” does not include any payment in respect of value-added tax on sales or the provision of services or in respect of duty of excise,

(b) subject to *paragraph (c)* an undertaking shall not be deemed to be involved in a merger or acquisition by virtue only of its being the vendor of any securities or other property involved in the merger or acquisition, and

(c) in relation to a merger or acquisition that will occur by reason of the acquisition concerned being an acquisition referred to in *section 16(1)(c)*—

F99[(i) *subparagraphs (i) and (ii) of subsection (1)(a)*, in their application to the part of an undertaking mentioned in *section 16(1)(c)*, shall apply as if the references to turnover in the State were, in relation to that part of

an undertaking, references to turnover in the State generated from the assets of that part of an undertaking that are the subject of the acquisition mentioned in *section 16(1)(c)*,]

F99[(ii) notwithstanding *paragraph (b)*, that part of an undertaking mentioned in *section 16(1)(c)* shall, for the purposes of *paragraph (a)* or *(b)* of *subsection (1)* but not so as to place on it an obligation to notify the Commission of the proposal to put the merger or acquisition into effect, be deemed to be involved in the merger or acquisition.]

F100[(3) In the case of a proposed merger or acquisition that is not required to be notified under *subsection (1)*, any of the undertakings involved in the merger or acquisition may, before putting the merger or acquisition into effect, notify the Commission in writing, and provide full details, of the proposal to put the merger or acquisition into effect, and such notification may be made after any of the applicable events referred to in *paragraph (b)* of *subsection (1A)* occurs.]

F101[(3A) Any of the undertakings involved in a merger or acquisition that—

(a) is not required to be notified under *subsection (1)*, and

(b) was not notified under *subsection (3)*,

may notify the Commission in writing of the merger or acquisition after it has been put into effect, and provide full details of the merger or acquisition concerned.

(3B) The Commission may review any notification made to it under *subsection (3)* or (3A) and may, in relation to such notification, take interim measures.]

(4) Nothing in this section or any other provision of this Act prejudices the operation of F100[the Council Regulation].

(5) Where he or she is of opinion that the exigencies of the common good so warrant, the Minister may, after consultation with the Authority, by order specify a class or classes of merger or acquisition for the purposes of *subsection (1)(b)*.

(6) The Minister may by order amend or revoke an order under *subsection (5)* or a previous order under this subsection.

(7) Every order under this section shall have effect on and from the date on which it is made and shall be laid before each House of the Oireachtas as soon as may be after it is made; if a resolution confirming the order is not passed by each such House within the next 21 days after that House has sat after the order is laid before it, the order shall lapse, but without prejudice to the validity of anything previously done thereunder.

(8) A notification in accordance with this section shall be accompanied by such fee as may be prescribed and different fees may be prescribed for different classes of notification; if the notification is not accompanied by that fee the notification shall be invalid.

(9) Where there is a contravention of F99[*subsection (1)*, *section 18A(1)* or *section 20(2)*] an undertaking, the person in control of an undertaking, or (in the case of *section 20(2)*) other person], which has failed to notify the Authority within the specified period or failed to supply the information required within the period specified by the Authority, as the case may be, shall be guilty of an offence and shall, subject to *subsection (10)*, be liable—

(a) on summary conviction, to a fine not exceeding €3,000,

(b) on conviction on indictment, to a fine not exceeding €250,000.

(10) *Subsection (9)* operates so that if the contravention concerned continues one or more days after the date of its first occurrence, F100[the undertaking or person]

referred to in that subsection is guilty of a separate offence under that subsection for each day that the contravention occurs; but in respect of the second or subsequent offence of which he or she is guilty by reason of that continued contravention, *subsection (9)* shall have effect as if—

(a) in *paragraph (a)*, “€300” were substituted for “€3,000”,

(b) in *paragraph (b)*, “€25,000” were substituted for “€250,000”.

(11) For the purposes of *subsection (9)* the person in control of an undertaking is—

(a) in the case of a body corporate, any officer of the body corporate who knowingly and wilfully authorises or permits the contravention,

(b) in the case of a partnership, each partner who knowingly and wilfully authorises or permits the contravention,

(c) in the case of any other form of undertaking, any individual in control of that undertaking who knowingly and wilfully authorises or permits the contravention.

(12) A notification for the purposes of *subsection (1) or (3)* shall not be valid where any information provided or statement made under *subsection (1) or (3)* or *section 20(2)* is false or misleading in a material respect, F102[or if the Commission is of the opinion that the full details required under *subsection (1) or (3)*, or all the specified information requested under *section 20(2)*, have not been provided,] and any determination under this Part made on foot of such notification is void.

F102[(12A) Notwithstanding *section 19(2)*, the Commission may, for the purposes of this Part, request or accept notification of a merger or acquisition to which *subsection (1)* applies but which was purported to have been put into effect without having been notified in accordance with that subsection.]

(13) The transmission to the Authority by F103[the European Commission] of a copy of a notification made to the Commission under F100[the Council Regulation] shall constitute a notification under *subsection (1)* in relation to the merger or acquisition concerned.

(14) Irrespective of the date on which F103[the European Commission] transmits a copy of the notification referred to in *subsection (13)*, the date of receipt by the Authority of F104[that Commission’s] decision under F100[the Council Regulation] in relation to the merger or acquisition, the subject of the notification, shall be deemed to be the date of the notification for the purposes of this Act.

F101[(15) Summary proceedings in relation to an offence under *subsection (9)* may be brought by the Commission.]

F105[Power to require notification of below threshold mergers or acquisitions]

18A.—(1) This section applies to a merger or acquisition that—

(a) is not required to be notified under *section 18(1)*,

(b) has not been notified to the Commission under *section 18(3) or 18(3A)*, and

(c) may, in the opinion of the Commission, have an effect on competition in markets for goods or services in the State.

(2) In relation to a merger or acquisition to which this section applies, the Commission may require, in accordance with *subsection (3)*, each of the undertakings involved in the merger or acquisition to notify the Commission in writing, and provide full details, of the merger or acquisition and an undertaking of which such a requirement is made shall comply with the requirement.

(3) A requirement under *subsection (2)* shall—

- (a) be made by notice in writing served on each of the undertakings involved in the merger or acquisition,
 - (b) specify a period within which the undertakings involved in the merger or acquisition shall submit a notification to the Commission, and
 - (c) be made by the Commission no later than 60 working days after the earliest of the following dates:
 - (i) the date on which one of the undertakings involved in the merger or acquisition publicly announces an intention to make a public bid or a public bid is made but not yet accepted;
 - (ii) the date on which the Commission becomes aware that the undertakings involved in the merger or acquisition have entered into an agreement the result of which will, if the agreement is implemented, be that the merger or acquisition occurs;
 - (iii) the date on which the merger or acquisition is put into effect.
- (4) Where an undertaking of which a requirement is made under *subsection (2)* requests in writing, before the expiration of—
- (a) the period specified in the requirement, or
 - (b) such period as stands extended from time to time in accordance with this subsection,
- an extension to the period within which it is required to notify the merger or acquisition concerned to the Commission, the Commission may, where it considers it appropriate to do so, extend that period, and an undertaking in respect of which such an extension is granted shall comply with the requirement within the period as so extended.
- (5) (a) Subject to *paragraph (b)*, *sections 18(8), 18(12), 19, 20, 21 and 22* shall apply to a notification under *subsection (2)* as if it were a notification under *section 18(1)*.
- (b) Where a merger or acquisition to which this section applies has already been put into effect at the time a requirement is made under this section, *subsections (1) to (5) of section 19* shall not apply to the merger or acquisition.
- (6) Where an undertaking does not comply with a requirement to notify a merger or acquisition under *subsection (2)* within the period specified in the requirement, the Commission may, in relation to the merger or acquisition, do one or more of the following:
- (a) examine the merger or acquisition in accordance with *section 20* as if a notification had been received by the Commission in respect of it on the last day of the period specified in the requirement under *subsection (1)*;
 - (b) where the Commission considers it appropriate to do so due to the risk that the merger or acquisition may have an effect on competition in any markets for goods or services in the State, impose interim measures and the provisions of *section 18B* will apply mutatis mutandis to any measures so imposed.]

F106[Power to impose interim measures in respect of certain mergers and acquisitions

18B.—(1) Where the Commission—

- (a) has been notified of a merger or acquisition under *section 18(1), 18(3), 18(3A), 18(12A) or 18A*, and
- (b) considers it appropriate to do so due to the risk that the merger or acquisition may have an effect on competition in any markets for goods or services in the State,

it may impose an interim measure on one or more undertakings involved in the merger or acquisition.

(2) Where the Commission imposes an interim measure under *subsection (1)*, it shall by notice in writing served on the undertaking on which the measure is imposed—

- (a) set out the nature of the interim measure or interim measures imposed, and
- (b) specify the period for which the interim measure shall remain in force, which may include such period as is required for the Commission to make a determination under *section 21* or *section 22* in relation to the merger or acquisition.

(3) Where an interim measure has been imposed on an undertaking in accordance with this section, the Commission may, at any time before the expiry of the period referred to in *subsection (2)(b)*, by notice in writing served on the undertaking on which the interim measure was imposed, vary or revoke the interim measure (including by specifying a period other than the period specified in the original interim measure) and, in the case of an interim measure that is varied, the interim measure shall apply on the terms set out in such notice.

(4) Where an undertaking fails to comply with an interim measure imposed on it in accordance with this section, the undertaking, or a person in control of the undertaking (within the meaning of *section 18(11)*), shall be guilty of an offence and shall, subject to *subsection (5)*, be liable—

- (a) on summary conviction, to a fine not exceeding €3,000,
- (b) on conviction on indictment, to a fine not exceeding €250,000.

(5) *Subsection (4)* operates so that if the contravention concerned continues one or more days after the date of its first occurrence, the undertaking or person referred to in that subsection is guilty of a separate offence under that subsection for each day that the contravention occurs; but in respect of the second or subsequent offence of which he or she is guilty by reason of that continued contravention, *subsection (4)* will have effect as if—

- (a) in *paragraph (a)* of that subsection, “€300” were substituted for “€3,000”, and
- (b) in *paragraph (b)* of that subsection, “€25,000” were substituted for “€250,000”.

(6) In this Part, “interim measure” means a measure that is imposed by the Commission in accordance with this section requiring an undertaking involved in a merger or acquisition—

- (a) to refrain from taking any step, or such steps as may be specified by the Commission, towards putting the merger or acquisition into effect, or from further putting it into effect, or
- (b) to take such actions as may be specified by the Commission for the purpose of mitigating the impact of any step already taken by such undertaking towards putting the merger or acquisition into effect,

and without prejudice to the generality of the foregoing includes—

- (i) imposing on the undertaking obligations as to the carrying on of any activities or the safeguarding of any assets,
- (ii) providing for the carrying on of any activities or the safeguarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the measure) or in any other manner, and
- (iii) imposing obligations preventing the undertaking from—

- (I) closing or selling sites,
- (II) selling or failing to maintain equipment,
- (III) degrading service levels,
- (IV) terminating the employment of key employees,
- (V) integrating IT systems,
- (VI) failing to participate in a tender process,
- (VII) discontinuing products, or
- (VIII) exchanging confidential commercially sensitive information.]

Limitation on
merger or
acquisition being
put into effect.

19.—(1) A merger or acquisition to which *paragraph (a) or (b) of section 18(1)* applies, or which is referred to in *subsection (3) of section 18* and has been notified to the Authority in accordance with that subsection, F107[or in relation to which the Commission has made a requirement under *section 18A(1)* before it is put into effect,] shall not be put into effect until—

- (a) subject to *subsection (3)*, the Authority, in pursuance of *section 21* or 22, has determined that the merger or acquisition may be put into effect, or
- (b) the Authority has made a conditional determination in relation to the merger or acquisition, or
- (c) subject to *subsection (4)*, the period specified in *subsection (2) of section 21* has elapsed without the Authority having informed the undertakings which made the notification concerned of the determination (if any) it has made under *paragraph (a) or (b) of that subsection (2)*, or
- (d) subject to *subsection (5)*, F108[120 working days after the appropriate date have elapsed, or, where a requirement was made under *section 20(2)*, 120 working days and any period of suspension that applied pursuant to *section 22(4A)* after the appropriate date have elapsed] without the Authority having made a determination under *section 22* in relation to the merger or acquisition,

whichever first occurs.

F109[(2) Any such merger or acquisition which purports to be put into effect, where that putting into effect contravenes *subsection (1)*, is void and shall remain void—

- (a) until the Commission informs the undertakings which made the notification that the merger or acquisition may be put into effect in accordance with *section 21(2)(a)*, or
- (b) where the Commission makes a determination pursuant to *section 21(2)(b)* to carry out an investigation under *section 22* in relation to the merger or acquisition, until a determination is issued under *paragraph (a) or (c) of section 22(3)*.]

(3) Notwithstanding *subsection (1)(a)*, the determination referred to in that provision shall not operate to permit the merger or acquisition concerned to be put into effect if the merger or acquisition is not put into effect before the expiry of the period of 12 months after the date on which the determination is made.

(4) Notwithstanding *subsection (1)(c)*, the failure by the Authority to inform the undertakings concerned of the matter referred to in that provision shall not operate to permit the merger or acquisition concerned to be put into effect if the merger or acquisition is not put into effect before the expiry of the period of 13 months after the appropriate date.

(5) Notwithstanding *subsection (1)(d)*, the absence of a determination by the Authority in the circumstances referred to in that provision shall not operate to permit the merger or acquisition concerned to be put into effect if the merger or acquisition is not put into effect before the expiry of the period of F108[12 months after the relevant period referred to in *subsection (1)(d)* has elapsed].

(6) In this section “appropriate date” means—

F110[(a) unless *paragraph (b)* applies, the date of receipt by the Commission of the notification of the merger or acquisition concerned under *section 18(1)*,

(aa) notwithstanding *subsection (8)*, and unless *paragraph (b)* applies, the date of receipt by the Commission of the first notification of a merger or acquisition under *section 18(3)*,]

(b) if the Authority has, under *section 20(2)*, made, within F108[30 working days] from the date of receipt by it of F109[a notification of a merger or acquisition, a requirement or requirements of one or more of the undertakings involved in such merger or acquisition]—

(i) the date on which the requirement is complied with or, in case 2 or more requirements are made and each is complied with, whichever of the dates on which the requirements are complied with is the later or latest,

(ii) where the requirement is not complied with or each of the 2 or more requirements is not complied with, the date immediately following the expiry of the period specified in the requirement or, as the case may be, the date immediately following the expiry of whichever of the respective periods specified in the requirements is the last to expire, or

(iii) in case 2 or more requirements are made but one or more but not all of them are complied with, the later or latest of the following dates, namely the dates provided by applying—

(I) *subparagraph (i)* to the requirement or requirements complied with, and

(II) *subparagraph (ii)* to the requirement or requirements not complied with.

F107[(6A) For the purposes of *subsection (6)*, a requirement made under *section 20(2)* shall be deemed to be complied with on and from the date on which the Commission was provided with a certification under *section 20(2)(b)(ii)* where—

(a) the Commission confirms, by way of a notification under *section 20(2)(c)*, that it is satisfied that the requirement to which the certification relates has been complied with, or

(b) the Commission does not issue a notification under *section 20(2)(c)* within 10 working days of being provided with the certification.

(6B) Where the Commission confirms, by way of a notification under *section 20(2)(c)*, that it is not satisfied that a requirement to which the certification relates has been complied with—

(a) the requirement shall be deemed not to be complied with for the purposes of *subsection (6A)*, and

(b) the Commission may request additional information relating to that requirement from the person or undertaking of whom the requirement was made.

(6C) Where, having received additional information requested under *subsection (6B)*, the Commission considers that a requirement has been complied with, the

requirement shall be deemed to be complied with for the purposes of *subsection (6A)* on and from the date on which the Commission so notifies the person or undertaking subject to the requirement.]

F108[(7) The reference, in the definition of "appropriate date" in *subsection (6)*, and in *section 22(4A)*, to the period specified in a requirement, is a reference to—

- (a) the period specified in the requirement as being the period within which the information concerned shall be supplied, and
- (b) where a requirement has been extended under *section 20(2A)* or *section 20(2B)*, the date specified in the requirement as so extended.]

(8) For the purpose of the reference in *subsection (6)*, and in any other provision of this Act, to the date on which the Authority receives a notification under *section 18*, if a single notification is not made by all the undertakings concerned, the said reference shall be construed as a reference to the later or latest of the dates on which a notification of the merger or acquisition concerned under *section 18* is received by the Authority.

(9) *Subsection (8)* is without prejudice to *section 18(14)*.

F107[(10) Where a merger or acquisition is put into effect, or purports to be put into effect, in contravention of *subsection (1)* the undertaking or undertakings that have put the merger or acquisition into effect, or the person in control of such undertaking (within the meaning of *section 18(11)*), shall be guilty of an offence and shall, subject to *subsection (11)*, be liable—

- (a) on summary conviction, to a fine not exceeding €3,000,
- (b) on conviction on indictment, to a fine not exceeding €250,000.

(11) *Subsection (10)* operates so that if the contravention concerned continues one or more days after the date of its first occurrence, the undertaking or person referred to in that subsection is guilty of a separate offence under that subsection for each day that the contravention occurs; but in respect of the second or subsequent offence of which he or she is guilty by reason of that continued contravention, *subsection (10)* shall have effect as if—

- (a) in *paragraph (a)* of that subsection, "€300" were substituted for "€3,000", and
- (b) in *paragraph (b)* of that subsection, "€25,000" were substituted for "€250,000".]

Examination by
the Authority of
notification.

20.—(1) In respect of a notification received by it, the Authority—

- (a) shall, unless the circumstances involving the merger or acquisition are such that the Authority considers it would not be in the public interest to comply with this paragraph—
 - (i) cause a notice of the notification to be published within 7 days after the date of receipt of it,
 - (ii) consider all submissions made, whether in writing or orally, by the undertakings involved in the merger or acquisition or by any individual or any other undertaking,
- (b) may enter into discussions with the undertakings involved in the merger or acquisition or with any individual or any other undertaking with a view to identifying measures which would ameliorate any effects of the merger or acquisition on competition in markets for goods or services, and
- (c) shall form a view as to whether the result of the merger or acquisition would be to substantially lessen competition in markets for goods or services in the State.

F112[(2) (a) Where the Commission is of the opinion that it requires, in order to consider a merger or acquisition for the purposes of this Part, further information from—

(i) any one or more of the undertakings involved in the merger or acquisition, or

(ii) any other person or undertaking that it considers may have information relevant to the Commission's consideration of the merger or acquisition,

it may require, by notice in writing served on that person or that undertaking, to provide to it, within such period as it specifies, specified information that is in the power or control of that person or that undertaking.

(b) Where the Commission makes a requirement of a person or undertaking under *paragraph (a)*—

(i) the person or undertaking of whom such a requirement is made shall comply with it, and

(ii) the following person shall certify in writing that, to the best of his or her knowledge and belief, the person or undertaking has complied with a requirement under this section:

(I) where the undertaking is a body corporate, a director or other similar officer of the undertaking or a person who purports to act in such capacity;

(II) where the undertaking is a partnership, a partner in the partnership;

(III) in the case of a form of undertaking other than a body corporate or a partnership, the individual in control of the undertaking;

(IV) where the request is made of a natural person, the person.

(c) The Commission shall, within 10 working days from the date on which it is provided with a certification under *paragraph (b)(ii)*, notify the person providing that certificate whether or not it is satisfied that the requirement to which the certification relates has been complied with.]

F112[(2A) If, before the expiration of the period specified in a notice under *subsection (2)*, an undertaking on which, or person on whom, the notice was served requests, in writing, an extension to the specified period, the Commission may, where it considers it appropriate to do so, extend that period, and where such an extension is granted that undertaking or person shall comply with the requirement under *subsection (2)* within the specified period as so extended.]

F111[(2B) The Commission, pursuant to a request from F112[an undertaking or person referred to in *subsection (2A)*], and where it considers it appropriate to do so, may further extend the period as extended under *subsection (2A)* or this subsection.]

(3) In the course of the Authority's activities under *subsection (1)(b)*, any of the undertakings involved in the merger or acquisition concerned may submit to the Authority proposals of the kind mentioned in *subsection (4)* with a view to the proposals becoming binding on it or them if the Authority takes the proposals into account and states in writing that the proposals form the basis or part of the basis of its determination under *section 21* or *22* in relation to the merger or acquisition.

(4) The proposals referred to in *subsection (3)* are proposals with regard to the manner in which the merger or acquisition may be put into effect or to the taking, in relation to the merger or acquisition, of any other measures referred to in *subsection (1)(b)*.

Determination of issues concerned without full investigation, etc.

21.—(1) In this section “appropriate date” has the same meaning as it has in [section 19](#).

(2) In respect of a notification received by it, the Authority shall, within F113[30 working days] after the appropriate date, inform the undertakings which made the notification and any individual or any other undertaking from whom a submission concerning the notification was received of whichever of the following determinations it has made, namely—

(a) that, in its opinion, the result of the merger or acquisition will not be to substantially lessen competition in markets for goods or services in the State and, accordingly, that the merger or acquisition may be put into effect, or

(b) that it intends to carry out an investigation under [section 22](#) in relation to the merger or acquisition.

(3) Where the Authority makes a determination referred to in *paragraph (a) or (b) of subsection (2)*, it shall publish that determination, with due regard for commercial confidentiality, within F113[60 working days] after the making of the determination.

(4) If any of the undertakings which have made the notification concerned submits to the Authority proposals to which [section 20\(3\)](#) applies, then *subsection (2)* shall have effect as if “F113[45 working days]” were substituted for “F113[30 working days]” in that subsection.

Determination of issues concerned on foot of full investigation.

22.—(1) In this section “appropriate date” has the same meaning as it has in [section 19](#).

(2) Having considered a notification made to it, the Authority may decide that it shall carry out an investigation (in this section referred to as a “full investigation”) in relation to the merger or acquisition concerned.

(3) On completion of a full investigation in relation to the merger or acquisition concerned, the Authority shall make whichever of the following determinations it considers appropriate, namely that the merger or acquisition—

(a) may be put into effect,

(b) may not be put into effect, or

(c) may be put into effect subject to conditions specified by it being complied with,

on the ground that the result of the merger or acquisition will or will not, as the case may be, be to substantially lessen competition in markets for goods or services in the State or, as appropriate, will not be to substantially lessen such competition if conditions so specified are complied with.

F114[(3A) Where, on completion of a full investigation in relation to a merger or acquisition—

(a) that has been put into effect without the Commission having issued a determination under [section 21\(2\)\(a\) or 22\(3\)\(a\) or \(c\)](#), and

(b) that is a merger or acquisition—

(i) to which *paragraph (a) or (b) of section 18(1)* applies, or

(ii) that has been notified to the Commission in accordance with [section 18\(3\), 18\(3A\) or 18A\(1\)](#),

the Commission finds that the result of the merger or acquisition will be to substantially lessen competition in markets for goods or services in the State, the Commission may—

- (I) determine that the merger or acquisition should be unwound or dissolved, and the manner in which such unwinding or such dissolution shall occur, including through the dissolution of the merger or the disposal of all the shares or assets acquired, so as to restore the situation prevailing prior to the merger or acquisition being put into effect, or
- (II) where it is not possible to unwind or dissolve the merger or acquisition, determine that the undertakings involved in the merger or acquisition shall take such steps as are appropriate to achieve restoration as far as practicable of the situation prevailing before the merger or acquisition was put into effect.]

(4) Where the Authority makes a determination under *subsection (3)*, it shall reduce the determination to writing (and the determination in that form is referred to in *paragraph (a)* and *subsection (7)* as a “written determination”) and—

- (a) furnish to the undertakings which made the notification a copy of the written determination within F115[120 working days] after the appropriate date, and
- (b) publish the determination, with due regard for commercial confidentiality, within F115[60 working days] after the making of the determination.

F116[(4A) Notwithstanding *subsection (4)(a)*, if the Commission has, under *section 20(2)*, made, not later than 30 working days from the date of its determination under *section 21(2)(b)*, F117[a requirement or requirements of an undertaking involved in the merger or acquisition concerned], the period of 120 working days referred to in *subsection (4)(a)* shall stand suspended on the date that the first requirement is made and shall resume—

- (a) on the date on which the requirement is complied with or, in case 2 or more requirements are made and each is complied with, on whichever of the dates on which the requirements are complied with is the later or latest,
- (b) where the requirement is not complied with or each of the 2 or more requirements is not complied with, on the date immediately following the expiry of the period specified in the requirement or, as the case may be, on the date immediately following the expiry of whichever of the respective periods specified in the requirements is the last to expire, or
- (c) in case 2 or more requirements are made but one or more but not all of them are complied with, on the later or latest of the following dates, namely the dates provided by applying—
 - (i) *paragraph (a)* to the requirement or requirements complied with, and
 - (ii) *paragraph (b)* to the requirement or requirements not complied with.

(4B) If any of the undertakings that have made the notification concerned submits to the Commission during a full investigation under this section proposals to which *section 20(3)* applies, *subsections (4)* and (4A), *section 19(1)(d)* and, in the case of a media merger, paragraph (c) of the definition of “relevant date” in *section 28A(1)* F118[and *paragraph (b)* (inserted by section 4 of the Intellectual Property (Miscellaneous Provisions) Act 2014) of *section 28B(2)*] (inserted by section 74 of the Competition and Consumer Protection Act 2014), shall apply as if “135 working days” were substituted for “120 working days” in those provisions.]

F114[(4AA) For the purposes of *subsection (4A)*, a requirement under *section 20(2)* shall be deemed to be complied with on and from the date on which the Commission was provided with a certification under *section 20(2)(b)(ii)* where—

- (a) the Commission confirms, by way of a notification under *section 20(2)(c)*, that it is satisfied that the requirement to which the certification relates has been complied with, or

(b) the Commission does not issue a notification under *section 20(2)(c)* within 10 working days of being provided with the certification.

(4AB) Where the Commission confirms, by way of a notification under *section 20(2)(c)*, that it is not satisfied that a requirement to which the certification relates has been complied with—

(a) the requirement shall be deemed not to be complied with for the purposes of *subsection (4A)*, and

(b) the Commission may request additional information relating to that requirement from the person or undertaking of whom the requirement was made.

(4AC) Where, having received additional information requested under *subsection (4AB)*, the Commission considers that a requirement has been complied with, the requirement shall be deemed to be complied with for the purposes of *subsection (4A)* on and from the date on which the Commission so notifies the person or undertaking subject to the requirement.]

(5) A determination under *subsection (3)(c)* that the merger or acquisition may be put into effect subject to specified conditions being complied with is referred to in this section as a “conditional determination”.

(6) A conditional determination shall include a condition requiring the merger or acquisition to be put into effect within 12 months after the making of the determination.

(7) A written determination under *subsection (3)* shall state the reasons for its making and shall include a report in relation to the full investigation.

(8) Before making a determination under *subsection (3)*, the Authority shall have regard to any relevant international obligations of the State.

Provisions with regard to media mergers.

23.— F119[...]

Appeal to the High Court against determination of the Authority.

24.—(1) An appeal may be made to the High Court against a determination of the Authority under *paragraph (b) or (c) of section 22(3)*.

(2) F120[...]

(3) An appeal under this section—

(a) may be made by any of the undertakings which made the notification in relation to the merger or acquisition concerned, and

F121[(b) shall be made within 40 working days after the date on which the undertaking is informed by the Commission of the determination concerned or, in case the determination is one that was made under *section 22(3)(c)* in relation to a media merger, within 40 working days after the date the Minister for Communications, Energy and Natural Resources has informed the undertaking of his or her determination under *paragraph (a) or (b) of section 28D(1)*, or under *section 28G(1)*, as the case may be.]

(4) Any issue of fact or law concerning the determination concerned may be the subject of an appeal under this section but, with respect to an issue of fact, the High Court, on the hearing of the appeal, may not receive evidence by way of testimony of any witness and shall presume, unless it considers it unreasonable to do so, that any matters accepted or found to be fact by the Authority in exercising the relevant powers under *section 22* were correctly so accepted or found.

(5) Notwithstanding *subsection (4)*, the High Court, on the hearing of an appeal under this section, may receive evidence by way of the testimony of one or more witnesses if it considers it was unreasonable for the Authority to have accepted or found as a fact any matter concerned.

(6) Without limiting the exercise of the judicial function with respect to a particular case, it shall be the duty of the High Court, in so far as it is practicable, to hear and determine an appeal under this section within 2 months after the date on which the appeal is made to it.

(7) On the hearing of an appeal under this section, the High Court may, as it thinks fit—

(a) annul the determination concerned,

(b) confirm the determination concerned, F120[...]

(c) confirm the determination concerned subject to such modifications of it as the court determines and specifies in its F121[[decision](#), or]

F122[(d) remit the matter to the Commission and, if appropriate, to the Minister for Communications, Energy and Natural Resources, with a direction to make a determination taking into account the findings of the High Court, and with any other directions that the High Court considers appropriate.]

(8) The High Court may, where it appears to the court that the circumstances so warrant, F120[...] extend the period mentioned in *subsection (3)(b)* in which an appeal under this section may be made to it.

(9) An appeal to the Supreme Court against a decision of the High Court under any of the foregoing provisions of this section shall lie only on a question of law.

Laying of order under [section 23\(4\)](#) before Houses of the Oireachtas.

25.— F123[...]

Enforcement of certain commitments, determinations and orders.

26.—(1) In this section—

“commitment” means an obligation on the part of an undertaking arising by virtue of a proposal put forward by it being the subject of a statement in writing by the Authority such as is mentioned in [section 20\(3\)](#);

“determination” means a determination of the Authority made under [section 21](#) or 22;

F124[...]

(2) It shall be lawful for a court of competent jurisdiction to grant an injunction on the motion of the Authority or of any other person to enforce compliance with the terms of F125[a [commitment](#) or a [determination](#)], for the time being in force.

(3) *Subsection (2)* shall not affect any other right of the Authority or other person to bring proceedings (whether civil or criminal) for the enforcement of compliance with the terms of F125[a [commitment](#) or a [determination](#)].

(4) A person who contravenes (whether by act or omission) a provision of F125[a [commitment](#) or a [determination](#)] for the time being in force shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment, or

(b) on conviction on indictment, to a fine not exceeding €10,000 or to imprisonment for a term not exceeding 2 years or to both such fine and such imprisonment.

(5) Every person who aids, abets or assists another person, or conspires with another person, to do anything (whether by way of act or of omission) the doing of which is an offence by virtue of *subsection (4)* shall himself or herself be guilty of an offence under this section and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(6) Where an offence under *subsection (4)* or (5) which is committed by a body corporate or by a person purporting to act on behalf of a body corporate or an unincorporated body of persons is proved to have been so committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person who is a director, manager, secretary, member of the committee of management or other controlling authority of any such body, or who is any other similar officer of any such body, that person shall also be guilty of an offence and shall be liable to be proceeded against and punished as if he or she was guilty of the first-mentioned offence.

(7) *Subsections (4), (5) and (6)* operate so that if the contravention concerned continues one or more days after the date of its first occurrence, the person referred to in the subsection concerned is guilty of a separate offence under that subsection for each day that the contravention occurs; but in respect of the second or subsequent offence of which he or she is guilty by reason of that continued contravention, *subsection (4)* shall have effect as if—

(a) in *paragraph (a)*, “€300” were substituted for “€3,000”, and

(b) in *paragraph (b)*, “€1,000” were substituted for “€10,000”.

(8) Summary proceedings in relation to an offence under this section may be brought by the Authority.

(9) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this section may be instituted within 12 months after the day on which the offence was committed.

F126[(10) The Commission may monitor and review commitments or conditions contained in a determination.]

Alteration of certain monetary amounts.

27.—(1) The Minister may make an order once, and once only, in each year, beginning with the year following the year in which this section is commenced, amending *subsection (1)(a)* of *section 18* by substituting for the monetary amount standing specified in *subparagraph (i)* or F127[(ii)] of that provision for the time being a monetary amount that is greater than that amount.

(2) In making an order under *subsection (1)*, the Minister shall have regard to, and only to, such economic data as the Minister considers to be relevant to the purpose.

(3) Every order under this section shall have effect on and from the date on which it is made and shall be laid before each House of the Oireachtas as soon as may be after it is made; if a resolution confirming the order is not passed by each such House within the next 21 days after that House has sat after the order is laid before it, the order shall lapse, but without prejudice to the validity of anything previously done thereunder.

Relationship between this Part and other enactments.

28.—(1) Nothing in an enactment specified in *subsection (2)* prejudices the operation of F128[this Part or Part 3A].

(2) The enactment mentioned in *subsection (1)* is an enactment (other than an enactment contained in F128[this Part or Part 3A]) that requires, in respect of the doing of the act or acts that comprise a merger or acquisition to which *paragraph (a)*

or (b) of F128[[section 18\(1\)](#), or [section 28B\(1\)](#)] applies, the doing of that act or those acts to be either—

- (a) sanctioned, whether such sanctioning takes the form of the making by a court of an order or the granting by a person of any other form of consent, or
- (b) the subject of any form of registration of a resolution passed by one or more undertakings.

(3) Neither the giving of a sanction such as is referred to in *subsection (2)(a)* nor the carrying out of a registration such as is referred to in *subsection (2)(b)* shall be done or completed in relation to a merger or acquisition to which *paragraph (a)* or *(b)* of F128[[section 18\(1\)](#), or [section 28B\(1\)](#)] applies unless and until no step remains to be taken, or power of any person or court or of either House of the Oireachtas remains to be exercised, under F128[[this Part or Part 3A](#)], being a step or power the taking or exercising of which would, by virtue of this Part, prevent the merger or acquisition from being put into effect.

F129[PART 3A

MEDIA MERGERS]

F130[Interpretation **28A.**—(1) In this Part—
and application.

"advisory panel" has the meaning assigned to it by [section 28F](#);

"broadcasting service" has the same meaning as it has in the Act of 2009;

"carries on a media business in the State" means, in relation to a media business—

- (a) having a physical presence in the State, including a registered office, subsidiary, branch, representative office or agency, and making sales to customers located in the State, or
- (b) having made sales in the State of at least €2 million in the most recent financial year;

"diversity of content" means the extent to which the broad diversity of views (including diversity of views on news and current affairs) and diversity of cultural interests prevalent in Irish society is reflected through the activities of media businesses in the State including their editorial ethos, content and sources;

"diversity of ownership" means the spread of ownership and control of media businesses in the State linked to the market share of those media businesses as measured by listenership, readership, reach or other appropriate measures;

"full media merger examination" has the meaning assigned to it by [section 28E](#);

"Joint Oireachtas Committee" has the same meaning as it has in the Act of 2009;

"media business" means the business (whether all or part of an undertaking's business) of—

- (a) the publication of newspapers or periodicals consisting substantially of news and comment on current affairs, including the publication of such newspapers or periodicals on the internet,
- (b) transmitting, re-transmitting or relaying a broadcasting service,
- (c) providing any programme material consisting substantially of news and comment on current affairs to a broadcasting service, or

- (d) making available on an electronic communications network any written, audio-visual or photographic material, consisting substantially of news and comment on current affairs, that is under the editorial control of the undertaking making available such material;

"media merger" means—

- (a) a merger or acquisition in which 2 or more of the undertakings involved carry on a media business in the State, or
- (b) a merger or acquisition in which one or more of the undertakings involved carries on a media business in the State and one or more of the undertakings involved carries on a media business elsewhere;

"plurality of the media" includes both diversity of ownership and diversity of content;

"programme material" has the same meaning as it has in the Act of 2009;

"reach" means the proportion of a population or audience that consumes any part of the output of a media business in a given period;

"relevant criteria" means the following matters:

- (a) the likely effect of the media merger on plurality of the media in the State;
- (b) the undesirability of allowing any one undertaking to hold significant interests within a sector or across different sectors of media business in the State;
- (c) the consequences for the promotion of plurality of the media in the State of intervening to prevent the media merger or attaching conditions to the approval of the media merger;
- (d) if appropriate, the adequacy of the following to protect the public interest in plurality of the media in the State:
 - (i) the scale and reach of RTÉ and TG4;
 - (ii) Part 6 of the Act of 2009;
 - (iii) the ownership and control policy of the Broadcasting Authority of Ireland for the time being in force;
- (e) the proposed commitments that the undertakings are prepared to offer and which the Minister for Communications, Energy and Natural Resources may incorporate pursuant to *section 28D(5)* or *section 28E(10)* in his or her determination;
- (f) the extent to which the public interest can be secured by the imposition of any conditions by the Minister for Communications, Energy and Natural Resources under *section 28D* or *section 28G*;

"relevant date" means, in relation to a media merger, 10 working days from whichever of the following dates is applicable:

- (a) the date of a determination by the Commission under *paragraph (a)* of *section 21(2)* or under *paragraph (a)* or *(c)* of *section 22(3)*;
- (b) the day after the period specified in *subsection (2)* of *section 21* has elapsed without the Commission having informed the undertakings that made the notification concerned of the determination (if any) it has made under *paragraph (a)* or *(b)* of that *subsection (2)*;
- (c) where the Commission has made a determination under *section 21(2)(b)*, the day after—

(i) 120 working days have elapsed after the appropriate date within the meaning of *section 19(6)*, or

(ii) where a requirement or requirements referred to in *section 22(4A)* were made under *section 20(2)*, 120 working days and any period of suspension that applied pursuant to *section 22(4A)* have elapsed after the appropriate date within the meaning of *section 19(6)*,

without the Commission having made a determination under *section 22*;

(d) the date of a decision of the European Commission under Article 6(1)(b) or Article 8(1) or (2) of the Council Regulation ;

(e) the date that Article 10(6) of the Council Regulation comes into effect;

"RTÉ" means Raidió Teilifís Éireann;

"TG4" means Teilifís na Gaeilge;

"undertakings involved" shall—

(a) be construed in accordance with *Part 3*, or

(b) in the case of a merger or acquisition to which *section 28B(6)* applies, mean the undertakings concerned in accordance with the Council Regulation.

(2) For the avoidance of doubt, this Part applies to a media merger that has been notified to the European Commission in accordance with the Council Regulation, and consideration of, and a determination on, such a media merger under this Part by the Minister for Communications, Energy and Natural Resources shall be an appropriate measure to protect the legitimate interest in plurality of the media within the meaning of Article 21(4) of that Council Regulation.]

F131[Notification of media merger to Minister for Communications, Energy and Natural Resources.

28B.—(1) In the case of a merger or acquisition that is a media merger, the undertakings involved that notified the Commission under *section 18(1)*, or that notified the European Commission, as the case may be, shall notify the Minister for Communications, Energy and Natural Resources in writing, and shall provide him or her with full details, of the proposal to put the merger or acquisition into effect.

(2) A notification to the Minister for Communications, Energy and Natural Resources under *subsection (1)* —

(a) shall be made on or before the relevant date, and

F132[(b) notwithstanding *paragraph (a)*, shall not be made before whichever of the following dates is applicable:

(i) the date of a determination by the Commission under *paragraph (a)* of *section 21(2)* or under *paragraph (a)* or (c) of *section 22(3)*;

(ii) the day after the period specified in *subsection (2)* of *section 21* has elapsed without the Commission having informed the undertakings that made the notification concerned of the determination (if any) it has made under *paragraph (a)* or (b) of that *subsection (2)*;

(iii) where the Commission has made a determination under *section 21(2) (b)*, the day after—

(I) 120 working days have elapsed after the appropriate date within the meaning of *section 19(6)*, or

(II) where a requirement or requirements referred to in *section 22(4A)* were made under *section 20(2)*, 120 working days and any period of suspension

that applied pursuant to *section 22(4A)* have elapsed after the appropriate date within the meaning of *section 19(6)*,

without the Commission having made a determination under *section 22*;

(iv) the date of a decision of the European Commission under Article 6(1) (b) or Article 8(1) or (2) of the Council Regulation;

(v) the date that Article 10(6) of the Council Regulation comes into effect.]

(3) When making a notification under *subsection (1)*, each of the undertakings involved in the media merger shall provide full information to the Minister for Communications, Energy and Natural Resources on all circumstances in relation to the media merger concerned that may impair plurality of the media in the State and shall notify the Minister for Communications, Energy and Natural Resources of any changes in the information.

(4) The undertakings involved in a media merger may make submissions to the Minister for Communications, Energy and Natural Resources in relation to the applicability of the guidelines referred to in *section 28L* to the media merger.

(5) If the Commission makes a determination referred to in *paragraph (a)* or *(b)* of *section 21(2)* or *paragraph (a)*, *(b)* or *(c)* of *section 22(3)* in relation to a media merger it shall, immediately after doing so, inform the Minister for Communications, Energy and Natural Resources of that fact.

(6) If the European Commission makes a decision under Article 6(1)(a), (b) or (c) or Article 8(1), (2) or (3) of the Council Regulation or if Article 10(6) of that Council Regulation takes effect in relation to a media merger the undertakings involved shall, immediately after having being notified of the decision or of Article 10(6) having taken effect, as the case may be, inform the Minister for Communications, Energy and Natural Resources.

(7) A notification for the purposes of *subsection (1)* shall not be valid and any determination under this Part made on foot of such notification is void—

(a) where any information provided or statement made under *subsection (1)*, (3) or (4) or *section 28D(3)* or *28E(7)* is false or misleading in a material respect, or

(b) if the Minister for Communications, Energy and Natural Resources is of the opinion that full details referred to in *subsection (1)*, full information or changes to the information referred to in *subsection (3)*, or the specified information referred to in *sections 28D(3)* or *28E(7)*, were not provided.

(8) Where there is a contravention of *subsection (1)* or (3), the person in control of an undertaking that has failed to notify the Minister for Communications, Energy and Natural Resources or that has failed to supply the information required, as the case may be, shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €250,000.

(9) *Subsection (8)* operates so that if the contravention concerned continues one or more days after the date of its first occurrence, the person referred to in that subsection is guilty of a separate offence under that subsection for each day that the contravention occurs; but in respect of the second or subsequent offence of which he or she is guilty by reason of that continued contravention, *subsection (8)* shall have effect as if—

(a) in *paragraph (a)*, "a class E fine" were substituted for "a class A fine", and

(b) in *paragraph (b)*, "€25,000" were substituted for "€250,000".

(10) For the purposes of *subsection (8)* the person in control of an undertaking is—

- (a) in the case of a body corporate, any officer of the body corporate who knowingly and wilfully authorises or permits the contravention,
- (b) in the case of a partnership, each partner who knowingly and wilfully authorises or permits the contravention,
- (c) in the case of any other form of undertaking, any individual in control of that undertaking who knowingly and wilfully authorises or permits the contravention.

(11) Summary proceedings in relation to an offence under this section may be brought by the Minister for Communications, Energy and Natural Resources.]

F133[Limitation on media merger being put into effect.

28C.—(1) Notwithstanding any other provision of this Act or of any other enactment, a media merger shall not be put into effect before the Minister for Communications, Energy and Natural Resources makes a determination under *paragraph (a) or (b) of section 28D(1) or paragraph (a) or (c) of section 28G(1)*.

(2) Notwithstanding *subsection (1)*, a determination referred to in that provision shall not operate to permit the merger or acquisition concerned to be put into effect if the merger or acquisition is not put into effect before the expiry of the period of 12 months from the date on which the determination is made.

(3) Any media merger that purports to be put into effect, where that putting into effect contravenes this section, is void.]

F134[Initial examination by Minister for Communications, Energy and Natural Resources of media merger notification.

28D.—(1) Not later than 30 working days (or 45 working days, where proposed commitments referred to in *subsection (5)* have been made) from the relevant date or from the appropriate date, whichever is the later, the Minister for Communications, Energy and Natural Resources shall inform the undertakings that have made the media merger notification under *section 28B* of whichever of the following determinations he or she has made, namely—

- (a) that in his or her opinion the result of the media merger will not be contrary to the public interest in protecting plurality of the media in the State, and accordingly that the media merger may be put into effect,
- (b) that, in light of proposed commitments offered by the undertakings, in his or her opinion the result of the media merger will not be contrary to the public interest in protecting plurality of the media in the State, and accordingly the media merger may be put into effect subject to the incorporation of those proposed commitments as specified conditions to be complied with, or
- (c) that he or she is concerned that the media merger may be contrary to the public interest in protecting plurality of the media in the State, and accordingly that he or she intends to request the Broadcasting Authority of Ireland to carry out an examination under *section 28E*.

(2) In making a determination under *subsection (1)* as to whether the result of the media merger is likely to be contrary to the public interest in protecting plurality of the media in the State, the Minister for Communications, Energy and Natural Resources shall have regard to—

- (a) the relevant criteria,
- (b) any guidelines issued under *section 28L*,
- (c) all submissions made and information provided to the Minister for Communications, Energy and Natural Resources by the undertakings involved in the media merger,

(d) and take full account of, where applicable, the determination of the Commission under *paragraph (a) of section 21(2)* or under *paragraph (a) or (c) of section 22(3)*,

(e) and take full account of, where applicable, the decision by the European Commission under Article 6(1)(b) or Article 8(1) or (2) of the Council Regulation,

(f) relevant reports published by the Minister for Communications, Energy and Natural Resources under *section 28M*, and

(g) relevant research published by the Broadcasting Authority of Ireland under *section 28M*.

(3) Where the Minister for Communications, Energy and Natural Resources requires further information for the purposes of this section, he or she may by notice in writing require any one or more of the undertakings involved to supply to him or her specified information within a specified period, and an undertaking of whom such a requirement is made shall comply with it.

(4) For the purposes of *subsection (2)*, the Minister for Communications, Energy and Natural Resources may enter into discussions with the undertakings involved in the media merger or with any individual or any other undertaking with a view to identifying measures which would ameliorate any effects of the media merger on plurality of the media in the State.

(5) In the course of the discussions under *subsection (4)*, any of the undertakings involved in the media merger concerned may submit to the Minister for Communications, Energy and Natural Resources proposed commitments of the kind mentioned in *subsection (6)* with a view to the proposed commitments becoming binding on it or them if the Minister for Communications, Energy and Natural Resources incorporates the proposed commitments as specified conditions to be complied with in his or her determination under *subsection (1)(b)* in relation to the media merger.

(6) The proposed commitments referred to in *subsection (5)* are proposed commitments with regard to the manner in which the media merger may be put into effect or to the taking, in relation to the media merger, of any other measures referred to in *subsection (4)*.

(7) As soon as may be after the Minister for Communications, Energy and Natural Resources makes a determination under *subsection (1)*, he or she—

(a) shall furnish to the undertakings involved a copy of the determination, and

(b) may publish, with due regard for commercial confidentiality—

(i) the fact of the making of the determination,

(ii) whether the determination was made under *paragraph (a), (b) or (c) of subsection (1)*, and

(iii) where his or her determination was made under *subsection (1)(b)*, a summary of the conditions specified in the determination.

(8) After the Minister for Communications, Energy and Natural Resources has furnished the determination to the undertakings involved in accordance with *subsection (7)(a)* —

(a) he or she may correct the determination at any time before the determination is published under *paragraph (c)* so as to remove any clerical or typographical errors or any errors of a similar nature and shall inform the undertakings involved of any such changes made, but may not reconsider or re-open any aspect of the determination,

(b) not later than 10 working days from the date of receipt of the determination under *subsection (7)(a)*, the undertakings involved may request the Minister for Communications, Energy and Natural Resources in writing to omit from the version of the determination to be published under *paragraph (c)* any information that they consider to be commercially sensitive, and

(c) he or she shall publish the determination not later than 15 working days from the date of the determination, with due regard for commercial confidentiality.

(9) In this section, reference to "appropriate date" means—

(a) unless *paragraph (b)* applies, the date of receipt by the Minister for Communications, Energy and Natural Resources of the notification of the media merger concerned under *section 28B*,

(b) if the Minister for Communications, Energy and Natural Resources has made, under *subsection (3)*, not later than 30 working days from the date of receipt by him or her of the notification of the media merger concerned under *section 28B*, a requirement or requirements of one or more of the undertakings involved—

(i) the date on which the requirement is complied with or, in case 2 or more requirements are made and each is complied with, whichever of the dates on which the requirements are complied with is the later or latest,

(ii) where the requirement is not complied with or each of the 2 or more requirements is not complied with, the date immediately following the expiry of the period specified in the requirement or, as the case may be, the date immediately following the expiry of whichever of the respective periods specified in the requirements is the last to expire, or

(iii) in case 2 or more requirements are made but one or more but not all of them are complied with, the later or latest of the following dates, namely the dates provided by applying—

(I) *subparagraph (i)* to the requirement or requirements complied with, and

(II) *subparagraph (ii)* to the requirement or requirements not complied with.

(10) The reference in the definition of "appropriate date" in *subsection (9)* to the period specified in a requirement is a reference to the period specified in the requirement as being the period within which the information concerned shall be supplied.

(11) For the purpose of the reference in *subsection (9)*, and in any other provision of this Act, to the date on which the Minister for Communications, Energy and Natural Resources receives a notification under *section 28B*, if a single notification is not made by all the undertakings involved, the said reference shall be construed as a reference to the later or latest of the dates on which a notification of the merger or acquisition involved under *section 28B* is received by the Minister for Communications, Energy and Natural Resources.]

F135[Full media merger examination.

28E.—(1) Where the Minister for Communications, Energy and Natural Resources makes a determination under *section 28D(1)(c)*, he or she shall request the Broadcasting Authority of Ireland to carry out an examination (in this Part referred to as a "full media merger examination") in relation to the media merger concerned.

(2) On receipt of a request under *subsection (1)*, the Broadcasting Authority of Ireland shall, as soon as may be—

- (a) cause a copy of the request to be published on the website of the Broadcasting Authority of Ireland,
 - (b) invite submissions to be made not later than 20 working days from the date of publication of the request pursuant to *paragraph (a)*, and
 - (c) cause a copy of the request to be sent to the Joint Oireachtas Committee and invite a submission from that Joint Oireachtas Committee within the period specified in *paragraph (b)*.
- (3) The submissions referred to in *paragraphs (b) and (c) of subsection (2)* —
 - (a) shall be furnished, pursuant to *subsection (9)(c)*, to the undertakings involved in the media merger,
 - (b) shall be furnished to the Minister for Communications, Energy and Natural Resources and where an advisory panel has been established under *section 28F*, to the advisory panel, to enable them to perform their functions under this Part,
 - (c) may be referred to or quoted from in, or annexed to, the documents referred to in *subsections (9)(a) and (12)(b) and section 28G(4)(c)*, and
 - (d) shall not be published or otherwise disclosed to the public by the Minister for Communications, Energy and Natural Resources, the Broadcasting Authority of Ireland or the advisory panel before the Minister for Communications, Energy and Natural Resources publishes the documents referred to in *section 28G(4)(c)*.
- (4) The Broadcasting Authority of Ireland shall—
 - (a) not later than 80 working days from the date of the request under *subsection (1)* or the applicable date, whichever is the later, make a report in writing to the Minister for Communications, Energy and Natural Resources in relation to its examination, and
 - (b) as soon as may be after making the report under *paragraph (a)*, send the report to the undertakings involved.
- (5) A report under *subsection (4)* shall contain a recommendation as to whether the media merger should be put into effect with or without conditions or should not be put into effect.
- (6) The Broadcasting Authority of Ireland, in order to make a report under *subsection (4)*, shall form a view as to whether the result of the media merger is likely to be contrary to the public interest in protecting plurality of the media in the State, and for that purpose, shall have regard to—
 - (a) the relevant criteria,
 - (b) any guidelines issued by the Minister for Communications, Energy and Natural Resources under *section 28L*,
 - (c) all submissions made and information provided—
 - (i) to the Minister for Communications, Energy and Natural Resources, during his or her initial examination under *section 28D*, by the undertakings involved in the media merger, and
 - (ii) to the Broadcasting Authority of Ireland, during the full media merger examination, by the undertakings involved in the media merger, by any other person in response to an invitation for submissions under *subsection (2)(b)*, or by the Joint Oireachtas Committee in response to an invitation for a submission under *subsection (2)(c)*,

- (d) and take full account of, where applicable, the determination of the Commission under *paragraph (a) of section 21(2)* or under *paragraph (a) or (c) of section 22(3)*,
- (e) and take full account of, where applicable, the decision by the European Commission under Article 6(1)(b) or Article 8(1) or (2) of the Council Regulation,
- (f) where applicable, the opinion of the advisory panel established under *section 28F* and any clarifications of the opinion provided by the advisory panel in accordance with that section,
- (g) if the undertakings involved have responded to the draft report and recommendation provided to them pursuant to *subsection (9)*, the draft report and recommendation and the responses of the undertakings involved to the draft report and recommendation,
- (h) relevant reports published by the Minister for Communications, Energy and Natural Resources under *section 28M*, and
- (i) relevant research published by the Broadcasting Authority of Ireland under *section 28M*.

(7) Where the Broadcasting Authority of Ireland requires further information for the purposes of this section, it may, by notice in writing served on the undertakings, require any one or more of the undertakings involved to supply to it specified information within a specified period, and an undertaking of whom such a requirement is made shall comply with it.

(8) For the purposes of *paragraph (6)*, the Broadcasting Authority of Ireland may enter into discussions with the undertakings involved in the media merger or with any individual or any other undertaking with a view to identifying measures which would ameliorate any effects of the media merger on plurality of the media in the State.

(9) The Broadcasting Authority of Ireland shall, not later than 30 working days before it is due to make its report under *subsection (4)*, furnish the undertakings involved with—

- (a) its draft report and draft recommendation to which the undertakings involved may respond not later than 10 working days from the date of receiving the draft report and draft recommendation,
- (b) if applicable, the opinion and any clarifications issued by the advisory panel under *section 28F*, and
- (c) if applicable, the submissions referred to in *subsection (6)(c)*.

(10) In the course of any discussions under *subsection (8)*, any of the undertakings involved in the media merger concerned may submit to it, not later than 20 working days before the Broadcasting Authority of Ireland is due to make its report to the Minister for Communications, Energy and Natural Resources under *subsection (4)*, proposed commitments of the kind mentioned in *subsection (11)* with a view to the proposed commitments becoming binding on it or them if the Minister for Communications, Energy and Natural Resources incorporates the proposed commitments as specified conditions to be complied with in his or her determination under *section 28G(1)(c)* in relation to the media merger.

(11) The proposed commitments referred to in *subsection (10)* are proposed commitments with regard to the manner in which the media merger may be put into effect or to the taking, in relation to the media merger, of any other measures referred to in *subsection (8)*.

(12) Not later than 7 working days from the date of the making of its report to the Minister for Communications, Energy and Natural Resources under *subsection (4)*, the Broadcasting Authority of Ireland—

- (a) may, without reconsidering or re-opening any aspect of its report, correct the report so as to remove any clerical or typographical errors or any errors of a similar nature, and
- (b) where one or more such corrections have been made, shall—
 - (i) send the corrected report to the Minister for Communications, Energy and Natural Resources and the undertakings involved, and
 - (ii) inform the Minister for Communications, Energy and Natural Resources and the undertakings involved of the corrections made.

(13) In this section, reference to "applicable date" means—

- (a) unless *paragraph (b)* applies, the date the Minister for Communications, Energy and Natural Resources makes a determination under *section 28D(1)(c)*,
- (b) if the Broadcasting Authority of Ireland has made, under F136[*subsection (7)*], not later than 30 working days from the date the Minister for Communications, Energy and Natural Resources makes a determination under *section 28D(1)(c)*, a requirement or requirements of one or more of the undertakings involved—
 - (i) the date on which the requirement is complied with or, in case 2 or more requirements are made and each is complied with, whichever of the dates on which the requirements are complied with is the later or latest,
 - (ii) where the requirement is not complied with or each of the 2 or more requirements is not complied with, the date immediately following the expiry of the period specified in the requirement or, as the case may be, the date immediately following the expiry of whichever of the respective periods specified in the requirements is the last to expire, or
 - (iii) in case 2 or more requirements are made but one or more but not all of them are complied with, the later or latest of the following dates, namely the dates provided by applying—
 - (I) *subparagraph (i)* to the requirement or requirements complied with, and
 - (II) *subparagraph (ii)* to the requirement or requirements not complied with.

(14) The reference in the definition of "applicable date" in *subsection (13)* to the period specified in a requirement is a reference to the period specified in the requirement as being the period within which the information concerned shall be supplied.]

F137[Advisory panel.

28F.—(1) As soon as may be after the Minister for Communications, Energy and Natural Resources requests the Broadcasting Authority of Ireland to conduct a full media merger examination under *section 28E*, he or she may, if he or she considers that the opinion of an advisory panel is required in order to assist the Broadcasting Authority of Ireland in carrying out the full media merger examination and in making its report under *section 28E*, establish an advisory panel (in this Part referred to as an "advisory panel") to provide a reasoned opinion in writing to the Broadcasting Authority of Ireland on the application of the relevant criteria to the media merger in question and to provide clarifications of the opinion where requested by the Broadcasting Authority of Ireland in accordance with *subsection (6)(b)*.

(2) An advisory panel shall consist of at least 3 and not more than 5 persons appointed by the Minister for Communications, Energy and Natural Resources, each of whom shall have knowledge of, and expertise in, law, journalism, media, business or economics.

(3) The Minister for Communications, Energy and Natural Resources shall appoint one member of the advisory panel as chairperson of the panel.

(4) A person is not eligible to be appointed as a member of an advisory panel if the person, for the time being—

- (a) is entitled under the Standing Orders of either House of the Oireachtas to sit therein,
- (b) is a member of the European Parliament,
- (c) is entitled under the Standing Orders of a local authority to sit as a member thereof,
- (d) is a member, officer or employee of the Broadcasting Authority of Ireland, or
- (e) has a pecuniary interest or other beneficial interest in, or material to, any matter which is to be considered by the advisory panel.

(5) An advisory panel shall determine its own procedure.

(6) Notwithstanding *subsection (5)* —

- (a) an advisory panel shall submit its opinion referred to in *subsection (1)* to the Broadcasting Authority of Ireland in relation to the application of the relevant criteria to the media merger in question not later than 20 working days from the date of a request under *subsection (1)*, but no such opinion shall be requested or provided after the draft report and recommendation has been sent to the undertakings involved under *section 28E(9)*, and
- (b) an advisory panel shall provide clarification in writing of its opinion referred to in *subsection (1)* pursuant to a request in writing for such clarification within such period as the Broadcasting Authority of Ireland may specify in the request, but no such clarification shall be requested or provided after the draft report and recommendation has been sent to the undertakings involved under *section 28E(9)*.

(7) Following the determination of the Minister for Communications, Energy and Natural Resources under *section 28G* in respect of the relevant media merger, an advisory panel shall stand dissolved.

(8) For the purposes of this section, a person shall be regarded as having a beneficial interest in, or material to, a matter which is to be considered by the advisory panel in each of the following cases:

- (a) the person, any connected relative of the person or a nominee of either of them is a member of a company or any other body which has a beneficial interest in, or material to, any matter which is to be considered by the advisory panel;
- (b) the person or any connected relative of the person is in partnership with or is in the employment of a person who has a beneficial interest in or material to any such matter;
- (c) the person or any connected relative of the person is a party to any arrangement or agreement (whether or not enforceable) concerning land to which any such matter relates.

(9) For the purposes of this section, a person shall not be regarded as having a beneficial interest in, or material to, any matter by reason only that he or she or any

company or other person or any other body mentioned in *subsection (8)* has an interest which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering or discussing, or in voting on, any question in respect of the matter or in performing any function in relation to that matter.

(10) In this section—

"civil partner" means a civil partner within the meaning of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*;

"connected relative", in relation to a person, means a spouse, partner, civil partner, parent, brother, sister, child or a spouse, partner or civil partner of the child of the person.]

F138[Determination of Minister for Communications, Energy and Natural Resources after full media merger examination. **28G.**—(1) The Minister for Communications, Energy and Natural Resources shall, not later than 20 working days from the date the report of the Broadcasting Authority of Ireland was made to him or her under *section 28E(4)*, make whichever of the following determinations he or she considers appropriate, namely that the media merger—

(a) may be put into effect,

(b) may not be put into effect, or

(c) may be put into effect, subject to the conditions specified in the determination being complied with,

on the ground that he or she considers that the result of the media merger will or will not, as the case may be, be contrary to the public interest in protecting plurality of the media in the State or, as appropriate, will not be contrary to the public interest in protecting plurality of the media in the State if conditions so specified are complied with.

(2) When making a determination under *subsection (1)*, the Minister for Communications, Energy and Natural Resources shall have regard to—

(a) the relevant criteria,

(b) the report of the Broadcasting Authority of Ireland under *section 28E*,

(c) any guidelines issued under *section 28L*,

(d) all submissions made and information provided—

(i) to the Minister for Communications, Energy and Natural Resources, during his or her initial examination under *section 28D*, by the undertakings involved in the media merger, and

(ii) to the Broadcasting Authority of Ireland, during the full media merger examination, by the undertakings involved in the media merger, by any other person in response to an invitation for submissions under *section 28E(2)(b)*, or by the Joint Oireachtas Committee in response to an invitation for a submission under *section 28E(2)(c)*,

(e) and take full account of, where applicable, the determination of the Commission under *paragraph (a)* of *section 21(2)* or under *paragraph (a)* or *(c)* of *section 22(3)*,

(f) and take full account of, where applicable, the decision by the European Commission under Article 6(1)(b) or Article 8(1) or (2) of the Council Regulation,

- (g) where applicable, the opinion of the advisory panel established under *section 28F* and any later clarifications of the opinion provided by the advisory panel in accordance with that section,
 - (h) if the undertakings involved have responded to the draft report and recommendation provided to them pursuant to *section 28E(9)*, the draft report and recommendation and the responses of the undertakings involved to the draft report and recommendation,
 - (i) relevant reports published by the Minister for Communications, Energy and Natural Resources under *section 28M*, and
 - (j) relevant research published by the Broadcasting Authority of Ireland under *section 28M*.
- (3) As soon as may be after the Minister for Communications, Energy and Natural Resources makes a determination under *subsection (1)*, he or she—
- (a) shall furnish to the undertakings involved a copy of the determination, and
 - (b) may publish in *Iris Oifigiúil*, with due regard for commercial confidentiality—
 - (i) the fact of the making of the determination,
 - (ii) whether the determination was made under *paragraph (a), (b) or (c) of subsection (1)*, and
 - (iii) where his or her determination was made under *subsection (1)(c)*, a summary of the conditions specified in the determination.
- (4) After the Minister for Communications, Energy and Natural Resources has furnished the determination to the undertakings involved in accordance with *subsection (3)(a)* —
- (a) he or she may correct the determination at any time before the determination is published under *paragraph (c)(i)* so as to remove any clerical or typographical errors or any errors of a similar nature and shall inform the undertakings involved of any such changes made, but may not reconsider or re-open any aspect of the determination,
 - (b) not later than 15 working days from the date the determination is furnished to them under *subsection (3)(a)*, the undertakings involved may request the Minister for Communications, Energy and Natural Resources in writing to omit from the version of the determination to be published under *paragraph (c)* any information that they consider to be commercially sensitive, and
 - (c) he or she shall publish on the internet, after 15 working days, but not later than 30 working days, from the date of the determination, with due regard for commercial confidentiality—
 - (i) the determination,
 - (ii) the report of the Broadcasting Authority of Ireland to the Minister for Communications, Energy and Natural Resources under *section 28E*, and
 - (iii) where applicable, the opinion of the advisory panel established under *section 28F* and any clarifications of the opinion provided by the advisory panel.]

F139[Review of conditions in determination under *section 28G(1)(c)*.

28H.—(1) Where all the undertakings involved in a media merger are of the opinion that the market conditions applicable to the merger have substantially changed since the date the Broadcasting Authority of Ireland made its report to the Minister for Communications, Energy and Natural Resources under *section 28E(4)*, the undertakings involved may, not later than 40 working days from the date the determination under

section 28G(1)(c) is notified to them, request the Minister for Communications, Energy and Natural Resources to review the conditions contained in the determination.

(2) On receipt of a request under *subsection (1)*, the Minister for Communications, Energy and Natural Resources shall—

- (a) consider whether the market conditions have substantially changed, and
- (b) if he or she is satisfied that the market conditions have substantially changed, he or she shall carry out a review of the conditions contained in the determination to ascertain whether one or more of those conditions should be amended or revoked because they are no longer necessary, in light of the substantial change in the market conditions, to protect plurality of the media in the State.

(3) Following a review under *subsection (2)* and not later than 40 working days from the date of a request under *subsection (1)*, the Minister for Communications, Energy and Natural Resources may, with the consent of the undertakings involved, amend or revoke in writing one or more of the conditions contained in the determination.

(4) If the Minister for Communications, Energy and Natural Resources amends or revokes one or more of the conditions contained in the determination pursuant to *subsection (3)*, as soon as may be, he or she—

- (a) shall furnish to the undertakings involved a copy of the amended conditions or if all the conditions have been revoked, a statement to that effect, and
- (b) may publish, with due regard for commercial confidentiality—
 - (i) the fact of the amendment or revocation of one or more of the conditions under this section, and
 - (ii) a summary of the amended conditions or if all the conditions have been revoked, a statement to that effect.]

F140[Enforcement of certain determinations.

28I.—(1) It shall be lawful for the High Court to grant an injunction on the motion of the Minister for Communications, Energy and Natural Resources, the Broadcasting Authority of Ireland or any of the undertakings involved in the media merger to enforce compliance with the terms of a determination for the time being in force.

(2) *Subsection (1)* shall not affect any other right of the Minister for Communications, Energy and Natural Resources to bring proceedings (whether civil or criminal) for the enforcement of compliance with the terms of a determination.

(3) A person who contravenes (whether by act or omission) a provision of a determination for the time being in force commits an offence and shall be liable—

- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment, or
- (b) on conviction on indictment, to a fine not exceeding €10,000 or to imprisonment for a term not exceeding 2 years or to both such fine and such imprisonment.

(4) Every person who aids, abets or assists another person, or conspires with another person, to do anything (whether by way of act or of omission) the doing of which is an offence by virtue of *subsection (3)* shall himself or herself commit an offence under this section and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(5) Where an offence under *subsection (3)* or (4) which is committed by a body corporate or by a person purporting to act on behalf of a body corporate or an unincorporated body of persons is proved to have been so committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person who

is a director, manager, secretary, member of the committee of management or other controlling authority of any such body, or who is any other similar officer of any such body, that person shall also commit an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(6) *Subsections (3), (4) and (5) operate so that if the contravention concerned continues one or more days after the date of its first occurrence, the person referred to in the subsection concerned is guilty of a separate offence under that subsection for each day that the contravention occurs, but in respect of the second or subsequent offence of which he or she is guilty by reason of that continued contravention, subsection (3) shall have effect as if—*

(a) in *paragraph (a)*, "a class E fine" were substituted for "a class A fine", and

(b) in *paragraph (b)*, "€1,000" were substituted for "€10,000".

(7) Summary proceedings in relation to an offence under this section may be brought by the Minister for Communications, Energy and Natural Resources.

(8) In this section "determination" means a determination of the Minister for Communications, Energy and Natural Resources made under *section 28D or 28G.*]

F141 [Limitation of judicial review of determination.

28J.—(1) Leave shall not be granted for judicial review of a determination of the Minister for Communications, Energy and Natural Resources under *section 28D or 28G* unless—

(a) the application for leave to seek judicial review is brought by an undertaking involved in the media merger to which the determination relates,

(b) either—

(i) the application is made to the High Court not later than 40 working days from the date of the determination of the Minister for Communications, Energy and Natural Resources under *section 28D or 28G*, or

(ii) the High Court is satisfied that—

(I) there are substantial reasons why the application was not made within that period, and

(II) it is just in all the circumstances to grant leave, having regard to the interests of other affected persons and the public interest,

and

(c) the High Court is satisfied that the application raises a substantial issue for the High Court's determination.

(2) The High Court may make such order on the hearing of the judicial review as it thinks fit, including an order remitting the matter back to the Minister for Communications, Energy and Natural Resources with such directions as the High Court thinks appropriate or necessary.

(3) The determination of the High Court of an application for leave to apply for judicial review, or an application for judicial review, is final and no appeal lies from the decision of the High Court to the Supreme Court in either case, except with the leave of the High Court, which shall only be granted if the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

(4) *Subsection (3)* does not apply to a determination of the High Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution.]

F142[Fees.

28K.—(1) The Broadcasting Authority of Ireland may charge, receive and recover, for the costs incurred by it during a full media merger examination, such fees as it may, with the consent of the Minister for Communications, Energy and Natural Resources given with the approval of the Minister for Public Expenditure and Reform, from time to time determine.

(2) The fees determined under *subsection (1)* shall be paid by the undertakings that notified the media merger under *section 28B* in the time and manner specified by the Broadcasting Authority of Ireland, with the consent of the Minister for Communications, Energy and Natural Resources given with the approval of the Minister for Public Expenditure and Reform.

(3) The Broadcasting Authority of Ireland may provide for different fees in different circumstances or classes of circumstances or for different cases or classes of cases and for the manner in which fees are to be disposed of.

(4) The Broadcasting Authority of Ireland shall arrange for the publication on the internet of fees payable as soon as practicable after the fees have been determined under *subsection (1)*.

(5) The Broadcasting Authority of Ireland may recover any amount due and owing to it under this section from the person by whom it is payable as a simple contract debt in any court of competent jurisdiction.]

F143[Guidelines.

28L.—(1) The Minister for Communications, Energy and Natural Resources may, from time to time, following consultation with the Broadcasting Authority of Ireland and such other persons as he or she considers appropriate, prepare and make guidelines on the general applicability of the relevant criteria to media mergers, including in particular:

- (a) levels of media ownership including across different sectors of the media that would, subject to the particular circumstances of each media merger, be regarded as contrary to the public interest;
- (b) indicators of diversity of content and of diversity of ownership and control of media businesses that would be used in determining whether a media merger would be regarded as contrary to the public interest;
- (c) if appropriate, the manner in which he or she shall have regard to the adequacy of the following to protect the public interest in plurality of the media in the State:
 - (i) the scale and reach of RTÉ and TG4;
 - (ii) Part 6 of the Act of 2009;
 - (iii) the ownership and control policy of the Broadcasting Authority of Ireland for the time being in force;
- (d) what will constitute significant interests within a sector or across different sectors of media businesses in the State for the purposes of *paragraph (b)* of the definition of "relevant criteria" in *section 28A(1)*;
- (e) the nature of the proposed commitments that the undertakings involved in a merger may offer pursuant to *section 28D(5)* or *section 28E(10)* that could be incorporated as conditions in a determination by the Minister for Communications, Energy and Natural Resources under *section 28D(1)(b)* or *section 28G(1)(c)*;
- (f) the nature of the other conditions that may be imposed by the Minister for Communications, Energy and Natural Resources in a determination under *section 28G(1)(c)*;

(g) such other matters regarding media mergers as the Minister for Communications, Energy and Natural Resources considers appropriate.

(2) The Minister for Communications, Energy and Natural Resources may, from time to time, following consultation with the Broadcasting Authority of Ireland and such other persons as he or she considers appropriate, prepare and make guidelines on the manner in which he or she shall carry out his or her functions under *section 28H(2)*, including in particular, the factors he or she shall take into account in considering whether market conditions have substantially changed and, if they have so changed, the manner in which he or she shall review the conditions contained in a determination.

(3) Before making guidelines under *subsection (1) or (2)*, the Minister for Communications, Energy and Natural Resources—

(a) shall publish on the internet a draft of the proposed guidelines and allow persons 30 working days from the date of publication to make written representations to him or her in relation to the draft guidelines, and

(b) may, having considered any representations received, make the guidelines, with or without modification.

(4) The guidelines shall be published by the Minister for Communications, Energy and Natural Resources on the internet in such form or manner as he or she thinks appropriate and the guidelines published shall specify the date from which they have effect.]

F144[Report and research.

28M.—(1) The Broadcasting Authority of Ireland shall, not later than one year from the date of the commencement of this section, and every 3 years thereafter, prepare a report which shall—

(a) describe the ownership and control arrangements for undertakings carrying on a media business in the State,

(b) describe the changes to the ownership and control arrangements of such undertakings over the previous 3 years, and

(c) analyse the effects of such changes on plurality of the media in the State,

and the Broadcasting Authority of Ireland shall furnish the report to the Minister for Communications, Energy and Natural Resources as soon as may be after it has been prepared.

(2) The Minister for Communications, Energy and Natural Resources shall, as soon as reasonably practicable after the report has been prepared, cause a copy of the report to be laid before each House of the Oireachtas.

(3) As soon as practicable after the report has been laid before each House of the Oireachtas, the Minister for Communications, Energy and Natural Resources shall publish it on the internet.

(4) The Broadcasting Authority of Ireland shall conduct periodic methodological research on matters relating to plurality of the media, which may include the development of appropriate measurement indices, and shall record in writing and publish the results of such research.

(5) The Broadcasting Authority of Ireland—

(a) may conduct such other research relating to plurality of the media that it considers necessary, and

(b) shall conduct such other research relating to plurality of the media as the Minister for Communications, Energy and Natural Resources may request,

and shall record in writing and publish the results of such research.]

F145[Sharing of information and documents and disclosure of confidential information.

28N.—(1) A person shall not disclose confidential information obtained by him or her while performing functions as—

- (a) a member, an officer, or a member of the staff of, or an adviser or consultant to, the Broadcasting Authority of Ireland, or a member of the staff of such adviser or consultant, or
- (b) a member of an advisory panel established under *section 28F*,

unless he or she is duly authorised by the Broadcasting Authority of Ireland to so do.

(2) *Subsection (1)* shall not operate to prohibit the disclosure of confidential information by a person referred to in that subsection to the Broadcasting Authority of Ireland, the advisory panel or to the Minister for Communications, Energy and Natural Resources in the circumstances referred to in *subsection (3)*.

(3) The Minister for Communications, Energy and Natural Resources, the Broadcasting Authority of Ireland or an advisory panel established under *section 28F* may share information or documents with each other if satisfied that the information or documents are required by each other for the performance of functions under this Part.

(4) A person who contravenes *subsection (1)* shall be guilty of an offence and shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both.

(5) In this section—

"confidential information" includes—

- (a) information that is expressed by the undertakings involved in the merger or acquisition to be confidential either as regards particular information or as regards information of a particular class or description, and
- (b) submissions of a commercially sensitive nature made by any other person;

"public body" means—

- (a) a Department of State,
- (b) the Garda Síochána,
- (c) the Permanent Defence Force within the meaning of the *Defence Act 1954*,
- (d) a local authority within the meaning of the *Local Government Act 2001*, or
- (e) a body established by or under any enactment or charter other than the Companies Acts ;

"submissions of a commercially sensitive nature" means submissions the disclosure of which could reasonably be expected to—

- (a) substantially and materially prejudice the commercial or industrial interests of—
 - (i) the person who made the submission,
 - (ii) the person to whom the submission relates, or
 - (iii) a class of persons in which a person referred to in *subparagraph (i)* or *(ii)* falls,

(b) substantially prejudice the competitive position of a person in the conduct of the person's business, profession or occupation, or

(c) substantially prejudice the financial position of the State or a public body.]

F146[Expenses in administration of Part.

280.—The expenses incurred by the Minister for Communications, Energy and Natural Resources in the administration of this Part shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.]

PART 4

THE COMPETITION AUTHORITY

The Competition Authority. **29.**—F147[...]

Functions of the Authority. **30.**—F148[...]

Investigations of the Authority — general provisions. **31.**—F149[...]

Prohibition on unauthorised disclosure of information. **32.**—F150[...]

Strategic plans and work programmes. **33.**—F151[...]

Provisions for co-operation between the Authority and statutory bodies. **34.**—F152[...]

Membership. **35.**—F153[...]

Disqualification. **36.**—F154[...]

Meetings and business. **37.**—F155[...]

Functions and accountability of chairperson. **38.**—F156[...]

Staff. **39.**—F157[...]

Seal of the Authority. **40.**—F158[...]

Accounts and audits. **41.**—F159[...]

Annual report. **42.**—F160[...]

Grants and borrowing powers. **43.**—F161[...]

Superannuation. **44.**—F162[...]

Authorised officers and their powers. **45.**—F163[...]

Relationship of Authority with foreign competition bodies. **46.**—F164[...]

F165[Power to disclose certain information relating to offences under this Act.] **47.**—F166[...]

F167[PART 4A

PERFORMANCE OF FUNCTIONS OF COMMISSION UNDER THIS ACT

Function of the Commission to investigate complaints relating to the electronic communications market. **47A.**—The F168[Commission for Communications Regulation] has, in addition to its other functions under this Act or any other enactment, the function of investigating, either on its own initiative or in response to a complaint made to it by any person, the existence of an agreement, decision or practice of a kind specified in section 4 F169[or Article 101 of the Treaty on the Functioning of the European Union], or the occurrence of an abuse of the kind specified in section 5 F169[or Article 102 of the Treaty on the Functioning of the European Union], involving the provision of an electronic communications service or electronic communications network, or associated facilities.]

F170[Delegation of functions of Commission. **47B.**—(1) Except as provided by *subsection (2)*, the F171[Commission for Communications Regulation] may delegate the performance of any of its functions under this Act to any member of the F171[Commission for Communications Regulation] or F171[or any member of the staff of the Commission for Communications Regulation].

(2) The F171[Commission for Communications Regulation] may not delegate the performance of—

(a) its function under *section 4(3)*, or

F172[(b) the power to prosecute an offence under *section 6* or *7*, or to pursue administrative sanctions proceedings or for relief under *section 14*.]]

F173[Commission to notify Authority before acting under this Act.

47C.—Before performing any of its functions under this Act, the F174[Commission for Communications Regulation] shall notify the Authority in writing of its intention to perform that function.]

F175[Responsibilities of Authority with respect to notifying existence of certain agreements, decisions, practices and abuses.

47D.—(1) If—

- (a) at any time the Authority suspects on reasonable grounds that there exists or has existed an agreement, decision or practice of a kind specified in *section 4*, or there is occurring or has occurred an abuse of the kind specified in *section 5*, and
- (b) it appears to the Authority that the agreement, decision or practice, or the abuse, relates to the provision of an electronic communications service or electronic communications network, or an associated facility,

it shall notify its suspicion in writing to the F176[Commission for Communications Regulation], together with particulars setting out the basis for the suspicion.

(2) If at any time the F176[Commission for Communications Regulation] suspects on reasonable grounds that there exists or has existed an agreement, decision or practice of a kind specified in *section 4*, or there is occurring or has occurred an abuse of the kind specified in *section 5*, it shall notify that suspicion in writing to the Authority. This subsection applies irrespective of whether it appears to the F176[Commission for Communications Regulation] that the suspected breach relates to the provision of an electronic communications service or electronic communications network, or an associated facility.]

F177[Authority and Commission to make every effort to settle disputed questions.

47E.—(1) The Authority and the F178[Commission for Communications Regulation] shall make every effort to settle by agreement any question arising as to which of them should perform the functions conferred on a competent authority by F179[*Part 2 (section 4(3) excepted), Part 2C and Part 2D*] that may relate to the provision of an electronic communications service or electronic communications network, or associated facilities.

(2) If at any time the Authority or the F178[Commission for Communications Regulation] considers that the question cannot be resolved by agreement, it may refer the question for resolution by the Minister.

(3) As soon as practicable after the question has been referred under *subsection (2)*, the Minister shall determine the question and then notify the Authority and the F178[Commission for Communications Regulation] of the determination. In making a determination, the Minister shall—

- (a) consult with the Minister for Communications, Marine and Natural Resources, and
- (b) take into account any representations made with respect to the question by the Authority or the F178[Commission for Communications Regulation].

(4) The determination of the Minister under *subsection (3)* is final.]

F180[Undertaking not liable to be prosecuted by both Authority and Commission for same offence.

47F.—If an undertaking that provides an electronic communications service or electronic communications network, or associated facilities, is being, or has been, prosecuted for an offence under *section 6* or *7* by the Authority or by the F181[Commission for Communications Regulation], the undertaking is not liable to be prosecuted for the same offence by the other of those entities.]

F182[Co-operation agreement between Authority and the Commission with respect to performing their respective functions under this Act.]

47G.— (1) As soon as practicable after the commencement of this Part, the Authority and the F183[Commission for Communications Regulation] shall enter into negotiations for a co-operation agreement that will—

- (a) facilitate the performance of their respective functions under this Act, and
- (b) avoid duplicating activities by the Authority and the F183[Commission for Communications Regulation] in relation to the performance of those functions, and
- (c) ensure, as far as practicable, consistency between decisions made, and other steps taken, by the Authority and the F183[Commission for Communications Regulation] so far as any part of those decisions or steps relates to the performance of those functions.

(2) As far as practicable, a co-operation agreement shall—

- (a) require the Authority and the F183[Commission for Communications Regulation] to consult each other before performing any of their respective functions under this Act if the performance of the functions concerned involves the same issues, and
- (b) enable the Authority and the F183[Commission for Communications Regulation] to provide each other with information in its possession if the information is required by the other to perform its functions under this Act.

(3) The Authority and the F183[Commission for Communications Regulation] may vary a co-operation agreement by further agreement.

(4) The Authority and the F183[Commission for Communications Regulation] shall respectively provide the Minister for Enterprise, Trade and Employment and the Minister for Communications, Marine and Natural Resources with a copy of a co-operation agreement, or a variation of such an agreement, as soon as practicable after the agreement or variation has been entered into.

(5) A co-operation agreement, and any variation to it, is to be in writing.

(6) As soon as practicable after a co-operation agreement, or variation of the agreement, is entered into, the Authority and the F183[Commission for Communications Regulation] shall publish in such manner as they think appropriate a notice to the effect that the agreement or variation has been entered into. The notice shall state—

- (a) that a copy of the agreement or variation can be inspected at premises of the Authority and premises of the F183[Commission for Communications Regulation], or by a means, specified in the notice, and
- (b) that a copy of the agreement or variation can be purchased from either the Authority or the F183[Commission for Communications Regulation] in a manner so specified.

However, if either the Authority or the F183[Commission for Communications Regulation] has complied with this subsection, the other of them is taken to have so complied.

(7) As soon as practicable after a co-operation agreement, or a variation of the agreement, is entered into, the Authority shall arrange for a copy of the agreement or variation to be laid before each House of the Oireachtas.

(8) The Authority and the F183[Commission for Communications Regulation] shall each make available to members of the public copies of a co-operation agreement, or a variation of the agreement, for inspection and for purchase (at a cost not exceeding the reasonable cost of making a copy and the cost (if any) of posting it).

(9) If information is provided by the Authority or the F183[Commission for Communications Regulation] under a co-operation agreement to which this section applies, any enactment restricting or prohibiting the disclosure of that information by the provider of the information also applies to the receiver of the information.]

F184[Liability of competent authority and associated persons and indemnity for associated persons.]

47H.—(1) This section applies to the following persons:

- (a) the competent authority;
- (b) the members of the competent authority (including the chairperson);
- (c) adjudication officers under this Act;
- (d) employees of the competent authority;
- (e) agents of the competent authority.

(2) A person to whom this section applies is not liable for damages and no proceedings may be maintained against them in which it is claimed that the person is liable in damages (whether such liability is enforceable by action or not), for anything done or omitted to be done in the performance or purported performance or exercise or purported exercise of any of their functions or powers under *Parts 2C to 2G*, unless it is proved that the act or omission was in bad faith.

(3) Notwithstanding any subsequent court determination as to whether an act or omission was otherwise than in good faith, where a competent authority is satisfied that a person to whom this section applies (other than a competent authority) has discharged his or her duties in pursuance of the functions of the competent authority under *Parts 2C to 2G* in good faith, the competent authority may, in the manner and to the extent and subject to the terms and conditions that the competent authority may determine from time to time in consultation with the Minister, indemnify that person against all actions or claims (including as to costs) however they arise in respect of the discharge by him or her of his or her duties.]

PART 5

MISCELLANEOUS

Repeals.

48.—The following are repealed:

- (a) the *Industrial and Provident Societies (Amendment) Act, 1971*,
- (b) the *Mergers, Take-overs and Monopolies (Control) Act, 1978*,
- (c) sections 24, 25 and 26 of the *Restrictive Practices (Amendment) Act, 1987*,
- (d) the *Competition Act, 1991*, and
- (e) the *Competition (Amendment) Act, 1996*.

Restrictive Practices (Groceries) Order, 1987.

49.—F185[...]

Protections for person reporting breaches of Act.

50.—(1) A person who, apart from this section, would be so liable shall not be liable in damages in respect of the communication, whether in writing or otherwise, by him or her to the Authority of his or her opinion that—

- (a) an offence under *section 6* or *7* has been or is being committed, or

(b) any other provision of this Act that prohibits an undertaking from doing a particular thing or things has not been or is not being complied with,

unless it is proved that he or she has not acted reasonably F186[...] in forming that opinion and communicating it to the Authority.

(2) The reference in *subsection (1)* to liability in damages shall be construed as including a reference to liability to be the subject of an order providing for any other form of relief.

F187[(2A) *Subsection (1)* does not apply to a communication that is a protected disclosure within the meaning of the Protected Disclosures Act 2014.]

(3) An employer shall not penalise an employee for having formed an opinion of the kind referred to in *subsection (1)* and communicated it, whether in writing or otherwise, to the Authority if the employee has acted reasonably F186[...] in forming that opinion and communicating it to the Authority.

F188[(3A) *Subsection (3)* does not apply to a communication that is a protected disclosure within the meaning of the Protected Disclosures Act 2014.]

(4) *Schedule 3* shall have effect for the purposes of *subsection (3)*.

(5) A person who states to the Authority that an undertaking has committed or is committing an offence under *section 6* or 7 or has failed or is failing to comply with a provision of this Act referred to in *subsection (1)(b)* knowing that statement to be false shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment.

F189[(5A) *Subsection (5)* does not apply to the making of a statement that is a protected disclosure within the meaning of the Protected Disclosures Act 2014.]

(6) Notwithstanding *section 10(4)* of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under *subsection (5)* may be instituted within 2 years after the day on which the offence was committed or, if later, 2 years after the day on which evidence that, in the opinion of the person by whom the proceedings are brought, is sufficient to justify the bringing of the proceedings comes to that person's knowledge.

(7) For the purposes of *subsection (6)*, a certificate signed by or on behalf of the person bringing the proceedings as to the day on which the evidence referred to in that subsection relating to the offence concerned came to his or her knowledge shall be *prima facie* evidence thereof and in any legal proceedings a document purporting to be a certificate issued for the purpose of this subsection and to be so signed shall be deemed to be so signed and shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate.

(8) *Subsection (1)* is in addition to, and not in substitution for, any privilege or defence available in legal proceedings, by virtue of any enactment or rule of law in force immediately before the commencement of this section, in respect of the communication by a person to another (whether that other person is the Authority or not) of an opinion of the kind referred to in *paragraph (a)* or *(b)* of *subsection (1)*.

Amendment of
Industrial and
Provident
Societies Act,
1893.

51.—The Industrial and Provident Societies Act, 1893, is amended—

(a) in *section 51*, by the substitution for “For the purposes of this Act” of “Subject to *section 51A* of this Act, for the purposes of this Act”, and

(b) by the insertion of the following section after *section 51*:

“51A. In relation to special resolutions for the purposes of *sections 52* and *53* of this Act, *section 51* of this Act shall have effect as if—

(a) in paragraph (a) 'of not less than three fourths' were deleted, and

(b) in paragraph (b), 'where such special resolution is passed by a majority of less than three fourths of such members,' were inserted before 'confirmed'."

Regulations and orders.

52.—(1) F190[Subject to subsection (3), the Minister may] by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.

(2) Every regulation under this Act and every order under this Act (other than an order under section 2, subsection (4) or (5) of section 18 F191[...] or section 27(1)) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation or order is passed by either such House within the next 21 days on which that House has sat after the regulation or order is laid before it, the regulation or order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

F192[(3) In relation to any matter referred to in Parts 2C to 2H as prescribed, to be prescribed or otherwise to be provided for by the Minister in regulations—

(a) where the regulations in question relate wholly to the composition, rules, procedures, staffing, functions or duties of, or any other matter relating to, the Commission, such regulations may be made by the Minister after consulting with the Minister for the Environment, Climate and Communications,

(b) where the regulations in question relate wholly to the composition, rules, procedures, staffing, functions or duties of, or any other matter relating to, the Commission for Communications Regulation, such regulations may be made by the Minister for the Environment, Climate and Communications after consulting with the Minister, and

(c) where the regulations in question relate jointly to the composition, rules, procedures, staffing, functions or duties of, or any other matter relating to both the Commission and the Commission for Communications Regulation, such regulations may be made by the Minister after consulting with the Minister for the Environment, Climate and Communications,

and in this Act, "relevant Minister" shall accordingly be interpreted as the Minister or the Minister for the Environment, Climate and Communications as the case may be.]

Expenses.

53.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Provision with respect to fees payable under this Act.

54.—The Public Offices Fees Act, 1879, shall not apply to fees payable under this Act.

Saving and transitional provisions.

55.—Schedule 2 shall have effect for the purposes of this Act.

F193[Non-applicability of limitation periods to certain actions

55A.—(1) The matters referred to in subsection (2) may be brought, made or taken, as the case may be, by the competent authority at any time, notwithstanding—

(a) any provision (other than section 11A) of the Statute of Limitations Act 1957, and

(b) any provision of the Statute of Limitations (Amendment) Act 1991 .

(2) *Subsection (1)* applies to the following matters:

(a) an action under *section 14A*;

(b) issuing a prohibition notice under *section 15H*;

(c) a referral under *section 15M*.]

Section 3.

SCHEDULE 1

STATUTORY BODIES AND THEIR RESPONSIBLE MINISTERS OF THE GOVERNMENT

F194[...]

Section 55.

SCHEDULE 2

SAVING AND TRANSITIONAL PROVISIONS

Continuance in office of members of the Authority

1. A person who was a member of the Authority immediately before the commencement of *section 35* shall continue in office as such a member for the remainder of the term of office for which he or she was appointed, unless he or she sooner dies or resigns from office or otherwise ceases to hold office.

Transfer of certain staff

2. (1) Every officer of the Minister who has been designated by the Minister at any time before such day as may be appointed by the Minister by order for the purposes of this paragraph shall, on the day of such designation, be transferred to, and become a member of, the staff of the Authority.

(2) The Minister shall not make an order under *subparagraph (1)* without having notified in writing any recognised trade unions or staff associations concerned and the Authority of his or her intention to do so and considering any representations made by them or any of them in relation to the matter within such time as may be specified in the notification.

(3) Save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, an officer of the Minister designated by the Minister under *subparagraph (1)*, who is transferred by that subparagraph to the staff of the Authority shall not, while in the service of the Authority, receive a lesser scale of pay or be made subject to less beneficial terms and conditions of service (other than those relating to tenure of office) than the scale of pay to which he or she was entitled and terms and conditions of service (other than those relating to tenure of office) to which he or she was subject immediately before the day on which he or she was so transferred.

(4) Until such time as the scales of pay and the terms and conditions of service (other than those relating to tenure of office) of staff so transferred are varied by the Authority, following consultation with any recognised trade unions and staff associations concerned, the scales of pay to which they were entitled and the terms and conditions of service (other than those relating to tenure of office), restrictions, requirements and obligations to which they were subject immediately before their transfer shall continue to apply to them and may be applied or imposed by the Authority while they are in the service of the Authority. No such variation shall operate to worsen the scales of pay or the terms or conditions of service applicable to a member of such staff immediately before the day on which he or she was transferred save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned.

(5) The terms and conditions relating to tenure of office which are granted by the Authority to a member of the staff of the Authority who was designated by the Minister and under *subparagraph (1)* transferred to its staff shall not, while he or she is in the

service of the Authority, be less favourable to him or her than those prevailing for the time being in the civil service; any alteration in the conditions in regard to tenure of office of any such member shall not be such as to render those conditions less favourable to him or her than those prevailing in the civil service at the time of such alteration save in accordance with a collective agreement negotiated with any recognised trade unions or staff associations concerned. If a dispute arises between the Authority and any such member as to conditions prevailing in the civil service, the matter shall be determined by the Minister for Finance after consultation with the Minister.

(6) In relation to staff transferred by *subparagraph (1)* to the staff of the Authority, previous service in the civil service shall be reckonable for the purposes of, but subject to any other exemptions or exclusions in, the Redundancy Payments Acts, 1967 to 1990, the *Organisation of Working Time Act, 1997*, the Minimum Notice and Terms of Employment Acts, 1973 and 1984, and the Unfair Dismissals Acts, 1977 to 1993.

(7) In this paragraph “recognised trade union or staff association” means a trade union or staff association recognised by the Authority for the purposes of negotiations which are concerned with the remuneration or conditions of employment, or the working conditions, of employees.

Certificates, licences and notifications

3. (1) On the commencement of *section 48(d)*—

- (a) every certificate issued under section 4(4) of the *Competition Act, 1991*, and in force immediately before that commencement shall stand revoked;
- (b) every licence granted under section 4(2) of the *Competition Act, 1991*, and in force immediately before that commencement (other than a licence to which *subparagraph (2)* applies) shall stand revoked, and
- (c) every notification made under *section 7 of the Competition Act, 1991*, shall cease to have effect.

(2) Every licence granted under section 4(2) of the *Competition Act, 1991*, in respect of a category of agreements, decisions or concerted practices and in force immediately before the commencement of *section 4* shall continue in being as if it were a declaration made under *subsection (3)* of the latter section and may be revoked by the Authority accordingly.

Mergers or take-overs notified before commencement of section 18, etc.

4. (1) In this paragraph “Act of 1978” means the *Mergers, Take-overs and Monopolies (Control) Act, 1978*.

(2) Notwithstanding the repeals effected by *section 48*, the provisions of the Act of 1978, and of every instrument thereunder in force immediately before the commencement of *section 18*, shall continue in force for the purposes mentioned in *subparagraphs (3)* and *(4)*.

(3) A merger or take-over (within the meaning of the Act of 1978) notified to the Minister in accordance with section 5 of that Act before the commencement of *section 18* shall continue to be dealt with under that Act after that commencement and the provisions of that Act and of every instrument thereunder shall, accordingly, apply for that purpose.

(4) A proposed merger or take-over prohibited either absolutely or except on conditions by virtue of section 9 of the Act of 1978 (whether such prohibition took effect before the commencement of *section 18* or, in the case of a merger or take-

over referred to in *subparagraph (3)*, after that commencement) shall continue to be so prohibited indefinitely save where the Minister, by virtue of the exercise by him or her of the powers under subsection (4) of that section 9, otherwise determines.

Section 21 of Interpretation Act, 1937

5. The provisions of this Schedule are without prejudice to the generality of *section 21 of the Interpretation Act, 1937*, (which, amongst other things, enables the prosecution of offences committed under repealed enactments).

Section 50.

SCHEDULE 3

Redress for Contravention of Section 50(3)

1. F195[...]

2. In proceedings under F196[*Part 4 of the Workplace Relations Act 2015*] in relation to a complaint that *section 50(3)* has been contravened, it shall be presumed, until the contrary is proved, that the employee concerned acted reasonably and in good faith in forming the opinion and making the communication concerned.

3. If a penalisation of an employee, in contravention of *section 50(3)*, constitutes a dismissal of the employee within the meaning of the Unfair Dismissals Acts, 1977 to 1993, relief may not be granted to the employee in respect of that penalisation both under F196[*Part 4 of the Workplace Relations Act 2015*] and under those Acts.

4. F195[...]

F196[5. A decision of an adjudication officer under section 41 of the Workplace Relations Act 2015 in relation to a complaint of a contravention of *section 50(3)* shall do one or more of the following, namely—

- (a) declare that the complaint was or, as the case may be, was not well founded,
- (b) require the employer to comply with *section 50(3)* and, for that purpose, require the employer to take a specified course of action,
- (c) require the employer to pay to the employee compensation of such amount (if any) as the adjudication officer considers just and equitable having regard to all of the circumstances, but not exceeding 104 weeks' remuneration in respect of the employee's employment calculated in accordance with regulations under *section 17 of the Unfair Dismissals Act 1977*.]

6. F195[...]

F197[6A. A decision of the Labour Court under section 44 of the Workplace Relations Act 2015, on appeal from a decision of an adjudication officer referred to in *paragraph 5*, shall affirm, vary or set aside the decision of the adjudication officer.]

F198[SCHEDULE 4

RELEVANT CATEGORIES OF SELF-EMPLOYED WORKER

- (1) Actors engaged as voice-over actors
- (2) Musicians engaged as session musicians
- (3) Journalists engaged as freelance journalists]



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COMPETITION ACT 2002

REVISED

Updated to 27 September 2023

About this Revised Act

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Competition Acts 2002 to 2022: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Competition (Amendment) Act 2022* (22/2022), s. 1(2)). The Acts in this group are:

- *Competition Act 2002* (14/2002)
- *Competition (Amendment) Act 2006* (4/2006)
- *Competition (Amendment) Act 2010* (12/2010)
- *Competition (Amendment) Act 2012* (18/2012), other than s. 9
- *Competition and Consumer Protection Act 2014* (29/2014), Parts 3 and 4
- *Intellectual Property (Miscellaneous Provisions) Act 2014* (36/2014), s. 4
- *Competition (Amendment) Act 2017* (12/2017)
- *Competition (Amendment) Act 2022* (12/2022), Parts 2 and 3

Annotations

This Revised Act is not annotated and only shows textual amendments. An annotated version of this revision is also available which shows textual and non-textual amendments and their sources. It also shows editorial notes including statutory instruments made pursuant to the Act and previous affecting provisions.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available. A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.