

Oversight and Performance Delivery Agreement

Between

**The Department of Business,
Enterprise and Innovation**

- and -

**the
Competition and Consumer Protection
Commission (CCPC)**

2018

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- and -

The Competition and Consumer Protection Commission (CCPC)

1. Definitions and Interpretation

“The CCPC” – means the Competition and Consumer Protection Commission.

“Department” – means the Department of Business, Enterprise and Innovation.

“Liaison Unit” – means the Competition and Consumer Policy Unit in the Department

“Minister” – means Minister for Business, Enterprise and Innovation.

“Agreement” means this Oversight and Performance Delivery Agreement which sets out the level of service expected of the CCPC to ensure that the Key Performance Indicators and targets where appropriate, as set out in its Annual Programme at Appendix 1 are met. This Oversight and Performance Delivery Agreement also serves to meet the requirement laid out in paragraph 8.4 of the Code of Practice for the Governance of State Bodies 2016 with respect to the requirement to have in place a written "Oversight Agreement" between the CCPC and the Department.

“Strategy Statement” means the Statement of Strategy referred to in section 30(1) of the Competition and Consumer Protection Act 2014 and section 1.15 of the 2016 Code of Practice for the Governance of State Bodies, i.e. a plan that sets out appropriate objectives and goals and identifies relevant Key Performance Indicators and targets, where appropriate, against which performance can be clearly measured. The Strategy covers a 3 to 5 year period and may be referred to variously in the context of the State Body’s governing legislation. The Strategy is supported by the annual Work Programme and budgeting cycle.

“Work Programme” denotes an annual work programme, business plan, corporate plan or an agreed performance plan that sets out the business goals, timelines and Key Performance Indicators (with due regard to the Key Output targets, and context and impact indicators being used for Performance Budgeting) to be achieved by the CCPC, and with due regard to the resource allocation under the Staffing Resource Management Framework, as contained at Appendix 4. The CCPC’s Work Programme is provided for in section 30(5) of the Competition and Consumer Protection Act 2014.

“Workforce Plan” means an annual workforce plan, as required by the Department of Public Expenditure and Reform, on the strategic management of staffing covering the demands on the Agency, current supply of staff, summary of staffing requirements, summary of specialist gaps, skills gap closure strategy and demand and supply forecast to meet Staffing Resource Management Framework targets and actual staffing levels.

“2014 Act” means the Competition and Consumer Protection Act, 2014.

2. Context

2.1 This Agreement is between the Department of Business, Enterprise and Innovation (the Department) and the Competition and Consumer Protection Commission (the CCPC).

2.2 The CCPC is an independent statutory body established under the Competition and Consumer Protection Act, 2014. The CCPC is a non-commercial body.

2.3 The primary functions of the CCPC are laid out in section 10 of the Competition and Consumer Protection Act 2014 and can be summarised as follows:

- promoting consumer and economic welfare by enforcing consumer protection and competition law,
- informing and advocating on consumer and competition issues,
- helping consumers make informed decisions and ultimately intervening in markets to make Ireland a better place to be a consumer and a better place to do business.

2.4 A list of all legislation underpinning the role of the CCPC in the performance of its functions is set out in Appendix 5 to this Agreement.

2.5 This Agreement is prepared in fulfilment of the requirement under the Code of Practice for the Governance of State Bodies, published in August 2016, for each Department to ensure that they have written Oversight and Performance Delivery Agreements with State bodies under their aegis.

2.6 The governance of the CCPC shall be pursued in accordance with its establishing legislation which shall have primacy and the relevant guidance issued by Department of Finance and Department of Public Expenditure and Reform, including:

- Report of the Working Group on the Accountability of Secretaries General and Accounting Officers (Mullarkey Report), Department of Finance, 2002
- Accountability of Accounting Officers and CEOs, Department of Finance, 2004
- Public Financial Procedures, Department of Finance, 2008
- The Role and Responsibilities of Accounting Officers, A Memorandum for Accounting Officers, Department of Public Expenditure and Reform, 2011
- The terms of the Staffing Resource Management Framework, or post-ECF delegated sanction, for the time being in force. More details are set out in Appendix 4.
- Guidelines for Workforce Planning, Department of Public Expenditure and Reform, 2012
- Code of Practice for the Governance of State Bodies, Department of Public Expenditure and Reform, 2016

and any other relevant circulars or instruction issued by the Department of Finance or the Department of Public Expenditure and Reform from time to time.

In their oversight role, the members of the CCPC commit to ensure that the CCPC meets its mandate under the Code of Practice for Corporate Governance of State Bodies 2016, its statutory obligations and its Key Performance Indicators and targets, where appropriate, as agreed in this document. The Chairperson undertakes to ensure that performance against set Key Performance Indicators and targets, where appropriate, is monitored on an on-going basis and that statutory and related obligations are met.

2.7 Existing legislative provisions applying to the CCPC are not superseded by this Agreement, and shall continue to have primacy.

PERFORMANCE DELIVERY AGREEMENT

THE PARTIES AGREE THE FOLLOWING:

3. Purpose of the Agreement

The key objectives of this agreement are to:

- define the requirements that the Department has of the CCPC, within the resources that are available to the CCPC,
- assist the Department in monitoring and, where appropriate, managing the CCPC's performance subject to the primacy of legislation,
- where appropriate, ensure mutual agreement between the Department and the CCPC with regard to priorities, and
- reflect the management of interdependent services (e.g. human resources) that exist in key areas between the Department and the CCPC.

4. Duration of the Agreement

This Agreement is deemed to commence on the date of signature by both parties and is subject to annual renewal at the start of each business year.

5. Commitments (Operational Roles, Responsibilities, Outputs and Outcomes)

5.1 The CCPC undertakes to provide an agreed level of service in accordance with the deliverables and Key Performance Indicators specified in its Work Programme as set out in Appendix 1 and Appendix 2, in the context of the CCPC's Strategy Statement 2018-2020, and in accordance with all relevant legislation.

5.2 A draft Work Programme for the following year will be submitted to the Minister at least two months before the commencement of each financial year in accordance with Section 30(5) of the 2014 Act.

5.3 The Department commits to assisting the CCPC in the achievement of its Key Performance Indicators and targets, where appropriate, by providing:

- regular information flows,
- reasonable time frames within which the CCPC is expected to respond,
- guidance and directions, and
- appropriate financial, staff, and knowledge resources, within the Department's control.

The Department will engage with the CCPC on the level of resources required for the achievement of targets and recognises that any additional responsibilities allocated to the CCPC are likely to require appropriate additional resources.

The CCPC will also provide all relevant information to the Department, follow guidance and directions from the Department, and ensure that there is efficient and effective use of the financial, staff and knowledge resources assigned to it to meet the Key Output targets, and context and impact indicators as set out in the Revised Estimates Volume 2018, Vote 32, in so far as they relate to its work.

5.4 The Liaison Unit in the Department shall be the initial point of contact between the CCPC and any other Section of the Department in relation to corporate issues, including finance, human resources, pensions and employment contracts, unless otherwise advised by the Liaison Unit, and both parties to the agreement will ensure that those issues are dealt with in a timely and efficient way. The Corporate Services Division of the CCPC will be its main point of contact with the Liaison Unit.

5.5 The management of issues with Departmental assignees will have regard to both the Department staffing policies and the operational needs of the CCPC. The CCPC's personnel point of contact will inform the Departmental Human Resources Unit of related personnel issues as soon as is reasonably possible, when those issues present. Appropriate responses as determined by Department policy, will be agreed between the Department and the CCPC as soon as is reasonably possible. Compliance with Health & Safety legislation remains the responsibility of the CCPC for all staff, where issues will be managed by the CCPC, in partnership where appropriate with the Department.

6. Performance Management, Monitoring and Reporting

6.1 The performance of the CCPC will be monitored by the Department against the objectives set out in the Annual Work Programme and having regard to the statutory role of the CCPC and the staffing position of the CCPC under the Staffing Resource Management Framework and relevant Workforce Plan. To facilitate this, the CCPC will provide on a quarterly basis to the Liaison Unit a report on progress under the Work Programme and Workforce Plan in reaching targets, where appropriate, and Key Performance Indicators set out in the Work Programme.

6.2 Both parties agree that any issues which may impact on the Agreement will be brought to the other's attention as soon as reasonably possible, having regard to all the circumstances and both parties agree to work towards finding a mutually satisfactory solution.

6.3 The CCPC will seek at all times to meet the terms of this Agreement. Where any shortfalls in performance are identified, the CCPC will put forward its proposals and a timetable for adjusting the performance to the expected standard for consideration by the Department with a view to reaching an agreed amendment to the Agreement.

6.4 In circumstances where the Department and the CCPC cannot reach agreement on resolving an issue arising from this Agreement to mutual satisfaction, the Minister's decision on the matter will be final, subject to the primacy of the relevant legislation.

7. Flexibility & Amendment of Targets

Both parties recognise that it may become necessary to change, modify, add to or otherwise alter agreed Key Performance Indicators and targets, where appropriate, during the course of this Agreement. A necessity for amendment may arise due to changes to the prevailing operating circumstances and / or changes in the financial, resourcing or economic climate which may impact on the ability of the CCPC to meet its obligations under the terms of this Agreement.

8. Financial Management and Monitoring / Controls

8.1 The CCPC will comply with the Department's requirements in relation to financial management, monitoring and control. Such requirements are underpinned by the Public Financial Procedures set out by the Minister for Public Expenditure & Reform. The requirements of the Code of Practice for the Governance of State Bodies and the Public Spending Code should also be adhered to.

8.2 Payments due in relation to this Agreement (i.e. for 2018 funding) will be made in the light of net funding requirements demonstrated by monthly detailed statements to be submitted to the Department of Business, Enterprise and Innovation by the CCPC. Such statements should also be accompanied with a brief explanation, if/where the cumulatively incurred expenditure at month's end differs from the initially profiled expenditure for the period in question.

8.3 In particular, the CCPC should comply with the requirements of DPER Circular 13/2014 Management of and Accountability for Grants. This circular outlines the public financial management principles, procedures and additional reporting requirements to be followed in the management of grant funding provided from public funds. Bodies should have regard to the reclassification provisions of the Circular and in particular those provisions detailing the payment principles to be followed, including as they relate to requests for prefunding. Bodies should also comply with the provisions of the Circular not only insofar as they relate to their responsibilities as grantees of public monies but also as they relate to situations

where they make onward grants to other bodies, including the payment principles that must be followed in such instances.

8.4 Funding for 2018 is as determined as part of the annual Budget/Estimates process undertaken in the autumn last year. The definitive annual allocation provided to the CCPC is set out in the published 2018 Revised Estimates Volume (REV) for the year. The CCPC shall be responsible for taking every reasonable effort to ensure that it remains within budget each year. Where the CCPC considers that it will have difficulty remaining within its allocation, it should advise the Liaison Unit of the position as soon as possible.

8.5 Funding for 2019 will be determined as part of the annual Budget/Estimates process undertaken this year. The CCPC should make clear their financial requirements with a supported business case for the forthcoming financial year when requested. This will assist the Department's negotiations for the 2019 Estimates and REV campaign. The funding capacity and subsequent provision made to the CCPC will be determined by the overall financial provision being made to the Department vote taking into consideration Government priorities and the available resources at the disposal of the Minister and the Department.

9. Governance

9.1 The CCPC shall prepare and present to the Minister its Financial Statements and its Annual Report in accordance with Sections 31 and 32 of the 2014 Act and the Code of Practice for the Governance of State Bodies 2016.

9.2 Financial Statements must give a true and fair view of the income, expenditure (financial performance), assets, liabilities and capital (financial position) of the CCPC at the end of the financial year in accordance with the applicable accounting standards. The CCPC is required to arrange for the Financial Statements to be audited by the Controller and Auditor General.

9.3 In compliance with statutory requirements, the Department will arrange for the laying of the Annual Reports and the audited Financial Statements of the CCPC before the Houses of the Oireachtas, together with any report of the Comptroller and Auditor General on the Financial Statements.

9.4 The CCPC shall prepare an annual Workforce Plan having regard to its legislative mandate, business needs and Staffing Resource Management Framework within timelines agreed with the Department and will submit the final Workforce Plan to the Liaison Unit as well as providing periodic updates as required.

10. Communication & Information Sharing

10.1 The Management Board shall arrange to meet with the Chair of the CCPC at least once a year to discuss relevant issues, including progress towards strategic targets and objectives, policy developments and other relevant issues.

10.2 Review meetings between the CCPC and the Department at operational level will be held at least on a quarterly basis and will include as standing agenda items: corporate governance; discussions on budgets, resources and staffing; policy developments; achievement of Key Performance Indicators and targets, where appropriate; and support and intervention requirements.

11. Partnership & Responsiveness

Both parties support the effective achievement of the agreed Key Performance Indicators and targets, where appropriate, and commit to keep each other fully appraised and updated on all key issues covered by this Agreement.

12. Legal expenses

The legal expenses of the CCPC must be met from the non-pay element of its Grant. In the event that the CCPC incurs legal enforcement costs that exceed its allocation and cannot be met from elsewhere within its subhead, the Department will:

- Seek sanction from the Department of Public Expenditure & Reform for virement of a matching amount of unspent Non-Pay monies that might arise elsewhere in the Department Vote for provision to Subhead C8 to meet the excess legal cost expenditure. Virement requests normally occur in the latter part of the financial year when it is clearer if/where excesses/underspends are arising across the Department Vote.
- In the unlikely event that such legal costs cannot be met from anywhere across the Department Vote and subject to the scale of excess expenditure involved that such might necessitate a Supplementary Estimate, the CCPC should note that this process requires the approval of the Houses of the Oireachtas and the Minister for Public Expenditure and Reform, and would specifically require the Minister to present the Supplementary Estimate to the Select Committee for the Department by year end.
- Through its Finance Unit, the Department will take account of any such overspend without prejudice during a particular year when the following year's estimates are being prepared and in the context of the overall Estimate for the financial year in question.

The Department will make every effort, in its dealings with the Department of Public Expenditure and Reform, to ensure that the CCPC's enforcement activities are not curtailed due to lack of financial resources. In turn, the CCPC undertakes to keep the Department informed of actions initiated and their potential financial implications so as to identify any possible overspend at as early a stage as possible.

SIGNED:

**For the Competition and Consumer
Protection Commission**

Isolde Goggin

on 10th day of April 2018

NAME Isolde Goggin

POSITION Chairperson

**For the Department of Business,
Enterprise and Innovation**

Dr Orlaigh Quinn

on 16 day of April 2018

NAME Dr Orlaigh Quinn

POSITION Secretary General