



**International  
Competition  
Network**

**ANTI-CARTEL  
ENFORCEMENT  
TEMPLATE**

**CARTELS WORKING GROUP  
Subgroup 2: Enforcement Techniques**

**Ireland**

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# ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

## IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning (hardcore) cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses which suffer from cartel activity to get information about the possibilities of lodging a complaint in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

[Please include, where applicable, any references to relevant statutory provisions, regulations or policies as well as references to publicly accessible sources, if any.]<sup>1</sup>

## 1. Information on the law relating to cartels

<b>A. Law(s) covering cartels:</b> [availability (homepage address) and indication of the languages in which these materials are available]	Section 4 and 6 of The Competition Act 2002 as amended and Article 101 TFEU  English, Irish
<b>B. Implementing regulation(s) (if any):</b> [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	Council Regulation (EC) 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 101 and 102 of the Treaty accessible at; < <a href="#">EUR-Lex - 32003R0001 - EN - EUR-Lex</a> > Available in all EU official languages  Transposed into Irish law by way of S.I. No. 195/2004 - European Communities (Implementation of the Rules on Competition Laid Down in Articles 81 and 82 of the Treaty) Regulations 2004

<sup>1</sup> Editor's note: all the comments in [square brackets] are intended to assist the agency when answering this template, but will be removed once the completed template is made public.

	<p>Accessible at &lt;<a href="http://www.irishstatutebook.ie/eli/2004/si/195/made/en/print">http://www.irishstatutebook.ie/eli/2004/si/195/made/en/print</a>&gt;</p> <hr/> <p>Available in Irish and English</p>
<p><b>C. Interpretative guideline(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</b></p>	<p>Notices and Guidelines published by the Competition and Consumer Protection Commission ('CCPC') are accessible on its website at <a href="http://www.ccpc.ie">www.ccpc.ie</a>, Available in English.</p>
<p><b>D. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]</b></p>	<p>Information on the Cartel Immunity Programme is available on both the websites of the CCPC and the Director of Public Prosecutions <a href="http://www.dppireland.ie">www.dppireland.ie</a></p>

## 2. Scope and nature of prohibition on cartels

<p><b>A. Does your law or case law define the term "cartel"? [Please quote.]</b></p> <p><b>If not, please indicate the term you use instead. [Please quote.]</b></p>	<p>The Competition Act does not use the term 'Cartel'. Instead anti-competitive conduct is defined under Section 4 of the 2002 Act and are based on Article 101 TFEU. It states that all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention 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'.</p> <p>In the judgement of <i>DPP v Patrick Duffy and Duffy Motors Newbridge Limited</i> [2009] IEHC 208 Justice Liam McKechnie noted at paragraph 22, 'that there is no standard or even a description of a cartel', and provided his own description as follows; 'Cartels involve a group of competitors who for their own self gain agree to restrict their individual business freedom and agree to a course of conduct on the market. They can be used for all forms of anti-competitive behaviour but are particularly attracted to price fixing, restricting output/limiting production, bid rigging and market allocation. These are "hardcore" infringements of competition law, and rightly so have been described, as involving odious practices. They stifle competition and discourage new entrants; damaging economic and commercial liberty'.</p>
<p><b>B. Does your legislation or case law distinguish between very serious cartel behaviour</b></p>	<p>Yes- section 6(1) criminalises anti-competitive agreements (under section 4(1) and Article 101TFEU) and section 6(2) then distinguishes hardcore cartel agreements by the creation of an</p>

<p><b>(“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas<sup>2</sup>) and other types of “cartels”? [Please describe how this differentiation is made and identify the most egregious types of conduct.]</b></p>	<p>evidential presumption that their object is the prevention, restriction or distortion of competition unless the defendant proves otherwise. It categorises these agreements, under section 6(2) (a-c) as price fixing, limitation of output or sales and the sharing of markets of customers. So once the prosecution proves the existence of such hardcore agreements the trial jury is entitled to presume that the object of the agreement is anti-competitive, thus the presumption represents the intentional element or the <i>mens rea</i> of the offence. Therefore hardcore cartel agreements are usually prosecuted in the criminal courts while less egregious anti-competitive conduct are prosecuted in the civil courts.</p>
<p><b>C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors. Please also describe any other limitations to the ban on hardcore cartels.]</b></p>	<p>The Competition Act 2002 incorporates statutory criminal defences against domestic hard core cartels by adopting the exemptions set out in Article 101(3).</p> <p>Thus section 6(3) provides that it is 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) that states; where, ‘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’.</p> <p>Then Section 4(4) incorporates criminal defences for prosecutions in the Irish jurisdiction against alleged contraventions of Article 101(1) TFEU where an exemption for the agreement in question was granted by the European Commission pursuant to Article 101(3), or the agreement, decision or concerted practice benefitted from the terms of an exemption provided for by or granted by the European Council or the Commission or did not contravene the prohibition by virtue of Article 101(3).</p> <p>Section 6(5) also provides a ‘State compulsion’ defence where the alleged anti-competitive offences were done pursuant to a determination or a direction given by a statutory body.</p> <p>Similarly Article 101 does not apply if undertakings are compelled to act in an anti-competitive manner by the State. For example State compulsion could occur where national legislation creates a legal framework which itself eliminates any possibility on the part of the undertakings.</p>
<p><b>D. Is participation in a hardcore cartel illegal <i>per se</i><sup>3</sup>? [If the situation differs for civil, administrative and criminal</b></p>	<p>No. however, as explained at Question 2B, there is a rebuttable presumption that participation in a hard core cartel has as its object the prevention restriction or distortion of competition unless the defendant proves otherwise, as stated under the</p>

<sup>2</sup> In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

<sup>3</sup> For the purposes of this template the notion of ‘per se’ covers both ‘per se’ and ‘by object’, as these terms are synonyms used in different jurisdictions.

liability, please clarify this.]	criminal provisions of the Competition Act 2002.
E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?	It is a criminal offence and these offences are prosecuted by the DPP in Ireland's highest criminal court; the Central Criminal Court. Minor cartel offences can be prosecuted summarily in the District Court by the CCPC if the matter is not complex and warrants lighter sanctions. It is also possible for hardcore cartels to be prosecuted in the civil courts where the standard of proof is set at a lower threshold.

### 3. Investigating institution(s)

A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities]	The Competition and Consumer Protection Commission
B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]	Bloom House Railway Street Dublin 1, D01 C576 Telephone 353 1 402 5500
C. Information point for potential complainants:	<a href="http://www.ccpc.ie/make-complaint">http://www.ccpc.ie/make-complaint</a>
D. Contact point where complaints can be lodged:	There are a number of ways to submit a complaint. <ul style="list-style-type: none"> <li>• Via Email: <a href="mailto:complaints@ccpc.ie">complaints@ccpc.ie</a>(link sends e-mail)</li> <li>• Via Phone: 353 1 402 5500</li> <li>• Via Fax: 353 1 402 5501</li> </ul> In writing to: Bloom House Railway Street Dublin 1, D01 C576
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	Investigative assistance is provided by An Garda Síochána (Irish Police) National Economic Crime Bureau, with a Detective Sergeant seconded and made an Authorised Officer of the Competition and Consumer Protection Commission. Additional resources are provided when required (e.g. for searches of premises and for the arrest, detention and questioning of suspects).

#### 4. Decision-making institution(s)<sup>4</sup> [to be filled in only if this is different from the investigating agency]

<p><b>A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]</b></p>	<p>The Competition and Consumer Protection Commission investigates alleged cartels and refers completed investigation files to the Director of Public Prosecutions (the DPP). The DPP decides itself whether or not to institute a prosecution on indictment (for serious offences). The CCPC may prosecute, if the cartel matter is deemed a minor offence, in the District (lowest) Court. Civil cases are also prosecuted by the CCPC. The courts are the designated decision makers in cartel cases.</p>
<p><b>B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]</b></p>	<p>Office of the Director Of Public Prosecutions          Infirmary Road, Dublin 7.          Tel: +353 (0)1 858 8500 ~ Fax: +353 (0)1 642 7406  <a href="http://www.dppireland.ie">www.dppireland.ie</a>          Available in English and Irish</p>
<p><b>C. Contact point for questions and consultations:</b></p>	<p>Tel: +353 (0)1 858 8500 ~ Fax: +353 (0)1 642 7406  <a href="http://www.dppireland.ie">www.dppireland.ie</a></p>
<p><b>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</b></p>	<p>The CCPC investigates and gathers evidence relating to allegations of cartels. It then refers its file to the DPP for prosecution on indictment in respect of serious offences and will institute proceedings itself for summary prosecution for minor offences. The CCPC assists and supports the DPP in the criminal litigation of cartel matters for serious matters</p>
<p><b>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</b></p>	<p>Upon the completion of a criminal cartel investigation the CCPC refers the file to the DPP for its consideration on whether to prosecute the matter on indictment at the Central Criminal Court. The case is prosecuted in the name of the DPP. The CCPC provides litigation support and its own authorised officers provide witness testimony for the prosecution.</p>

#### 5. Handling complaints and initiation of proceedings

<p><b>A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]</b></p>	<p>Cartel investigations can be initiated by complaint, ex officio, and immunity application.</p>
<p><b>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form,</b></p>	<p>Complainants are encouraged to file a complaint through its website <a href="mailto:complaints@ccpc.ie">complaints@ccpc.ie</a> (link sends e-mail) or by mail to 14 Parnell Square Dublin 1. There is no mandatory</p>

<sup>4</sup> Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

etc.)? [If there is a requirement to complete a specific form, please, indicate its location (website address).]	requirement to file a complaint in writing, the CCPC can accept a complaint on an oral basis.
<b>C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]</b>	The CCPC does not stipulate any such requirements. The CCPC having received a complaint will subject it to a preliminary assessment on whether to close or further investigate it.
<b>D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect? [Please elaborate.]</b>	The CCPC has a discretion to close or further investigate complaints based on its own assessment.
<b>E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</b>	No, there is not an obligation on the CCPC to publish reasons or adopt a decision for closing a complaint. The CCPC will notify the complainant in writing of its decision to close their complaint.
<b>F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?</b>	No.

## 6. Leniency policy<sup>5</sup>

<b>A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]</b>	It is called the Cartel Immunity Programme (CIP) and is available in full printed brochure form or on the website of the CCPC at: <a href="http://ccpc.ie/enforcement-mergers/cartel-immunity-programme">http://ccpc.ie/enforcement-mergers/cartel-immunity-programme</a> The CIP is also available on the website of the DPP at: <a href="https://www.dppireland.ie/publications/category/21/cartel-immunity-programme/">https://www.dppireland.ie/publications/category/21/cartel-immunity-programme/</a>
<b>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on</b>	No only full immunity from criminal prosecution is available for the first applicant that complies with all the requirements under the CIP. Subject to the requirements the DDP may then decide to grant immunity to an applicant under this Programme on the

<sup>5</sup> For the purposes of this template the notion of ‘leniency’ covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like ‘leniency’ ‘amnesty’ and ‘immunity’ are considered as synonyms.



<p><b>the case?</b></p>	<p>recommendation of the CCPC. However the CIP does not limit the DPP's own general discretion to grant immunity which could, in exceptional circumstances, extend to the grant of immunity to more than one cartel participant in a given case.</p>
<p><b>C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?</b></p>	<p>Only the first applicant that complies with all the requirements under the CIP is eligible for a grant of immunity from the DPP. These requirements include that the applicant did not coerce any party into participating in the cartel and it must provide full and timely cooperation during the course of the investigation and the subsequent legal proceedings. However the DPP has also a general discretion to grant immunity to other cartel participants.</p>
<p><b>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</b></p> <p><b>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</b></p>	<p>There is no such stipulation under the CIP. The first applicant that complies with the requirements of the CIP is eligible to obtain a grant of immunity but only at the discretion of the DPP based on a recommendation from the CCPC. However the CCPC may decide not to make such a recommendation if it already has sufficient evidence to warrant a referral of a file to the DPP.</p>
<p><b>E. Who can be a beneficiary of the leniency program (individual / businesses)?</b></p>	<p>An individual and/or a businesses can apply for immunity. An undertaking may apply on its own behalf and on behalf of its employees, directors and officers who require immunity. Directors, officers and employees of an undertaking who require immunity may also apply on their own behalf. (An undertaking is defined by the Act as meaning 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).</p>
<p><b>F. What are the conditions of availability of full leniency: [e.g. provide decisive evidence, maintain cooperation throughout, not to be the ringleader, cease the infringement, restitution, etc.]</b></p>	<p>The requirements for immunity are set out in sections 3.3 to 3.10 of the Programme as follows;</p> <p>3.3 The applicant must not have taken steps to coerce another party to participate in the illegal cartel activity.</p> <p>3.4 The applicant must do nothing to alert its associates in the cartel that it has applied for immunity under the CIP and must refrain from commenting publicly on the activities of the cartel in which it has been involved pending the conclusion of any prosecutions.</p> <p>3.5 From the time that the applicant first considered applying for immunity it must not have destroyed, hidden, made unusable or falsified any evidence relating to the offence(s).</p> <p>3.6 An applicant in an ongoing cartel must take effective steps, to be agreed with the CCPC, to ensure that it does not involve itself in any further illegal cartel activity following its application for immunity. However, in exceptional circumstance the commission may require an applicant to act in a manner that would, in the CCPC view, be required to preserve the integrity of the CCPC investigation.</p>



	<p>3.7 Throughout the course of the CCPC investigation and any subsequent prosecution, the applicant must provide comprehensive, prompt and continuous cooperation.</p> <p>3.8 In particular, the applicant (including individuals who require personal immunity) has a positive duty to:</p> <ul style="list-style-type: none"> <li>• Reveal any and all cartel offences under the Act in which the applicant may have been involved and of which it is aware;</li> <li>• Provide full, frank and truthful disclosure of all the evidence and information in the possession or control or known or available to the applicant, including all documentary electronic and other records, wherever located, relating to the offences under investigation;</li> <li>• Preserve and not tamper with any evidence that is capable of being under the applicant's control;</li> <li>• Ensure to the best of the applicant's ability that current and former directors, officers and employees cooperate fully with the CCPC's investigation and any subsequent prosecutions;</li> <li>• Subject as hereinafter provided, from the time that the applicant first considered applying for immunity, not disclose to third parties any dealings with the CCPC (including the fact of its immunity application) without its prior written consent, except where required to do so by law. If disclosure is required, the CCPC, must be notified prior to the applicant releasing any such information. This restriction shall not, however, prevent the applicant from disclosing the existence or content of the application (i) to another competition authority, or(ii) to an external lawyer for the purpose of obtaining legal advice provided the applicant ensures that such lawyer does not disclose any such information to any third party;</li> <li>• Disclose to the Commission, unless otherwise prohibited, all applications made by the applicant for immunity in other jurisdictions;</li> <li>• Co-operate fully with the CCPC, on a continuing basis, expeditiously and at no expense to the Commission throughout the investigation and with any ensuing prosecutions; and</li> <li>• Provide individuals who give clear and comprehensive statements of evidence that will be recorded by the Commission. Such individuals must also provide complete and truthful evidence in any ensuing prosecutions.</li> </ul>
<p><b>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment): [e.g.: valuable, potential, decisive</b></p>	<p>Partial Leniency or immunity are not available under the terms of the CIP. It grants full immunity from prosecution to the first qualified applicant.</p>

<p>evidence by witnesses or on basis of written documents, etc.? Must the information be sufficient to lead to an initiation of investigations?]</p>	
<p><b>H. Obligations for the beneficiary after the leniency application has been accepted: [e.g. ongoing, full cooperation with the investigating agency during the proceedings, etc.]</b></p>	<p>Such obligations are the requirements that the successful applicant must adhere to under paragraphs 3.3 to 3.8 and have been set out in answer to question F above.</p>
<p><b>I. Are there formal requirements to make a leniency application? [e.g. must applications take a particular form or include particular information/data, must they be in writing or can they be made orally, etc.]</b></p>	<p>All applications for immunity can only be made by calling the Cartel Immunity Phone listed in the CIP-353 877631378. The cartel immunity phone may be contacted between the hours of 10am and 5pm (local time) Monday to Friday, except public or bank holidays</p>
<p><b>J. Are there distinct procedural steps within the leniency program? [e.g.: provisional guarantee of leniency ("PGL") and further steps leading to a final leniency agreement / decision)?]</b></p>	<p>Yes. The CIP sets out the steps for the grant of immunity as follows;</p> <ul style="list-style-type: none"> <li>• The CIP provides for a marker system to ensure a fair and orderly queue in case of multiple applications for immunity.</li> <li>• Upon perfection of the marker, conditional immunity is granted to the first successful applicant in the queue by the DPP if it accepts the recommendation by the CCPC.</li> <li>• Then the applicant must provide full, frank and truthful disclosure in addition to the obligations set out under section 3.</li> </ul> <p>When the terms, obligations and conditions set out in the CIP have been fully satisfied, including where any resulting prosecutions have been disposed of, the DPP will confirm that the applicant has full immunity.</p>
<p><b>K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?</b></p>	<p>Section 5.10 stipulates that if the Commission is of the opinion that the immunity application discloses a likely criminal breach of the Act that warrants a formal investigation, the CCPC will formally write to the DPP recommending a grant of conditional immunity for the Applicant. Upon receipt by the CCPC of the decision to grant conditional immunity from the DPP the CCPC will inform the applicant. Full immunity is confirmed by the DPP once the applicant complies with all the requirements of the CIP and all prosecutions have been disposed of.</p>
<p><b>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?</b></p>	<p>The power to grant immunity resides solely at the discretion of the DPP. The powers of the DPP derive from statute, (i.e. the Prosecution of the Offences Act 1974). The CIP sets out in writing the terms upon which the DPP may grant immunity. The CCPC administers the CIP and can exercise considerable influence in making recommendations to grant immunity to the DPP, who will make his/her own decision on whether to grant immunity or not, and then notify the CCPC accordingly. The CCPC will then notify the applicant of the DPP decision.</p>

<p><b>M. Do you have a marker system? If yes, please describe it.</b></p>	<p>The CIP provides a marker system where applications for immunity are queued and dealt with in order of receipt. The system allows the applicant to place a marker with the designated immunity officer in order to retain the applicant's place in the queue for immunity. The immunity officer will give the applicant a reasonable period of time within which to perfect the marker by submitting its full application for immunity. Where a marker is perfected the information that is then provided will be deemed to have been submitted on the date when the marker was granted. If the applicant withdraws from the process the next successful applicant will then be considered.</p>
<p><b>N. Does the system provide for any extra credit<sup>6</sup> for disclosing additional violations? [e.g. a hardcore cartel in another market]</b></p>	<p>No</p>
<p><b>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</b></p>	<p>Yes. Section 7 of the CIP addresses this issue as follows; 'An immunity applicant's identity will be kept confidential as long as permissible under Irish and European Law. Information disclosed pursuant to this Programme will not be disclosed to any third party other than in accordance with the normal practices and procedures pertaining to criminal investigations and prosecutions. In particular, information may be disclosed :</p> <ul style="list-style-type: none"> <li>• Where disclosure is required by law;</li> <li>• Where disclosure is for the purpose of the administration and enforcement of the Act</li> <li>• Where disclosure is necessary for the prevention of the commission of a criminal offence;</li> <li>• Where disclosure is required in the course of an investigation or prosecution</li> <li>• Where an applicant agrees to and signs a waiver on disclosure allowing the Commission to share information with another competition authority investigating the particular cartel in another jurisdiction where the same applicant has also applied for immunity or leniency</li> </ul>
<p><b>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</b></p>	<p>No. The discretion as to whether to grant immunity or not lies solely with the DPP and his/her decisions are not normally reviewable by the Court.</p>
<p><b>Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]:</b></p>	<p>All applications for immunity can only be made by calling the Cartel Immunity Phone listed in the CIP-353 877631378. The cartel immunity phone may be contacted between the hours of 10am and 5pm (local time) Monday to Friday, except public or bank holidays</p>

<sup>6</sup> Also known as: "leniency plus", "amnesty plus" or "immunity plus". This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

<p><b>R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</b></p>	<p>Yes. Section 6 of the CIP sets out the circumstances where the grant of conditional immunity may be revoked. It states that the Commission will recommend that the DPP revoke conditional immunity where the applicant does the following; fails to cooperate, makes false statements, or interferes with witnesses and/or where evidence is uncovered suggesting that the applicant coerced others into participating in the cartel.</p> <p>In the event that an applicant fails to comply with the requirements of the Programme and/or fails to provide complete and timely cooperation, the Commission shall give applicant written notice of any such failure. Where such failures are capable of being remedied the notice shall specify a period within which the applicant must remedy its immunity granted to the applicant. No appeal process lies against the discretion of the DDP to revoke the immunity.</p>
<p><b>S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?</b></p>	<p>No. However the CCPC does promote the Cartel Immunity Programme that aims to encourage applications.</p>
<p><b>T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate.</b></p>	<p>The CIP states that it does not disclose information obtained from the immunity applicant except where disclosure is required by law. Further, it is a matter of policy that the CCPC would resist disclosure of immunity materials on the grounds of public interest privilege.</p>

## 7. Settlement

<p><b>A. Does your competition regime allow settlement?</b></p> <p><b>If yes, please indicate its public availability (link to the relevant rules, guidelines, etc.).</b></p>	<p>No. However there is a provision under Competition Act 2002 as amended that provides for the Irish High Court civil jurisdiction to make an order for certain agreements between the CCPC and an Undertaking following an investigation by the CCPC. The agreement requires the undertaking to desist from the alleged anti-competitive behaviour under investigation in consideration for the CCPC forgoing the institution of proceedings in the matter. This settlement agreement is provided under section 14B of the Competition Act 2002 as inserted by the section 5 of the Competition (Amendment) Act 2002.</p>
<p><b>B. Which types of restrictive agreements are eligible for settlement [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</b></p>	<p>All restrictive agreements are applicable for a Section 14B. However it would be unlikely to be applied to a hardcore cartel matter subjected to a criminal investigation, unless the matter is remitted to the civil jurisdiction.</p>
<p><b>C. What is the reward of the settlement for the parties?</b></p>	<p>They are not liable to be prosecuted in the civil courts by the CCPC in respect of the matter investigated by the CCPC.</p>
<p><b>D. May a reduction for settling be cumulated with a leniency reward?</b></p>	<p>This is not possible under the Irish Competition enforcement regime.</p>

<p><b>E. List the criteria (if there is any) determining the cases which are suitable for settlement.</b></p>	<p>There is no set criteria, it is a matter for the discretion of the CCPC.</p>
<p><b>F. Describe briefly the system [who can initiate settlement – your authority or the parties, whether your authority is obliged to settle if the parties initiate, in which stage of the investigation settlement may be initiated, etc.].</b></p>	<ul style="list-style-type: none"> <li>Following an investigation the CCPC may decide to enter into a settlement agreement with an undertaking on the basis that it obviates the requirement to prove the alleged infringement in court and saves time and costs. The scope of agreement is where the undertaking agrees to cease and desist from the alleged anti-competitive activity in question and the CCPC then agrees not to bring any enforcement proceedings. The CCPC may apply to the High Court to obtain an order based on the terms of such settlement agreements made between the parties. The duration of such orders are for seven years but can be extended on application by the CCPC for three more years. The statutory provisions for this settlement process are set out in section 14B of the Competition Act 2002 as amended by section 5 the Competition (Amendment Act) 2012.</li> </ul>
<p><b>F. Describe the procedural efficiencies of your settlement system [e.g. shorter decision, etc.].</b></p>	<p>It forgoes the necessity to bring court proceedings to restrain the alleged anti-competitive activity by the CCPC, and to prove the allegations in a court of law and also brings these matters to timelier conclusion.</p>
<p><b>G. Does a settlement necessitate that the parties acknowledge their liability for the violation?</b></p>	<p>An admission of liability is not a requirement for these Court Order agreements. However if the undertaking subject to the agreement subsequently breaches the agreement, it is liable to be in contempt of court and consequently subject to penal sanction.</p>
<p><b>H. Is there a possibility for settled parties to appeal a settlement decision at court?</b></p>	<p>No, but the High Court can entertain an application by the undertaking to annul or to vary the order under the grounds prescribed under 14 B (7) where: the CCPC consents to the application, the original order contains a material error, there has been a material change in circumstances since the making of the original order that warrants the annulling or the varying of the order or the court is satisfied that in the interests of justice, the original order should be varied or annulled.</p>

## 8. Commitment

<p><b>A. Does your competition regime allow the possibility of commitment?</b></p> <p>If yes, please indicate its public availability [link to the relevant rules, guidelines, etc.].</p>	<p>No</p>
<p><b>B. Which types of restrictive agreements are eligible for</b></p>	

<p>commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</p> <p>Are there commitments which are excluded from the commitment possibility?</p>	
<p>C. List the criteria (if there are any) determining the cases which are suitable for commitment.</p>	
<p>D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural]</p>	
<p>E. Describe briefly the system [who can initiate commitment – your authority or the parties, in which stage of the investigation commitment may be initiated, etc.]</p>	
<p>I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?</p>	
<p>J. Describe how your authority monitors the parties' compliance to the commitments.</p>	
<p>K. Is there a possibility for parties to appeal a commitment decision at court?</p>	

## 9. Investigative powers of the enforcing institution(s)<sup>7</sup>

A. Briefly describe the investigativ

The CCPC has power to;

- Seek court sanctioned search warrants of business and residential premises and to seize and retain original documentation including

<sup>7</sup> “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

<p><b>e measures available to the enforcing agency such as requests for information, searches/raids<sup>8</sup>, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</b></p>	<p>electronic data at any time or times within one month of the issue of the warrant.</p> <ul style="list-style-type: none"> <li>• Summons the attendance of witnesses to examine them on oath and require the production of documents and records (e.g. from employees, telecoms banks third parties).</li> <li>• By notice in writing, require any person or undertaking to provide it with such written information as the CCPC considers necessary to enable it to carry out its functions.</li> <li>• Have its authorised officers attend with members of An Garda Siochana (Irish Police) and participate in the questioning of suspects at a Garda station who are detained in connection with the investigation of an alleged cartel offence.</li> <li>• Have its authorised officers take cautioned statements (i.e. evidentiary admissible statements) from suspects and witness statements from witnessed in relation to the alleged cartel offences under investigation.</li> </ul>
<p><b>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</b></p>	<p>Residences, automobiles, and briefcases can be searched under a court warrant.</p>
<p><b>C. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If</b></p>	<p>Yes. Section 9 of the Criminal Law Act 1976, allows such evidence to be seized by the Irish Police, and then used as such for another case. Section 37(9) of the Competition and Consumer Protection Act 2014 extends this power of seizure beyond the scope of the warrant to authorised officers of the CCPC.</p>

<sup>8</sup> “Searches/raids” means all types of search, raid or inspection measures.



<p>yes, under which circumstances (e.g. is a post-search court warrant needed)?</p>	
<p><b>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</b></p>	<p>Yes. There has been a successful legal challenge against the CCPC regarding the scope of a certain Search Warrant that had been granted under section 37(3) of the Competition and Consumer Protection Act 2014 in relation to its effects upon the privacy rights under the Irish Constitution and the European Convention on Human Rights in the case of: CRH PLC, Irish Cement Limited and Seamus Lynch -v- The Competition and Consumer Protection Commission [2016] IEHC 162 and accessible at;</p> <p><a href="http://www.courts.ie/Judgments.nsf/0/9E7ECF2C5B64FCA380257FA400365CCC">http://www.courts.ie/Judgments.nsf/0/9E7ECF2C5B64FCA380257FA400365CCC</a></p> <p>This decision was appealed by the CCPC to the Supreme Court.</p> <p>The Supreme Court judgements are linked below.</p> <p><a href="http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/5cc9804917b9dda48025812f004a80d4?OpenDocument">http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/5cc9804917b9dda48025812f004a80d4?OpenDocument</a></p> <p><a href="http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/ae37eb0311a0c768025812f0048761c?OpenDocument">http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/ae37eb0311a0c768025812f0048761c?OpenDocument</a></p> <p><a href="http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/2f8ecfd950a18ee38025812f004a6755?OpenDocument">http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/2f8ecfd950a18ee38025812f004a6755?OpenDocument</a></p> <p>The Supreme Court ordered that the CCPC be restrained from accessing, reviewing or making any use of the unrelated Electronic Documents [uplifted from the search] other than in accordance with agreement between the parties which accords with the requirements of Article 8 of the European Convention of Human Rights and in the event of no agreement that there liberty to apply to the High Court [for further directions].</p> <p>The Supreme Court Order is linked below;</p> <p><a href="http://courts.ie/Judgments.nsf/597645521f07ac9a80256ef30048ca52/5cc9804917b9dda48025812f004a80d4/\$FILE/53147391.pdf/SC%20Cr%20Ordr%2065-2016%20CRH%2001-Jun-17.pdf">http://courts.ie/Judgments.nsf/597645521f07ac9a80256ef30048ca52/5cc9804917b9dda48025812f004a80d4/\$FILE/53147391.pdf/SC%20Cr%20Ordr%2065-2016%20CRH%2001-Jun-17.pdf</a></p>

## 10. Procedural rights of businesses / individuals

<p><b>A. Key rights of defence in cartel cases: [e.g.: right of access to documents in the possession of the enforcing authority, right to a written statement of the case against the defendant, right to respond to that case in writing, right to respond orally, right to confront</b></p>	<p>Anti-trust enforcement is incorporated into the Common Law System of Ireland where fundamental due process rights for the defence are guaranteed. Fundamental rights are guaranteed by the Irish Constitution, and the European Convention of Human Rights has been incorporated into Irish law by way of the European Convention of Human Rights Act 2003. Thus the defence are entitled to pre-trial discovery/disclosure of all documents, materials and evidence. The defence have the right to cross-examine witnesses and to challenge the prosecutions on procedural matters. In the</p>
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<p><b>companies or individuals that make allegations against the defendant, right to legal representation before the enforcing authorities, right not to self-incriminate, etc.] Please indicate the relevant legal provisions.</b></p>	<p>course of criminal investigations suspects at interview or under interrogation are entitled to legal representation of their choice and receive a formal caution against self –incrimination when under criminal investigation.</p>
<p><b>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation? Please indicate the relevant legal provisions.</b></p>	<p>Section 31 of the Competition Act 2002 contains a general prohibition on the disclosure of information that comes into possession of the CCPC and therefore applies to business secrets. The prohibition applies irrespective whether the information is obtained by the CPCC by a compulsory power or in the course of meeting held in private with a person.</p>

## 11. Limitation periods and deadlines

<p><b>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision on the merits of the case must be made?</b></p>	<p>There is no limitation period for criminal prosecution of cartel offences on indictment, (i.e. for serious offences).</p> <p>There is a two year limitation period for the summary prosecution of a cartel offence from the date of the commission of the offence, section 8(11) of the Competition Act 2002</p>
<p><b>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits?</b></p>	<p>None.</p>
<p><b>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions? (see also 15A)</b></p>	<p>The commencement and completion of a CCPC investigation are not susceptible to challenge.</p> <p>Rights of appeal lie against sanctions for anti -trust violations imposed by the trial court under the Irish legal system.</p>

## 12. Types of decisions

<p><b>A. List which types of decisions</b></p>	<p>Under Ireland's civil court jurisdiction for anti-trust public</p>
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<p><b>on the merits of the case can be made in cartel cases under the laws listed under Section 1. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]</b></p>	<p>enforcement; the court can make a declaration of a finding of an infringement and it can grant an injunction compelling the infringer to cease and desist. The civil courts do not have jurisdiction to impose fines for anti-trust violations.</p>
<p><b>B. List any other types of decisions on the merits of the case relevant particularly in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 12/A).</b></p>	<p>Under Ireland's criminal court jurisdiction for cartel enforcement. The court can impose against;</p> <p>An individual upon conviction of an indictable offence - a custodial sentence of 10 years and/or a fine of €5 million or 10% of the individual's turnover within the year prior to conviction whichever is the greater.</p> <p>An undertaking upon conviction of an indictable offence- a fine of €5 million or 10% of its turnover within the year prior to conviction whichever is the greater.</p> <p>Upon Summary conviction; for an undertaking that is not an individual, to a fine not exceeding Class A fine of €5,000 or for an individual to either or both such a fine and a maximum of 6 months imprisonment.</p>
<p><b>C. Can interim measures<sup>9</sup> be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both<sup>10</sup>.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</b></p>	<p>Yes. The CCPC can seek an injunction to restrain cartel violation in the civil court, and the DPP can initiate criminal proceedings at a later stage. Only a court of law has such sanctioning decision making powers.</p>

### 13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

<p><b>A. Grounds for the imposition of procedural sanctions / fines [e.g. late provision of requested information, false or incomplete provision of</b></p>	<p>Section 18 of the Competition and Consumer Protection Act 2014 sets out various grounds that warrant procedural sanctions;</p> <ul style="list-style-type: none"> <li>• Failure to attend before the Commission pursuant to summons</li> </ul>
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<sup>9</sup> In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

<sup>10</sup> Only for agencies which answered "yes" to question 2.B. above

<p>information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.]:</p>	<ul style="list-style-type: none"> <li>• Refusal by a summoned person before the Commission to; take an Oath, to produce documents or to answer any question put legally by the Commission</li> <li>• Where a summoned person knowingly provides false and misleading material information to the Commission</li> <li>• Where a summoned person does anything before which is the equivalent to a contempt of court</li> <li>• Obstruction or impeding of authorised officers in the exercise of their powers are dealt with by section 35 of the above Act.</li> </ul> <p>The provisions of Section 7(2) of the Criminal Law Act 1997 has been successfully used to prosecute an individual who acted with intent to impede the prosecution of another individual by telling him to destroy material electronic evidence. In DPP v Brendan Smith (31 May 2017 Central Criminal Court) the accused was convicted upon his own plea for the intent to impede the prosecution of the director of the other cartel firm by telling him to ‘delete all emails’ where he knew the emails were of relevance to the investigation and prosecution of offences under the Competition Act 2002. The accused received a three month suspended sentence in accordance with the sentencing provision under Section 7(4) of the Criminal Law Act 1997.</p>
<p><b>B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):</b></p>	<p>The above grounds are competition statutory criminal sanctions and are subject to the following pecuniary and custodial tariffs;</p> <ul style="list-style-type: none"> <li>• on summary conviction the maximum fine is a Class A fine of €5,000 and/or the maximum custodial sentence of 6 months imprisonment;</li> <li>• On conviction on indictment the maximum sanctions for obstruction and impeding are a €50,000 fine and three year sentence. For the other matters listed above the maximum sanctions are a €250,000 fine and/or a five year custodial sentence.</li> </ul> <p>For the ‘intent to impede offence’ mentioned above, a convicted individual is liable to a maximum sentence of five years in accordance with section 7(4)(c) of the Criminal Law Act 1997.</p>
<p><b>C. On whom can procedural sanctions be imposed?</b></p>	<p>Such convictions for these offences can only be imposed on individuals</p>
<p><b>D. Criteria for determining the sanction / fine:</b></p>	<p>This is a matter for judicial discretion based on sentencing guidelines.</p>
<p><b>E. Are there maximum and / or minimum sanctions / fines?</b></p>	<p>There is no minimum sanction; the maximum sanctions for these type of offences under the competition statute are a €250,000 fine and/or a five year custodial sentence on conviction on indictment as set out above.</p>

## 14. Sanctions on the merits of the case

<p><b>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</b></p> <p><b>On whom can sanctions be imposed? [E.g.: representatives of businesses, (imprisonment for individuals), businesses, in the case of associations of companies the associations or the individual companies?]</b></p>	<p>Under Ireland's criminal cartel enforcement regime. The courts can impose sanctions, under section 8 The Competition Act as amended, against the following;</p> <p>An individual upon conviction of an indictable offence - a custodial sentence of 10 years and/or a fine of €5 million or 10% of the individual's turnover whichever is the greater.</p> <p>An undertaking upon conviction of an indictable offence- a fine of €5 million or 10% of its turnover whichever is the greater.</p> <p>On summary conviction;</p> <p>-an individual is liable to a Class A fine (€5,000), and/or 6 months imprisonment,</p> <p>-an undertaking that is not an individual is liable to a class A fine (€5,000),</p> <p>Under Ireland's civil competition enforcement regime the court can make the following orders;</p> <p>A declaration of an infringement against either or both an undertaking or an individual (director/manager of the undertaking).</p> <p>An injunction order against either or both an undertaking or an individual (Director/manager of the undertaking).</p> <p>In both Irish criminal and civil competition enforcement regimes sanctions can be imposed against undertakings and/or association of undertakings (trade associations)</p>
<p><b>B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]</b></p>	<p>There are no formal set of sentencing guidelines specific for cartel offences however Mr Justice Liam McKechnie has set out some sentencing principles for the sentencing court's discretion for such matters in the case of <i>DPP v Patrick Duffy and Duffy Motors Newbridge Limited</i> [2009] IEHC 208; where he enumerated the following;</p> <p>'...I must in principle be conscious of:</p> <p>the gravity of the offences; the circumstances in which these offences were carried out;</p> <p>the nature of the offences and the continuing duration of their commission;</p> <p>the part played by Mr. Duffy [the cartelist] in them, his personal circumstances and the corporate circumstances of the company;</p> <p>any aggravating and mitigating factor;</p> <p>and, finally, where appropriate, apply the principles of proportionality and totality'.</p> <p>The judgement is accessible at;</p> <p><a href="http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/7edd63f6621aa222802575d1003983ff?OpenDocument">http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/7edd63f6621aa222802575d1003983ff?OpenDocument</a></p>
<p><b>C. Are there maximum and / or minimum sanctions / fines?</b></p>	<p>There is no minimum sanction, the maximum has been set out for the answer to Question 12A above.</p>
<p><b>D. Guideline(s) on calculation of fines: [name and reference]</b></p>	<p>There are no guidelines on the calculation of the fines. As stated above at the answer to Question 12A, the Competition legislation sets out the maximum fines which the Court has the discretion to impose.</p>

<p>number, availability (homepage address) and indication of the languages in which these materials are available]</p>	
<p><b>E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?</b></p>	<p>In the Irish legal system an appeal would lie against the decision and/or the severity of the sanction. An appeal against the challenged decision does not have an automatic suspensory effect unless the court or the appellate court decide otherwise. In this regard the appellant party would seek to apply for suspension ('a stay') against the civil court's order or a criminal court's conviction/sentence.</p>

## 15. Possibilities of appeal

<p><b>A. Does your law provide for an appeal against a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</b></p>	<p>Yes. There is a right of appeal against conviction and/or severity of sentence for cartel cases tried in the criminal court. There is a right of appeal against orders of the High Court (civil).  The grounds of appeal can be broadly based that include questions of fact, law and procedure.</p>
<p><b>B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative]</b></p>	<p>The appeal against criminal conviction and/or sentence made by the Central Criminal Court, is heard at the Court of Appeal.  The appeal against a civil order of the High Court is also heard before the Court of Appeal.</p>