

Administrative Leniency Policy for Cartels



Coimisiún um
Iomláocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

Introductory Note

On the 31st January 2022, the Competition (Amendment) Bill 2022 (no. 12 of 2022) was initiated and published, thereby commencing the legislative procedure in the Oireachtas. The Bill aims to implement Directive (EU) 2019/1 of the European Parliament and of the Council, also known as the ECN+ Directive.

This Policy is based upon the text of the Bill, as it was published and will refer to the Bill as the Competition (Amendment) Act 2022 (the title as is envisaged by the Bill) and all references to the Act, or any of the proposed amendments to other legislation, will be cited as if the Act had been enacted and will, if required, be updated in accordance with the final version of the Act.

Preface

The Administrative Leniency Policy for Cartels (“ALP” or “this Policy”) outlines the policy of the Competition and Consumer Protection Commission (“the CCPC”) in considering applications for leniency from undertakings for disclosing their participation in cartels and outlines the requirements applicant undertakings must meet in order to qualify for leniency in accordance with the Competition Act 2002 (as amended) (“the 2002 Act”) and specifically Part 2E thereof (as inserted by the Competition (Amendment) Act 2022 (“the 2022 Act”)).¹ This Policy is prepared in accordance with section 15A(2) of the 2002 Act and gives general guidance regarding how the CCPC operates its leniency programme.

The 2022 Act provides that the CCPC may impose administrative financial sanctions on undertakings and associations of undertakings for cartel infringements (i.e., infringements of section 4 of the 2002 Act and/or Article 101 Treaty on the Functioning of the European Union (“TFEU”)), of up to €10 million or 10% of total worldwide turnover (whichever is greater) of the undertaking or association of undertakings in the business year preceding the CCPC’s decision.²

The term “leniency”, in the context of this Policy, refers to both immunity from administrative financial sanctions, as well as a reduction of any such administrative financial sanctions, which would otherwise have been imposed by the CCPC on an undertaking participating in a cartel in contravention of the 2002 Act and/or Article 101 TFEU.

¹ See Sections 15AL(2) and 15AJ(2) 25 of the 2002 Act.

² See Section 15AC of the 2002 Act.

This Policy, pursuant to Part 2E of the 2002 Act and modelled on the European Competition Network's revised Model Leniency Programme, encourages self-reporting of unlawful cartels by cartel participants at the earliest possible stage in return for leniency. The CCPC may grant leniency to an undertaking, upon application, in exchange for the voluntary disclosure of information regarding cartel conduct which satisfies specific criteria prior to or during the CCPC's investigation, as further set out in this Policy.

This Policy is separate to and in addition to the Cartel Immunity Programme ("CIP"),³ which outlines the joint policy of both the CCPC and the Director of Public Prosecutions ("the DPP") in considering applications for immunity from prosecution for criminal cartel offences under the 2002 Act.

Undertakings wishing to apply for leniency are strongly advised to review the provisions of both the CIP and this Policy and to seek legal advice before making an application. In addition, the CCPC has published a Frequently Asked Questions document ("FAQs") for the CIP and a new Guidance Note on the interaction between the CIP and the ALP.⁴ The Guidance Note on the interaction between the CIP and the ALP explains the circumstances in which an undertaking applying under the ALP is advised to make a simultaneous application under the CIP. The CCPC may also publish a FAQ document on the ALP in due course.

³ The CIP is available on the websites of both the CCPC (<https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/02/2015-01-20-Revised-CIP-Final.pdf>) and the DPP (<https://www.dppireland.ie/publication-category/cartel-immunity-programme/>)

⁴ Both the FAQs and the Guidance Document are available on the website of the CCPC. (<https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/02/Cartel-Immunity-Programme-FAQ2015.pdf>) (<https://www.ccpc.ie/business/research/consultations/competition-law-developments-in-2022/guidance-note-on-the-interaction-between-the-cartel-immunity-programme-cip-and-the-administrative-leniency-policy-alp-for-cartels/>)

This Policy may be reviewed from time to time and any amendments will be published on the CCPC's website accordingly.

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1. Introduction

- 1.1 This Policy sets out how the CCPC will process applications for leniency received in respect of undertakings which are participating or have participated in a cartel.
- 1.2 An undertaking is 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.⁵
- 1.3 A cartel is 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 fixing or coordination of purchase or selling prices or other trading conditions, including in relation to intellectual property rights; the allocation of production or sales quotas; the sharing of markets and customers; bid-rigging; restrictions of imports or exports; and/or anti-competitive actions against other competing undertakings.⁶
- 1.4 Cartels are prohibited by section 4 of the 2002 Act and Article 101 of the TFEU. The CCPC treats all instances of cartel conduct extremely seriously. Cartel conduct has severely negative consequences for consumers, businesses and the economy in general, as it causes them to pay more for goods and/or services than they otherwise would have paid. Cartels are particularly harmful due to

⁵ See Section 3(1) of the 2002 Act.

⁶ See Section 3(1) of the 2002 Act as amended by section 4 of the 2022 Act.

their secret nature and can in general be seen as conspiracies against consumers and the public interest in having competitive markets.

- 1.5 As set out in the Preface above, the term leniency in this Policy refers to both immunity from administrative financial sanctions and a reduction of administrative financial sanctions. It is important to note that in terms of leniency: i) immunity from administrative financial sanctions, under this Policy, is only available to the first participant in a given cartel that applies for leniency; and ii) a possible reduction of up to 50% of any administrative financial sanctions that would otherwise be imposed is available to a second or subsequent participant in the same cartel that applies for leniency. In both instances the applicant undertaking must satisfy all the requirements as set out in this Policy.
- 1.6 In this Policy, the term leniency refers to a grant of conditional leniency in relation to administrative financial sanctions by the CCPC unless otherwise specified. This means that even where the CCPC has granted leniency under this Policy, such grant of leniency is conditional in that it may be withdrawn by the CCPC including where the applicant fails to comply with the leniency conditions as set out in this Policy, the 2002 Act and/or as may be specified by the CCPC on a case by case basis.
- 1.7 This Policy sets out a framework for rewarding the cooperation with a CCPC investigation of undertakings which participate in cartels. Any undertaking may apply for leniency under the ALP including any undertaking that has materially facilitated the formation or operation of a cartel, even where such undertaking is not engaged in the same line of business as the cartel.
- 1.8 Undertakings wishing to apply for leniency are referred to the 2002 Act (as amended by the 2022 Act) and the TFEU and may contact the CCPC's Cartels Hotline (+353 87 763 1378) if they have any queries relating to this Policy. This Policy does not constitute legal advice and it does not in any way affect the right

of any potential applicant to obtain legal advice and/or arrange legal representation.

2. Obtaining leniency

- 2.1 Applications for leniency under this Policy must be made to the CCPC and the CCPC may decide to grant leniency to an applicant pursuant to Part 2E of the 2002 Act where the following conditions are fulfilled.

Immunity from administrative financial sanctions

- 2.2 The CCPC may grant leniency, in the form of immunity from administrative financial sanctions, if the applicant is the first participant in a cartel that makes an application in line with this Policy and comply with the conditions, including those of the 2002 Act and this Policy, as follows:

Type 1A

- 2.3 The CCPC may grant an undertaking immunity from any administrative financial sanction which would otherwise have been imposed where:
- (a) the undertaking is the first to submit evidence which, in the CCPC's view at the time it evaluates the leniency application, will enable the CCPC to carry out searches in connection with the alleged cartel under section 37 of the Competition and Consumer Protection Act 2014 ("the 2014 Act");
 - (b) the CCPC did not, at the time of the leniency application, already have sufficient evidence to carry out such a search, or sufficient evidence to seek a court warrant for such a search, or had not already carried out a search in connection with the alleged cartel under section 37 of the 2014 Act (together with sub-paragraph (a), "the Type 1A Evidential Requirement"); and
 - (c) the undertaking satisfies the general conditions for leniency set out at paragraph 2.12 below which follow those set out in section 15AK of the 2002 Act ("the General Conditions for Leniency").

Type 1B

2.4 In cases where Type 1A immunity is not available (for example, where the CCPC has already carried out a search in connection with the alleged cartel under section 37 of the 2014 Act and/or already has in its possession sufficient evidence to carry out such a search), the CCPC may grant an undertaking Type 1B immunity from any administrative financial sanctions which would otherwise have been imposed where:

- (a) the undertaking is the first to submit evidence which, in the CCPC's view, is sufficient to ground a finding of an infringement of section 4 of the 2002 Act and/or Article 101 TFEU in respect of the alleged cartel;
- (b) at the time of the leniency application, the CCPC did not have sufficient evidence to find such an infringement of section 4 of the 2002 Act and/or Article 101 TFEU in connection with the alleged cartel;
- (c) no other undertaking previously qualified for immunity from administrative financial sanctions in relation to the same alleged cartel (together with sub-paragraphs (a) and (b), the "Type 1B Evidential Requirement"); and
- (d) the applicant satisfies the General Conditions for Leniency set out at paragraph 2.12 below which follow those set out in section 15AK(1) of the 2002 Act.

Disclosure Requirement for Type 1A and 1B immunity

2.5 In applications for Type 1A and Type 1B immunity, in order to be granted immunity from administrative financial sanctions, the undertaking must disclose to the CCPC the fact of its participation in the cartel concerned, together with all the details thereof in accordance with paragraph 2.12(b)(i) below and section 15AK(1)(b)(i) of the 2002 Act ("the Disclosure Requirement").

Excluded applicants

- 2.6 As provided for by section 15AI(5)(d) of the 2002 Act an undertaking which took steps to coerce another undertaking to join a cartel or remain in it is not eligible for immunity from administrative financial sanctions under this Policy.

Reduction of administrative financial sanctions (“Type 2 Leniency”)

Type 2 Leniency

- 2.7 Undertakings that do not qualify for immunity from administrative financial sanctions may benefit from a reduction of any such administrative financial sanctions that would otherwise have been imposed.
- 2.8 In order to qualify for a reduction of administrative financial sanctions, an undertaking must:
- (a) disclose its participation in the cartel concerned;
 - (b) provide the CCPC with evidence of the alleged cartel which, in the CCPC’s view, represents significant added value relative to the evidence already in the CCPC’s possession at the time of the leniency application; and
 - (c) satisfy the General Conditions for Leniency set out at paragraph 2.12 below which follow those set out in section 15AK(1) of the 2002 Act.
- 2.9 The concept of ‘significant added value’ in paragraph 2.8 above refers to the extent to which the evidence provided by the undertaking strengthens, by its very nature and/or its level of detail, the CCPC’s ability to prove the existence and/or membership of the alleged cartel.
- 2.10 Reductions granted to an undertaking following a Type 2 Leniency application shall not exceed 50% of the administrative financial sanctions which would otherwise have been imposed.

2.11 If an undertaking submits compelling evidence in a Type 2 Leniency application, which the CCPC uses to establish additional facts which lead to an increase of the amount of the administrative financial sanction imposed by the CCPC on other undertakings participating in the cartel concerned, such additional facts will not be taken into account when setting any administrative financial sanctions to be imposed on the undertaking which provided this evidence.

General Conditions for Leniency

2.12 In order to qualify for leniency under this Policy, an applicant shall:

- (a) end its involvement in the alleged cartel at the latest immediately following its leniency application, except for what would, in the view of the CCPC, be reasonably necessary to preserve the integrity of its investigation,
- (b) cooperate genuinely, fully, on a continuous basis and expeditiously with the CCPC from the time of its leniency application until the CCPC has closed its enforcement proceedings against all parties under investigation by adopting a decision or has otherwise terminated its enforcement proceedings. Such cooperation includes:
 - (i) providing the CCPC promptly with all relevant information and evidence relating to the alleged cartel that comes into the applicant's possession or is accessible to it, including in particular:
 - the name and address of the undertaking applying;
 - the names of all other undertakings that participate in or have participated in the alleged cartel;
 - a detailed description of the alleged cartel, including the affected goods and/ or services, the affected

territory(ies), the duration of the alleged cartel, and the nature of the alleged cartel conduct;

- evidence of the alleged cartel in its possession or under its control (in particular any contemporaneous evidence); and
- information on any past or possible future leniency applications in relation to the alleged cartel to any other competent authorities including the Commission for Communications Regulation (“ComReg”), competition authorities of EU Member States, the European Commission, or competition authorities of third countries;

- (ii) remaining at the disposal of the CCPC 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 CCPC and making reasonable efforts to make former directors, managers and other members of staff available for interviews with the CCPC;
- (iv) not destroying, falsifying or concealing relevant information or evidence; and
- (v) unless and to the extent otherwise explicitly authorised by the CCPC, not disclosing the fact of, or any of the content of, its leniency application before the CCPC has issued a statement of objections in the enforcement proceedings before it; and

(c) when contemplating making a leniency application to the CCPC but prior to doing so, the applicant must not have:

(i) destroyed, falsified or concealed evidence which falls within the scope of the leniency application; or

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

2.13 Joint applications for leniency by two or more independent undertakings will not be considered. This does not preclude leniency applications by a single economic entity on behalf of its constituent companies.

2.14 Failure to comply with the General Conditions for Leniency and/or the requirements set out in this Policy may result in the CCPC refusing to grant leniency or withdrawing the grant of leniency (see Chapter 5 below).

2.15 In accordance with section 15AK(6) of the 2002 Act, an undertaking that makes a leniency application to the CCPC under this Policy and, intentionally or negligently, provides to the CCPC information which is false or misleading in a material respect or destroys, falsifies or conceals relevant evidence is guilty of an offence.

3. Authority to apply for leniency and impact of leniency on directors, officers and employees of an undertaking

- 3.1 Every undertaking applying under this Policy, whatever its legal form, must be able to show that it has made a formal decision to apply for leniency. A person making an application on behalf of an undertaking must satisfy the CCPC that he/she is duly authorised to act on behalf of the undertaking in question.
- 3.2 The CCPC does not have the power to impose administrative financial sanctions on individuals who are not undertakings and who have participated in a cartel infringement. Notwithstanding this, all current and/or former directors, managers, and other members of staff of the applicant undertaking will be fully protected from any sanctions that may be imposed in criminal, administrative and non-criminal judicial proceedings in Ireland, in relation to their involvement in the cartel covered by the application for immunity from administrative financial sanctions provided that:
- (a) the leniency application meets the Type 1A Evidential Requirement or the Type 1B Evidential Requirement as applicable (set out at paragraphs 2.3(a) and (b) and 2.4 (a)-(c) respectively);
 - (b) the undertaking meets the Disclosure Requirement for Type 1A and Type 1B immunity (set out in paragraph 2.12(b)(i) of this Policy and in section 15AK(1)(b)(i) of the 2002 Act);
 - (c) the relevant individuals actively cooperate with the competent authority concerned (which may include the CCPC and the DPP or another relevant

enforcement authority where the proceedings concerned are criminal);
and

- (d) the application for leniency predates the time when the relevant individuals were made aware of the CCPC proceedings leading to the potential imposition of sanctions referred to above.

3.3 It continues to be possible for individuals who are not undertakings to apply for immunity from criminal prosecution for cartel offences under the 2002 Act outside of this Policy through the CIP.⁷ Any undertaking may also apply for immunity from criminal prosecution for cartel offences under the 2002 Act using the CIP on its own behalf and on behalf of its employees, directors and officers who require individual immunity. Please refer to the CIP and the CCPC's Guidance Note on the Interaction between the CIP and the ALP for further information.

⁷See footnote 4 above.

4. The leniency process

- 4.1 In this Policy, a “marker” means protection afforded to an undertaking applying for leniency by and at the discretion of the CCPC for a specified period of time whereby the undertaking is given time to gather the necessary information and evidence in order to meet the relevant evidential threshold for leniency. The marker protects the undertaking’s place in the queue for leniency for a given period of time, as determined by the CCPC on a case by case basis.
- 4.2 An undertaking wishing to apply for leniency may approach the CCPC through the Cartels Hotline (+353 87 763 1378) in order to seek informal guidance on the operation of the ALP prior to making a formal application under the ALP and/or to enquire if leniency is available.
- 4.3 In order for the CCPC to determine whether leniency is available in a particular instance, the undertaking or its legal advisor must present an outline of the relevant facts, including the market(s) and the nature of the alleged cartel conduct involved. Such an enquiry may be made without disclosing the undertaking’s identity. If the undertaking proceeds to make a formal application for leniency, such undertaking’s identity will need to be disclosed either at the point at which the application for a marker is made or within a period of time granted by the CCPC in its sole discretion.

Step 1: obtaining a marker

- 4.4 Applications for leniency can only be made by calling the CCPC’s Cartels Hotline (+353 87 763 1378). The Cartels Hotline may be contacted between the hours of 10am and 5pm (Dublin time) Monday to Friday, except public or bank holidays.
- 4.5 An undertaking wishing to make an application for leniency may initially apply for a ‘marker’. In order to obtain a marker, the undertaking or its legal advisor must provide, either at the point at which the application for a marker is made

or within a period of time granted by the CCPC in its discretion, the undertaking's name, address and phone number, an outline of the facts which led to the application for a marker and any other information reasonably required by the CCPC.⁸ Applications for markers in respect of the same alleged cartel will be queued and dealt with in the order of receipt by the CCPC.

- 4.6 The undertaking will be given a reasonable period of time within which to perfect the marker by submitting its full application for leniency. This period of time for perfecting the marker will be decided by the CCPC in its sole discretion and will take account of whether the undertaking is the first applicant applying for Type 1A or Type 1B immunity or a second or subsequent applicant applying for Type 2 leniency. The CCPC shall notify the undertaking in writing of this period, save in circumstances where written notification is deemed by the CCPC to pose a danger to the investigation being carried out by it. Where a marker is perfected, the information and evidence that is then provided will be deemed to have been submitted on the date when the marker was initially requested.
- 4.7 The CCPC may, at its sole discretion and upon written request from the undertaking applying for leniency, prior to the expiry of the initial period, extend the period specified for perfecting the marker.

Step 2: perfecting the marker

- 4.8 To perfect the marker, the undertaking must, within the period specified by the CCPC, provide the CCPC with:⁹

⁸ Section 15AM(2)(b) of the 2002 Act.

⁹ Section 15AM(2)(b) of the 2002 Act.

- (a) the name and address of the applicant undertaking;
- (b) the names of all other undertakings that participate or participated in the alleged cartel;
- (c) 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;
- (d) information on any past or possible future leniency applications made to any other competent authorities including ComReg, competition authorities of EU Member States, the European Commission, or competition authorities of third countries in relation to the alleged cartel;¹⁰
- (e) an outline of the process which led to the leniency application, including the form of formal decision to make the application;
- (f) confirmation of whether an application for immunity from prosecution for criminal cartel offences under the 2002 Act under the CIP has been / will be made;
- (g) an outline of the nature of the evidence at the undertaking's disposal;
and
- (h) any other information reasonably required by the CCPC.¹¹

¹⁰ Section 15AM(2)(b) of the 2002 Act, cross-referring to section 15AK(1)(b)(i) of the 2002 Act.

¹¹ Section 15AM(2)(b) of the 2002 Act.

- 4.9 This information must be provided in writing. However, upon the undertaking's request, the CCPC may allow some or all of the above information to be provided orally.
- 4.10 If a marker expires before it is perfected (and not extended by the CCPC before expiry), or the application is otherwise refused by the CCPC, the CCPC will consider any other applications for leniency in the queue and/or any subsequent applications. Nothing prevents the holder of an expired marker from re-applying, but in those circumstances, its original place in the queue will not be protected.

Step 3: granting of leniency

Procedure for immunity applications

- 4.11 Where the undertaking is the first applicant in the alleged cartel to make an immunity application to the CCPC under this Policy and the CCPC has verified that the information and evidence submitted is sufficient to meet either the Type 1A Evidential Requirement or the Type 1B Evidential Requirement as applicable, it will grant the undertaking conditional immunity from administrative financial sanctions.
- 4.12 If the Type 1A Evidential Requirement and the Type 1B Evidential Requirement are not met, the CCPC will inform the undertaking that its application for immunity from administrative financial sanctions is rejected. The undertaking may then request the CCPC to consider its application as a Type 2 Leniency application for a reduction in administrative financial sanctions.
- 4.13 If the CCPC, having granted conditional immunity from administrative financial sanctions, ultimately finds that the undertaking applying for leniency acted as a coercer in relation to the alleged cartel or that the undertaking has not fulfilled all of the conditions attached to leniency, the CCPC will inform the undertaking of this as soon as practicable and leniency will be withdrawn.

4.14 If immunity from administrative financial sanctions is refused or withdrawn because the CCPC finds at any stage of the application that the conditions attached to leniency have not been fulfilled, the undertaking will not benefit from any other favourable treatment under this Policy in respect of the same alleged cartel.

Procedure for applications for reductions of administrative financial sanctions

4.15 Where an undertaking applies for Type 2 Leniency, the CCPC will assess the evidence submitted as part of such application. If the CCPC comes to the preliminary conclusion that the evidence submitted by an undertaking constitutes 'significant added value' within the meaning as set out at paragraph 2.9 above, it will inform the undertaking of its intention to apply a reduction of administrative financial sanctions. This confirmation will be given as early as practicable and no later than the date the statement of objections in relation to the alleged cartel is issued to the parties involved.

4.16 The CCPC will decide, at the end of the leniency process, the level of reduction an undertaking will benefit from, relative to the administrative financial sanction which would otherwise be imposed as follows. For:

- (a) the first undertaking to provide significant added value: a reduction of 30%-50% will be available;
- (b) the second undertaking to provide significant added value: a reduction of 20%-30% will be available; and
- (c) any subsequent undertaking(s) that provide significant added value: a reduction of up to 20% will be available.

4.17 In order to determine the appropriate level of reduction of administrative financial sanctions within these bands, the CCPC will take into account the time at which the evidence was submitted to the CCPC (including whether the

undertaking was the first, second or third applicant) and the CCPC's assessment of the overall value added to its case by that evidence.

- 4.18 As set out above in Chapter 1 above, any grant of leniency by the CCPC is conditional, unless otherwise specified, upon the undertaking's continued compliance with the leniency conditions set out in this Policy and/or as may be specified by the CCPC on a case by case basis. The CCPC will continue to monitor the undertaking's compliance with such leniency conditions until the very end of its investigation and any resulting enforcement proceedings. If the CCPC finds that one or more of the conditions attached to leniency have not been fulfilled, leniency may be withdrawn and the undertaking will not benefit from any favourable treatment under this Policy in respect of the same alleged cartel.

Step 4: full disclosure

- 4.19 Having reached a decision to grant leniency, the CCPC will advise the undertaking accordingly. The undertaking must then provide the CCPC with full, frank and truthful disclosure of the following information, including (in addition to the obligations outlined in Chapter 2 above):
- (a) all dates, locations, content of and participants in alleged cartel contacts and/or meetings;
 - (b) contact details of all current and former officers, directors, partners, managers and employees who have been identified as likely witnesses;
 - (c) all relevant explanations in connection with evidence provided in support of the leniency application; and
 - (d) all evidence relating to the alleged cartel in the possession of the applicant or available to it, in particular electronic and contemporaneous evidence.

4.20 The undertaking will provide such evidence and information to the CCPC on the understanding that it will not be used in any proceedings by the CCPC against the undertaking unless the grant of leniency is withdrawn due to the undertaking's failure to comply with the requirements of this Policy. See Chapter 5 for further information on the consequences of a failure to comply with the requirements of this Policy.

Step 5: final leniency

4.21 When the terms, obligations and conditions set out in this Policy have been fully satisfied, including where any resulting enforcement proceedings have come to an end, the CCPC will confirm that the undertaking has final leniency, i.e., immunity from administrative financial sanctions or that the undertaking will benefit from a reduction in administrative financial sanctions in respect of the alleged cartel as applicable.

Summary applications

4.22 The CCPC will accept summary applications for leniency from undertakings that have applied to the European Commission for leniency, either by applying for a summary application marker or by submitting a full application in relation to the same alleged cartel.

4.23 Such a summary application shall only be accepted¹² by the CCPC provided that the application to the European Commission covers more than three Member States as affected territories.

¹² Section 15AN(2) of the 2002 Act.

4.24 A summary application must have an identical substantive scope to the respective application with the European Commission and must include a short written description of the following:

- (a) the name and address of the undertaking;
- (b) the names of other parties to the alleged cartel;
- (c) the affected goods and/or services;
- (d) the affected territory(-ies);
- (e) the duration of the alleged cartel conduct;
- (f) the nature of the alleged cartel conduct;
- (g) the Member State(s) where the evidence of the alleged cartel is likely to be located; and
- (h) information on any other past or possible future leniency applications made to any other competition authorities of EU Member States or the European Commission or competition authorities of non-Member States in relation to the alleged cartel.¹³

4.25 A summary application must be accompanied by a copy of the application made to the European Commission and any written confirmation of such application having been received by the European Commission.¹⁴ The CCPC may verify whether the scope of the summary application corresponds to the scope of the

¹³ Section 15AN(3)(f) of the 2002 Act).

¹⁴ Section 15AN(4) of the 2002 Act.

leniency application filed with the European Commission through cooperation within the European Competition Network.

- 4.26 Undertakings must inform the CCPC if the scope of their leniency application with the European Commission has changed and must update the summary application accordingly.
- 4.27 Having received a summary application, the CCPC will acknowledge receipt and where the information set out at paragraph 4.24 is provided, grant the undertaking a summary application marker based on the date and time when the information was provided to the CCPC. In addition, if the summary applicant undertaking is the first applicant in respect of the alleged cartel to make an application to the CCPC, the CCPC will inform such undertaking accordingly.
- 4.28 The CCPC may also request an undertaking to provide specific further information related to the summary leniency application. Where the CCPC, having received a summary application, decides to request specific further information, the undertaking must provide such information promptly and/or within the period of time specified by the CCPC.
- 4.29 Where the European Commission has received the full application, it shall be the main interlocutor of the leniency applicant in the period before clarity has been gained as to whether the European Commission will pursue the case in whole or in part. In circumstances where it is clear that (a) the European Commission does not intend to pursue the case in whole or in part and (b) the CCPC decides to act upon the case, the CCPC will determine the period of time within which the undertaking must make a full leniency application including all relevant evidence and information required to meet the applicable threshold set out above. If a Type 1A or Type 1B summary applicant submits such information within the set period to the CCPC, the information provided will be deemed to have been submitted on the date when the summary application marker was granted. Type 2 summary applications will be assessed in the order created by summary

application markers, subject to the other requirements applicable under this Policy and Part 2E of the 2002 Act.

- 4.30 If the CCPC requests the undertaking to make a full submission (i.e., a leniency application instead of a summary application), the undertaking must submit to the CCPC all information and evidence relating to the alleged cartel, in accordance with the requirements of this Policy and specific guidance issued by the CCPC and/or regulation.¹⁵

Leniency statements and oral procedure

- 4.31 As set out in paragraph 4.9 above, leniency applications must be in writing. Upon the undertaking's request, the CCPC may allow oral leniency applications. In such cases leniency statements may be provided orally and recorded in any form deemed appropriate by the CCPC.¹⁶ The undertaking will still need to provide the CCPC with copies of all pre-existing documentary evidence of the alleged cartel.
- 4.32 No access to any records of the leniency statements (whether oral or written) will be granted before the CCPC has issued its statement of objections to the parties under investigation.

Failed leniency applications and use of evidence

- 4.33 Despite an undertaking applying for leniency under this Policy in good faith, there may be instances where leniency is not available (such applicant is referred

¹⁵ Section 15AN(5) of the 2002 Act.

¹⁶ Pursuant to section 15AL of the 2002 Act, the CCPC shall issue guidelines to prescribe the precise form of applications for leniency.

to in this Policy as a “failed bona fide applicant”). This may occur, for example, where:

- (a) in relation to immunity applicants, the information and evidence supplied is already in the CCPC’s possession or is insufficient to meet the Type 1A Evidential Requirement or the Type 1B Evidential Requirement (i.e. it does not provide a sufficient basis for the CCPC to conduct a search or ground a finding of an infringement in relation to the alleged cartel);
- (b) in relation to Type 2 applications, the information and evidence supplied is insufficient to meet the Type 2 Evidential Requirement (i.e. it does not meet the standard of adding significant value relative to the evidence already in the CCPC’s possession); or
- (c) although the undertaking considered that the conduct disclosed in the leniency application amounted to cartel activity, the CCPC considers that the nature of the alleged infringement is not such as to amount to cartel activity or that it relates to cartel activity focused on jurisdictions other than Ireland or the EU.

4.34 Information and evidence submitted to the CCPC by such a failed bona fide applicant which is self-incriminatory will not subsequently be relied on as evidence by the CCPC against that undertaking (or any of its cooperating directors, managers or other members of staff) in any criminal or administrative enforcement proceedings relating to the same alleged cartel. This does not prevent the CCPC from using any information and evidence submitted to the CCPC by a failed bona fide applicant against such applicant where such information: (i) could have been obtained through public sources; (ii) is of a purely factual nature (as distinct from being self-incriminatory); or (iii) relates to another alleged cartel, not disclosed by the failed bona fide applicant.

- 4.35 The CCPC reserves the right to pursue enforcement proceedings against a failed bona fide applicant using information and evidence obtained in accordance with its normal powers of investigation. A failed bona fide applicant for immunity from administrative financial sanctions may approach the CCPC with an application for a reduction of administrative financial sanctions.
- 4.36 Nothing in this Chapter 4 operates to prevent the CCPC from using any information and evidence provided by a failed bona fide applicant against third parties.

5. Failure to comply with the requirements of this Policy

- 5.1 Failure to comply with the General Conditions for Leniency and/or requirements set out in this Policy may result in the CCPC refusing or withdrawing the grant of leniency.
- 5.2 The CCPC may withdraw a grant of leniency where it considers it to be appropriate in the circumstances, including where an undertaking fails to cooperate genuinely, fully, on a continuous basis and expeditiously with the CCPC as required by this Policy, makes false or misleading statements, interferes with witnesses and/or where evidence is uncovered suggesting that the undertaking coerced others into joining the alleged cartel or remaining in it or that the undertaking destroyed, falsified or concealed evidence relating to the leniency application.
- 5.3 In the event that an undertaking fails to comply with the requirements of this Policy and/or fails to provide genuine, full, continuous and expeditious cooperation, the CCPC will give the undertaking written notice of any such failure. Where such failures are, in the CCPC's view, capable of being remedied the notice shall specify a period within which the undertaking must remedy such failures. If the undertaking fails to remedy the failures identified, the CCPC may, without further notice, revoke the leniency granted to such undertaking.
- 5.4 If leniency is withdrawn by the CCPC under paragraph 5.2 above, the CCPC will inform the undertaking accordingly. In such case, the undertaking will not benefit from any favourable treatment under this Policy and the CCPC may take whatever action it considers appropriate in the circumstances, which may include pursuing enforcement proceedings against the undertaking in question. Without prejudice to any of the above, failure to comply with the requirements

of this Policy includes failure by an applicant to fully procure the complete and timely cooperation of its directors, managers and other members of staff.

- 5.5 Where an undertaking, at any stage from the time of its leniency application until the CCPC has closed its enforcement proceedings against all parties under investigation, acts in bad faith and/or fails to cooperate genuinely, fully, continuously and expeditiously such that the CCPC decides to withdraw a grant of leniency, the CCPC reserves the right to use any information provided by such undertaking against that failed applicant (and against any third parties).

6. Confidentiality

6.1 A leniency applicant's identity will be kept confidential for as long as permissible under Irish and European law. Information disclosed pursuant to this Policy will not be disclosed to any third party other than in accordance with the normal practices and procedures pertaining to cartel investigations and proceedings. In particular, information may be disclosed:

- (a) where disclosure is required by law;
- (b) where disclosure is for the purpose of the administration and enforcement of the 2002 Act and Articles 101 and/or 102 TFEU;
- (c) where disclosure is necessary for the prevention of the commission of a criminal offence;
- (d) where disclosure is required in the course of an investigation or proceedings/ prosecution;
- (e) where an undertaking agrees to and signs a waiver on disclosure allowing the CCPC to share information with another competition authority investigating the alleged cartel in another jurisdiction where the same applicant has also applied for immunity or leniency in respect of the same alleged cartel.

6.2 Where the CCPC chooses to pursue administrative enforcement proceedings in relation to the alleged cartel, the fact that an undertaking has applied for leniency, together with the information it has submitted and on which the CCPC intends to rely, will be set out in the statement of objections issued to the other parties to the proceedings.

- 6.3 In addition to the circumstances described above, the CCPC may share a leniency application with a competition authority of another EU Member State or the European Commission where:
- (a) the undertaking applying for leniency consents to the exchange by signing a waiver;
 - (b) the undertaking has applied for leniency with both the CCPC and that other competition authority in relation to the same alleged cartel; or
 - (c) the receiving authority provides a written commitment not to use the information transmitted to impose sanctions on the undertaking, its subsidiaries or its employees.

The CCPC may also provide further details on how information contained in leniency applications may be used in an FAQ document on the ALP.

Administrative Leniency Policy for Cartels

Version 1

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Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission