



# Guidance Note on the Interaction between the Cartel Immunity Programme (CIP) and the Administrative Leniency Policy for Cartels (ALP)



Coimisiún um  
Iomaíocht agus  
Cosaint Tomhaltóirí

Competition and  
Consumer Protection  
Commission

## Introductory Note

On the 31<sup>st</sup> 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 Guidance Note 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.

## Table of Contents

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1. Introduction .....	1
2. Cartel Enforcement.....	4
3. CIP .....	10
4. ALP .....	12
5. Interaction between the CIP and ALP .....	14

# 1. Introduction

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1.1 The Competition and Consumer Protection Commission (“the CCPC”) has put in place an administrative leniency programme and policy for cartels, in accordance with its obligations under 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”). The CCPC’s Administrative Leniency Policy for Cartels (“ALP”) is published on the CCPC’s website.<sup>1</sup> The purpose of the ALP is to set out the policy of the CCPC in considering applications for leniency from undertakings for disclosing their participation in cartels and to outline the requirements applicant undertakings must meet for the CCPC to grant immunity from administrative financial sanctions to any first undertaking to apply and disclose its participation in a cartel and a reduction of administrative financial sanctions to undertakings (second and subsequent to apply) for disclosing their participation in such a cartel subject to meeting the required conditions (collectively “leniency”).

1.2 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 such as, but

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<sup>1</sup> The ALP is available on the CCPC’s website here:

<https://www.ccpic.ie/business/research/consultations/competition-law-developments-in-2022/administrative-leniency-policy-for-cartels/>.

not limited to, 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, including bid-rigging<sup>2</sup>, restrictions of imports or exports or anti-competitive actions against other competing undertakings.<sup>3</sup>

1.3 Cartels continue to constitute a criminal offence under the 2002 Act with significant criminal penalties including fines for undertakings and both fines and imprisonment for individuals. For this reason, the existing Cartel Immunity Programme (“CIP”) will continue to operate. The CIP outlines the policy of both the CCPC and the Director of Public Prosecutions (“the DPP”) in considering applications for immunity from criminal prosecution for cartel offences under the 2002 Act. The CIP is published on the websites of both the CCPC and the DPP.<sup>4</sup>

1.4 The CCPC considers that both the CIP and the ALP will play an important role in contributing to the detection, investigation and prosecution of cartels in Ireland. The purpose of this Guidance Note is to provide undertakings and individuals with some preliminary, high-level guidance on cartel enforcement in Ireland (Chapter 2), the different functions of the CIP and the ALP (Chapters 3 and 4) and the interaction between the CIP and the ALP including guidance on which programme to apply to

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<sup>2</sup> Bid-rigging is defined in section 4(11) of the Competition Act 2002 as inserted by section 5 of the 2022 Act.

<sup>3</sup> See section 3 of the Competition Act 2002 as amended by section 4 of the 2022 Act.

<sup>4</sup> The CIP can be found at the following link:

<https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/02/2015-01-20-Revised-CIP-Final.pdf> and <https://www.dppireland.ie/publication-category/cartel-immunity-programme/>.

More information on the CIP can be found at the following link:

<https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/02/Cartel-Immunity-Programme-FAQ2015.pdf>.

and how, when applications are made to the CCPC under both the CIP and the ALP, the CCPC will process such applications (Chapter 5).

- 1.5 The full process and procedure of each of the CIP and ALP are contained and set out in detail in each of the respective programme and/or policy documents. This Guidance Note is intended to assist undertakings and individuals in understanding the operation of the ALP and the CIP in general. Nothing in this Guidance Note should be construed as legal advice and the CCPC would strongly suggest that legal advice should always be sought before applying under the CIP and/or the ALP. In the event of a discrepancy or inconsistency between this Guidance Note and the terms and conditions of the CIP and/or the ALP, the terms and conditions of the CIP and/or the ALP will take precedence.
- 1.6 The ALP is a new policy and the CCPC's approach to the handling of leniency applications under the ALP and the interaction between the ALP and the CIP may evolve over time. The CCPC reserves the right to depart from this Guidance Note, where it considers it is appropriate to do so, considering all the facts and circumstances of a particular case. Where there are particular issues of concern to a potential applicant in relation to the interaction between the ALP and the CIP that are not considered in this Guidance Note, it is incumbent on the applicant to raise the matter as early as possible with the CCPC so that specific guidance may be given where practicable. It is important to bear in mind however that the CCPC does not provide legal advice and that it is incumbent upon any potential applicant to seek legal advice independently.

## 2. Cartel enforcement

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### The criminal cartel offence

- 2.1 Sections 4, 6, 7A and 8 of the 2002 Act, as amended by the 2022 Act, and Article 101 of the Treaty on the Functioning of the European Union (“TFEU”) govern the cartel offence in Ireland.
- 2.2 Cartel conduct includes all agreements between competing undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in the State or in any part of the State and which are prohibited and void under section 4(1) of the 2002 Act. These include agreements between undertakings, decisions by associations of undertakings, and concerted practices which:
- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
  - (b) limit or control production, markets, technical development or investments;
  - (c) share markets or sources of supply;
  - (d) apply dissimilar conditions to equivalent transactions with other trading parties;
  - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which by their nature or according to commercial usage have no connection with the subject of such contracts (e.g. tying); and

(f) are concerned with bid-rigging.<sup>5</sup>

- 2.3 Article 101 of the TFEU prohibits the same kind of conduct as that prohibited by section 4 of the 2002 Act, provided it can be shown that the conduct in question may have an effect on trade between Member States of the EU.
- 2.4 Section 6(1) of the 2002 Act makes it an offence for an undertaking to enter into, or implement, an agreement or to make or implement a decision or to engage in a concerted practice in contravention of section 4(1) or Article 101 TFEU and intentionally or recklessly acts to prevent, restrict or distort competition or intentionally or recklessly makes omissions having the effect of preventing, restricting or distorting competition.<sup>6</sup>
- 2.5 Where an agreement between competing undertakings, a decision made by an association of competing undertakings or a concerted practice engaged in by competing undertakings has the purpose of directly or indirectly fixing prices, limiting output or sales, sharing markets or customers or engaging in bid-rigging,<sup>7</sup> it is presumed to have as its object the prevention, restriction or distortion of competition in trade in any goods or services in the State or any part thereof or

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<sup>5</sup> See section 4(1)(f) of the 2002 Act (as inserted by section 5 of the 2022 Act). Bid-Rigging is defined in section 4(11) of the 2002 Act.

<sup>6</sup> Section 3 of the 2002 Act assigns the following definition: “Undertaking” means a person being an individual, a body corporate or an unincorporated body of persons engaged for gain in the production, supply or distribution of goods or the provision of a service and, where the context so admits, shall include an association of undertakings.

<sup>7</sup> See section 6(2) of the 2002 Act as amended by section 6 of the 2022 Act. Bid-rigging is defined in section 4(11) of the 2002 Act.



within the common market as the case may be, unless the defendant proves otherwise.<sup>8</sup> This conduct is generally referred to as “hard-core” cartel conduct.<sup>9</sup>

### **Individual liability**

2.6 Section 8(6) of the 2002 Act provides for criminal liability for individual directors, managers or other similar officers of the undertaking. Individual liability is “derivative liability” in that where an offence under section 6 of the 2002 Act has been committed by an undertaking and the doing of that act was authorised or consented to by such an individual, that individual (as well as the undertaking) is guilty of an offence and may be prosecuted criminally for such offence.

### **Penalties**

2.7 Section 8 of the 2002 Act provides that conduct prohibited by section 6 of the 2002 Act may be prosecuted on a summary basis or on indictment and sets out the penalties that may be imposed upon conviction. The DPP will decide whether or not to institute a prosecution on indictment (for serious, hard-core offences) itself. On conviction on indictment for competition law offences, the Central Criminal Court may impose fines of up to €50 million or 20% of annual turnover on an undertaking or an individual.<sup>10</sup> In addition, in the case of “hard-core” breaches of

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<sup>8</sup> See section 6(2) of the 2002 Act.

<sup>9</sup> Pursuant to section 7A of the 2002 Act, only those offences listed in this section may be prosecuted criminally.

<sup>10</sup> See section 8 of the 2002 Act.

competition law (e.g., price fixing, bid-rigging and market sharing), the Central Criminal Court can impose a term of imprisonment of up to 10 years on an individual.<sup>11</sup>

2.8 The CCPC may also bring summary proceedings itself in relation to less serious offences under section 6 of the 2002 Act, in the District Court. Following a summary criminal conviction for hard-core cartel conduct contrary to section 6(2) of the 2002 Act, the District Court may impose fines of up to €5,000 on an undertaking or individual and/or a prison sentence of up to 6 months on an individual.

2.9 In addition, under Irish company law, natural persons convicted on indictment for a competition offence are deemed automatically disqualified from being appointed or acting as a director or other officer, auditor, receiver, liquidator or examiner or being in any way concerned in the management of a company for a period of 5 years after the date of conviction (or for such other period as the court may order).<sup>12</sup> The CCPC may also make an application for a director disqualification order where a person has contravened section 4 of the 2002 Act or Article 101 TFEU.<sup>13</sup>

## Administrative sanctions

2.10 Following the commencement of the 2022 Act, the CCPC has the power under the 2002 Act to find, subject to Court confirmation, that an undertaking or association

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<sup>11</sup> See section 8 of the 2002 Act.

<sup>12</sup> See section 839 of the Companies Act 2014 (as amended) (“the Companies Act”).

<sup>13</sup> See sections 842(j) and 844(4A) of the Companies Act.

of undertakings has committed an infringement of EU or Irish competition law<sup>14</sup> (including a cartel infringement) and to impose administrative sanctions including administrative financial sanctions of up to €10 million or 10% of the total worldwide turnover (whichever is greater) of an undertaking or association of undertakings that has participated in a cartel in breach of section 4(1) of the 2002 Act and/or Article 101 TFEU.<sup>15</sup>

## Choice of enforcement route

2.11 The CCPC has full discretion to decide whether to pursue criminal or administrative enforcement in relation to an alleged cartel.<sup>16</sup> The choice of appropriate enforcement route is at the CCPC's discretion and will depend on the particular circumstances of a given case. Further guidance on this is set out in the *Guidance Note on the CCPC's Choice of Enforcement Regime*.<sup>17</sup> For the avoidance of doubt, this choice of enforcement route applies in relation to an alleged cartel regardless of whether an application for immunity or leniency is made under the CIP or the ALP or both.

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<sup>14</sup> See section 15X of the 2002 Act.

<sup>15</sup> See section 15AC of the 2002 Act.

<sup>16</sup> See section 15K of the 2002 Act.

<sup>17</sup> Available on the CCPC's website at

<https://www.ccpc.ie/business/research/consultations/competition-law-developments-in-2022/guidance-note-on-the-ccpcs-choice-of-enforcement-regime-for-breaches-of-competition-law/>.

- 2.12 Any information and evidence provided to the CCPC by an undertaking applicant under the ALP can be used by the CCPC to investigate the alleged cartel concerned as a criminal offence and to potentially refer a file to the DPP for criminal prosecution against the cartel members. Likewise, any information and evidence provided to the CCPC under the CIP can be used by the CCPC to pursue administrative enforcement proceedings against the cartel members.
- 2.13 As the CCPC has this choice of enforcement route, the CCPC will continue to administer the CIP alongside the ALP and the CCPC expects that undertakings will want to apply under both the CIP and the ALP to secure both immunity from criminal prosecution and leniency in respect of the administrative financial sanctions in relation to their participation in an alleged cartel. The following Chapters 3 and 4 provide an overview of the CIP and the ALP respectively.

### 3. CIP

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- 3.1 As set out in the Preamble to the CIP, the CIP outlines the policy of both the CCPC and the DPP in considering applications for immunity from prosecution for criminal cartel offences under the 2002 Act.
- 3.2 The CIP was originally agreed by the CCPC's predecessor, the Competition Authority ("TCA"), and the DPP in December 2001 and outlines the special dispensation where the DPP is willing to forsake a sanction against a single cartel participant that has applied for immunity from prosecution, in return for the applicant's assistance in prosecuting the other members of the cartel.
- 3.3 A revised version of the CIP came into effect in January 2015, following public consultation, which was aimed to ensure the greatest amount of convergence possible with the the European Competition Network ("ECN") Model Leniency Programme.<sup>18</sup> The CIP sets out the considerations for applications for immunity from criminal prosecution for cartel offences and outlines the requirements on parties in order to qualify for conditional (and final) immunity. Under the CIP, the CCPC manages immunity applications and makes recommendations to the DPP on granting immunity to applicants in appropriate cases.

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<sup>18</sup> Full convergence was however not possible because of the differences in cartel enforcement, whereby Ireland operated a system of criminal enforcement only, whereas in Europe, most Member States and the European Commission, operated an administrative enforcement system. The introduction of the 2022 Act changes this position by introducing an administrative enforcement regime for competition law infringements in Ireland.

- 3.4 Any individual or undertaking may apply to the CCPC for immunity from prosecution under the CIP. An undertaking may apply on its own behalf and on behalf of its directors, officers and employees who require individual immunity. Directors, officers and employees of an undertaking who require immunity may also apply on their own behalf.
- 3.5 Under the CIP, the first applicant who satisfies the conditions of the CIP is granted full immunity from prosecution for criminal cartel offences under the 2002 Act.
- 3.6 The CIP does not apply to administrative financial sanctions. In addition, there is no mechanism available under the CIP to provide immunity and/or a reduction in penalties/fines for other applicants who subsequently come forward or for applicants who do not qualify for the award of immunity from prosecution.<sup>19</sup>

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<sup>19</sup> The CIP does however make it clear that it is an application of the general discretion of the DPP in the exercise of the DPP's functions and powers to grant immunity from prosecution and that the DPP could, in exceptional circumstances, extend the grant of immunity to more than one cartel participant in a given case.

## 4. ALP

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- 4.1 The ALP was introduced by the CCPC in 2022 following the commencement of the 2022 Act, which transposes and implements the provisions of Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 (“the ECN+ Directive”) into Irish law. As explained in Chapter 2 above, under the 2002 Act (as amended by the 2022 Act), the CCPC has the power to make a finding (subject to Court confirmation) that an undertaking has participated in a cartel and to impose administrative sanctions on such undertaking, including administrative financial sanctions of up to €10 million or 10% of the total worldwide turnover (whichever is greater) of the undertaking or association of undertakings in the business year preceding the decision.<sup>20</sup>
- 4.2 The 2022 Act requires the CCPC, as a “Competent Authority”, to put in place a leniency programme to enable it to grant immunity from administrative financial sanctions to undertakings for disclosing their participation in cartels and a reduction of administrative financial sanctions in respect of undertakings or associations of undertakings which do not qualify for immunity from administrative financial sanctions (collectively ‘leniency’). Under the 2022 Act, the CCPC is required to prepare a policy to assist it in operating its leniency programme for cartels and publish this policy. The ALP fulfils the CCPC’s legislative obligation in this regard.

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<sup>20</sup> See section 15AC of the 2022 Act.

- 4.3 The CCPC has developed and drafted the ALP in accordance with the requirements of the ECN+ Directive as transposed by the 2022 Act, using the ‘ECN Model Leniency Programme as a basis for the CCPC’s leniency programme.
- 4.4 In contrast to the CIP where a decision by the DPP is required to grant conditional immunity, in the case of leniency applications under the ALP, the CCPC is the sole decision-maker on leniency. The DPP has no role under the ALP but the CCPC will typically keep the DPP informed of all markers granted, given the fact that: (i) the DPP has a role under the CIP; and, (ii) the ALP and the CIP will be run in parallel. The CCPC may also hold regular liaison meetings to keep the DPP informed on cases where appropriate.
- 4.5 Interaction between the CCPC and the Commission for Communications Regulation (“ComReg”) in relation to leniency applications concerning cartels in the electronic communications sector will be addressed in a separate policy.



## 5. Interaction between the CIP and ALP

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5.1 The full process and procedure of each of the CIP and ALP are contained and set out in detail in each of the respective programme and/or policy documents. The purpose of this Chapter is to provide guidance on the interaction between the CIP and the ALP including which programme undertakings should apply to and how, when applications are made to the CCPC under both the CIP and the ALP, the CCPC will process such applications. This guidance is subject to the caveat that the ALP is a new policy based on new legislation. Accordingly, the CCPC may need to depart from this guidance where the circumstances require and the CCPC's approach to the interaction between the ALP and the CIP may evolve over time, at which point this Guidance Note may be updated.

### **Which programme to apply to**

5.2 The decision as to which programme and/or policy to apply to is a matter for undertakings and individuals to consider in conjunction with their legal advisors. No undertaking (or individual) is compelled to make an application under the CIP and/or the ALP.

5.3 As explained above in Chapter 2, an undertaking that has participated in a cartel can be the subject of criminal or administrative sanctions and the CCPC has full discretion to decide whether to pursue criminal or administrative enforcement in relation to an alleged cartel. An undertaking that is granted leniency under the ALP

will not be automatically immune from criminal prosecution.<sup>21</sup> Likewise, an undertaking that is granted immunity under the CIP will not have an automatic place in the queue for administrative leniency in the event that the CCPC chooses to pursue administrative enforcement proceedings against the cartel members.

- 5.4 In the majority of cases therefore, the CCPC expects that undertakings may want to apply under both the CIP and the ALP with a view to obtaining both immunity from criminal prosecution and leniency in respect of administrative financial sanctions.
- 5.5 Where undertakings are seeking both immunity from criminal prosecution under the CIP and leniency from administrative financial sanctions under the ALP, undertakings are encouraged to seek to make a simultaneous application under the CIP and the ALP, so as to be able to obtain a marker and/or place in the queue (as applicable) under both the CIP and ALP.
- 5.6 Notwithstanding the above, the CCPC accepts that there may be circumstances where the ALP will not be applicable and where an applicant may wish to only apply under the CIP, e.g., an individual who is not an undertaking, such as an officer or director for instance.

### **How to make a simultaneous application under the CIP and the ALP**

- 5.7 The CCPC will continue to use its single dedicated Cartels Hotline (+353 87 763 1378) for both the CIP and the ALP which may be contacted between the hours of 10am and 5pm (Dublin time) Monday to Friday, except public or bank holidays.

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<sup>21</sup> In certain circumstances, current and former managers and other members of staff of the undertaking will be immune from criminal prosecution provided the conditions in the ALP are complied with. See section 3 of the ALP for more details.

- 5.8 An application for a marker under both the CIP and ALP can be made orally at the same time using this single phone line and will be screened by the CCPC's immunity/leniency team. Where an undertaking is making such an application under both the ALP and the CIP, the applicant undertaking must confirm this orally on the initial call to the Cartels Hotline.

### **How the CCPC will process applications received under both the CIP and the ALP**

- 5.9 Where an undertaking chooses to make an application under both the CIP and the ALP, the CCPC will run the CIP and ALP in parallel and applications will be dealt with by the CCPC concurrently as far as practicable.
- 5.10 At the time when an undertaking applies for a marker under both the CIP and ALP, the CCPC may not be in a position to confirm whether the likely enforcement route in relation to the alleged cartel concerned will be criminal or administrative. For this reason, the CCPC will consider and grant a marker under both the ALP and the CIP (where available) in accordance with the requirements of the respective programme/policy. Where the applicant undertaking is the first undertaking to make such applications, it will be required to perfect both markers in accordance with the requirements of the CIP and ALP, as applicable, which for all practical purposes involves the provision of similar information and the same procedural steps.
- 5.11 The CCPC will decide whether to open a formal investigation into the alleged cartel disclosed (if such an investigation is not already open).
- 5.12 Where the CCPC reaches a preliminary view that the application discloses a cartel which is suitable for criminal prosecution, the immunity application will continue

under the CIP and the CCPC will formally write to the DPP recommending a grant of conditional immunity from prosecution for the applicant in accordance with the conditions of the CIP (see Step 3 of the CIP).<sup>22</sup> In this scenario, the CCPC will provide a “comfort letter” to the applicant, confirming that the CCPC has made a recommendation to the DPP to grant the applicant conditional immunity from criminal prosecution under the CIP and that the CCPC will be investigating the cartel to the criminal standard of proof (beyond a reasonable doubt) but that the applicant will not be a target in the investigation for as long as the applicant is cooperating and complying with the requirements of the CIP. The applicant will then need to provide full disclosure in accordance with the CIP. The applicant undertaking will not need to take any further steps under the ALP at this point in time but the applicant will continue to benefit from the protection of the marker it holds under the ALP.

- 5.13 Where the CCPC reaches a preliminary view that the application discloses a cartel that is suitable for the administrative enforcement route, the application will continue under the ALP and the CCPC will issue a “comfort letter” under the ALP, which will confirm that the CCPC has granted the applicant conditional immunity from administrative financial sanctions under the ALP and that the CCPC intends to investigate the cartel to the civil standard of proof (on a balance of probabilities) but that the applicant will not be a target in the investigation for as long as the applicant is cooperating and complying with the requirements of the ALP (see Step 3 of the ALP). The applicant will then need to provide full disclosure in accordance with the terms of the ALP. Where the CCPC intends to pursue the cartel under the administrative enforcement route, the CCPC will not write to the DPP

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<sup>22</sup> See section 5.10 of the CIP.

recommending a formal grant of immunity from prosecution but the applicant will continue to benefit from the marker it holds under the CIP.

- 5.14 Any comfort letter issued under either policy is without prejudice to the ultimate enforcement route the CCPC decides to take in relation to the particular alleged cartel. For example, in the event that the CCPC refers a file to the DPP but the DPP decides not to grant immunity from criminal prosecution because the alleged cartel is not suitable for criminal enforcement, the CCPC may decide to pursue the matter under administrative enforcement. In this scenario, the first applicant who has made a simultaneous application under both the CIP and the ALP will already enjoy protection as a result of the marker it holds under the ALP. For the avoidance of doubt, a comfort letter will only be issued and remain in place where the applicant has been truthful and cooperated fully and remained compliant with the requirements of the particular policy/programme.
- 5.15 The CCPC anticipates that most investigations into alleged cartels will start off as investigations to the criminal standard of proof. However, the CCPC reserves the right at any time to decide that the cartel is more suitable for administrative enforcement action. Where either: (i) the DPP decides not to grant immunity as the matter is not suitable for criminal prosecution; or (ii) the CCPC subsequently decides that the cartel is more suitable for the administrative enforcement route, the CIP immunity application will come to an end. In the case of (ii), the CCPC will issue a “no-criminal-action” letter to the applicant which will confirm that the CCPC is not intending to either recommend the case for criminal prosecution by the DPP on indictment or itself initiate summary proceedings. The CCPC will also inform the DPP that immunity or conditional immunity from prosecution (as applicable) will no longer be required.

- 5.16 In the event of either of the scenarios envisaged in the paragraph above occurring, as the applicant undertaking will hold a marker under the ALP as a result of its simultaneous application, the matter will then be progressed further solely as a leniency application under the ALP.

#### **Position of second applicant**

- 5.17 In the event that an applicant makes a simultaneous application for a marker for immunity from administrative financial sanctions under the ALP (either Type 1A or Type 1B) and immunity from criminal prosecution under the CIP, as described above but a marker under the CIP is not available, the applicant can still proceed with its application for a marker under the ALP in order to preserve its place in the queue in the event that the CCPC decides to pursue the alleged cartel using its administrative enforcement powers.
- 5.18 Where an undertaking applies for immunity from administrative financial sanctions under the ALP (either Type 1A or Type 1B) and immunity from criminal prosecution under the CIP but a marker is not available under either the CIP or the ALP (because the applicant was not the first applicant to apply), the applicant can request the CCPC to consider its ALP Type 1 application as an ALP Type 2 application, i.e., for a reduction in administrative financial sanctions (see Chapter 2 of the ALP). An ALP Type 2 marker will only be of benefit in the event that the CCPC decides to pursue the alleged cartel using its administrative enforcement powers. In this scenario, the CCPC will ringfence the information and evidence provided to perfect the marker and this information and evidence will not be used against the applicant directly in the case of a criminal prosecution. In the case of administrative enforcement action, if the applicant submits compelling evidence which the CCPC uses to prove additional facts, which lead to an increase in administrative financial sanctions as compared to the administrative financial sanctions that would otherwise have been

imposed on the participants in the cartel, the CCPC shall not take such additional facts into account when setting the amount of an administrative financial sanction to be imposed on the ALP Type 2 applicant which provided this evidence.

### **Use of information and evidence**

5.19 There is no guarantee that an undertaking will be successful in its application under the CIP and/or the ALP such that the applicant will be granted immunity from prosecution or leniency from administrative financial sanctions, as applicable. Evidence submitted in applications under either the CIP or ALP (or both), will not be used by the CCPC against the applicant directly, unless the applicant has failed to act in good faith or cooperate fully with the CCPC and conditional immunity or leniency has been revoked, as provided for in the particular programme/policy.<sup>23</sup>

### **Conclusion**

5.20 As set out above, this Guidance Note is intended to inform undertakings and individuals in understandings of the interaction between the ALP and the CIP. Nothing in this Guidance Note is intended to limit the CCPC's discretion in carrying out its statutory functions and any departure by the CCPC from the guidance in this document shall not invalidate any related enforcement action.

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<sup>23</sup> See section 5.12 of the CIP and sections 4.32-4.34 and 5 of the ALP.

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Version 1

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