

TABLE OF CONTENTS

TAE	BLE OF CONTENTS	
1	INTRODUCTION	3
2	SCOPE	3
3	PURPOSE	4
4	WHAT IS A CONFLICT OF INTEREST?	4
5	COMMON SITUATIONS THAT GIVE RISE TO A CONFLICT RISK	5
6	ASSESSING CONFLICTS OF INTEREST	5
7	DECLARATIONS	6
8	IDENTIFICATION AND DECLARATION OF REMUNERATION CONFLICTS	7
9	CONFLICTS REGISTER	
	ASSIGNMENT OF MATTERS	
11	OVERSIGHT OF COMPLIANCE	10
12	PROCESSING AND RETENTION OF DATA	10

1 INTRODUCTION

- 1.1 The Competition and Consumer Protection Commission (the "CCPC"), under the Competition Act 2002 (as amended) (the "2002 Act"), can initiate an administrative enforcement procedure at any stage during a competition investigation, where it forms the preliminary view that an infringement of competition law may have occurred and that the matter is not to be treated as a criminal matter. Where the CCPC forms a provisional opinion that an infringement has occurred and decides to proceed with enforcement, the CCPC is required to refer the matter for decision by an independent Adjudication Officer. Where an Adjudication Officer finds that an infringement has occurred, he or she may decide to impose a structural or behavioural remedy, a periodic penalty payment and/or an administrative financial sanction and such decisions cannot take effect, unless confirmed by the High Court. Adjudication Officers may also receive referrals concerning breaches of procedural and other matters¹. In this Policy, the term "Adjudication" is used to refer to proceedings before an Adjudication Officer with respect to matters referred to him or her pursuant to the 2002 Act or the Competition and Consumer Protection Act 2014.
- 1.2 Adjudication Officers are appointed by the Minister for Enterprise, Tourism and Employment (the "Minister") on the CCPC's nomination and must be independent in the performance of their functions. Regulation 26 of the Competition Act 2002 (Adjudication Officers) Regulations 2023 (S.I. No. 476/2023) (the "Regulations") requires the CCPC to "publish policies and implement measures sufficient to identify and manage conflicts of interest" on the part of (a) Adjudication Officers, (b) the Chief Adjudication Officer, and (c) those persons assisting them². This Policy has been prepared and published by the CCPC in accordance with this statutory requirement.
- 1.3 More generally, this Policy also reflects the importance of impartiality in the Adjudication process, and the CCPC's recognition of the need for independence of Adjudication Officers to ensure the effectiveness and integrity of Adjudication proceedings.
- 1.4 The obligations contained in this Policy supplement and do not replace the statutory requirements of the 2002 Act and Regulations, concerning conflicts of interest in Adjudication.

2 SCOPE

2.1 This Policy applies to:

- Adjudication Officers, appointed in accordance with section 150 of the 2002 Act and the Regulations to make Adjudication decisions and exercise related functions on behalf of the CCPC
- Chief Adjudication Officer, appointed in accordance with Regulation 13(3) or Regulation 17 of the Regulations
- Assistants to Adjudication, appointed in accordance with section 15R of the 2002 Act, which
 includes CCPC employees tasked with assisting Adjudication and any other persons including

¹ In accordance with section 15M of the 2002 Act, the CCPC may refer certain procedural matters for Adjudication and in accordance with Section 33 of the Competition and Consumer Protection Act 2014, Adjudication Officers may also determine as to whether information is legally privileged in certain circumstances.

² Namely any employee of the CCPC required or any other person (including any consultant or advisor) appointed under section 15R of the 2002 Act to assist an adjudication officer.

- consultants and/or advisers appointed to assist Adjudication Officers ("Assistants to Adjudication").
- In this Policy, the Chief Adjudication Officer, Adjudication Officers and Assistants to Adjudication are collectively called "Persons Concerned with Adjudication" or a "Person Concerned with Adjudication".

3 PURPOSE

- 3.1 It is recognised that it is not possible or practical for Persons Concerned with Adjudication, to avoid all conflicts of interest, instead it is this Policy's objective to ensure that all conflicts of interest are identified promptly, so that they can be managed appropriately. Therefore, the purpose of this Policy is to:
 - Outline the approach to identifying conflicts of interest in Adjudication, including the maintenance of a register of disclosed interests
 - Establish a mechanism for managing conflicts of interest in Adjudication
 - Outline roles and responsibilities in relation to managing conflicts of interest in Adjudication.

4 WHAT IS A CONFLICT OF INTEREST?

- 4.1 A "conflict of interest" means any actual, perceived or potential conflict of interest, which compromises or could compromise, Persons Concerned with Adjudication in the exercise of their role in Adjudication.
 - An actual conflict of interest arises when external factors, including personal interests, connections or activities, impair or influence a Person Concerned with Adjudication's ability to act or apply judgement in an unbiased manner in relation to their duties in Adjudication
 - A **perceived conflict of interest** arises when external factors, including personal interests, connections or activities may be perceived by a reasonable third party to impair or influence a Person Concerned with Adjudication's ability to act or apply judgement in an unbiased manner in relation to their duties in Adjudication
 - A potential conflict of interest arises when external factors including personal interests, connections or activities could cause an actual or perceived conflict of interest to arise at some time in the future in relation to a Person Concerned with Adjudication's duties in Adjudication

5 COMMON SITUATIONS THAT GIVE RISE TO A CONFLICT RISK

- 5.1 A "conflict risk" means any circumstance capable of giving rise to a risk that a conflict of interest may occur. It is not possible to prescribe in advance an exhaustive list of situations which may give rise to conflict risk, each and every situation must be considered on its own merits, however in the context of Adjudication, some common causes of conflict risk may be:
 - Personal connections: The personal connections (family, business associate, friend etc.) maintained by Persons Concerned with Adjudication must not influence or be perceived to influence them in carrying out their role in relation to Adjudication
 - Other employment/positions: Roles that Persons Concerned with Adjudication may have previously held or hold (directorships, equivalent positions in other bodies, advisory/consultancy roles etc.) must not influence or be perceived to influence them in carrying out their role in relation to Adjudication
 - Professional/business relationships: Any previous or on-going professional/business relationships, (client relationships including the acceptance of instructions by legal professionals etc.) that a Person Concerned with Adjudication may have previously held or hold must not influence or be perceived to influence them in carrying out their role in relation to Adjudication
 - Financial Interests: A Person Concerned with Adjudication's personal financial
 interests (including other income, financial assets or liabilities) must not influence or
 be perceived to influence them in carrying out their role in relation to Adjudication.

6 ASSESSING CONFLICTS OF INTEREST

- 6.1 Each set of circumstances must be considered on its own merits but there are a number **of key factors** in assessing a conflict risk:
 - The extent and severity of the conflict between the specific role of the Person Concerned with Adjudication in Adjudication and the particular set of circumstances
 - The length of time the conflict risk is likely to persist for, with shorter-term conflicts generally giving rise to lower concerns
 - The extent to which a conflict risk may be mitigated
 - The reputational risk to Adjudication or possibility of impairing confidence in Adjudication created by the particular conflict risk
 - In the case of a conflict of interest created by personal connections:
 - the role of the person with whom the Person Concerned with Adjudication has a personal connection and as a general rule, more senior positions give rise to greater conflict concerns
 - the closeness of the personal connection and as a general rule the closer the connection the greater the conflict concern
 - In the case of conflict risks created by other employment or roles outside of Adjudication:
 - the nature and duration of the role/position held
 - the type of tasks undertaken as part of this role/position

- the length of time since leaving/the conclusion of that role/position
- the extent of any ongoing connection (personal or financial) with the former employer/role
- In the case of conflict risks created by other professional/business relationships:
 - the nature and type of relationship
 - the extent of any financial connection and whether it is ongoing
 - where the risk is created by instructions accepted by legal professionals, the frequency and subject matter of such instructions and as a general rule, the closer the link to competition law/subject matter of the Adjudication and regularity of instruction, the greater the conflict concern
 - In the case of conflict risks created by financial interests, the size of the financial interest and basis on which it is managed, with small or collectively managed schemes/policies unlikely to raise conflict concerns whereas larger or directly managed/held interests may give risk to greater concern.

PROCEDURES FOR IDENTIFICATION OF CONFLICTS

7 DECLARATIONS

- 7.1 Some conflict risks can be identified in advance; others may only become apparent as the matter develops, or circumstances change. A Person Concerned with Adjudication must be alert to conflict risks arising at all times and should keep under constant review whether any of their outside personal or professional interests give rise to a conflict risk that should be declared.
- 7.2 Persons Concerned with Adjudication must make the following scheduled declarations:

Chief Adjudication Officer

- On appointment or renewal of appointment, the Chief Adjudication Officer must make a
 declaration of absence of conflict of interest with the role of Chief Adjudication Officer
 and disclose any information, known to them at that time, that could reasonably give
 rise to a conflict of interest
- On dealing with a specific matter referred to Adjudication for decision, as an Adjudication Officer, the Chief Adjudication Officer must make a declaration of absence of conflict of interest with that matter and disclose any information, in relation to the referral, that could reasonably give rise to a conflict risk
- At any time, declare remuneration from sources other than the CCPC that gives rise to a conflict of interest as detailed in section 8 of this Policy

Adjudication Officers

- On appointment or renewal of appointment to the panel under Regulation 4(1) of the Regulations, Adjudication Officers must make a declaration of absence of conflict of interest with the role of Adjudication Officer and disclose any information, known to them at that time, that could reasonably give rise to a conflict risk
- On direction to deal with a specific matter referred to Adjudication for decision,
 Adjudication Officers must make a declaration of absence of conflict of interest with that

- matter and disclose any information, in relation to the referral, that could reasonably give rise to a conflict risk
- At any time, declare remuneration from sources other than the CCPC that gives rise to a conflict of interest as detailed in section 8 of this Policy

Assistants to Adjudication

On being tasked with assisting an Adjudication Officer(s) with a specific matter referred to Adjudication for decision, Assistants to Adjudication must make a declaration of absence of conflict of interest with that matter and disclose any information, in relation to the referral, that could reasonably give rise to a conflict of interest.

8 IDENTIFICATION AND DECLARATION OF REMUNERATION CONFLICTS BY ADJUDICATION OFFICERS

- 8.1 Regulation 9(1) of the Regulations requires an Adjudication Officer (including the Chief Adjudication Officer) "who receives remuneration from a source other than the [CCPC] that gives rise to a conflict of interest" to declare the remuneration and the conflict to the Minister (a) upon being nominated for appointment under section 15O(1) of the 2002 Act, (b) upon renewal of appointment under Regulation 7 or 15 of the Regulations and (c) as soon as reasonably practicable after the Adjudication Officer knows of remuneration or a conflict not otherwise disclosed upon nomination or upon renewal.
- 8.2 It is the responsibility of all Adjudication Officers, including the Chief Adjudication Officer, to declare such remuneration and conflicts of interest to the Minister as soon as reasonably practicable where they become aware of such remuneration or conflict after their appointment or the renewal of their appointment.
- 8.3 Adjudication Officers must also contemporaneously disclose the information provided to the Minister, in accordance with Regulation 9(1) of the Regulations, to the Chief Adjudication Officer, for inclusion in the Conflicts Register, in accordance with section 9 of the Policy.

PROCEDURES FOR MANAGEMENT OF CONFLICTS OF INTEREST

9 CONFLICTS REGISTER

- 9.1 The Chief Adjudication Officer, with support provided by Assistants to Adjudication, will maintain a record of all interests and conflict risks disclosed by Persons Concerned with Adjudication ("Conflicts Register") including the declarations detailed in sections 7 and 8 of this Policy.
- 9.2 The Chief Adjudication Officer and Assistants to Adjudication will also record details of any interests and conflict risk information pertaining to themselves in the Conflicts Register.
- 9.3 The Conflicts Register shall contain all information disclosed by Persons Concerned with Adjudication, including the nature of each conflict risk, any parties concerned, the period in which it arose, and any mitigating measures implemented, if appropriate.
- 9.4 The Conflicts Register will be used to assist in assigning Adjudication Officers and Assistants to Adjudication to specific matters.

10 ASSIGNMENT OF MATTERS

Assignment of Adjudication Officer(s)

- 10.1 The functions of the Chief Adjudication Officer include directing an Adjudication Officer or a division of Adjudication Officers to deal with a matter and/or, where appropriate, re-assigning a matter. Discharging these functions requires the Chief Adjudication Officer to consider whether any conflicts of interest arise.
- 10.2 Adjudication Officer(s) will be provided with sufficient details of the nature of a matter referred for Adjudication, including the identity of the party(s) and of their representatives to allow them to consider any conflict risks arising.
- 10.3 The Adjudication Officer(s) will then make a written declaration of absence of conflict and identify and disclose any conflict risks that may arise, to the Chief Adjudication Officer. Adjudication officers should err in favour of disclosure if they have any doubt as to whether a disclosure should be made.
- 10.4 The Chief Adjudication Officer will assess the information provided in line with the assessment criteria in section 6 of this Policy, in using their judgment to determine whether to designate an Adjudication Officer to deal with a matter.
- 10.5 An Adjudication Officer with an actual or perceived conflict of interest in relation to a particular matter shall not be eligible for assignment to consider that matter.
- 10.6 In circumstances where the information disclosed leads to a risk of the perception of a potential conflict of interest, the Chief Adjudication Officer will consider the issue with the Adjudication Officer concerned and if appropriate seek further information from that Adjudication Officer. If the Chief Adjudication Officer is satisfied that on balance a reasonable third party would not perceive a potential conflict of interest, they should communicate the details to the participants³ in that Adjudication matter. This communication should be in writing and include any proposed mitigation measures if appropriate and a specified time period for response. The Chief Adjudication Officer should take the responses into account in considering whether to assign the Adjudication Officer to the particular matter.
- 10.7 If the Chief Adjudication Officer, considers that there is a conflict risk declared not amounting to a conflict of interest, but which in the interests of transparency should be disclosed, then the Chief Adjudication Officer may disclose the matter to the participants in that Adjudication matter.
- 10.8 If the Chief Adjudication Officer has an actual conflict of interest in relation to a particular matter, that is of such severity that it prevents the Chief Adjudication Officer from performing their functions in relation to the assignment of an Adjudication Officer(s) to consider a particular matter, then the Chief Adjudication Officer must inform the CCPC and abstain from directing an Adjudication Officer to deal with a matter. The CCPC may then apply to the Minister to designate an Adjudication Officer as the Chief Adjudication Officer for the purposes of assigning an Adjudication(s) Officer to the matter. For the avoidance of doubt, the Chief Adjudication Officer will continue to abstain from any involvement in the matter as long as the actual conflict

8

³ As used in this section of the Policy, the term "participants" refers to the undertaking or association of undertakings the subject of the proceedings, the members of the CCPC enforcement unit directly involved in the proceedings, the Adjudication Unit staff assigned to the particular matter, and any other individuals directed by the Chief Adjudication Officer to assist with the particular matter.

of interest remains, and the Adjudication Officer designated by the Minister will continue to act as Chief Adjudication Officer with respect to the matter as necessary while the matter is ongoing.

During proceedings

- 10.9 It is recognised that it may not be possible for all conflict risks to be identified by an Adjudication Officer before assignment to a particular matter. A conflict risk could also arise or only become known to an Adjudication Officer, during the course of a matter's consideration by the Adjudication Officer. Therefore, following an Adjudication Officer's assignment to a particular matter, they should keep under review whether any conflict risk arises.
- 10.10 If a conflict risk arises following the assignment of a matter to an Adjudication Officer, they must disclose the details to the Chief Adjudication Officer as soon as possible and consult with the Chief Adjudication Officer.
- 10.11 If the Adjudication Officer believes the conflict risk amounts to an actual or perceived conflict of interest by continuing to perform their functions in relation to that matter, the Adjudication Officer must recuse themselves from the matter and notify the participants in that adjudication matter of the recusal.
- 10.12 If the Adjudication Officer believes that it would give rise to the perception of a potential conflict of interest by continuing to perform their functions in relation to that matter, the Adjudication Officer should following consultation with the Chief Adjudication Officer, communicate the details to the participants in that Adjudication matter. This communication should be in writing and include any proposed mitigation measures if appropriate and a specified time period for response. The responses will be taken into account in considering whether it is necessary for the Adjudication Officer to recuse themselves.
- 10.13 The Chief Adjudication Officer may where they consider it appropriate, including on grounds of conflicts of interest in circumstances where an Adjudication Officer does not believe it is necessary to recuse themselves, reassign a matter to another Adjudication Officer(s). In these circumstances the Chief Adjudication Officer will communicate the rationale for the reassignment to the Adjudication Officer and the participants in that Adjudication matter.
- 10.14 These procedures are also applicable mutatis mutandis to the Chief Adjudication Officer when intending to perform or performing the functions of an Adjudication Officer.

Assistants to Adjudication

7 1001010

10.15 The CCPC appoints Assistants to Adjudication, including any consultants or advisers and in doing so, the CCPC will consider whether such an appointment would give rise to a conflict of interest⁴.

- 10.16 Assistants to Adjudication, will be provided with sufficient details of the matter referred for Adjudication to make a written declaration of absence of conflict of interest with that matter and disclose any information, for inclusion in the Conflicts Register, that could reasonably give rise to a conflict risk. If the Assistant to Adjudication is engaged through a public procurement exercise, any declarations may be sought and made prior to any decision to award a tender.
- 10.17 An Assistant to Adjudication may not assist with an Adjudication matter, in circumstances where they have an actual or perceived conflict of interest with that particular matter.

⁴ The rules for doing so are set out more fully in Regulation 20 of the Regulations and may be supplemented by the CCPC when appointing any individual assistant under section 15R of the 2002 Act.

- 10.18 In circumstances, where a potential conflict of interest risk arises, the Chief Adjudication Officer will consult with the Assistant to Adjudication concerned and consider whether any mitigation measure(s) could be implemented in the circumstances to reduce the conflict risk. The Chief Adjudication Officer will assess the matter and any mitigation(s) measures, in line with the assessment criteria in section 6 of this Policy, in using their judgment to determine whether it is appropriate for the Assistant to Adjudication to assist, or continue assisting, with that Adjudication matter.
- 10.19 The Chief Adjudication Officer may where they consider it appropriate, including on grounds of conflicts of interest, in circumstances where the Assistant to Adjudication does not believe they have a conflict of interest, direct an Assistant to Adjudication not to assist with a particular Adjudication matter.
- 10.20 If the Chief Adjudication Officer, considers that an Assistant to Adjudication declares a conflict risk, which does not amount to a conflict of interest, but which in the interests of transparency should be disclosed, then the Chief Adjudication Officer acting at his or her discretion may disclose the matter to the participants to the Adjudication, including any mitigation measure(s) implemented if appropriate.

11 OVERSIGHT OF COMPLIANCE

- 11.1 To support robust reporting to the Minister on compliance with the principle of independence in section 15P of the 2002 Act, the Chief Adjudication Officer will disclose the Conflicts Register, as set out in section 9 of this Policy, to the CCPC Commission and the person(s) appointed⁵ to oversee compliance with section 15P of the 2002 Act, on an annual basis.
- 11.2 The Chief Adjudication Officer will also disclose relevant parts of the Conflicts Register to the CCPC Commission, in circumstances where the CCPC is considering requesting that the Minister revoke the appointment of an Adjudication Officer, in accordance with section 15Q(2)(b)(v)(III) of the 2002 Act, on the grounds of conflicts of interest.

12 PROCESSING AND RETENTION OF DATA

12.1 Information provided under this Policy will be processed in accordance with data protection principles as set out in the Data Protection Act 2018 and the General Data Protection Regulation (Regulation (EU) 2016/679).

-

⁵ Regulation 23 of the Regulations