

Rules for Competition Adjudication Oral Hearings

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Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

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The Competition and Consumer Protection Commission (the “**CCPC**”), in exercise of the powers conferred on it by section 15V(14)(b) of Part 2D of the Competition Act 2002 hereby makes the following Rules.

1 PRELIMINARY

- 1.1 These Rules may be cited as the Rules for Competition Adjudication Oral Hearings. These Rules shall be published on the CCPC’s website and shall come into operation on 2 April 2026.

2 INTERPRETATION

- 2.1 In these Rules, unless the context otherwise requires—

"the 2002 Act" means the Competition Act 2002;

"the 2014 Act" means the Competition and Consumer Protection Act 2014;

"the 2020 Act" means the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020;

"the 2023 Regulations" mean the Competition Act 2002 (Adjudication Officers) Regulations 2023;

"adjudication officer" means an adjudication officer appointed pursuant to the 2002 Act and the 2023 Regulations;

"Adjudication Proceedings" means proceedings before an adjudication officer under Part 2D of the 2002 Act;

"Adjudication Unit" means the unit of the CCPC responsible for providing assistance, including administrative support, to adjudication officers pursuant to section 15R of the 2002 Act, as described in Rule 5.7;

"CCPC" means the Competition and Consumer Protection Commission of Ireland;

"case management hearing" means a case management, directions or other procedural or preliminary hearing;

"Chief Adjudication Officer" means the chief adjudication officer appointed pursuant to the 2002 Act and the 2023 Regulations;

"Enforcement" means the area(s) of the CCPC responsible for the discharge of the CCPC’s enforcement functions in relation to Relevant Competition Law. For the avoidance of doubt this term does not include the Adjudication Unit;

"expert memorandum" means the written memorandum prepared by two or more experts pursuant to Rule 4.38;

"Full Investigation Report" means the report prepared by Enforcement under section 15L(9)(a) of the 2002 Act;

"Minister" means the Minister for Enterprise, Tourism and Employment;

"oral hearing" means a hearing held in the circumstances described in Rule 3.1;

"party" or "parties" save where these Rules otherwise provide, where the context otherwise requires or as provided in the 2002 Act, means the Undertaking and Enforcement;

"Relevant Competition Law" means provisions regarding competition law as set out in sections 4 and 5 of the 2002 Act and/or Articles 101 and 102 of the Treaty on the Functioning of the European Union; and

"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 in respect of whom a referral is made to an adjudication officer under section 15M of the 2002 Act for a decision or order under section 15X of the 2002 Act and, in the context of these Rules, shall also include an association of Undertakings (or more than one Undertaking and/or association of Undertakings).

- 2.2 Words and phrases not otherwise defined in these Rules shall, unless the context otherwise requires, have the meanings assigned to them in the 2002 Act and/or the 2023 Regulations.
- 2.3 Where these Rules refer to the "CCPC", the term is not intended, save where the context requires otherwise, to include the Adjudication Unit or adjudication officers, which have separate functions with regard to Adjudication Proceedings, as set out in the 2002 Act and the 2023 Regulations.
- 2.4 These Rules are made under and in accordance with the 2002 Act. Where there is a conflict or inconsistency between these Rules and the provisions of the 2002 Act, the provisions of the 2002 Act shall prevail.
- 2.5 For the avoidance of doubt, the provision of written notice pursuant to these Rules may be achieved by sending such notice by email and any dispute regarding whether any notice is valid shall be determined by the adjudication officer.

3 GENERAL

Circumstances in which an oral hearing may be convened

- 3.1 Pursuant to section 15U(2) of the 2002 Act, an adjudication officer may conduct an oral hearing if they consider it necessary to resolve an issue of fact or otherwise enable a decision to be made under section 15X of the 2002 Act.
- 3.2 Without prejudice to the generality of section 15U(2) of the 2002 Act, an adjudication officer may, in their discretion, or at the request of a party, convene an oral hearing if they are satisfied it is necessary to do so to make a decision under section 15X of the 2002 Act, including in but not limited to the following circumstances:
 - (a) for the purposes of case management;
 - (b) pursuant to sections 33(3), (4) and/or (5) of the 2014 Act, for the purposes of determining in respect of proceedings under Parts 2D and/or 2G, as it applies to Adjudication

Proceedings, of the 2002 Act whether information compelled or taken pursuant to the 2014 Act is privileged legal material¹;

- (c) for the purpose of hearing oral evidence or testimony, including to resolve an issue of fact which cannot fairly be resolved without an oral hearing or where the credibility of a witness needs to be tested;
- (d) for the purposes of section 15U(3) of the 2002 Act, at which an Undertaking may make submissions in relation to the Full Investigation Report prepared under section 15L(9) of the 2002 Act;
- (e) for the purpose of hearing legal submissions, including hearing oral submissions on sanctions;
- (f) for the purpose of imposing or considering whether to impose:
 - (i) an administrative financial sanction on the Undertaking concerned in accordance with sections 15AA-15AC of the 2002 Act;
 - (ii) a periodic penalty payment (including a hearing requirement period penalty payment) in accordance with section 15AD of the 2002 Act; and/or
 - (iii) structural or behavioural remedies pursuant to section 15Z of the 2002 Act; or
- (g) any combination of the matters provided in (a)-(f).

3.3 For the avoidance of doubt, nothing in these Rules shall be taken as imposing an obligation on an adjudication officer to convene an oral hearing in any particular case.

Fair Hearing

3.4 Adjudication officers shall conduct an oral hearing fairly in accordance with the principles of procedural fairness and constitutional and natural justice, while doing so in as expeditious, efficient and as cost-effective a manner as practical.

Standard of proof

3.5 Decisions made by an adjudication officer pursuant to section 15X(2)(a) shall be made on the balance of probabilities. Without prejudice to the foregoing, in so far as it relates to hearings under these Rules:

- (a) Where the 2002 Act places the burden of proof on an Undertaking, the standard of proof shall be the balance of probabilities;

¹ Please note that determinations regarding whether information is privileged legal material in the context of proceedings under Parts 2C and 2G of the 2002 Act are provided for at paragraph 7.37 of the Guidelines on the Conduct of Competition Adjudication Proceedings which are made under section 15AF of the 2002 Act.

- (b) Where the 2002 Act provides that any specified matter(s) is presumed to be fact unless the contrary is shown, the evidential burden placed on the Undertaking shall only be in respect of such matter(s).

Adjudication officers sitting in divisions

- 3.6** In accordance with section 15T of the 2002 Act, the Chief Adjudication Officer may direct adjudication officers to sit as a division for the purpose of a particular adjudication or group or type of adjudication. In such circumstances, references to an adjudication officer in these Rules shall be considered to be references to a division of adjudication officers.
- 3.7** In accordance with regulation 18 of the 2023 Regulations, such divisions shall comprise three adjudication officers or an odd number greater than three where the Chief Adjudication Officer so directs.
- 3.8** Where such a division is established, in accordance with regulation 19 of the 2023 Regulations, the Chief Adjudication Officer shall appoint one adjudication officer to act as chairperson of the division and another to act as deputy chairperson.
- 3.9** In accordance with regulation 18(2) of the 2023 Regulations, a decision of a division of adjudication officers shall not be challenged on the ground that the division was not constituted in accordance with the 2023 Regulations.
- 3.10** Where a division of adjudication officers is appointed pursuant to Rule 3.6, those adjudication officers shall sit together for the purposes of an oral hearing, save for the purposes of a case management hearing under Rule 3.13, which shall be conducted by the chairperson of the division, or deputy chairperson if the chairperson is unable to exercise this function for any reason. The chairperson or deputy chairperson as the case may be shall also have the discretion to convene the entire division for such case management hearing.
- 3.11** Where one or more adjudication officers in such a division is unable to attend an oral hearing for reasons of illness or otherwise, the Chief Adjudication Officer may assign another adjudication officer and the adjudication may proceed so long as there is at all times an odd number of adjudication officers present and provided that, in such circumstances, only the adjudication officers who attend the oral hearing shall participate in making the decision arising from that hearing.
- 3.12** The decision of a division of adjudication officers shall be delivered in writing by the chairperson without disclosing any view other than that of the division, whether assenting or dissenting.

Case management and directions

- 3.13** An adjudication officer may, of their own volition having considered any submissions made by the parties or upon application by a party, issue such directions as they see fit in relation to or arising from the conduct of an oral hearing as appears convenient for the determination of the matter in a manner which is just, expeditious and likely to minimise the costs of the matter.

3.14 Such directions may include but are not limited to:

- (a)** the manner in which the proceedings are to be conducted, including any time limits to be observed;
- (b)** fixing any issues of fact or law to be determined, including any requests for particulars or further and better particulars;
- (c)** the defining of issues by the parties, or any of them, including the exchange between the parties of statements of case or memoranda for the purpose of clarifying issues, which may include particulars of any matter of an economic or technical nature which may be at issue or may be the subject of evidence;
- (d)** the issues on which evidence is required and/or the means by which evidence is to be submitted;
- (e)** identification of witnesses to be called, the preparation of witness statements, the summoning of witnesses to attend or produce documents and/or the examination of witnesses on oath or otherwise;
- (f)** compelling the production (including discovery) of records or an identified category of records;
- (g)** such interim or interlocutory directions pursuant to section 33(5) of the 2014 Act as the adjudication officer considers appropriate pending a final determination of whether information is privileged legal material;
- (h)** the submission in advance of written legal submissions and/or skeletal arguments and/or core books for an oral hearing;
- (i)** pursuant to section 15V(10) of the 2002 Act, the holding of an oral hearing otherwise than in public or the imposition of restrictions on the reporting or distribution of information given at the hearing;
- (j)** expert evidence, including directing any expert witnesses to consult with each other for the purposes of (i) identifying the issues in respect of which they intend to give evidence, (ii) where possible, reaching agreement on the evidence that they intend to give in respect of those issues or (iii) considering any matter which the adjudication officer may direct them to consider, and requiring that such experts record in a joint memorandum particulars of the outcome of their consultations;
- (k)** adjournments; and
- (l)** the time, dates, location, mode and conduct of an oral hearing.

- 3.15** If an Undertaking fails to comply with a direction made by an adjudication officer, the adjudication officer may, after considering any written and/or oral submissions on the part of the Undertaking and Enforcement, make a decision as to whether, on the balance of probabilities, the Undertaking has or has not intentionally, recklessly or negligently breached a procedural or hearing requirement. Having made a decision in this regard, an adjudication officer may impose one or more of the sanctions provided in section 15X(2)(b) of the 2002 Act, subject to the requirements of sections 15 AA to section 15AD. Further, an adjudication officer may issue any further directions considered necessary or appropriate, including a direction:
- (a) requiring that the failure be remedied and specifying how it is to be remedied; or
 - (b) waiving or relieving the requirements of a previous direction.
- 3.16** If Enforcement fails to comply with a direction made by an adjudication officer, the adjudication officer may, after considering any written and/or oral submissions on the part of Enforcement and the Undertaking, issue any further directions considered necessary or appropriate, including a direction:
- (a) requiring that the failure be remedied and specifying how it is to be remedied; or
 - (b) waiving or relieving the requirements of a previous direction.

Mode of hearing

- 3.17** Case management hearings shall be heard remotely (i.e., online) unless determined otherwise by the adjudication officer. Substantive hearings shall be held in person unless determined otherwise by the adjudication officer.
- 3.18** Without prejudice to the generality of Rule 3.17, an adjudication officer may, at their discretion, direct that any oral hearing or part of any oral hearing (including the giving of evidence) be conducted remotely (i.e., online), or that certain participants or witnesses may participate remotely and/or that the evidence of certain witnesses may be given remotely in a hybrid hearing. Where a remote oral hearing is directed, or a direction is made for a hybrid hearing, the Adjudication Unit shall make a link available via which the remote or hybrid oral hearing can be accessed.

Hearings otherwise than in public and reporting restrictions

- 3.19** Oral hearings, which for the avoidance of doubt include case management hearings, shall be held in public unless the adjudication officer is satisfied that special circumstances exist (including where commercially sensitive information is given or likely to be given in evidence) such as to justify the oral hearing or part thereof being conducted otherwise than in public. One or more of the parties may make an application to the adjudication officer for a hearing or any part thereof, to be held otherwise than in public. Any such application shall set out the reasons for the request, and shall be made in writing in advance of the hearing. Each party shall be entitled to make written submissions on an application made by another party. Where considered necessary, the adjudication officer may receive oral submissions from the parties

in relation to the application. Following consideration of the application, the adjudication officer shall notify the parties of their decision, together with the reasons for that decision. Where the hearing or part thereof is held otherwise than in public, the adjudication officer will determine who is entitled to attend the hearing or part thereof.

- 3.20** Irrespective of whether an oral hearing (including a case management hearing) is held in public or otherwise, an adjudication officer may impose restrictions on the reporting or distribution of information given at the hearing or part thereof if they are satisfied that special circumstances exist (including whether information given or likely to be given in evidence is commercially sensitive information).

Notice of an oral hearing

- 3.21** An adjudication officer shall provide written notice of an oral hearing to the parties, to include the date, the times, location and mode of hearing.
- 3.22** Unless the adjudication officer determines that an oral hearing shall be conducted otherwise than in public in accordance with Rule 3.19, the Adjudication Unit shall publish notice of the oral hearing on the CCPC's website.

Directions

- 3.23** Where directions have been made in relation to an oral hearing at a case management hearing or at any point during the adjudication, the parties will comply with those directions and the oral hearing will proceed in accordance with those directions unless they are varied by the adjudication officer.

Adjournments

- 3.24** An adjudication officer may, at their own discretion or on the application of any party, adjourn an oral hearing to a specific date and/or place or adjourn the matter generally.

4 EVIDENCE

Application of rules of evidence

- 4.1** The rules of evidence applicable in civil proceedings before the High Court shall apply to any adjudication before an adjudication officer, save as otherwise set out in the 2002 Act (in particular sections 15V and 15AW) or as may be prescribed by the Minister pursuant to section 15V(14) of the 2002 Act.
- 4.2** Pursuant to section 15AW, the type of proof that is admissible as evidence in an adjudication under these Rules shall include relevant documents, oral statements, electronic messages, recordings and all other objects containing information, irrespective of the form it takes and the medium on which information is stored, provided that the proof would be admissible before a court.

Documentary evidence

- 4.3** The provisions of Chapter 3 of the 2020 Act and sections 15V and 15AW of the 2002 Act shall apply to a matter conducted pursuant to these Rules. For the purpose of these Rules, “business” shall have the meaning set out in section 12 of the 2020 Act.
- 4.4** Information contained in a document shall be admissible in an adjudication as evidence of any fact in the document of which direct oral evidence would be admissible if the information—
- (a)** was compiled in the ordinary course of a business;
 - (b)** was supplied by a person (whether or not he or she so compiled it and is identifiable) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with; and
 - (c)** in the case of information in non-legible form that has been reproduced in permanent legible form, was reproduced in the course of the normal operation of the reproduction system concerned.
- 4.5** Such information shall be admissible regardless of whether the information was supplied directly or indirectly but, if it was supplied indirectly, only if each person (whether or not he or she is identifiable) through whom it was supplied received it in the ordinary course of a business.
- 4.6** Rule 4.4 shall not apply to (i) information that is privileged from disclosure in the Adjudication Proceedings, (ii) information supplied by a person who would not be compellable to give evidence at the instance of the party wishing to give the information in evidence by virtue of section 14 of the 2020 Act, save as set out in section 14(6) of the 2020 Act or (iii) subject to section 14(4) of the 2020 Act, information compiled for the purposes or in contemplation of any criminal investigation, investigation or inquiry carried out pursuant to or under any enactment, civil proceedings, criminal proceedings or relevant proceedings, or proceedings of a disciplinary nature.
- 4.7** Subject to the conditions in section 15AW(4) of the 2002 Act, if a document contains a statement by a person asserting that an act has been done, or is, or was, proposed to be done, by another person, being an act that relates to a regulatory breach (the “relevant act”) then, at the adjudication officer’s discretion, that statement shall be admissible at the oral hearing as evidence that the relevant act was done by that other person or was proposed (at the time the statement was made, or, as the case may be, at a previous time) to be done by him or her.
- 4.8** For the purposes of Rule 4.7 “regulatory breach” means (a) the entry into or the making or implementation of an agreement or decision, or the engaging in of a concerted practice, the subject of proceedings under the 2002 Act, or (b) the doing of the act or acts that constitute an abuse of a dominant position, the subject of proceedings under the 2002 Act.
- 4.9** Where information is admissible in evidence by virtue of Rule 4.4 and/or Chapter 3 of the 2020 Act, but is expressed in terms that are not intelligible to the average person without explanation, an explanation of the information shall also be admissible in evidence if either—

- (a) it is given orally by a person who is competent to do so, or
- (b) it is contained in a document and the document purports to be signed by such a person.

4.10 The notice provisions of section 15 of the 2020 Act shall apply to the admission of business records as evidence under these Rules, save that references to a court in section 15 shall be construed as references to an adjudication officer.

4.11 In estimating the weight, if any, to be attached to evidence admitted by virtue of these Rules and/or the 2020 Act, the adjudication officer shall consider all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise.

4.12 Where information is given in evidence by virtue of Chapter 3 of the 2020 Act and/or Rule 4.4:

- (a) any evidence which, if the person who made the statement had been called as a witness, would have been admissible as relevant to his or her credibility as a witness, shall be admissible for that purpose;
- (b) evidence may, with the leave of the adjudication officer, be given of any matter which, if that person had been called as a witness, could have been put to him or her in cross-examination as relevant to his or her credibility but of which evidence could not be adduced by the cross-examining party; and
- (c) evidence tending to prove that that person, whether before or after making the statement, made (whether orally or not) a statement which is inconsistent with it shall, if not already admissible by virtue of section 14 of the 2020 Act and/or Rule 4.4, be admissible for the purpose of showing that he or she has contradicted himself or herself.

4.13 Nothing in these Rules shall prejudice the admissibility in any adjudication before an adjudication officer of any document, as evidence of any matters stated in it—

- (a) that is so admissible by virtue of any rule of law or other enactment; or
- (b) that would be admissible before a court hearing civil proceedings by virtue of any rule of law or other enactment.

Summoning of witnesses

4.14 Pursuant to section 15V(2) of the Act, unless a witness consents to shorter notice or the period of notice to the witness is abridged by direction of the adjudication officer, an adjudication officer may, by notice in writing no less than 14 days prior to the date on which the witness is required to attend before an adjudication officer:

- (a) summon a witness to appear to give evidence or to produce before the adjudication officer any books, documents or records in such person's power or control, or to do both; and
- (b) require the witness to attend an oral hearing from day to day unless excused, or released from further attendance, by the adjudication officer.

- 4.15** The payment or reimbursement of, or any part of, the reasonable travelling and subsistence expenses of a witness required to attend an oral hearing is at the discretion of the adjudication officer and such expenses shall be discharged by the CCPC.
- 4.16** Nothing in these Rules compels the disclosure by any person of any information that the person would be entitled to refuse to produce on the grounds of legal professional privilege or authorises the inspection or copying of any document containing such information that is in the person's possession, power or control.
- 4.17** An adjudication officer has the same powers, rights and privileges as a judge of the High Court when hearing civil proceedings on the occasion of that action including with respect to—
- (a)** the attendance and examination of witnesses on oath or otherwise (including witnesses who are outside the State); and
 - (b)** compelling the production (including discovery) of records or an identified category or categories of records.
- 4.18** An adjudication officer may require evidence to be given on oath and may require a witness to take an oath that the evidence the witness will give shall be true. An adjudication officer may administer such an oath to the witness orally or permit the witness to affirm.

Presentation of Evidence and Submissions

- 4.19** At the oral hearing, an authorised officer or other representative of Enforcement or any other person (including but not limited to a legal representative), with leave of the adjudication officer, shall present the evidence in support of the referral. This may include making submissions on any issues of law, fact, evidence, sanction or penalty as may arise and on any other matters deemed relevant.
- 4.20** At an oral hearing, an Undertaking or any other person (including but not limited to a legal representative), with leave of the adjudication officer, may make submissions or present evidence to the adjudication officer on the Full Investigation Report prepared under section 15L(9) of the 2002 Act, and the evidence presented by Enforcement, and in defence or reply shall be entitled to present evidence or submissions on any issues of law, fact, evidence, sanction, or penalty as may arise, and on any other matters deemed relevant.

Witness statements and examination of witnesses

- 4.21** The testimony of witnesses attending an oral hearing shall be given in accordance with section 15V of the 2002 Act and these Rules.
- 4.22** Save for those witnesses appearing under compulsion of summons or where directed by the adjudication officer, where it is intended to call a witness of fact, a witness statement setting out the evidence that the witness intends to give shall be submitted to the adjudication officer and as applicable, the parties, in advance of the hearing and in accordance with any directions made by the adjudication officer in that regard.

- 4.23** The adjudication officer may allow a witness, including an expert witness, at the oral hearing to give evidence by tendering a written statement, provided such statement is verified on oath.
- 4.24** At an oral hearing, the parties are entitled to examine and cross-examine witnesses, subject to the supervisory jurisdiction of an adjudication officer, who may limit the matters on which evidence is adduced or refuse to permit a party to examine or cross-examine a witness or expert at their discretion.
- 4.25** The adjudication officer may dispense with the need to call a witness to give oral evidence if such evidence is not necessary to resolve an issue of fact or otherwise enable a decision to be made under section 15X of the 2002 Act.

Directions relating to evidence

- 4.26** On application by a party or parties or of the adjudication officer's own motion, and where the adjudication officer is satisfied that such direction is necessary for the determination of the issues before the adjudication officer the adjudication officer may—
- (a)** direct authorised officers of the CCPC, or the Undertaking to answer (whether on oath or otherwise) an identified question or questions in whatever manner or form the adjudication officer may specify;
 - (b)** direct a party to adduce evidence or produce books, documents and records in its power or control; and
 - (c)** direct a party to clarify any issue of fact that an adjudication officer may deem necessary.
- 4.27** An answer to a question put to a person in response to a direction under Rule 4.26(a) is not admissible as evidence against the person in criminal proceedings, other than proceedings for perjury in circumstances where the contested response or information was provided on oath.
- 4.28** A person the subject of a direction under Rule 4.26 shall be entitled to the same immunities and privileges in respect of compliance with such direction as a witness appearing in proceedings before the High Court.
- 4.29** An adjudication officer may, at his or her discretion, refuse to permit a party to call a witness (including an expert) whose evidence the adjudication officer considers not to be relevant to, and/or unnecessary to hear in order to resolve, any matter properly to be inquired into in the adjudication.

Expert Evidence

- 4.30** The opinion of any witness who appears to the adjudication officer to possess the appropriate qualifications or experience as respects the matter to which his or her evidence relates shall, subject to Rule 4.31, be admissible in evidence as regards any matter calling for expertise or special knowledge that is relevant to the proceedings and, in particular and without prejudice to the generality of the foregoing, the following matters, namely:

- (a) the effects that types of agreements, decisions or concerted practices may have, or that specific agreements, decisions or concerted practices have had, on competition in trade,
 - (b) an explanation to the adjudication officer of any relevant economic principles or the application of such principles in practice, where such an explanation would be of assistance to the adjudication officer.
- 4.31** Notwithstanding Rule 4.30, an adjudication officer may, where in its opinion the interests of justice require it to do so, direct in the proceedings concerned that evidence of a general or specific kind referred to in Rule 4.30 shall not be admissible in proceedings under this Act or shall be admissible in such proceedings for specified purposes only.
- 4.32** Expert evidence may not be delivered or adduced without the prior leave of the adjudication officer and unless the expert's evidence has been provided to the adjudication officer and the other parties in advance of the hearing and in accordance with any directions made by the adjudication officer in that regard.
- 4.33** Save where an adjudication officer grants leave for an additional expert or experts, each party may offer evidence from one expert only in a particular field of expertise on a particular issue. Such leave shall not be granted unless the adjudication officer is satisfied that the evidence of an additional expert is necessary in order to do justice between the parties.
- 4.34** It is the duty of an expert to assist the adjudication officer as to matters within his or her field of expertise and to comply with the duties applicable to experts in civil proceedings in the High Court. This duty overrides any obligation to the party paying the fee of the expert.
- 4.35** Every report of an expert delivered pursuant to these Rules or to any direction of an adjudication officer shall:
 - (a) contain a statement acknowledging the duty mentioned in Rule 4.34;
 - (b) disclose any financial or economic interest of the expert, or of any person connected with the expert, in any business or economic activity of the party retaining that expert, including any sponsorship of or contribution to any research of the expert or of any university, institution or other body with which the expert was, is or will be connected, other than any fee agreed for the preparation by the expert of the report provided or to be provided in the adjudication concerned and any fee and expenses due in connection with the participation of the expert in the adjudication concerned.
- 4.36** An adjudication officer may, of his or her own motion, or at the request of one or more of the parties, give a direction:
 - (a) requiring each party intending or proposing to offer expert evidence, to identify–
 - (i) the field in which expert evidence is required; and
 - (ii) where practicable, the name of the proposed expert;

- (b) determining the fields of expertise in which, or the proposed expert(s) by whom, evidence may be given at the hearing; and/or
- (c) fixing the date by which a report setting out the evidence of each expert intended to be called shall be delivered.

Meeting between experts

- 4.37** Where two or more parties intend to call experts, an adjudication officer may direct all or any of those experts to meet. Where such a direction is made, the experts shall be required to meet privately, without the presence of any party or any legal representative of any party, and to discuss with each other their proposed evidence and any other matters that they may be directed to discuss.
- 4.38** Following the meeting referred to in Rule 4.37, the experts may be required by the adjudication officer to draw up a written memorandum (known as the “expert memorandum”) setting out the matters which are agreed and disputed as between them and the expert memorandum, shall be furnished to the parties and to the adjudication officer.
- 4.39** Upon consideration of the expert memorandum, an adjudication officer may, before or in the course of the oral hearing:
- (a) require any experts to be examined and cross-examined (either on the whole or on a specified part of their evidence) one after another, in such order as the adjudication officer shall direct; or
 - (b) apply the “debate among experts” procedure pursuant to Rule 4.39(c);
 - (c) where the “debate among experts” procedure is applied, each of two or more contradicting experts shall testify at the same time. Each expert, in such order as the adjudication officer shall determine, and without being examined by, or by counsel for, any party, shall give an outline of the evidence that is agreed between or among them. The experts shall then, in such order as the adjudication officer shall determine, present the evidence on which they are not agreed, the one with the other or others. Following such presentation, the experts may, subject to the directions of the adjudication officer, be required to debate the points which are not agreed between or among them, the one with the other or others.
- 4.40** When the “debate among experts” pursuant to Rule 4.39(c) is complete, examination in chief by a party or representative of a party, if deemed necessary by the adjudication officer, and cross examination on such matters as the adjudication officer, or if the adjudication so directs, general cross examination shall be allowed, as may re-examination.

Single Joint Expert

- 4.41** Where both of the parties wish to offer expert evidence on a particular issue, the adjudication officer may at his or her discretion, direct that the evidence on that issue is to be given by a single joint expert (in this Rule and in Rule 4.42, the “single joint expert”). The adjudication officer may direct the terms on and manner in which the single joint expert is to be instructed.
- 4.42** Where the parties cannot agree who should be the single joint expert, the adjudication officer may:—
- (a) select the single joint expert from a list prepared or identified by the parties; or
 - (b) direct that the single joint expert be selected in such other manner as the adjudication officer directs.

Costs

- 4.43** No order as to costs shall be made in proceedings before an adjudication officer, save that an adjudication officer may in his or her discretion award the costs of proceedings before an adjudication officer:
- (a) against the Undertaking, in the event that it is found to have infringed Relevant Competition Law and where the adjudication officer finds that the Undertaking has engaged in improper, irregular, unfair, or unsatisfactory conduct in connection with the investigation of the alleged infringement or in the conduct of its defence before an adjudication officer; or
 - (b) against the CCPC in the event that no infringement is found and where the adjudication officer finds that the CCPC has engaged in improper, irregular, unfair, or unsatisfactory conduct in connection with the investigation of the alleged infringement or in its conduct of the proceedings before the adjudication officer.

5 MISCELLANEOUS

Privilege

- 5.1** Subject to Rule 5.2, nothing in these Rules shall compel the disclosure by any person of privileged legal material or authorise the taking of privileged legal material.
- 5.2** The disclosure of information may be compelled, or possession of it taken, pursuant to the 2014 Act, notwithstanding that it is apprehended that the information is privileged legal material, provided that the compelling of its disclosure or the taking of its possession is done by means whereby the confidentiality of the information can be maintained (as against the person compelling such disclosure or taking such possession) pending the determination by the High Court or an adjudication officer (in respect of proceedings under Part 2D or Part 2G of the 2002 Act) of the issue as to whether the information is privileged legal material.

- 5.3** Without prejudice to Rule 5.4, where, in the circumstances referred to in Rule 5.2, information has been disclosed or taken possession of pursuant to the 2014 Act, the person (a) to whom such information has been so disclosed, or (b) who has taken possession of it, shall - in accordance with section 33 of the 2014 Act and in the context of matters falling within the scope of Part 2D and/or Part 2G of the 2002 Act - (unless the person has, within the period subsequently mentioned in this subsection, been served with notice of an application under Rule 5.4 in relation to the matter concerned) apply to the High Court or to an adjudication officer for a determination as to whether the information is privileged legal material and such an application under section 33 of the 2014 Act shall be made within 30 days after the disclosure or the taking of possession.
- 5.4** A person who, in the circumstances referred to in Rule 5.2, is compelled to disclose information, or from whose possession information is taken, pursuant to the 2014 Act, may apply to the High Court or to an adjudication officer (in respect of proceedings under Part 2D or Part 2G of the 2002 Act) for a determination as to whether the information is privileged legal material.
- 5.5** Pending the making of a final determination of an application to an adjudication officer under Rule 5.3 or 5.4, the adjudication officer may give such interim or interlocutory directions as he or she considers appropriate including, without prejudice to the generality of the foregoing, directions as to:
- (a)** the preservation of the information, in whole or in part, in a safe and secure place in any manner specified by the adjudication officer;
 - (b)** the appointment of a person with suitable legal qualifications possessing the level of experience, and the independence from any interest falling to be determined between the parties concerned, that the adjudication officer considers to be appropriate for the purpose of—
 - (i)** examining the information, and
 - (ii)** preparing a report for the adjudication officer with a view to assisting or facilitating the adjudication officer in his or her determination as to whether the information is privileged legal material.
- 5.6** An application to an adjudication officer under Rule 5.3, 5.4 or 5.5 shall be by application and may, if an adjudication officer directs, be heard otherwise than in public.

Adjudication Unit

- 5.7** Adjudication officers may be assisted in the performance of their functions by the Adjudication Unit. The Adjudication Unit will provide general administrative support in relation to the conduct of Adjudication Proceedings to the adjudication officers.
- 5.8** While staff of the Adjudication Unit may provide administrative assistance to adjudication officers, they will not participate in the making of decisions by adjudication officers and, in the case of employees of the CCPC assigned to staff the Adjudication Unit, will not be subject to the direction of any member or employee of the CCPC in relation to the performance of their functions in assisting adjudication officers.