

Addendum to the CCPC's Administrative Leniency Policy

Subject to consultation

Introductory Note

The Competition (Amendment) Act 2022 was signed into law by the President on 29 June 2022. The Act transposes Directive (EU) 2019/1 of the European Parliament and of the Council, also known as the ECN+ Directive. This Policy is based upon the text of the Act, as enacted.

1. Resale price maintenance

Introduction and scope

- 1.1 Resale price maintenance (“RPM”) is the term used to describe an agreement or concerted practice between a supplier and its reseller that has as its direct or indirect object the establishment of a fixed or minimum resale price or price level to be charged by the reseller. RPM is prohibited by section 4 of the Competition Act 2002, as amended (the “2002 Act”) and Article 101 of the Treaty on the Functioning of the European Union (“TFEU”) and is regarded as a serious infringement of competition law.
- 1.2 Part 2D of the 2002 Act provides that the CCPC may impose administrative financial sanctions on undertakings and associations of undertakings for, amongst other infringements, cartel infringements and RPM (i.e., infringements of section 4 of the 2002 Act and/or Article 101 of the TFEU), of up to €10 million or 10% of total worldwide turnover (whichever is greater) of the undertaking or association of undertakings in the business year preceding the CCPC’s decision.¹
- 1.3 Under section 15AP of the 2002 Act, the CCPC may put in place leniency programmes for infringements of competition law other than cartels. This Part of the ALP sets out the terms upon which the CCPC may grant leniency in respect of RPM.

Availability of immunity and reduction of fines

- 1.4 Subject to this Part of the ALP, the terms that apply to leniency applications by participants in cartels under Part 1 of this Policy shall apply *mutatis mutandis* to applications in respect of RPM under this Part of the ALP.
- 1.5 The CCPC may grant Type 1A immunity from any administrative financial sanction which would otherwise have been imposed in relation to conduct involving RPM where the conditions in Part 1 of this Policy are satisfied. However, it is the CCPC’s policy that an undertaking which instigated the RPM should generally not be eligible for Type 1A immunity or Type 1B immunity under this Policy.

¹ See Section 15AC of the 2002 Act.

- 1.6 As regards an application made by an undertaking that did not instigate the RPM, the CCPC is unlikely to grant Type 1B immunity (as provided for in paragraph 2.4 of Part 1 of this Policy) where the application relates solely to conduct involving RPM. The CCPC considers that in circumstances where Type 1A immunity is not available (for example, where the CCPC has already carried out a search in connection with the alleged infringement and/or already has in its possession sufficient evidence to carry out such a search), an applicant in a case involving RPM is unlikely to be able to provide sufficient additional evidence to justify immunity.
- 1.7 However, an undertaking that does not qualify for immunity from administrative financial sanction (i.e., either Type 1A immunity or Type 1B immunity) in relation to conduct involving RPM, may benefit from Type 2 Leniency. By analogy with section 15AJ(8) of the 2002 Act, reductions granted to an undertaking following a Type 2 Leniency application in relation to conduct involving RPM shall not exceed 50% of the administrative financial sanction which would otherwise have been imposed.