

**Template pursuant to Section 3 (a) of the
ICN Framework on Competition Agency Procedures**

Competition and Consumer Protection Commission, Ireland

The following template is submitted by the **Competition and Consumer Protection Commission (CCPC), Ireland** pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

The Competition and Consumer Protection Commission (‘The CCPC’) is an independent statutory body with a dual mandate to enforce competition and consumer protection law in Ireland. It was established in October 2014 pursuant to the Competition and Consumer Protection Act 2014 (“the 2014 Act”), following the merger of the Competition Authority (TCA) and the National Consumer Agency (NCA).

We enforce Irish and European competition law in Ireland. We conduct investigations and can take civil or criminal enforcement action if we find evidence of breaches of competition law. The CCPC is not the decision-maker in competition law enforcement cases – the Irish courts have sole competence to adopt prohibition decisions, make orders, grant remedies and impose penalties in respect of breaches of national and EU competition law. A decision of a national court in Ireland hearing a civil or criminal competition law case can be appealed to a higher court or, depending on the circumstances, the High Court may judicially review a decision made by a lower court such as the District Court. The High Court has a specialised judge and special court rules dedicated to competition law cases dealing with both private and public enforcement of EU and national competition laws.

The CCPC is also responsible for assessing mergers and acquisitions above a specified financial threshold, and all media mergers. We have full decision-making powers¹ in this area and can make a determination to block a merger, clear a merger or clear a merger, subject to specific conditions.

In addition to our role in competition enforcement, we also engage in competition advocacy - highlighting to Government and other policymakers the possible impact of proposed legislation or regulations on competition and/or consumer welfare and promoting reforms in particular sectors of the economy.

Further information about the CCPC can be found on our website <https://www.ccpc.ie/>

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

¹ Specific provisions relating to media mergers are set down in Part 3(A) of the Competition Act 2002 (as amended). All media mergers must be referred to the Minister for Communications, Climate Action and Environment and the final determination is made by the Minister.

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

General Legislative Framework

Irish competition law is contained in various pieces of legislation, most importantly the [Competition Act 2002](#), as amended by the [Competition \(Amendment\) Act 2006](#), the [Competition \(Amendment\) Act 2010](#), the [Competition \(Amendment\) Act 2012](#), Parts 3 and 4 of the [Competition and Consumer Protection Act 2014](#), the [Intellectual Property \(Miscellaneous Provisions\) Act 2014](#) and the [Competition \(Amendment\) Act 2017](#). This legislation is referred to collectively as the Competition Acts 2002 to 2017.

EU competition law is contained primarily in Articles 101 and 102 of the [Treaty on the Functioning of the European Union](#) (TFEU). Articles 101 and 102 of the TFEU prohibit the same kind of conduct as that prohibited by sections 4 and 5 of the Competition Act 2002, as amended.

The competition authorities of every EU Member State, including Ireland, are required to actively participate in the European Competition Network ('the ECN'). Cooperation within the ECN is designed to (i) inform the ECN of new cases and envisaged enforcement decisions to ensure an efficient allocation of cases and a consistent application of European Competition law; (ii) ensure an effective allocation of cases; (iii) facilitate the exchange of evidence and information; (iv) assist/obtain assistance from other competition authorities or the commission on investigations conducted by the CCPC; and, (v) discuss issues of common interest.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

The CCPC's investigation and enforcement policies and Procedural Rules and the applicable legislation in Ireland afford persons of other jurisdictions treatment no less favorable in like circumstances.

The Rules of the Superior Courts, which govern competition law proceedings and apply equally to all defendants, contain specific rules governing service out of the jurisdiction and enforcement of judgements.

Ireland is a Contracting Party to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

General Approach

Laws and Regulations applicable to Investigations and Enforcement Proceedings are set out in legislation and caselaw and additionally, with regard to judicial proceedings, in the Rules of the Superior Courts. All legislation in Ireland is publicly available at the Irish Statute Book website [<http://www.irishstatutebook.ie/>] and the Rules of the Superior Courts and Judgements of the Courts are available at www.Courts.ie.

The CCPC has links on its website to all competition laws and regulations that apply to investigations and enforcement proceedings in Ireland. See <https://www.ccpc.ie/business/enforcement/competition-consumer-protection-act/> for details.

We also publish details on our website of past antitrust cases and proceedings (<https://www.ccpc.ie/business/enforcement/civil-competition-enforcement/>) and merger determinations (<https://www.ccpc.ie/business/mergers/mergers-archive/>)

The CCPC publishes on its website guidance notices designed to help businesses to comply with competition law (<https://www.ccpc.ie/business/help-for-business/>) and specific guidance on mergers (<https://www.ccpc.ie/business/mergers/guidance-on-mergers/>)

The CCPC adheres to all Laws and Regulations applicable to Investigations and Enforcement Proceedings. The CCPC publishes Strategy Statements every three years which set out our

strategic goals and the approach adopted to, inter alia, the enforcement of competition law. Under our current Strategy Statement² for 2018 – 2020 we are committed to:

- *Transparency in our compliance and enforcement activities, providing information on legislation, explaining the basis for our decisions and publicising proactive inspections.*
- *Publish information and guidelines to encourage complaints that will lead to potential enforcement actions.*
- *Continuously assess all our investigative and enforcement procedures to ensure ongoing adherence to best practice and legal requirements, including those in relation to privacy, data protection and the rights of defence.*

We have published a set of Prioritisation Principles which set out how we prioritise our enforcement activity and ensure transparency in our choice of actions (see <https://www.ccpc.ie/business/about/decide-take-action/>).

Cartels

The CCPC operates a Cartel Immunity Programme ('the Programme') in conjunction with the Director of Public Prosecutions ('the DPP'), who is responsible for prosecuting offences on indictment - almost all cartels are viewed as criminal offences given the seriousness of these type of offences. Details of the Programme are available on our website (see <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/03/anti-cartel-enforcement-template.pdf>) The Programme outlines the policy of both the CCPC and the DPP in considering applications for immunity from prosecution for criminal cartel offences under the Competition Act, 2002 (as amended) and it outlines the requirements on parties in order to qualify for immunity. This Programme is also published on the ICN website <https://www.internationalcompetitionnetwork.org/working-groups/cartel/templates/>.

Merger Review

The CCPC publishes extensive guidance to businesses about its merger review process on its website at: <https://www.ccpc.ie/business/mergers/guidance-on-mergers/guidance-mergers/>

d) Investigative Process

- i. *Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. *Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal,*

² <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/02/CCPC-Strategy-Statement-2018-2020.pdf>

economic, and procedural issues, according to the status and specific needs of the Investigation.

- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

The CCPC informs persons subject to a civil or criminal investigation as soon as practical and legally permissible. The CCPC follows internal procedures on informing relevant parties of the status of a CCPC investigation on an ongoing basis and of the ultimate outcome of a full CCPC civil or criminal investigation.

Specific provisions and timelines for engagement with parties who have notified mergers to the CCPC are set out in part 3 of the Competition Act 2002, as amended. Furthermore, our internal procedures for providing information to and engaging with parties to a merger are set out in our various Guidance Documents regarding mergers and acquisitions which are available at <https://www.ccpc.ie/business/mergers/guidance-on-mergers/>

The CCPC is at all times mindful of the Constitutionally protected right to fair procedures, which relates to, for example, the right of persons to be made aware of the case against them and to be given an opportunity to respond.

The CCPC is vested with certain information-gathering powers under legislation, for example the power to require parties to a merger to provide further information to the CCPC and the power, in the context of an investigation, to summon witnesses, to examine them on oath and to require them to produce books documents and records or to provide the CCPC with information in writing. The CCPC adheres to the relevant timelines set out in legislation, where applicable, in relation to responses required from persons in those circumstances.

In civil investigations, notice is typically provided to persons shortly after the investigation is opened (typically within a matter of days).

e) Timing of Investigations and Enforcement Proceedings

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

The CCPC endeavors to conclude its investigations, including its review of notified mergers, within a reasonable time period, taking into account relevant statutory deadlines and the Statute of Limitations.

Merger Review

Mergers and acquisitions that meet defined turnover thresholds are subject to mandatory notification to the CCPC under Irish competition law. For parties who have expressed their intention to notify a merger or acquisition, the Competition Enforcement and Mergers Division of the CCPC is available for pre-notification discussions.

Where a merger notification is submitted to the CCPC, the CCPC will conduct its merger review pursuant to the detailed rules set out in legislation and in the CCPC's own guidance documents, available [here](#). That legislation sets out binding statutory deadlines within which the CCPC must make a determination regarding a notified merger, making specific provision for phase 1 and phase 2 mergers and for extensions to the statutory deadline in certain prescribed circumstances. Furthermore, the CCPC has published non-binding guidance setting out in detail timelines within those statutory deadlines which relate to the various different stages of the merger review process.

Criminal and Civil Investigations

The CCPC always aims to complete all of its investigations in a timely fashion. The CCPC takes into account the Statute of Limitations in conducting its investigations and in seeking to prosecute matters following investigation. There is a two year limitation period for the summary prosecution of a cartel offence from the date of the commission of the offence. There is no limitation period for criminal prosecution of cartel offences on indictment.

Where the matter proceeds to Judicial Proceedings, the Rules of the Superior Courts apply to the case, prescribing specific time limits within which certain procedural steps in litigation must be taken. Whilst the CCPC is not always the prosecutor, for example, in the case of prosecutions on indictment (which are prosecuted by the DPP), it aims to conclude aspects of the litigation that are under its control in a timely fashion and in accordance with the Rules of the Superior Courts.

f) Confidentiality

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.***
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.***
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.***

Privacy Notice

The CCPC has published a Privacy Notice on its website: (<https://www.ccpc.ie/consumers/wp-content/uploads/sites/2/2018/08/2018.08.30-CCPC-General-Privacy-Notice.pdf>). The Notice points out that there are situations in which the CCPC may be permitted to, or required by law, to make certain information provided to it available to third parties. Details of the situations in which the CCPC may disclose personal

data to third parties, and information on how the CCPC collects and uses personal data, are set out in the Notice.

Privacy Protocol

The CCPC has also published a Privacy Protocol which outlines the safeguards put in place by the CCPC to protect the privacy rights of businesses and individuals when material is taken during the course of an unannounced search. <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/06/Privacy-Protocol.pdf>

Access to File

- *Antitrust Proceedings*

In the context of competition proceedings, access to file is provided by either voluntary or compulsory (Court ordered) discovery. In the context of a third party seeking access to the CCPC's file in private proceedings, that third party can seek voluntary discovery and if refused, may seek to obtain a court order compelling discovery.³

Specific provision has been laid down for third parties to obtain court-ordered access to the CCPC's case file in actions for damages before the court pursuant to SI 43/2017 - European Union (Actions for Damages for Infringements of Competition Law) Regulations 2017 ("SI 43/2017").⁴ Under Regulation 6 of SI 43/2017, a third party pursuing an action for damages for infringement of competition law, can seek court-ordered access to the CCPC's case file. SI 43/2017 also contains further detailed provisions regarding the disclosure of information that was prepared by a person specifically for the proceedings of a competition authority, information that the competition authority has drawn up and sent to the parties in the course of its proceedings, leniency statements and settlement submissions.

- *Merger Reviews*

In the context of merger reviews, specific procedures are set out on our website governing access to the case file, including how the CCPC protects the confidentiality of information provided to it during the course of its reviews, while balancing the right of the notifying parties' access to the case file. (<https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/CCPC-Mergers-Access-to-the-File-1.pdf>).

Confidentiality Rules applicable to CCPC Staff

Section 25(1) of the Competition and Consumer Protection Act 2014 prohibits, subject to certain exceptions, Members of the CCPC, CCPC staff, authorised officers appointed by the CCPC and any person engaged by the CCPC from disclosing confidential information obtained by them in their official capacity or while performing their duties as such unless they

³ Where a third party seeks a court order for discovery of documentation of non-party to the proceedings it is necessary to show that the order is necessary for disposing fairly of the matter or for saving costs.

⁴ See [SI No. 43/2017 - European Union \(Actions for Damages for Infringements of Competition Law\) Regulations 2017](#) which implements [Directive 2014/140/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing action for damages under national law for infringements of the competition law provisions of the Member States and the European Union](#).

are authorised to do so by the CCPC or by authorised CCPC staff. It is a criminal offence to infringe the prohibition, punishable on conviction by fine and/or imprisonment.

The Official Secrets Act 1963, as amended, also applies to all CCPC staff.

Protected Disclosures

The [Protected Disclosures Act 2014](#) in Ireland provides protection to anyone making protected disclosures (aka whistleblowers) and the CCPC adheres to the principles of the legislation.

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

The CCPC has a Code of Conduct in place which applies to all CCPC staff. The Code sets down the general principles and standards which govern the professional activities and conduct of all persons working in the CCPC. Under the Code:

- All staff, in engaging in activities outside of work, must avoid the risk of conflict with their official duties, avoid any impropriety and comply with all CCPC disclosure requirements.
- Staff should be mindful that perceived and potential conflicts can be as damaging to the integrity and reputation of the CCPC as actual conflicts; therefore, the same consideration should be given to these situations.

The Chairperson and Members of the Commission are, in addition to the Code of Conduct, bound by the *Commission Conflicts of Interest Policy and Protocols* and Legal Advisors are additionally bound by the *Conflict of Interest Policy for CCPC Legal Advisors*.

Some staff have statutory obligations under the *Ethics in Public Office Acts 1995 and 2001*. Separate to those obligations, no staff member may allow a situation to arise where there is a conflict or potential for conflict between his/her own interests and the interests of the CCPC.

Any staff member who is involved with any outside organisation, whether economic, social, voluntary, cultural or political, has the responsibility to ensure that such involvement is not prejudicial to the interests of the CCPC and that it does not create a conflict of interest or potential conflict with the CCPC.

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense,***

parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.

- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.**
- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.**

The CCPC follows its internal procedures in informing relevant parties, on an ongoing basis, of the status of a CCPC investigation and the ultimate outcome of a CCPC full civil or criminal investigation.

Anti-trust enforcement is incorporated into the Common Law System of Ireland where fundamental due process rights for the defence are guaranteed. Fundamental rights are guaranteed by the Irish Constitution, and the European Convention of Human Rights has been incorporated into Irish law by way of the European Convention of Human Rights Act 2003.

The defence has the right to cross-examine witnesses and to challenge the prosecutions on procedural matters. In the course of criminal investigations suspects at interview or under interrogation are entitled to legal representation of their choice and receive a formal caution against self-incrimination when under criminal investigation. Where the matter proceeds to Judicial Proceedings, the Rules of the Superior Courts apply to the case.

The CCPC is at all times mindful of the constitutionally protected right to fair procedures. "*In the context of criminal litigation, fair procedures require that a person charged with an offence should be clearly told what it is that is alleged against him, and that he should have an opportunity to make his defence.*" Furthermore, they should be informed of the details of the complaint against them, be given an opportunity to answer the complaint and to defend themselves⁵.

Specific provisions and timelines for engagement with parties who have notified mergers are set out in part 3 of the Competition Act 2002, as amended. Furthermore, our internal procedures for providing information to and engaging with parties to a merger, including regarding the basis of the Commission's legal and economic reasoning in all cases, are set out in our various Guidance Documents regarding mergers and acquisitions which are available [here](#).

⁵ Kelly: The Irish constitution 5th ed. P.1276

i) Representation by Counsel and Privilege

- i.* No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.**
- ii.* Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.**
- iii.* Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.**

As mentioned above, anti-trust enforcement is incorporated into the Common Law System of Ireland where fundamental due process rights for the defence are guaranteed.

Fundamental rights are guaranteed by the Irish Constitution, and the European Convention of Human Rights has been incorporated into Irish law by way of the European Convention of Human Rights Act 2003. The Irish Courts have confirmed that a person facing a tribunal in respect of which it is appropriate to have legal representation has a right under the Irish Constitution and the European Convention of Human Rights to freely select the lawyers that will represent him or her. The 2014 Act provides for the general principle that no one can be compelled to disclose privileged legal material and that the CCPC is not generally authorized to take privileged legal material. However, the 2014 Act does allow the CCPC to compel disclosure of, and to take privileged legal material provided it follows the process stipulated in the 2014 Act to ensure legally privileged material is identified and kept confidential pending the High Court's determination of whether such information is covered by privilege.

j) Decisions in Writing

- i.* Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.**
- ii.* Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those**

concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.

Competition Enforcement

The CCPC does not have any power to adopt prohibition decisions or to make orders, grant remedies or impose penalties in respect of breaches of national competition law (i.e. sections 4 and 5 of the Competition Act 2002) or EU competition law (i.e. Articles 101 and 102 TFEU). Instead, the Irish courts have sole competence to adopt prohibition decisions, make orders, grant remedies and impose penalties in respect of breaches of national and EU competition law. In Ireland, breaches of competition law can be pursued either through civil or criminal proceedings in the Irish courts.

The CCPC investigates breaches of competition law. At the conclusion of its investigation, the CCPC may opt to initiate either civil or criminal proceedings against the undertaking concerned. It should be noted that cartel activity is typically pursued through criminal proceedings, whereas non-hardcore breaches of competition law are typically pursued through civil proceedings.

Details of all Court proceedings in respect of competition law cases are published on the Irish Courts website www.Courts.ie

The CCPC publishes details of civil law cases it has undertaken on behalf of the public on its website at:

<https://www.ccpic.ie/business/enforcement/civil-competition-enforcement/civil-court-cases/>

Merger Determinations

Specific provisions regarding the issuing of final determinations by the CCPC, with regard to mergers notified to the CCPC, are set out in part 3 of the Competition Act 2002, as amended, and in our internal procedures and Guidance Documents regarding mergers and acquisitions, which are available [here](#). That legislation and guidance set out statutory deadlines for the making of a final determination by the CCPC, the circumstances wherein those deadlines can be extended, the contents and publication of final determinations and the treatment of confidential information in those final determinations.

Undertakings and Commitments

In the context of mergers notified to the CCPC, provisions regarding proposals with regard to the manner in which the merger may be put into effect, are set out in part 3 of the Competition Act 2002, as amended. Those proposals become binding on the parties if the CCPC takes the proposals into account and states in writing that they form the basis or part of the basis of its determination.

The Competition Act 2002, as amended, contains detailed provisions regarding agreements entered into by the CCPC not to bring proceedings under section 14A of that Act which specify, amongst other things, that before the High Court will make an order in terms of that agreement, the CCPC has obligations regarding the publication of such an agreement.

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

As noted above, the Irish courts have sole competence to adopt prohibition decisions, make orders, grant remedies and impose penalties in respect of breaches of national and EU competition law. A decision of a national court in Ireland hearing a civil or criminal competition law case can be appealed to a higher court or, depending on the circumstances, the High Court may judicially review a decision made by a lower court such as the District Court. The High Court has a specialised judge and special court rules dedicated to competition law cases dealing with both private and public enforcement of EU and national competition laws.

In respect of merger review decisions taken by the CCPC, the notifying parties have a statutory right to appeal to the High Court following a full review (a Phase II investigation) that culminates in a CCPC determination to prohibit the merger, or to clear the merger subject to conditions.