



**International
Competition
Network**

ANTI-CARTEL ENFORCEMENT TEMPLATE

**CARTELS WORKING GROUP
Subgroup 2: Enforcement Techniques**

Ireland

**14 October 2022 / updating of
the template: 01/03/2018**

ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning anti-competitive practices, particularly hardcore cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses and individuals which suffer from cartel activity to get information about the possibilities of enforcement of their rights in private law in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

[Please include, where applicable, any references to relevant statutory provisions, regulations or policies as well as references to publicly accessible sources, if any.]¹

1. Information on the law relating to cartels

A. Law(s) covering cartels: [availability (homepage address) and indication of the languages in which these materials are available]	Section 4, 6 and 7A of the Competition Acts 2002 to 2022 (the „2002 Act”) (Click here and here) and Article 101 Treaty on the Functioning of the European Union („TFEU”) (click here). Available in English and Irish
B. Implementing regulation(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	Council Regulation (EC) 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 101 and 102 of the Treaty, accessible here and available in all EU official languages This regulation was transposed into Irish law by way of S.I. No. 195/2004 -European Communities (Implementation of the Rules on Competition Laid Down in Articles 81 and 82 of the

¹ Editor's note: all the comments in [square brackets] are intended to assist the agency when answering this template, but will be removed once the completed template is made public.

	Treaty) Regulations 2004, accessible here and available in English and Irish.
C. Interpretative guideline(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	<p>Notices and Guidelines published by the Competition and Consumer Protection Commission ('CCPC') are accessible on its website which is available in English.</p> <p>The Cartels page of the website is accessible here.</p> <p>Notable guidelines relating to cartel enforcement includes:</p> <ul style="list-style-type: none"> • The CCPC guidance note on the CCPC's choice of enforcement regime for breaches of competition law. • The CCPC guidance note on the interaction between the Cartel Immunity Programme and the Administrative Leniency Programme.
D. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]	<p>Information on the Cartel Immunity Programme is available on both the websites of the CCPC (here) and the Director of Public Prosecutions (here).</p> <p>Information on the Administrative Leniency Programme is available on the Cartels page of the CCPC's website.</p>

2. Scope and nature of prohibition on cartels

A. Does your law or case law define the term "cartel"? [Please quote.] If not, please indicate the term you use instead. [Please quote.]	<p>Section 3 of the 2002 Act defines the term cartel as follows:</p> <p>'cartel' means an agreement or concerted practice between two or more competing undertakings aimed at coordinating their competitive behaviour on the market or influencing the relevant parameters of competition through practices including the following:</p> <p>(a) the fixing or coordination of purchase or selling prices or other trading conditions, including in relation to intellectual property rights;</p> <p>(b) the allocation of production or sales quotas;</p> <p>(c) the sharing of markets;</p> <p>(d) the sharing of customers;</p> <p>(e) bid-rigging;</p> <p>(f) restrictions of imports or exports;</p> <p>(g) anti-competitive actions against other competing undertakings;</p>
B. Does your legislation or case law distinguish between very serious cartel behaviour ("hardcore cartels" – e.g.: price fixing, market sharing,	<p>Yes.</p> <p>Section 4 of the 2002 Act generally prohibits "all agreements between undertakings, decision by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction of distortion of</p>

bid rigging or production or sales quotas²) and other types of “cartels”? [Please describe how this differentiation is made and identify the most egregious types of conduct.]

competition in trade in any goods or services in the State or in any part of the State” and provides particular examples.

Then, the concept of ‘hardcore cartel behaviour’ is legislated for as follows:

- i) In respect of the criminal proceedings, Section 6(2) of the 2002 Act states that -

it shall be presumed that an agreement between competing undertakings, a decision made by an association of competing undertakings or a concerted practice engaged in by competing undertakings the purpose of which is to—

- (a) directly or indirectly fix prices with respect to the provision of goods or services to persons not party to the agreement, decision or concerted practice,
- (b) limit output or sales,
- (c) share markets or customers, or
- d) engage in bid-rigging.

has as its object the prevention, restriction or distortion of competition in trade in any goods or services in the State or in any part of the State or within the common market, as the case may be, unless the defendant proves otherwise.

- ii) In respect of administrative proceedings, Section 7B of the 2002 Act states that –

(a) it shall be presumed that an agreement between competing undertakings, a decision made by an association of competing undertakings or a concerted practice engaged in by competing undertakings the purpose of which is to—

- (i) directly or indirectly fix prices with respect to the provision of goods or services to persons not party to the agreement, decision or concerted practice,
- (ii) engage in bid-rigging,
- (iii) limit output or sales, or
- (iv) share markets or customers,

has as its object the prevention, restriction or distortion of competition in trade in any goods or services in the State or in any part of the State or within the common market, as the case may be, unless the defendant proves otherwise.

² In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors. Please also describe any other limitations to the ban on hardcore cartels.]

A) Criminal

The 2002 Act incorporates statutory criminal defences against domestic hard core cartels by adopting the exemptions set out in Article 101(3) of the TFEU.

Thus section 6(3) provides that it is a good defence to prove that the agreement, decision, or concerted practice in question, did not contravene that prohibition by virtue of section 4(2) that states;

where, 'having regard to all relevant market conditions, contributes to improving the production or distribution of goods or provision of services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit and does not

(a) impose on the undertakings concerned terms which are not indispensable to the attainment of those objectives,

(b) afford undertakings the possibility of eliminating competition in respect of a substantial part of the products or services in question'.

Then Section 4(4) incorporates criminal defences for prosecutions in the Irish jurisdiction against alleged contraventions of Article 101(1) TFEU where an exemption for the agreement in question was granted by the European Commission pursuant to Article 101(3), or the agreement, decision or concerted practice benefitted from the terms of an exemption provided for by or granted by the European Council or the Commission or did not contravene the prohibition by virtue of Article 101(3).

Section 6(5) also provides a 'State compulsion' defence where the alleged anti-competitive offences were done pursuant to a determination or a direction given by a statutory body.

B) Administrative

Similarly, section 7B(b) provides that it shall be a good defence to prove that a practice in question did not contravene the section 4 prohibition by virtue of section 4(2) (outlined above). Then, where it is alleged that conduct contravenes Article 101, section 7B(c) provides that it is a good defence that the conduct in practice in did not in fact contravene Article 101 by virtue of Article 101(3) TFEU or that, at the material time, the conduct was covered by an exemption or regulation pursuant to Article 101(3).

Article 101 does not apply if undertakings are compelled to act in an anti-competitive manner by the State. For example State compulsion could occur where national legislation creates a legal framework which itself eliminates any possibility on the part of the undertakings.

<p>D. Is participation in a hardcore cartel illegal <i>per se</i>³? [If the situation differs for civil, administrative and criminal liability, please clarify this.]</p>	<p>A) Criminal</p> <p>No.</p> <p>Section 6(2) of the 2002 Act contains a rebuttable presumption that participation in a hardcore cartel has as its object the prevention, restriction or distortion of competition unless the defendant proves otherwise.</p> <p>However, under 6(1), a new requirement introduced by the Competition (Amendment) Act 2022, it is necessary to show, for hardcore cartel conduct, that the undertaking either</p> <p>(i) intentionally or recklessly acted to prevent, restrict or distort competition, or (ii) intentionally or recklessly made omissions having the effect of preventing, restricting or distorting competition.</p> <p>B) Administrative</p> <p>No.</p> <p>While Section 7B of the 2002 Act contains a rebuttable presumption that participation in a hardcore cartel has as its object the prevention, restriction or distortion of competition, it is open to the defendant to prove otherwise.</p> <p>It is worth noting that, in contrast to criminal proceedings, there is no requirement to prove intention or recklessness in relation to the prevention, distortion or restriction of competition in administrative proceedings.</p>
<p>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</p>	<p>All three.</p> <p>Where the CCPC has formed the preliminary view that an undertaking has participated in hardcore cartel activity in contravention of section 4 of the 2002 Act or Article 101 TFEU the CCPC may elect to:</p> <p>(a) refer the matter to the Director of Public Prosecutions (the "DPP") to consider commencing criminal proceedings on indictment in relation to an offence under section 6 or 7 of the 2002 Act. These offences are prosecuted in Ireland's highest criminal court; the Central Criminal Court;</p> <p>(b) bring summary criminal proceedings itself in relation to an offence under section 6 or 7 of the 2002 Act pursuant to section 8(9) of the 2002 Act; These proceedings are prosecuted in the District Court.</p> <p>(c) pursue administrative enforcement proceedings in accordance with the procedures set out in the 2022 Act; or</p> <p>(d) pursue civil proceedings for injunctive or declaratory relief in the civil courts in accordance with the provisions of section 14A of the 2002 Act.</p>

³ For the purposes of this template the notion of 'per se' covers both 'per se' and 'by object', as these terms are synonyms used in different jurisdictions.

3. Investigating institution(s)	
A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities]	The Competition and Consumer Protection Commission.
B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]	Bloom House Railway Street Dublin 1 D01 C576 Telephone 353 1 402 5500
C. Information point for potential complainants:	https://www.ccpc.ie/business/contact/make-competition-complaint/
D. Contact point where complaints can be lodged:	There are a number of ways to submit a complaint. <ul style="list-style-type: none"> • Via Email: complaints@ccpc.ie (link sends e-mail) • Via Phone: 353 1 402 5500 • Via Fax: 353 1 402 5501 • Via our anonymous whistleblower platform (for cartels only) • In writing to: Bloom House Railway Street Dublin 1, D01 C576
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	Investigative assistance is provided by An Garda Síochána (Irish Police) National Economic Crime Bureau (“GNECB”), with a Detective Sergeant seconded and made an Authorised Officer of the CCPC. Additional resources are provided by An Garda Síochána and GNECB when required particularly in relation to searches of premises and also for the arrest, detention and questioning of suspects).

4. Decision-making institution(s) ⁴ [to be filled in only if this is different from the investigating agency]	
A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]	<p>A) Criminal</p> <p>The CCPC investigates alleged cartels and refers completed investigation files to the Director of Public Prosecutions (the ‘DPP’). The DPP decides itself whether or not to institute a prosecution on indictment (for serious offences). The Central Criminal Court is the designated decision maker for such offences and apart from the Court of Appeal who hears both</p>

⁴ Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

	<p>civil and criminal appeals, it is the highest ranking criminal court in Ireland.</p> <p>B) Administrative</p> <p>The CCPC investigates alleged cartels and may itself pursue administrative enforcement proceedings, in accordance with the procedures set out in the 2002 Act.</p> <p>In these instances, the Adjudication Officers of the CCPC are the designated independent decision makers and may find that there has been an infringement of relevant competition law as a matter of fact. However, administrative sanctions imposed on foot of this finding are subject to confirmation by the High Court.</p> <p>C) Civil</p> <p>The CCPC may prosecute, if the cartel matter is deemed a minor offence, in the District (lowest) Court. Civil cases are also prosecuted by the CCPC. In such cases the District Court is the designated decision maker.</p>
<p>B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]</p>	<p>Office of the Director Of Public Prosecutions Infirmery Road, Dublin 7.</p> <p>Tel: +353 (0)1 858 8500 ~ Fax: +353 (0)1 642 7406</p> <p>www.dppireland.ie</p> <p>Available in English and Irish</p>
<p>C. Contact point for questions and consultations:</p>	<p>Tel: +353 (0)1 858 8500 ~ Fax: +353 (0)1 642 7406</p> <p>www.dppireland.ie</p>
<p>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</p>	<p>The CCPC investigates and gathers evidence relating to allegations of cartels. It may then:</p> <ul style="list-style-type: none"> i) In the case of criminal proceedings, refers its file to the DPP for prosecution on indictment in respect of serious offences and in such cases, the CCPC assists and supports the DPP in the criminal litigation of the matter. <p>It may alternatively institute proceedings itself for summary prosecution for minor offences in the District Court or</p> <ul style="list-style-type: none"> ii) it may pursue administrative enforcement proceedings, in accordance with the procedures in the 2002 Act.
<p>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</p>	<p>Upon the completion of a criminal cartel investigation, the CCPC refers the file to the DPP for its consideration on whether to prosecute the matter on indictment at the Central Criminal Court. The case is prosecuted in the name of the DPP. The CCPC provides litigation support and its own authorised officers provide witness testimony for the prosecution.</p> <p>Alternatively, for minor cartel offences, the CCPC may itself institute proceedings for summary prosecution in the District Court.</p>

5. Handling complaints and initiation of proceedings

<p>A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]</p>	<p>Cartel investigations can be initiated by complaint, a whistleblower account, an immunity and/or leniency application, or ex officio.</p>
<p>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)? [If there is a requirement to complete a specific form, please, indicate its location (website address).]</p>	<p>Complainants are encouraged to file a complaint through its website complaints@ccpc.ie or by mail to Bloom House, Railway Street, Dublin 1.</p> <p>However, there is no mandatory requirement to file a complaint in writing, and the CCPC may accept a complaint on an oral basis.</p>
<p>C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]</p>	<p>The CCPC does not stipulate any such requirements. The CCPC, having received a complaint, will subject it to a preliminary assessment on whether to close or proceed to investigate it.</p>
<p>D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect? [Please elaborate.]</p>	<p>The CCPC has a discretion to close or further investigate complaints based on its own assessment.</p>
<p>E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</p>	<p>No, there is not an obligation on the CCPC to publish reasons or adopt a decision for closing a complaint. The CCPC will notify the complainant in writing of its decision to close their complaint.</p>
<p>F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?</p>	<p>No.</p>

6. Leniency policy⁵

<p>A. What is the official name of</p>	<p>There are two such programmes in our jurisdiction. One for</p>
---	---

⁵ For the purposes of this template the notion of ‘leniency’ covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like ‘leniency’ ‘amnesty’ and ‘immunity’ are considered as synonyms.

<p>your leniency policy (if any)? [Please indicate its public availability.]</p>	<p>criminal cartel proceedings, and the other for administrative cartel proceedings.</p> <p>The Criminal Immunity Programme (the 'CIP') can be found on the CCPC's website (here), and on the website of the Director of Public Prosecutions (here).</p> <p>The Administrative Leniency Policy (the 'ALP') can be found on the CCPC's website (here).</p>
<p>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</p>	<p>A) CIP</p> <p>Only full immunity from criminal sanctions is available under this programme. No partial immunity is offered.</p> <p>B) ALP</p> <p>This programme offers the following types of leniency:</p> <p>i) Type 1A – provides full immunity from financial sanctions for the first-in applicant in cases where the CCPC did not possess any knowledge/information on the cartel in question prior to the leniency application.</p> <p>Type 1B – provides up to 100% immunity from financial sanctions for the first-in applicant in cases where the CCPC already had some knowledge/information on the cartel in question prior to the leniency application.</p> <ul style="list-style-type: none"> • Type 2 – provides for a reduction in administrative financial sanctions for subsequent applicants. In order to qualify for a reduction of administrative financial sanctions, an undertaking must: <ul style="list-style-type: none"> ○ disclose its participation in the cartel concerned; ○ provide the CCPC with evidence of the alleged cartel which, in the CCPC's view, represents significant added value relative to the evidence already in the CCPC's possession at the time of the leniency application; and ○ comply with the general conditions for leniency as set out in Section 15AK(1) of the 2002 Act and in the CCPC Guidelines on the Administrative Leniency policy. <p>Reductions granted for a Type 2 applicant shall not exceed 50% of the administrative financial sanction which would otherwise have been imposed.</p>
<p>C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?</p>	<p>A) CIP</p> <p>Only the first applicant is eligible for full leniency under this programme. In exceptional circumstances the DPP may exercise her discretion to extend immunity to a second applicant under the programme.</p> <p>B) ALP</p> <p>As described in 5B above, only the first-in applicant is eligible for full immunity from financial sanctions under this programme.</p>

D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?

In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?

A) CIP

No. The CCPC may recommend the applicant for a grant of immunity even if the CCPC already has sufficient evidence to warrant the referral of a prosecution file to the DPP.

B) ALP

No.

However, we do differentiate between:

- i) Type 1A leniency where the first applicant in provides information sufficient to obtain a search warrant for the cartel. In these instances, the agency will not normally have had any knowledge of the cartel.
- ii) Type 1B leniency, when the agency has already carried out a search, but the first applicant in provides information sufficient to lead to the finding of an infringement.

In terms of benefit for the applicant, there is no difference in treatment under Type 1A or Type 1B leniency.

E. Who can be a beneficiary of the leniency program (individual / businesses)?

A) CIP

Both individuals and undertakings may be prosecuted under our criminal cartel offence.

Undertakings (individuals or businesses) can apply for immunity under the programme. Private individuals, who were involved in the cartel conduct in question, may also apply under the programme in their own right.

Where an undertaking applies under the programme, the CCPC will recommend that private individuals within the company who may have been liable for separate prosecution, should also benefit from immunity protection from the DPP.

B) ALP

Only undertakings, and not private individuals, may be sanctioned under our administrative enforcement regime for cartels. Therefore, only undertakings may apply under the programme.

However, there may be an indirect benefit to the individual employees/directors in the beneficiary undertaking under the ALP as these individuals will obtain automatic immunity from criminal prosecution in relation to that same cartel provided the undertaking meets the requirements to be eligible as set out above, that the relevant individuals actively cooperate with the CCPC and DPP and the application for leniency predates the time when the individual was made aware of the CCPC proceedings leading to the potential imposition of sanctions.

F. What are the conditions of availability of full leniency:

A) CIP

[e.g. provide decisive evidence, maintain cooperation throughout, not to be the ringleader, cease the infringement, restitution, etc.]

The conditions for full criminal immunity under the programme are as follows:

- The applicant is the first participant in a given cartel that makes an application in line with the requirements of the programme;
- The applicant must not have taken steps to coerce another party to participate in the illegal cartel activity;
- The applicant must do nothing to alert its associates in the cartel that it has applied for immunity under this Programme and must refrain from commenting publicly on the activities of the cartel in which it has been involved pending the conclusion of any prosecutions;
- From the time that the applicant first considered applying for immunity it must not have destroyed, hidden, made unusable or falsified any evidence relating to the offence(s);
- An applicant in an ongoing cartel must take effective steps, to be agreed with the CCPC, to ensure that it does not involve itself in any further illegal cartel activity following its application for immunity. However, in exceptional circumstances the CCPC may require an applicant to act in a manner that would, in the CCPC's view, be required to preserve the integrity of the CCPC's investigation;
- Throughout the course of the CCPC's investigation and any subsequent prosecution, the applicant must provide comprehensive, prompt and continuous co-operation; and, in particular, the applicant (including individuals who require personal immunity) has a positive duty to:
 - Reveal any and all cartel offences under the 2002 Act in which the applicant may have been involved and of which it is aware;
 - Provide full, frank and truthful disclosure of all the evidence and information in the possession or control or known or available to the applicant, including all documentary, electronic and other records, wherever located, relating to the offences under investigation;
 - Preserve and not tamper with any evidence that is capable of being under the applicant's control;
 - Ensure to the best of the applicant's ability that current and former directors, officers and employees cooperate fully with the CCPC's investigation and any subsequent prosecutions;
 - Subject as hereinafter provided, from the time that the applicant first considered applying for immunity, not disclose to third parties any dealings with the CCPC (including the fact of its immunity application) without the CCPC's prior written consent, except where required to do so by law. If disclosure is required, the

CCPC must be notified prior to the applicant releasing any such information. This restriction shall not, however, prevent the applicant from disclosing the existence or content of the application (i) to another competition authority or (ii) to an external lawyer for the purpose of obtaining legal advice provided the applicant ensures that such lawyer does not disclose any such information to any third party;

- Disclose to the CCPC, unless otherwise prohibited, all applications made by the applicant for immunity in other jurisdictions;
- Co-operate fully with the CCPC, on a continuing basis, expeditiously and at no expense to the CCPC throughout the investigation and with any ensuing prosecutions; and
- Provide individuals who give clear and comprehensive statements of evidence that will be recorded by the CCPC. Such individuals must also provide complete and truthful evidence in any ensuing prosecutions.

B) ALP

The applicant must be the first participant in the cartel to make an application in line with the requirements of the programme, and to provide evidence which enables the CCPC to carry out a search (in the case of Type 1A leniency) or to find an infringement (in the case of Type 2 leniency).

In addition to this evidential requirement, the applicant must:

- End its involvement in the alleged cartel at the latest immediately following its leniency application, except for what would, in the view of the CCPC, be reasonably necessary to preserve the integrity of its investigation;
- cooperate genuinely, fully, on a continuous basis and expeditiously with the CCPC from the time of its leniency application until the CCPC has closed its enforcement proceedings against all parties under investigation by adopting a decision or has otherwise terminated its enforcement proceedings. Such cooperation includes:
 - i) providing the CCPC promptly with all relevant information and evidence relating to the alleged cartel that comes into the applicant's possession or is accessible to it, including in particular:
 - the name and address of the undertaking applying;
 - the names of all other undertakings that participate in or have participated in the alleged cartel;
 - a detailed description of the alleged cartel, including the affected goods and/ or services, the affected territory(ies), the duration of the

	<p>alleged cartel, and the nature of the alleged cartel conduct;</p> <ul style="list-style-type: none"> • evidence of the alleged cartel in its possession or under its control (in particular any contemporaneous evidence); and • information on any past or possible future leniency applications in relation to the alleged cartel to any other competent authorities including the Commission for Communications Regulation (“ComReg”), competition authorities of EU Member States, the European Commission, or competition authorities of third countries; <p>ii) remaining at the disposal of the CCPC to promptly reply to any requests that may contribute to the establishment of the relevant facts;</p> <p>iii) making current directors, managers and other members of staff available for interviews with the CCPC and making reasonable efforts to make former directors, managers and other members of staff available for interviews with the CCPC;</p> <p>iv) not destroying, falsifying or concealing relevant information or evidence; and</p> <p>v) unless and to the extent otherwise explicitly authorised by the CCPC, not disclosing the fact of, or any of the content of, its leniency application before the CCPC has issued a statement of objections in the enforcement proceedings before it; and</p> <ul style="list-style-type: none"> • when contemplating making a leniency application to the CCPC but prior to doing so, the applicant must not have: <ul style="list-style-type: none"> i) destroyed, falsified or concealed evidence which falls within the scope of the leniency application; or ii) disclosed, directly or indirectly, the fact of, or any of the content of the leniency application it is contemplating except to other competent authorities or any competition authorities of EU Member States or the European Commission or competition authorities of third countries.
<p>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment): [e.g.: valuable, potential, decisive evidence by witnesses or on basis of written documents, etc.? Must the information be sufficient to lead to an initiation of investigations?]</p>	<p>A) CIP Partial immunity is not available under the CIP.</p> <p>B) ALP An undertaking may benefit from a reduction of fines under the ALP (Type 2 Leniency) where they:</p> <ul style="list-style-type: none"> • disclose its participation in the cartel concerned; • provide the CCPC with evidence of the alleged cartel which, in the CCPC’s view, represents significant

	<p>added value relative to the evidence already in the CCPC's possession at the time of the leniency application; and</p> <ul style="list-style-type: none"> • comply with the general conditions for leniency (outlined in the above question).
<p>H. Obligations for the beneficiary after the leniency application has been accepted: [e.g. ongoing, full cooperation with the investigating agency during the proceedings, etc.]</p>	<p>A) CIP</p> <ul style="list-style-type: none"> • Upon the grant of additional immunity from the DPP, the applicant must provide the CCPC with full, frank and truthful disclosure, including: <ul style="list-style-type: none"> ○ all dates, locations, content of and participants in alleged cartel contacts and/or meetings; ○ contact details of all current and former officers, directors, partners, managers and employees who have been identified as likely witnesses; ○ all relevant explanations in connection with evidence provided in support of the application; ○ all evidence relating to the alleged cartel in the possession of the applicant or available to it, in particular electronic and contemporaneous evidence. • Throughout the CCPC's investigation and any subsequent prosecution, the applicant must provide comprehensive, prompt and continuous co-operation in line with the requirements outlined in question 6F. <p>B) ALP</p> <ul style="list-style-type: none"> • Once the CCPC has confirmed its decision to grant leniency, the undertaking must then provide the CCPC with full, frank and truthful disclosure of the following information including: <ul style="list-style-type: none"> ○ all dates, locations, content of and participants in alleged cartel contacts and/or meetings; ○ contact details of all current and former officers, directors, partners, managers and employees who have been identified as likely witnesses; ○ all relevant explanations in connection with evidence provided in support of the leniency application; and ○ all evidence relating to the alleged cartel in the possession of the applicant or available to it, in particular electronic and contemporaneous evidence. • The applicant must cooperate genuinely, fully, on a continuous basis and expeditiously with the CCPC until the CCPC has closed its enforcement proceedings against all parties under investigation by adopting a decision or has otherwise terminated its enforcement proceedings. in line with the requirements outlined in question 6F.

<p>I. Are there formal requirements to make a leniency application? [e.g. must applications take a particular form or include particular information/data, must they be in writing or can they be made orally, etc.]</p>	<p>While the application processes for the CIP and the ALP are outlined in their respective policies, in practice the CCPC encourages applicants to make simultaneous applications under both programmes. The application process under both programmes have been closely aligned to facilitate this.</p> <p>Applications for immunity and/or leniency can only be made by calling the Cartel Immunity Phone (087 763 1378).</p> <p>To determine whether a marker is available, the applicant must present an outline of the facts of the case. This may be done without revealing the identity of the applicant.</p> <p>If a marker is available, the applicant can obtain one by providing a name and contact number.</p> <p>The applicant will be given a reasonable period of time (usually 10 days) within which to perfect the marker by submitting its full application for immunity (making the immunity statement). This statement may be made orally or in writing.</p> <p>To perfect the marker, the undertaking must provide the CCPC with:</p> <ul style="list-style-type: none"> • the name and address of the applicant undertaking; • the names of all other undertakings that participate or participated in the alleged cartel; • a detailed description of the alleged cartel, including the affected goods or services, the affected territories, the duration, and the nature of the alleged cartel conduct; • information on any past or possible future leniency applications made to any other competent authorities including ComReg, competition authorities of EU Member States, the European Commission, or competition authorities of third countries in relation to the alleged cartel; • an outline of the process which led to the leniency application, including the form of formal decision to make the application; • confirmation of whether an application has or will be made under the ALP for immunity from, or a reduction in, administrative financial sanctions which may be imposed on cartel offences under the 2002 Act; • an outline of the nature of the evidence at the undertaking's disposal; and • any other information reasonably required by the CCPC. <p>Where a marker is perfected, the information that is then provided will be deemed to have been submitted on the date when the marker was granted.</p>
<p>J. Are there distinct procedural steps within the leniency program? [e.g.: provisional guarantee of leniency ("PGL") and further steps leading to a</p>	<p>Yes.</p> <p>A) CIP</p> <p><i>Conditional Immunity –</i></p>

<p>final leniency agreement / decision)?]</p>	<p>Once the marker is perfected in line with the requirements outlined in the above question and the CCPC is of the opinion that the application discloses a likely criminal breach of the 2002 Act that warrants a formal criminal investigation, the CCPC will formally write to the DPP recommending a grant conditional immunity for the applicant.</p> <p><i>Full Immunity -</i></p> <p>At the close of the CCPC's investigation, when the terms, obligations and conditions of the programme have all been fully satisfied, including where any resulting prosecutions have been disposed of, the DPP will confirm that the applicant has full immunity.</p> <p>B) ALP</p> <p><i>Conditional Leniency –</i></p> <p>Where the undertaking is the first applicant in the alleged cartel to make an immunity application to the CCPC under this Policy and the CCPC has verified that the information and evidence submitted is sufficient to meet either the Type 1A Evidential Requirement or the Type 1B Evidential Requirement as applicable, it will grant the undertaking conditional immunity from administrative financial sanctions.</p> <p><i>Full Leniency –</i></p> <p>When the terms, obligations and conditions set out in this Policy have been fully satisfied, including where any resulting enforcement proceedings have come to an end, the CCPC will confirm that the undertaking has final leniency, i.e., immunity from administrative financial sanctions or that the undertaking will benefit from a reduction in administrative financial sanctions in respect of the alleged cartel as applicable.</p>
<p>K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?</p>	<p>Once the marker is perfected, and the CCPC forms the view that the evidence discloses a breach of competition law which warrants investigation, the applicant is informed of the decision to grant conditional immunity/leniency in writing.</p> <p>At this point, immunity/leniency will only be withdrawn if the applicant fails to comply with the requirements of the programme. They will be informed of any failings in writing and, if these failings are capable of remedied, they will be given time to do so before the decision is made to withdraw conditional immunity/leniency. In the case of criminal immunity the CCPC will make recommendation to the DPP to withdraw conditional immunity.</p> <p>The grant full immunity/leniency is only made once the CCPC's investigation is closed, or any enforcement proceedings or prosecutions have disposed of.</p>
<p>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?</p>	<p>A) CIP</p> <p>The grant of immunity under the CIP is an exercise of the prosecutorial discretion of the Director of Public Prosecutions.</p> <p>Generally, the grant of immunity is laid down in a written decision of the DPP.</p> <p>B) ALP</p> <p>The legal basis of the leniency programme is found in 2E of the</p>

	<p>2002 Act. The Act does not prescribe the form which the grant of leniency must take. However, the CCPC has established in its leniency policy that the grant of conditional leniency and full leniency will take the form of formal Commission decisions, which will be communicated to the applicant in writing.</p> <p>The Commission is a five-member board and acts as the decision-making organ of the agency.</p>
<p>M. Do you have a marker⁶ system? If yes, please describe it.</p>	<p>Yes. Both the CIP and the ALP use a marker system.</p> <p>An applicant, or its legal advisor, wishing to apply for immunity and/or leniency will first call the CCPC Cartels Hotline (details outlined at 6Q above) to determine whether a marker is available for the cartel in question. This call may be made on an anonymous basis. The CCPC staff member who answers the phone will either confirm the availability of the marker straight away, or will postpone the confirmation of a marker for a short period (usually no more than two days) if further checks are needed to confirm the availability of a marker.</p> <p>Upon confirmation of its availability, an applicant can apply for a marker by providing a name and contact number.</p> <p>This marker will preserve the applicants place in the immunity queue for 10 days to enable it to prepare the material necessary to 'perfect its marker'. A reasonable extension of the marker period may be requested and, at the CCPC's discretion, may be granted on one occasion. A second extension will not normally be granted.</p> <p>An applicant perfects their marker by providing the CCPC with the information outlined in question 6 (I) above.</p> <p>Where a marker is perfected, the information that is then provided will be deemed to have been submitted on the date when the marker was granted.</p>
<p>N. Does the system provide for any extra credit⁷ for disclosing additional violations? [e.g. a hardcore cartel in another market]</p>	<p>No.</p>
<p>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</p>	<p>Yes.</p> <p>A) CIP</p> <p>An immunity applicant's identity will be kept confidential as long as permissible under Irish and European law.</p> <p>Information disclosed will not be disclosed to any third party other than:</p> <ul style="list-style-type: none"> i) in accordance with the normal practices and procedures pertaining to criminal investigations and prosecutions, or

⁶ A marker protects an applicant's place in the queue for a given period of time and allows it to gather the necessary information and evidence in order to meet the relevant evidential threshold for immunity.

⁷ Also known as: "leniency plus", "amnesty plus" or "immunity plus". This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

	<p>ii) where an applicant signs a waiver on disclosure allowing the CCPC to share information with another competition authority investigating the particular cartel in another jurisdiction where the same applicant has also applied for immunity or leniency.</p> <p>B) ALP</p> <p>An immunity applicant's identity will be kept confidential as long as permissible under Irish and European law.</p> <p>Information disclosed will not be disclosed to any third party other than:</p> <ul style="list-style-type: none"> i) in accordance with the normal practices and procedures pertaining to cartel investigations and proceedings, or ii) where the CCPC chooses to pursue administrative enforcement proceedings in relation to the alleged cartel, the fact that an undertaking has applied for leniency, together with the information it has submitted and on which the CCPC intends to rely, will be set out in the statement of objections issued to the other parties to the proceedings, or iii) where an applicant signs a waiver on disclosure allowing the CCPC to share information with another competition authority investigating the particular cartel in another jurisdiction where the same applicant has also applied for immunity or leniency.
<p>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</p>	<p>No.</p>
<p>Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]:</p>	<p>Immunity/ leniency applications can only be made by calling the CCPC Cartels Hotline on +353 87 763 1378.</p> <p>The Cartels Hotline may be contacted between the hours of 10am and 5pm (Dublin time) Monday to Friday, except public or bank holidays.</p>
<p>R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</p>	<p>Yes.</p> <p>A) CIP</p> <p>In the event that an applicant fails to comply with the requirements of the Programme, as set out at in Question 6F, and/or fails to provide complete and timely cooperation, the CCPC will give the applicant written notice of any such failure. Where such failures are capable of being remedied the notice shall specify a period within which the applicant must remedy its default. If the undertaking fails to remedy the failures identified, the DPP may, without further notice, revoke the conditional immunity granted to the applicant.</p> <p>The Programme does not provide for any appeal of a decision to revoke immunity.</p> <p>B) ALP</p>

	<p>In the event that an undertaking fails to comply with the requirements of this Policy, as outlined in Question 6F, and/or fails to provide genuine, full, continuous and expeditious cooperation, the CCPC will give the undertaking written notice of any such failure. Where such failures are, in the CCPC's view, capable of being remedied the notice shall specify a period within which the undertaking must remedy such failures. If the undertaking fails to remedy the failures identified, the CCPC may, without further notice, revoke the leniency granted to such undertaking.</p> <p>The ALP does not provide for any appeal of a decision to revoke leniency.</p>
<p>S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?</p>	<p>This approach is not addressed in either the CIP or the ALP. While this has not been the practice of the CCPC, nothing in either programme expressly precludes such an approach.</p>
<p>T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate which parts are protected and what does protection actually mean.</p>	<p>The 2014 EU Antitrust Damages Directive (Directive 2014/104/EU) was transposed in Ireland by the European Union (Actions for Damages for Infringements of Competition Law) Regulations 2017.</p> <p>Section 4 of the regulations provide that, for the purpose of actions for damages, a court cannot at any time order a party or a third party, involved in an action for damages, to disclose a leniency statement.</p> <p>A leniency statement is defined in the regulations as “an oral or written presentation voluntarily provided by, or on behalf of, an undertaking or a natural person to a competition authority or a record thereof, describing the knowledge of that undertaking or natural person of a cartel and describing its role therein, which presentation was drawn up specifically for submission to a competition authority with a view to obtaining immunity or a reduction of fines under a leniency programme, not including pre-existing information”.</p> <p>Furthermore, section 15AL of the 2002 Act provides that “(3) A leniency statement, whether or not it has been withdrawn, shall not be admissible in evidence in proceedings under this Act or otherwise, save in accordance with section 15AM(4), where an applicant, whose immunity from financial sanctions is refused and on whom an administrative financial sanction is imposed, may rely on the contents of its application for leniency in proceedings or appeals under the Act.”</p>

<p>7. Settlement</p>	
<p>A. Does your competition regime allow settlement?</p>	<p>Yes.</p> <p>The relevant rules relating to the settlement procedure in this</p>

<p>If yes, please indicate its public availability (link to the relevant rules, guidelines, etc.).</p>	<p>jurisdiction are located in section 15L and 15M and of the 2002 Act.</p> <p>The CCPC may publish detailed guidance on the settlement regime in the future. If it does so, it will be located on the 'for business' section of their website, here.</p>
<p>B. Which types of restrictive agreements are eligible for settlement [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</p>	<p>An undertaking may make a 'settlement submission' to the CCPC in relation to any infringement of 'relevant competition law' (Article 101 and Article 102 and Section 4 and 5 of the 2002 Competition Act, 2002).</p>
<p>C. What is the reward of the settlement for the parties?</p>	<p>More detail on this question may be issued in the provided guidance mentioned in question A above.</p>
<p>D. May a reduction for settling be cumulated with a leniency reward?</p>	<p>More detail on this question may be issued in the provided guidance mentioned in question A above.</p>
<p>E. List the criteria (if there is any) determining the cases which are suitable for settlement.</p>	<p>More detail on this question may be provided in the potential guidance mentioned in question A above.</p>
<p>F. Describe briefly the system [who can initiate settlement – your authority or the parties, whether your authority is obliged to settle if the parties initiate, in which stage of the investigation settlement may be initiated, etc.].</p>	<p>The CCPC can agree a settlement with the undertakings at any time prior to a decision being made by an adjudication officer in relation to that infringement.</p> <p>The undertakings initiate settlement by making a settlement submission to the CCPC. If a settlement is agreed, the CCPC will make a referral to an adjudication officer in accordance with section 15M of the Competition Act, 2002 (as Amended) for an order on consent under section 15X(8) of the Act.</p>
<p>F. Describe the procedural efficiencies of your settlement system [e.g. shorter decision, etc.].</p>	<p>When a settlement is agreed, the CCPC can produce a simplified investigation report. The proceedings can also be finalised by an order on consent.</p>
<p>G. Does a settlement necessitate that the parties acknowledge their liability for the violation?</p>	<p>In its settlement submission to the CCPC, the party must describe their acknowledgement of, or renounce any right to dispute its participation in, an infringement of relevant competition law and its responsibility for that infringement.</p>
<p>H. Is there a possibility for settled parties to appeal a settlement decision at court?</p>	<p>An undertaking the subject of an order on consent, under the settlement procedure, may appeal to the Court against that decision not later than 12 working days after they receive notice of such a decision.</p>

8. Commitment

<p>A. Does your competition regime allow the possibility of commitment?</p>	<p>Yes.</p> <p>The relevant rules relating to the commitment procedure in this jurisdiction are located in section 15AE of the 2002 Act.</p>
---	--

<p>If yes, please indicate its public availability [link to the relevant rules, guidelines, etc.].</p>	<p>The CCPC may issue guidance on commitments in the future. If they do so, it will be located on the 'for business' portion of their website, here.</p>
<p>B. Which types of restrictive agreements are eligible for commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</p> <p>Are there violations which are excluded from the commitment possibility?</p>	<p>All infringements of relevant competition law are eligible for commitment.</p>
<p>C. List the criteria (if there are any) determining the cases which are suitable for commitment.</p>	<p>More detail on this question may be provided in the potential guidance mentioned in question A above.</p>
<p>D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural]</p>	<p>The form that commitments should take is not specified in the 2002 Act. A commitment agreement may be based on 'measures appropriately addressing the suspected or alleged infringement'.</p>
<p>E. Describe briefly the system [who can initiate commitment – your authority or the parties, in which stage of the investigation commitment may be initiated, etc.]</p>	<p>Undertaking(s) the subject of investigations carried out by the CCPC into suspected or alleged infringements, at any time prior to a decision being made by the adjudication officer, may in writing, propose to the competent authority measures appropriately addressing the suspected or alleged infringement.</p> <p>The CCPC may then consult to the extent that it sees fit in relation to the proposal. If it requires further information in order to consider the proposal it will request this information from the undertaking(s) in writing, to be provided within a specified time period. The CCPC may also propose alterations or additions to the proposal.</p> <p>The CCPC may notify the undertaking or association of undertakings in writing that the proposal is agreed. The undertaking(s) in receipt of this notification may then notify the CCPC that they consent to the terms of the proposal as agreed.</p> <p>The commitment agreement will be published on a website maintained by the CCPC, and shall be binding on the undertaking(s) entering into it for the period specified in the agreement.</p> <p>The CCPC will not, during that period, pursue any action against the undertaking(s) in respect of the conduct remedied by the commitment agreement, unless the undertaking(s) have failed to comply with the agreement.</p>
<p>I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?</p>	<p>No.</p> <p>The parties simply propose measures appropriately addressing the suspected or alleged infringement, for which they are being investigated.</p>

J. Describe how your authority monitors the parties' compliance to the commitments.	A record of commitment agreements entered into by the CCPC is published on a website maintained by the CCPC.
K. Is there a possibility for parties to appeal a commitment decision at court?	Such decisions may be appealed by way of judicial review in line with section 15AAA(2) of the 2002 Act.

9. Investigative powers of the enforcing institution(s)⁸

A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁹, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.	<p>The CCPC has power to;</p> <ul style="list-style-type: none"> • Seek court sanctioned search warrants of business and residential premises and to seize and retain original documentation including electronic data at any time or times within one month of the issue of the warrant. • Summons the attendance of witnesses to examine them on oath and require the production of documents and records (e.g. from employees, telecoms banks, third parties). • By notice in writing, require any person or undertaking to provide it with such written information as the CCPC considers necessary to enable it to carry out its functions. • Have its authorised officers attend with members of An Garda Siochana (Irish Police) and participate in the questioning of suspects at a Garda station who are detained in connection with the investigation of an alleged cartel offence. • Have its authorised officers take cautioned statements (i.e. evidentiary admissible statements) from suspects and witness statements from witnessed in relation to the alleged cartel offences under investigation. • Conduct surveillance in criminal investigations of hardcore cartel offences.
B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?	Residences, automobiles, and briefcases can be searched under a court warrant.
C. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which	<p>Yes. Section 9 of the Criminal Law Act 1976, allows such evidence to be seized by the Irish Police, and then used as such for another case.</p> <p>Section 37(9) of the Competition and Consumer Protection Act 2014 extends this power of seizure beyond the scope of the</p>

⁸ “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

⁹ “Searches/raids” means all types of search, raid or inspection measures.

<p>circumstances (e.g. is a post-search court warrant needed)?</p>	<p>warrant to authorised officers of the CCPC.</p>
<p>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p>	<p>Yes. In <i>CRH PLC, Irish Cement Limited and Seamus Lynch -v- The Competition and Consumer Protection Commission [2016] IEHC 162</i>, the plaintiffs successfully challenged the scope of the CCPC search warrant, in the High Court, relying on the right to privacy pursuant to the Irish Constitution and the European Convention on Human Rights. The CCPC appealed to the Supreme Court where the Court found in favour of the respondents and made an order restraining the CCPC from accessing or using, in any way, certain of the electronic documents which were unrelated to the investigation. There were three judgments of the Supreme Court which are available here, here and here.</p>

10. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases: [e.g.: right of access to documents in the possession of the enforcing authority, right to a written statement of the case against the defendant, right to respond to that case in writing, right to respond orally, right to confront companies or individuals that make allegations against the defendant, right to legal representation before the enforcing authorities, right not to self-incriminate, etc.] Please indicate the relevant legal provisions.</p>	<p>A) Administrative proceedings</p> <p>In administrative proceedings a statement of objections is issued under section 15L(1) of the 2002 Act to the party that the CCPC has formed a preliminary view that an infringement of relevant competition law may have occurred or may be occurring.</p> <p>After the issuing of a statement of objections, the CCPC will give access under section 15L(2) of the 2002 Act to the party of the material subject to redactions relied on by the CCPC in forming the preliminary view that an infringement of competition law has occurred. The CCPC has produced Guidelines on the Access to File Procedures which will become available on the CCPC website in due course. The party has the right to make written submissions under section 15L(3) of the 2002 Act to the CCPC on the content of the statement of objections. An adjudication officer may hold an oral hearing under section 15U(2)(d) of the 2002 Act to resolve any matters of fact or otherwise enable the adjudication officer to make a decision under section 15X of the 2002 Act.</p> <p>Pursuant to section 15H of the 2002 Act, the CCPC may issue a prohibition notice to an undertaking and such undertaking may make written submissions in response.</p> <p>The party has the right to legal representation in its interactions with the CCPC.</p> <p>Where the CCPC required a natural person to provide a statement or admission on foot of a statutory provision, such a statement or admission will not be admissible against that natural person in criminal proceedings.</p> <p>An undertaking may appeal a decision under 15X of the 2002 Act to the Courts within 28 working days after it receives notice of such a decision. This is provided for in section 15AY of the 2002 Act.</p> <p>B) Criminal proceedings</p> <p>In criminal enforcement proceedings before the District Court</p>
---	---

	or Central Criminal Court, the suspected infringing party has full rights of defence such as access to disclosure, the right to make oral and written arguments to the Judge in the case, protection against self-incrimination and the right to legal representation before the Court.
B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation? Please indicate the relevant legal provisions.	There is no difference in treatment of commercially sensitive information originating from the source of the information ie provided under compulsory legal order. If material is identified as commercially sensitive information, it will be redacted for example from the statement of objections under section 15L(2) of the 2002 Act. Redaction of commercially sensitive information is also provided for under sections 15U, 15Y and 15AV of the 2002 Act.

11. Limitation periods and deadlines

A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision on the merits of the case must be made?	<p>A) Criminal</p> <p>In criminal enforcement proceedings there is no time limit for the commencement of proceedings in the case of indictable offences. The cartel offence is an indictable offence.</p> <p>There is no time limit in criminal enforcement proceedings on when a decision on the merits must be made.</p> <p>B) Administrative</p> <p>Pursuant to section 55A of the 2002 Act, there is no time limit within which the CCPC is obliged to a) make a referral to an adjudication officer; b) issue a prohibition notice; or c) bring a civil action seeking a declaration or injunctive relief.</p>
B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits?	There is no statutory limitation for the completion of either a criminal or administrative investigation or to make a decision on the merits in a criminal or administrative enforcement proceeding.
C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions? (see also 15A)	There is no statutory limitation to challenge the commencement or completion of an investigation or decision regarding sanctions.

12. Types of decisions

<p>A. List which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]</p>	<p>A) Criminal Proceedings</p> <p>In criminal enforcement proceedings, the Court can find that there has been an infringement of the 2002 Act and impose criminal fines and/or a term of imprisonment. The directors of the undertaking can also be barred for a period of 5 years from acting as a company director from the date of conviction. Further details on the level of fines are at section 14 below</p> <p>B) Administrative Proceedings</p> <p>In administrative enforcement proceedings, an adjudication officer can find there has been an infringement of the 2002 Act and impose administrative fines as well as structural or behavioural remedies or periodic penalty payments.</p>
<p>B. List any other types of decisions on the merits of the case relevant particularly in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 12/A).</p>	<p>N/A</p>
<p>C. Can interim measures¹⁰ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both¹¹.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</p>	<p>Interim measures cannot be ordered in criminal or administrative enforcement cases.</p>

13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

<p>A. Grounds for the imposition of procedural sanctions / fines [e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice,</p>	<p>There are a number of circumstances which can give rise to the imposition of a procedural sanction/fine under section 3 of the 2002 Act as follows:</p> <ul style="list-style-type: none">• Obstructing or impeding an authorised officer of the CCPC in the course of a search.• Breaking a seal affixed by an authorised officer for the
--	--

¹⁰ In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

¹¹ Only for agencies which answered “yes” to question 2.B. above

<p>destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.]:</p>	<p>purpose of securing any document, record, data equipment, computer or place.</p> <ul style="list-style-type: none"> • Giving a false or misleading answer, failing to answer without reasonable excuse, refusing to provide a complete answer to, or otherwise failing to comply with, a requirement during the course of a search. • Providing false, incomplete or misleading information, or failing, without reasonable excuse, to supply information, including books, documents and records, in the power or control of the undertaking or association of undertakings within the time limit specified by the CCPC in response to a statutory request for information. • Failing without reasonable excuse to attend before the CCPC in response to a witness summons. <p>It is for an adjudication officer to make a decision as to whether there has been a breach of a procedural requirement under section 15X(2) of the 2002 Act.</p>
<p>B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):</p>	<p>Administrative fine, which is imposed by an adjudication officer.</p> <p>An adjudication officer may also impose behavioural/structural remedies or periodic penalty payments.</p>
<p>C. On whom can procedural sanctions be imposed?</p>	<p>Undertakings or an association of undertakings</p>
<p>D. Criteria for determining the sanction / fine:</p>	<p>The adjudication officer in deciding the fine for the breach of a procedural requirement shall have regard to the factors set out in section 15AB(1) of the 2002 Act:</p> <p>(a) the need to ensure that any administrative financial sanction imposed is effective, proportionate and dissuasive, sanction is imposed,</p> <p>(b) the gravity of the matter in respect of which an administrative financial sanction is imposed,</p> <p>(c) in respect of an infringement of relevant competition law—</p> <p>(i) the duration of the infringement;</p> <p>(ii) the value of the undertaking's sales of the goods and services to which the infringement directly or indirectly relates; and</p> <p>(iii) where applicable, the amount of any compensation paid as a result of a consensual settlement in accordance with Article 18(3) of Directive 2014/104/EU.</p> <p>(d) any specific factors, criteria or methodology relevant to paragraphs (a), (b) and (c) which are prescribed by the relevant Minister to be taken into account by an adjudication officer in the calculation of the amount of administrative financial sanctions, and</p> <p>(e) any guidelines issued by the CCPC under section 15AF in respect of specific factors, criteria or methodology relevant to the calculation of the amount of administrative financial sanctions.</p>

	<p>The adjudication officer may impose a structural or behavioural remedy where one is necessary to bring a procedural infringement to an end under section 15X of the 2002 Act. The decision of the adjudication officer to impose a structural or behavioural remedy is subject to confirmation by the High Court.</p> <p>The adjudication officer may impose periodic penalty payments in relation to a procedural infringement under section 15X of the 2002 Act.</p>
<p>E. Are there maximum and / or minimum sanctions / fines?</p>	<p>The maximum fine that can be imposed by an adjudication officer for a breach of a procedural requirement is €1 million or 1 per cent of the total worldwide turnover (whichever is greater) of the undertaking or association of undertakings in the financial year preceding the decision. There is no minimum fine that can be imposed.</p>

14. Sanctions on the merits of the case

A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):

On whom can sanctions be imposed? [E.g.: representatives of businesses, (imprisonment for individuals), businesses, in the case of associations of companies the associations or the individual companies?]

A) Criminal and Civil

Under Ireland's criminal cartel enforcement regime, the courts can impose sanctions, pursuant to section 8 of the 2002 Act, against the following;

An individual upon conviction of an indictable offence - a custodial sentence of up to 10 years and/or a fine of €50 million or 20% of the individual's turnover in the 12 months prior to conviction whichever is the greater.*

An undertaking upon conviction of an indictable offence- a fine of €50 million or 20% of its turnover in previous 12 years whichever is the greater.*

On summary conviction;

-an individual is liable to a Class A fine (€5,000), and/or up to 6 months imprisonment,

-an undertaking that is not an individual is liable to a class A fine (€5,000),

Under Ireland's civil competition enforcement regime the court can make the following orders;

A declaration of an infringement against either or both an undertaking or an individual (director/manager of the undertaking).

An injunction order against either or both an undertaking or an individual (Director/manager of the undertaking).

In both Irish criminal and civil competition enforcement regimes sanctions can be imposed against undertakings and/or association of undertakings (trade associations).

B) Administrative

Pursuant to the administrative enforcement of cartels*, the following sanctions may be imposed by an adjudication officer,

	<p>subject to confirmation by the High Court of Ireland:</p> <ul style="list-style-type: none"> -structural or behavioural remedies; -administrative financial sanctions; -periodic penalty payments. <p>An administrative financial sanction can be imposed on an individual, company or association of undertakings up to a maximum amount of €10 million or 10% of annual turnover of the preceding year whichever is the greater. An administrative financial sanction cannot be imposed where there are or have been related criminal proceedings.</p>
<p>B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]</p>	<p style="text-align: center;">A) Criminal</p> <p>There are no formal set of sentencing guidelines specific for cartel offences however Mr Justice Liam McKechnie has set out some sentencing principles for the sentencing court's discretion for such matters in the case of <i>DPP v Patrick Duffy and Duffy Motors Newbridge Limited</i> [2009] IEHC 208; where he enumerated the following:</p> <p>'...I must in principle be conscious of:</p> <ul style="list-style-type: none"> the gravity of the offences; the circumstances in which these offences were carried out; the nature of the offences and the continuing duration of their commission; the part played by Mr. Duffy [the cartelist] in them, his personal circumstances and the corporate circumstances of the company; any aggravating and mitigating factor; <p>and, finally, where appropriate, apply the principles of proportionality and totality'.</p> <p>These principles were subsequently applied in <i>DPP v Aston Carpets and Flooring Limited, and Brendan Smith</i> [2018] IECA 194 which was the subject of an appeal to the Court of Appeal for undue leniency in terms of the fines imposed by the sentencing judge. While the sentencing principles were not overturned by the Court of Appeal, the judgment does contain some interesting dicta including the „<i>The fine should more closely have reflected the actual financial gain accruing from the activity</i>” and „<i>save in exceptional circumstances, a fine should be for a sum greater than the financial gain so that it satisfies the requirement that it is punitive and acts as a deterrent</i>”</p> <p>The judgments are accessible at : BAILII - Case Law Search</p> <p style="text-align: center;">B) Administrative</p> <p>Section 15AB of the 2002 Act sets out a number of factors that adjudication officers must have regard to when setting administration financial sanctions:</p> <p>(a) the need to ensure that any administrative financial sanction imposed is appropriate, proportionate and dissuasive,</p>

	<p>(b) the gravity of the matter in respect of which an administrative financial sanction is imposed,</p> <p>(c) in respect of an infringement of relevant competition law—</p> <ul style="list-style-type: none"> i) the duration of the infringement; ii) the value of the undertaking’s sales of the goods and services to which the infringement directly or indirectly relates; and iii) where applicable, the amount of any compensation paid as a result of a consensual settlement in accordance with Article 18(3) of Directive 2014/104/EU (the “Damages Directive”), <p>(d) any specific factors, criteria or methodology relevant to paragraphs (a), (b) and (c) which are prescribed by the relevant Minister to be taken into account by an adjudication officer in the calculation of the amount of administrative financial sanctions; and</p> <p>(e) any guidelines issued by the competent authority under section 15AF in respect of specific factors, criteria or methodology relevant to the calculation of the amount of administrative financial sanctions.</p>
<p>C) Are there maximum and / or minimum sanctions / fines?</p>	<p>A) Criminal</p> <p>There is no minimum sanction. The maximum sentence is set out in the response to question 14A.</p> <p>B) Administrative</p> <p>The maximum fine for competition law infringements other than procedural breaches is €10 million or 10% of annual turnover.</p>
<p>C) Guideline(s) on calculation of fines: [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>A) Criminal</p> <p>There are no guidelines for calculating fines in criminal cases. The Competition legislation set out the maximum fines, as set out in the response to 14A above, the Courts have the discretion to impose.</p> <p>B) Administrative</p> <p>There are draft Guidelines under consultation currently by CCPC which are intended to provide undertakings and their legal advisors with further information on the calculation of administrative financial sanctions and periodic penalty payments.</p> <p>A copy of the draft guidelines is available here: 2022.04.04-Determination-of-admin-financial-sanctions-and-periodic-penalty-payments-for-consultation.pdf (ccpc.ie).</p> <p>A final version will be published on CCPC website in due course.</p>

<p>C) Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?</p>	<p>A) Criminal</p> <p>In cases where a party is appealing a decision or the severity of sanction, the appellant party makes an application for a stay (i.e. suspension) until the court hears and decides on the appeal.</p> <p>B) Administrative</p> <p>There is no automatic suspension of a decision of an adjudication officer. An application must be made to the Court by the appellant seeking a stay on the adjudicator's decision.</p>
--	---

<p>15. Possibilities of appeal</p>	
<p>A. Does your law provide for an appeal against a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</p>	<p>A) Criminal</p> <p>Yes. There is a right of appeal against conviction and/or severity of sentence for cartel cases tried in the criminal court. There is a right of appeal against orders of the High Court (civil). The grounds of appeal can be broadly based that include questions of fact, law and procedure.</p> <p>B) Administrative</p> <p>An undertaking or association of undertakings the subject of a decision by an adjudication officer may appeal to the High Court. An undertaking affected by a decision of an adjudication officer may also appeal to the High Court.</p>
<p>B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative]</p>	<p>A) Criminal</p> <p>The appeal against criminal conviction and/or sentence made by the Central Criminal Court, is heard at the Court of Appeal. The appeal against a civil order of the High Court is also heard before the Court of Appeal.</p> <p>B) Administrative</p> <p>For appeals against decisions of adjudication officers, appeals are made to the High Court.</p>

<p>16. Private enforcement</p>	
<p>A. Are private enforcement of competition law and private damage claims possible in your jurisdiction? If there is no legal provision for private enforcement and damage claims, what are the reasons for it?</p>	<p>Yes, private action for damages for competition breaches is possible. The 2014 EU Antitrust Damages Directive (Directive 2014/104/EU) was transposed in Ireland by the European Union (Actions for Damages for Infringements of Competition Law) Regulations 2017 (the "2017 Regulations"). Prior to the 2017 Regulations, claimants could bring actions for damages arising for competition law infringements pursuant to section 14 of the 2002 Act.</p>

	Pursuant to section 14 of the 2002 Act, in addition to damages, a person can also seek relief by way of an injunction or a declaration that there is a breach of competition law.
B. Laws regulating private enforcement of competition law in your jurisdiction [indication of the provisions and languages in which these materials are available; availability (homepage address)]	<ul style="list-style-type: none"> • 2014 EU Antitrust Damages Directive (Directive 2014/104/EU); and • Competition Acts 2002 – 2022.
C. Implementing regulation(s) on private enforcement (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	European Union (Actions for Damages for Infringements of Competition Law) Regulations 2017 (the “2017 Regulations”)
D. On what grounds can a private antitrust cause of action arise? / In what types of antitrust matters are private actions available?	There are no limits to the types of antitrust matters that ground a private action for damages. The plaintiff must prove that there has been an infringement of competition law contrary to either the 2002 Act or Article 101 of TFEU and the plaintiff has suffered damage as a result.
E. What pleading standards must the plaintiff meet to file a stand-alone or follow-on claim?	In stand-alone actions, the plaintiff has the burden of proving both the prima facie breach of competition law pursuant to the 2002 Act and/or Article 101 of the Treaty on the Functioning of the European Union. The plaintiff also has the burden of proving the quantum of loss.
<ul style="list-style-type: none"> • is a finding of infringement by a competition agency required to initiate a private antitrust action in your jurisdiction? What is the effect of a finding of infringement by a competition agency on national courts/tribunals? • if a finding of infringement by competition authority is required, is it also required that decision to be judicially finalised? 	A finding of a competition infringement is not a requirement for a private antitrust action. However, a finding by the CCPC is prima facie evidence of a breach of competition law.
F. Are private actions available where there has been a criminal conviction in respect of the same matter?	Yes
G. Do immunity or leniency applicants in competition investigations receive any	No.

<p>beneficial treatment in follow-on private damages cases?</p>	
<p>H. Name and address of specialised court (if any) where private enforcement claims may be submitted to</p>	<p>Private actions for damages and actions for injunctive or declarative relief can be pursued in the Circuit Court or in the High Court.</p>
<p>I. Information about class action opportunities</p>	<p>There is no formal class action procedure in Ireland.</p> <p>Multiparty litigation may proceed by way of a “test case” or “representative action”.</p>
<p>J. Role of your competition agency in private enforcement actions (if at all)</p>	<p>The CCPC can bring a civil action seeking a declaration that there is a contravention of the 2002 Act or Article 101 of the TFEU or an injunction that an undertaking pursuant to section 14A of the 2002 Act.</p> <p>Pursuant to regulation 8 of the 2017 Regulations, a plaintiff can rely on a finding of an infringement by the CCPC has prima facie evidence of a breach of competition law in a private action for damages.</p>
<p>K. What is the evidentiary burden on plaintiff to quantify the damages? What evidence is admissible?</p> <ul style="list-style-type: none"> • Role of your competition agency in the damage calculation (if at all) 	<p>The Plaintiff must prove, on the balance of probabilities, that there was a breach of competition law and the loss incurred. The CCPC does not have a role in quantifying damages in private competition law damages action unless specifically requested by the Court to assist it.</p>
<p>L. Discovery / disclosure issues:</p> <ul style="list-style-type: none"> • can plaintiff obtain access to competition authority or prosecutors’ files or documents collected during investigations? • is your competition agency obliged to disclose to the court the file of the case (in follow-on cases)? • summary of the rules regulating the disclosure of confidential information by the competition agency to the court • summary of the rules regulating the disclosure of leniency-based information by the competition agency to the court 	<p>The provision of disclosure in private actions for damages is prescribed in Regulation 5 and 6 of the 2017 Regulations.</p> <p>An application must made to the Court by the party seeking disclosure of the CCPC investigation file. A court may not order the disclosure of certain categories of information or documentation such as correspondence exchanged between the CCPC and the undertaking during the investigation, held on the CCPC file until after the investigation has closed the file or a decision has been adopted. Otherwise, there is no express statutory limitation on a Court ordering disclosure of the investigation file in a private action for damages in circumstances where the investigation may be ongoing.</p> <p>A court shall limit the disclosure of evidence to that which is proportionate. In considering whether an application is proportionate, the Court will have regard to the legitimate interests of all parties and relevant third parties. A court may order the disclosure of confidential information where it is relevant to the action for damages.</p> <p>In addition to assessing the proportionality of such a request, the Court is also obliged to take into account a number of factors such as the (i) specificity of the request, (ii) whether the disclosure is required in relation to an action for damages (iii) safeguarding the effectiveness of enforcing competition law when assessing whether to order the disclosure of the CCPC investigation file and to what extent should disclosure be ordered.</p> <p>If the disclosure requested cannot be obtained from any other</p>

	<p>party or third party other than from the CCPC, the Court shall order the disclosure of such information.</p> <p>A court cannot order a party or third party involved in an action for damages to disclose leniency statements or settlement submissions for the purpose of an action for damages.</p>
<p>M. Passing-on issues:</p> <ul style="list-style-type: none"> • how is passing-on regulated / treated in your jurisdiction? • is standing to bring a claim limited to those directly affected or may indirect purchasers bring claims? 	<p>Article 13 of the EU Damages Directive has been implemented by Regulation 12 of the 2017 Regulations which provides that a defendant can rely on the fact that the claimant passed on the overcharges arising from the competition law infringement in whole or in part as part of their defence to the action for damages.</p> <p>Both direct and indirect purchasers can claim compensation pursuant to Regulation 11 of the 2017 Regulations.</p>