



Number 14 of 2002

COMPETITION ACT 2002

REVISED

Updated to 1 January 2018

This Revised Act is an administrative consolidation of *Competition Act 2002*. It is prepared by the Law Reform Commission in accordance with its function under *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Finance Act 2017* (41/2017), enacted 25 December 2017, and all statutory instruments up to and including *Legal Metrology (Measuring Instruments) Act 2017 (Commencement) Order 2018* (S.I. No. 1 of 2018), made 4 January 2018, were considered in the preparation of this Revised Act.

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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Competition Acts 2002 to 2017: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Competition (Amendment) Act 2017* (12/2017), s. 4(2)). The Acts in this group are:

- *Competition Act 2002* (14/2002)
- *Competition (Amendment) Act 2006* (4/2006)
- *Competition (Amendment) Act 2010* (12/2010)
- *Competition (Amendment) Act 2012* (18/2012), other than s. 9
- *Competition and Consumer Protection Act 2014* (29/2014), parts 3 and 4
- *Intellectual Property (Miscellaneous Provisions) Act 2014* (36/2014), s. 4
- *Competition (Amendment) Act 2017* (12/2017)

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1990, may be found linked from the page of the Act or statutory instrument at

Acts which affect or previously affected this revision

- *Public Service Pay and Pensions Act 2017* (34/2017)
- *Competition (Amendment) Act 2017* (12/2017)
- *Workplace Relations Act 2015* (16/2015)
- *Companies Act 2014* (38/2014)
- *Intellectual Property (Miscellaneous Provisions) Act 2014* (36/2014)
- *Competition and Consumer Protection Act 2014* (29/2014)
- *Health (General Practitioner Service) Act 2014* (28/2014)
- *National Treasury Management Agency (Amendment) Act 2014* (23/2014)
- *Protected Disclosures Act 2014* (14/2014)
- *Central Bank (Supervision and Enforcement) Act 2013* (26/2013)
- *Competition (Amendment) Act 2012* (18/2012)
- *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011)
- *Ministers and Secretaries (Amendment) Act 2011* (10/2011)
- *Credit Institutions (Stabilisation) Act 2010* (36/2010)
- *Central Bank Reform Act 2010* (23/2010)
- *Competition (Amendment) Act 2010* (12/2010)
- *Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010* (2/2010)
- *National Asset Management Agency Act 2009* (34/2009)
- *Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009* (7/2009)
- *Financial Emergency Measures in the Public Interest Act 2009* (5/2009)
- *Anglo Irish Bank Corporation Act 2009* (1/2009)
- *Credit Institutions (Financial Support) Act 2008* (18/2008)
- *Communications Regulation (Amendment) Act 2007* (22/2007)
- *Consumer Protection Act 2007* (19/2007)
- *Competition (Amendment) Act 2006* (4/2006)
- *Investment Funds, Companies and Miscellaneous Provisions Act 2005* (12/2005)
- *Central Bank and Financial Services Authority of Ireland Act 2003* (12/2003)
- *Communications Regulation Act 2002* (20/2002)
- *National Pensions Reserve Fund Act 2000* (33/2000)
- *Pensions Act 1990* (25/1990)
- *Building Societies Act 1989* (17/1989)
- *Central Bank Act 1942* (22/1942)

All Acts up to and including *Finance Act 2017* (41/2017), enacted 25 December 2017, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *European Union (Actions for Damages for Infringements of Competition Law) Regulations 2017* (S.I. No. 43 of 2017)
- *European Union (Bank Recovery and Resolution) Regulations 2015* (S.I. No. 289 of 2015)
- *Occupational Pension Schemes (Funding Standard) (Amendment) Regulations 2013* (S.I. No. 135 of 2013)
- *Competition Act 2002 (Section 10) (Commencement) Order 2011* (S.I. No. 491 of 2011)
- *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011)
- *Competition Act 2002 (Section 34(11)) (National Transport Authority) Order 2011* (S.I. No. 72 of 2011)
- *Competition Act 2002 (Section 34(11)) (Commission For Taxi Regulation) Order 2009* (S.I. No. 555 of 2009)
- *Occupational Pension Schemes (Preservation of Benefits) (Amendment) Regulations 2009* (S.I. No. 70 of 2009)
- *Occupational Pension Schemes (Funding Standard) (Amendment) Regulations 2008* (S.I. No. 295 of 2008)
- *Competition Act 2002 (Section 18 (5) and (6)) Order 2007* (S.I. No. 122 of 2007)
- *Competition Act 2002 (Section 34(11)) (Health Insurance Authority) Order 2005* (S.I. No. 127 of 2005)

- *Competition Act 2002 (Commencement) Order 2004* (S.I. No. 196 of 2004)
- *Competition Act 2002 (Section 34(11))(Director of Consumer Affairs) Order 2003* (S.I. No. 130 of 2003)
- *Competition Act 2002 (Notification Fee) Regulations 2002* (S.I. No. 623 of 2002)
- *Competition Act 2002 (Section 18 (5)) Order 2002* (S.I. No. 622 of 2002)
- *Occupational Pension Schemes (Preservation of Benefits) Regulations 2002* (S.I. No. 279 of 2002)
- *Competition Act 2002 (Commencement) Order 2002* (S.I. No. 199 of 2002)
- *Occupational Pension Schemes (Funding Standard) Regulations 1993* (S.I. No. 419 of 1993)

All statutory instruments up to and including *Legal Metrology (Measuring Instruments) Act 2017 (Commencement) Order 2018* (S.I. No. 1 of 2018), made 4 January 2018, were considered in the preparation of this revision.



Number 14 of 2002

COMPETITION ACT 2002
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ARRANGEMENT OF SECTIONS
PART 1
PRELIMINARY AND GENERAL

Section

1. Short title.
2. Commencement.
3. Interpretation.

PART 2

COMPETITION RULES AND ENFORCEMENT

4. Anti-competitive agreements, decisions and concerted practices.
5. Abuse of dominant position.
6. Offence in respect of breach of *section 4(1)* or Article 81(1) of the Treaty.
7. Offence in respect of breach of *section 5(1)* or Article 82 of the Treaty.
8. Penalties and proceedings in relation to offences under *sections 6 and 7*.
9. Provisions as respects expert evidence.
10. Provision of information to juries.
11. Trial of persons for certain offences by Central Criminal Court.
12. Presumptions.
13. Admissibility of statements contained in certain documents.
14. Right of action for breaches of competition rules.
- 14A. Right of action of competent authority.
- 14B. Applications to High Court for orders in relation to certain agreements.
15. Appeal to High Court against declaration under *section 4(3)*.

PART 2A

COMPETITION IN GROCERY GOODS TRADE

- 15A. Definitions and operation of this Part.
- 15B. Anti-competitive conduct in grocery goods trading.
- 15C. Right of action for section 15B.

PART 2B

APPLICATION OF SECTION 4 TO COLLECTIVE BARGAINING AND AGREEMENTS IN RESPECT OF CERTAIN CATEGORIES OF WORKERS

- 15D. Definitions.
- 15E. Collective bargaining and agreements in respect of certain categories of workers.
- 15F. Prescribed relevant category of self-employed worker.

PART 3

MERGERS AND ACQUISITIONS

- 16. Mergers and acquisitions for the purposes of Act.
- 17. Application of *sections 18 to 22*.
- 18. Obligation to notify certain mergers and acquisitions.
- 19. Limitation on merger or acquisition being put into effect.
- 20. Examination by the Authority of notification.
- 21. Determination of issues concerned without full investigation, etc.
- 22. Determination of issues concerned on foot of full investigation.
- 23. Provisions with regard to media mergers.
- 24. Appeal to the High Court against determination of the Authority.
- 25. Laying of order under *section 23(4)* before Houses of the Oireachtas.
- 26. Enforcement of certain commitments, determinations and orders.
- 27. Alteration of certain monetary amounts.
- 28. Relationship between this Part and other enactments.

PART 3A

MEDIA MERGERS

- 28A. Interpretation and application.
- 28B. Notification of media merger to Minister for Communications, Energy and Natural Resources.
- 28C. Limitation on media merger being put into effect.
- 28D. Initial examination by Minister for Communications, Energy and Natural Resources of media merger notification.
- 28E. Full media merger examination.
- 28F. Advisory panel.
- 28G. Determination of Minister for Communications, Energy and Natural Resources after full media merger examination.

- 28H. Review of conditions in determination under section 28G(1)(c).
- 28I. Enforcement of certain determinations.
- 28J. Limitation of judicial review of determination.
- 28K. Fees.
- 28L. Guidelines.
- 28M. Report and Research.
- 28N. Sharing of information and documents and disclosure of confidential information.
- 28O. Expenses in administration of part.

PART 4

THE COMPETITION AUTHORITY

- 29. The Competition Authority.
- 30. Functions of the Authority.
- 31. Investigations of the Authority — general provisions.
- 32. Prohibition on unauthorised disclosure of information.
- 33. Strategic plans and work programmes.
- 34. Provisions for co-operation between the Authority and statutory bodies.
- 35. Membership.
- 36. Disqualification.
- 37. Meeting and business.
- 38. Functions and accountability of chairperson.
- 39. Staff.
- 40. Seal of the Authority.
- 41. Accounts and audits.
- 42. Annual report.
- 43. Grants and borrowing powers.
- 44. Superannuation.
- 45. Authorised officers and their powers.
- 46. Relationship of Authority with foreign competition bodies.
- 47. Information relating to offences under this Act may be disclosed to Authority.

PART 4A

PERFORMANCE OF FUNCTIONS OF COMMISSION UNDER THIS ACT

- 47A. Function of the Commission to investigate complaints relating to the electronic communications market.
- 47B. Delegation of functions of Commission.
- 47C. Commission to notify Authority before acting under this Act.
- 47D. Responsibilities of Authority with respect to notifying existence of certain agreements, decisions, practices and abuses.

- 47E. Authority and Commission to make every effort to settle disputed questions.
- 47F. Undertaking not liable to be prosecuted by both Authority and Commission for same offence.
- 47G. Co-operation agreement between Authority and the Commission with respect to performing their respective functions under this Act.

PART 5

MISCELLANEOUS

48. Repeals.
49. Restrictive Practices (Groceries) Order, 1987.
50. Protections for person reporting breaches of Act.
51. Amendment of Industrial and Provident Societies Act, 1893.
52. Regulations and orders.
53. Expenses.
54. Provision with respect to fees payable under this Act.
55. Saving and transitional provisions.

SCHEDULE 1

STATUTORY BODIES AND THEIR RESPONSIBLE MINISTERS OF THE GOVERNMENT

SCHEDULE 2

SAVING AND TRANSITIONAL PROVISIONS

SCHEDULE 3

REDRESS FOR CONTRAVENTION OF SECTION 50(3)

SCHEDULE 4

RELEVANT CATEGORIES OF SELF-EMPLOYED WORKER

 ACTS REFERRED TO

Broadcasting Act, 2001	2001, No. 4
Civil Service Commissioners Act, 1956	1956, No. 45
Civil Service Regulation Acts, 1956 and 1958	
Competition Act, 1991	1991, No. 24
Competition Acts, 1991 and 1996	
Competition (Amendment) Act, 1996	1996, No. 19
Comptroller and Auditor General (Amendment) Act, 1993	1993, No. 8

European Parliament Elections Act, 1997	1997, No. 2
Industrial and Provident Societies (Amendment) Act, 1971	1971, No. 31
Industrial and Provident Societies Act, 1893	56 & 57 Vict. c. 39
Interpretation Act, 1937	1937, No. 38
Mergers and Takeovers (Control) Acts, 1978 to 1996	
Mergers, Take-overs and Monopolies (Control) Act, 1978	1978, No. 17
Minimum Notice and Terms of Employment Acts, 1973 and 1984	
Organisation of Working Time Act, 1997	1997, No. 20
Petty Sessions (Ireland) Act, 1851	1851, c. 93
Public Offices Fees Act, 1879	1879, c. 58
Radio and Television Act, 1988	1988, No. 20
Redundancy Payments Acts, 1967 to 1990	
Restrictive Practices (Amendment) Act, 1987	1987, No. 31
Terms of Employment (Information) Act, 1994	1994, No. 5
Unfair Dismissals Act, 1977	1977, No. 10
Unfair Dismissals Acts, 1977 to 1993	



Number 14 of 2002

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AN ACT TO MAKE NEW PROVISION, BY ANALOGY WITH ARTICLES 81 AND 82 OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY, AND IN THE INTERESTS OF THE COMMON GOOD, FOR THE PROHIBITION OF ACTIVITIES WHICH PREVENT, RESTRICT OR DISTORT COMPETITION IN TRADE IN THE STATE OR WHICH CONSTITUTE AN ABUSE OF A DOMINANT POSITION IN SUCH TRADE, TO COMPLEMENT THE POWERS AVAILABLE TO THE COMMISSION OF THE EUROPEAN COMMUNITIES WITH REGARD TO THE ENFORCEMENT OF THE SAID ARTICLES 81 AND 82, TO MAKE NEW PROVISION, IN THE INTERESTS OF THE COMMON GOOD, FOR THE CONTROL OF CERTAIN MERGERS OR ACQUISITIONS, TO CONTINUE IN BEING THE COMPETITION AUTHORITY AND MAKE NEW PROVISION ABOUT ITS FUNCTIONS, TO REPEAL THE COMPETITION ACTS, 1991 AND 1996, THE MERGERS AND TAKEOVERS (CONTROL) ACTS, 1978 TO 1996, AND CERTAIN OTHER ENACTMENTS, TO AMEND THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1893, WITH RESPECT TO THE REQUIREMENTS FOR CERTAIN SPECIAL RESOLUTIONS THEREUNDER, AND TO PROVIDE FOR RELATED MATTERS. [10th April, 2002]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations

Modifications (not altering text):

- C1** Application of Act restricted (1.01.2018) by *Public Service Pay and Pensions Act 2017 (34/2017)*, s. 42(13), commenced as per s. 1(2).

Regulation of fees and other payments

42. ...

(13) A Minister of the Government may define the manner in which consultations under subsection (9) are to be conducted and conduct them in such manner, and with such representatives of service providers or otherwise, as he or she considers appropriate, and nothing in the Competition Act 2002 shall prevent participation by that Minister or any such representative in such consultations, or the communication and discussion of the outcome of such consultations by the representatives with the service providers they represent.

...

- C2** Application of Act restricted by *Health Act 1970 (1/1970)*, s. 58C(8)(b), as inserted (1.07.2015) by *Health (General Practitioner Service) Act 2014 (28/2014)*, s. 5, S.I. No. 267 of 2015.

[Agreement for provision of service under section 58B

58C. ...

(8) ...

(b) The Minister or, as the case may be, the Health Service Executive shall conduct consultations under subsection (5) in the manner defined under paragraph (a) and with such representatives of relevant medical practitioners or otherwise as the Minister or, as the case may be, the Health Service Executive considers appropriate, and nothing in the Competition Act 2002 shall prevent participation by the Minister, the Health Service Executive or any such representative in such consultations, or the communication and discussion of the outcome of such consultations by the representatives with the relevant medical practitioners they represent.

...]

- C3** Application of Act restricted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 33(1), S.I. No. 366 of 2014.

Saving for legal privilege

33. (1) Subject to *subsection (2)*, nothing in this Act, the Act of 2002 or the Act of 2007 shall compel the disclosure by any person of privileged legal material or authorise the taking of privileged legal material.

(2) The disclosure of information may be compelled, or possession of it taken, pursuant to this Act, notwithstanding that it is apprehended that the information is privileged legal material provided that the compelling of its disclosure or the taking of its possession is done by means whereby the confidentiality of the information can be maintained (as against the person compelling such disclosure or taking such possession) pending the determination by the High Court of the issue as to whether the information is privileged legal material.

...

- C4** Application of Act restricted (27.02.2009) by *Financial Emergency Measures in the Public Interest Act 2009* (5/2009), s. 9(10), commenced on enactment.

Reduction of payments to health professionals.

9.— ...

(10) The Minister for Health and Children may define the manner in which consultations under subsection (4) are to be conducted and conduct them in such manner, and with such representatives of health professionals or otherwise, as he or she considers appropriate, and nothing in the Competition Act 2002 shall prevent participation by that Minister or any such representative in such consultations, or the communication and discussion of the outcome of such consultations by the representatives with the health professionals they represent.

Editorial Notes:

- E1** Powers granted to authorised officers in relation to investigations under Act (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 37, S.I. No. 366 of 2014.
- E2** Power to appoint authorised officers under Act provided and powers of authorised officers specified by *Communications Regulation Act 2002* (20/2002), s. 39(1), (3), as amended (12.07.2010) by *Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010* (2/2010), s. 16(i), (ii), S.I. No. 234 of 2010.
- E3** Previous affecting provision: application of section restricted (2.10.2008) by *Credit Institutions (Financial Support) Act 2008* (18/2008), s. 7(2), commenced on enactment; repealed (1.08.2013) by *Central Bank (Supervision and Enforcement) Act 2013* (26/2013), s. 92, S.I. No. 287 of 2013.
- E4** Previous affecting provision: requirement to report suspected criminal offence or infringement of Act imposed by *Central Bank Act 1942* (22/1942), s. 33AK(3)(a)(vi) as inserted (1.05.2003) by *Central Bank and Financial Services Authority of Ireland Act 2003* (12/2003), s. 26, S.I. No. 160 of 2003; substituted and deleted (1.10.2010) by *Central Bank Reform Act 2010* (23/2010), s. 14(1) and sch. 1 pt. 1, item 39, S.I. No. 469 of 2010.

PART 1

PRELIMINARY AND GENERAL

Short title. **1.**—This Act may be cited as the Competition Act, 2002.

Commencement. **2.**—This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Annotations**Editorial Notes:**

E5 Power pursuant to section exercised (3.10.2011) by *Competition Act 2002 (Section 10) (Commencement) Order 2011* (S.I. No. 491 of 2011).

2. The 3rd day of October 2011 is appointed as the day on which section 10 of the Competition Act 2002 (No. 14 of 2002) shall come into operation.

E6 Power pursuant to section exercised (1.05.2004) by *Competition Act 2002 (Commencement) Order 2004* (S.I. No. 196 of 2004).

2. The 1st day of May 2004, is appointed as the day on which section 6(4)(c) of the Competition Act 2002 (No. 14 of 2002) shall come into operation.

E7 Power pursuant to section exercised (1.07.2002, 1.01.2003) by *Competition Act, 2002 (Commencement) Order 2002* (S.I. No. 199 of 2002).

3. The 1st day of July, 2002, is appointed as the day on which the following provisions of the Act shall come into operation:

(a) Part 1;

(b) Part 2 (other than sections 4(8), 5(3), 6(4)(c) and 10);

(c) Part 4;

(d) Part 5 (other than section 48 (b));

and

(e) Schedule 1, Schedule 2 (other than paragraph 4 thereof) and Schedule 3.

4. The 1st day of January, 2003, is appointed as the day on which the following provisions of the Act shall come into operation:

(a) sections 4(8) and 5(3);

(b) Part 3;

(c) section 48(b);

and

(d) paragraph 4 of Schedule 2.

Interpretation. **3.**—(1) In this Act, unless the context otherwise requires—

F1['Act of 2009' means the Broadcasting Act 2009;]

F2[‘associated facilities’, in relation to an electronic communications undertaking, has the same meaning as in section 2(1) of the Communications Regulation Act 2002 (No. 20 of 2002);]

F3[‘authorised officer’ has the same meaning as it has in the Competition and Consumer Protection Act 2014;]

“Authority” means the Competition Authority continued in being by *section 29*;

F4[...]

F2[F3[‘Commission’ means the Competition and Consumer Protection Commission;]

‘competent authority’—

(a) except as provided by paragraph (b), means the Competition Authority, and

(b) if the Competition Authority and the F3[Commission for Communications Regulation] have, under section 47E, agreed that the F3[Commission for Communications Regulation] should, in relation to a particular matter, perform the functions conferred on the relevant authority by Part 2, or the Minister has made a determination under that section that the F3[Commission for Communications Regulation] should exercise those functions in relation to that matter, also means the F3[Commission for Communications Regulation];

‘Competition Authority’ means the Authority continued by *section 29*;]

“conditional determination” shall be construed in accordance with *section 22*;

“contravention” includes, in relation to any provision, a failure to comply with that provision and “contravene” shall be construed accordingly;

“Council” means the Council of the European Communities;

F1[‘Council Regulation’ means Council Regulation (EC) No. 139/2004 of 20 January 2004 ¹ on the control of concentrations between undertakings;]

“court”, where used without qualification, means the District Court, the Circuit Court or the High Court as appropriate, or, in the case of an appeal, the Circuit Court, the High Court or the Supreme Court as appropriate;

“director” includes a person in accordance with whose directions or instructions the directors of the undertaking concerned are accustomed to act but does not include such a person if the directors are accustomed so to act by reason only that they do so on advice given by the person in a professional capacity;

F2[F3[‘electronic communications network’ has the same meaning as it has in the Act of 2009;]

‘electronic communications service’ has the same meaning as in section 2 of the Communications Regulation Act 2002;

‘electronic communications undertaking’ means an undertaking that provides an electronic communications network or an electronic communications service or associated facilities;]

“functions” includes powers and duties and a reference to the performance of functions includes, with respect to powers and duties, a reference to the exercise of the powers and the carrying out of the duties;

“Minister” means the Minister for Enterprise, Trade and Employment;

¹O.J. No. L 24, 29.1.2004, p.1.

“prescribed” means prescribed by regulations made by the Minister under this Act;

“publish”, in relation to a matter, includes to place a notice in relation to it in a national newspaper and to post a notice in relation to it on a website maintained by the Authority, any Minister of the Government or a statutory body;

“statutory body” means a person specified in *column (1) of Schedule 1*;

“Treaty” means the Treaty establishing the European Community;

F3 [‘undertaking’ means a person being an individual, a body corporate or an unincorporated body of persons engaged for gain in the production, supply or distribution of goods or the provision of a service and, where the context so admits, shall include an association of undertakings.]

(2) In this Act references, however expressed, to an agreement being concluded in respect of a merger or acquisition shall be construed as including references to an agreement (of whatever kind and whether expressed to be in respect of a merger or acquisition or not) being entered into the result of which will, if the agreement is implemented, be that a merger or acquisition occurs.

(3) Where—

(a) proof of any matter is, by any provision of this Act, placed on the defendant in the proceedings concerned it shall be sufficient, for the purposes of that provision, for the defendant to prove the matter on the balance of probabilities,

(b) any provision of this Act provides that any specified matter or matters is or are presumed to be fact unless the contrary is shown (as distinct from being presumed to be fact unless or until the contrary is proved) the provision shall be construed as placing on the defendant in the proceedings concerned an evidential burden only with respect to the matter or matters.

(4) In this Act references, however expressed, to an act that is done with the consent of a person shall be construed as including references to an act that is done with the connivance of a person.

(5) In this Act a reference to a section or Schedule is a reference to a section of, or Schedule to, this Act, unless it is indicated that a reference to some other provision is intended.

(6) In this Act a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to another provision is intended.

(7) In this Act a reference to any other enactment shall be construed as a reference to that enactment as amended, extended or adapted by or under any subsequent enactment (including this Act).

Annotations

Amendments:

- F1** Inserted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 47(a), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.
- F2** Inserted (15.05.2007) by *Communications Regulation (Amendment) Act 2007* (22/2007), s. 22(a), (c), (d), S.I. No. 224 of 2007.
- F3** Substituted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 47(b) - (f), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

- F4** Repealed (15.05.2007) by *Communications Regulation (Amendment) Act 2007* (22/2007), s. 22(b), S.I. No. 224 of 2007.

Modifications (not altering text):

- C5** Term “Competition Authority” construed (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 8, commenced as per s. 39(4) and S.I. No. 367 of 2014.

Transfer of functions to Commission

39. ...

(2) References in any Act of the Oireachtas passed before the establishment day or in any instrument made before that day under an Act of the Oireachtas to—

(a) the National Consumer Agency, or

(b) the Competition Authority, shall, on and after that day, be construed as references to the Commission.

...

Editorial Notes:

- E8** Previous affecting provision: definition of “Commission” inserted (15.05.2007) by *Communications Regulation (Amendment) Act 2007* (22/2007), s. 22, S.I. No. 224 of 2007; substituted as per F-note above.
- E9** Previous affecting provision: definition of “electronic communications network” inserted (15.05.2007) by *Communications Regulation (Amendment) Act 2007* (22/2007), s. 22, S.I. No. 224 of 2007; substituted as per F-note above.

PART 2

COMPETITION RULES AND ENFORCEMENT

Annotations

Modifications (not altering text):

- C6** Application of Part restricted (15.07.2015) by *European Union (Bank Recovery and Resolution) Regulations 2015*, reg. 197, in effect as per reg. 1(2).

Non application of competition rules.

197. Parts 2 and 3 of the Competition Act 2002 (No. 14 of 2002) do not apply with respect to a transfer under a resolution order.

- C7** Application of Part restricted (22.12.2014) by *National Treasury Management Agency (Amendment) Act 2014* (23/2014), s. 44(1), S.I. No. 586 of 2014.

Relevant acquisitions and relevant transfers

44. (1) Parts 2 and 3 of the Competition Act 2002 do not apply with respect to a relevant acquisition or a relevant transfer.

- C8** Application of Part restricted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 96, S.I. No. 548 of 2011.

Application of certain laws in relation to transfers, etc., of credit institutions.

96.—Parts 2 and 3 of the Competition Act 2002 and section 7 of the Act of 2008 do not apply with respect to—

(a) the appointment of a special manager pursuant to Part 6 ,

(b) the acquisition or disposal of any asset or liability by such a special manager, or

(c) a transfer under a transfer order pursuant to Part 5 .

- C9** Application of Part restricted (21.12.2010) by *Credit Institutions (Stabilisation) Act 2010* (36/2010), s. 54, S.I. No. 623 of 2010.

Application of laws in relation to transfers, etc., of credit institutions.

54.— Parts 2 and 3 of the Competition Act 2002 and section 7 of the Act of 2008 do not apply with respect to—

(a) the issue of shares in a relevant institution to the Minister or to a nominee of the Minister under a direction order,

(b) the appointment of a special manager to a relevant institution,

(c) the acquisition or disposal of an asset, or all of the assets, of a relevant institution or a liability of that institution by a special manager or under a direction order, or

(d) a transfer under a transfer order.

- C10** Application of Part restricted by *Building Societies Act 1989* (17/1989), s. 18A(3) as inserted (21.12.2009) by *National Asset Management Agency Act 2009* (34/2009), s. 231 and sch. 3 part 1 item 6, S.I. No. 545 of 2009.

Relationship framework

18A.— ...

(3) Parts 2 and 3 of the Competition Act 2002 shall not apply to the issue to the Minister for Finance, or that Minister's nominee, of one or more special investment shares.

...

- C11** Application of Part restricted (21.12.2009) by *National Asset Management Agency Act 2009* (34/2009), s. 215(1), S.I. No. 545 of 2009.

Disapplication of certain provisions of Competition Act 2002 and Credit Institutions (Financial Support) Act 2008.

215.— (1) Parts 2 and 3 of the Competition Act 2002 do not apply with respect to the acquisition of bank assets under this Act.

...

- C12** Application of Part restricted by *National Pensions Reserve Fund Act 2000* (33/2000), s. 15A(1) as inserted (30.03.2009) by *Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009* (7/2009), s. 5, S.I. No. 102 of 2009.

Disapplication of certain requirements of competition law, etc., in certain circumstances.

15A.—(1) Parts 2 and 3 of the Competition Act 2002 do not apply with respect to a relevant acquisition or a relevant transfer.

...

- C13** Application of Part restricted (21.01.2009) by *Anglo Irish Bank Corporation Act 2009* (1/2009), s. 15(1), commenced on enactment.

Disapplication of certain provisions of Competition Act 2002 and Credit Institutions (Financial Support) Act 2008.

15.—(1) Parts 2 and 3 of the Competition Act 2002 do not apply with respect to the acquisition by the Minister, or the transfer by the Minister to the Minister's nominee, of shares in Anglo Irish Bank under this Act.

Editorial Notes:

- E10** Finding in respect of certain contraventions under Part stated to be res judicata in respect of subsequent proceedings under Part (3.07.2012) by *Competition (Amendment) Act 2012 (18/2012)*, s. 8, S.I. No. 236 of 2012.

Anti-competitive agreements, decisions and concerted practices.

4.—(1) Subject to the provisions of this section, all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in the State or in any part of the State are prohibited and void, including in particular, without prejudice to the generality of this subsection, those which—

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions,
- (b) limit or control production, markets, technical development or investment,
- (c) share markets or sources of supply,
- (d) apply dissimilar conditions to equivalent transactions with other trading parties thereby placing them at a competitive disadvantage,
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which by their nature or according to commercial usage have no connection with the subject of such contracts.

(2) An agreement, decision or concerted practice shall not be prohibited under *subsection (1)* if it complies with the conditions referred to in *subsection (5)* or falls within a category of agreements, decisions, or concerted practices the subject of a declaration for the time being in force under *subsection (3)*.

F5[(3) Either competent authority may in writing declare that in its opinion a specified category of agreements, decisions or concerted practices complies with the conditions referred to in subsection (5), but only with the concurrence of the other competent authority. If the competent authority that made the declaration later forms the opinion that the category no longer complies with those conditions, it may revoke the declaration, but only with the concurrence of the other competent authority.]

(4) F5[The competent authority] shall publish, in such manner as it thinks fit, notice of the making of a declaration under *subsection (3)*, and of any revocation by it of such a declaration.

(5) The conditions mentioned in *subsections (2)* and *(3)* are that the agreement, decision or concerted practice or category of agreement, decision or concerted practice, 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.

(6) The prohibition in *subsection (1)* shall not prevent the court, in exercising any jurisdiction conferred on it by this Act concerning an agreement, decision or concerted practice which contravenes that prohibition and which creates or, but for this Act, would have created legal relations between the parties thereto, from applying, where appropriate, any relevant rules of law as to the severance of those

terms of that agreement, decision or concerted practice which contravene that prohibition from those which do not.

(7) In respect of an agreement, decision or concerted practice such as is referred to in *subsection (6)* a court of competent jurisdiction may make such order as to recovery, restitution or otherwise between the parties to such agreement, decision or concerted practice as may in all the circumstances seem just, having regard in particular to any consideration or benefit given or received by such parties on foot thereof.

(8) The putting into effect of a merger or acquisition in accordance with the provisions of *Part 3* of this Act, together with any arrangements constituting restrictions which are directly related and necessary to the implementation of the merger or acquisition and are referred to in the notification of the merger or acquisition under *subsection (1)* or *(3)* of *section 18*, shall not be prohibited under *subsection (1)*.

(9) For the avoidance of doubt, references in this Part of this Act to the parties to an agreement, decision or concerted practice of a kind referred to in *subsection (1)* include references to one or more of the parties to such an agreement, decision or concerted practice.

(10) *Subsection (9)* is without prejudice to *section 11(a)* of the Interpretation Act, 1937.

Annotations

Amendments:

- F5** Substituted (15.05.2007) by *Communications Regulation (Amendment) Act 2007* (22/2007), s. 23, S.I. No. 224 of 2007.

Editorial Notes:

- E11** Power to make disqualification order under *Companies Act 2014* (38/2014), where person contravenes section, prescribed by *Companies Act 2014* (38/2014), s. 842(j), as inserted (9.06.2017) by *Companies (Accounting) Act 2017* (9/2017), s. 94, S.I. No. 246 of 2017.
- E12** Previous affecting provision: subs. (8) applied with modifications (2.10.2008) by *Credit Institutions (Financial Support) Act 2008* (18/2008), s. 7(15), commenced on enactment; repealed (1.08.2013) by *Central Bank (Supervision and Enforcement) Act 2013* (26/2013), s. 92, S.I. No. 287 of 2013.

Abuse of dominant position.

5.—(1) Any abuse by one or more undertakings of a dominant position in trade for any goods or services in the State or in any part of the State is prohibited.

(2) Without prejudice to the generality of *subsection (1)*, such abuse may, in particular, consist in—

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions,
- (b) limiting production, markets or technical development to the prejudice of consumers,
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage,
- (d) making the conclusion of contracts subject to the acceptance by other parties of supplementary obligations which by their nature or according to commercial usage have no connection with the subject of such contracts.

(3) The putting into effect of a merger or acquisition in accordance with the provisions of *Part 3* of this Act, together with any arrangements constituting restrictions which are directly related and necessary to the implementation of the merger or acquisition and are referred to in the notification of the merger or acquisition under *subsection (1) or (3) of section 18*, shall not be prohibited under *subsection (1)*.

Annotations

Editorial Notes:

- E13** Power to make disqualification order under *Companies Act 2014* (38/2014), where person contravenes section, prescribed by *Companies Act 2014* (38/2014), s. 842(j), as inserted (9.06.2017) by *Companies (Accounting) Act 2017* (9/2017), s. 94, S.I. No. 246 of 2017.
- E14** Previous affecting provision: subs. (3) applied with modifications (2.10.2008) by *Credit Institutions (Financial Support) Act 2008* (18/2008), s. 7(15), commenced on enactment; repealed (1.08.2013) by *Central Bank (Supervision and Enforcement) Act 2013* (26/2013), s. 92, S.I. No. 287 of 2013.

Offence in respect of breach of *section 4(1)* or Article 81(1) of the Treaty.

6.—(1) An undertaking which—

- (a) enters into, or implements, an agreement, or
- (b) makes or implements a decision, or
- (c) engages in a concerted practice,

that is prohibited by *section 4(1)* or by Article 81(1) of the Treaty shall be guilty of an offence.

(2) In proceedings for an offence under *subsection (1)*, 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, or
- (c) 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.

(3) In proceedings for an offence under *subsection (1)* in which it is alleged that an agreement, decision or concerted practice contravened the prohibition in *section 4(1)*, it shall be 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)*.

(4) In proceedings for an offence under *subsection (1)* in which it is alleged that an agreement, decision or concerted practice contravened the prohibition in Article 81(1) of the Treaty, it shall be a good defence to prove that—

- (a) there was in force, at the material time, in respect of the particular agreement, decision or concerted practice an exemption granted by the F6[European Commission] pursuant to Article 81(3) of the Treaty,
- (b) at the material time the agreement, decision or concerted practice benefited from the terms of an exemption provided for by, or granted under, a regulation made by the Council or the F6[European Commission] pursuant to that Article 81(3), or

(c) the agreement, decision or concerted practice did not contravene that prohibition by virtue of that Article 81(3).

(5) In proceedings for an offence under *subsection (1)*, it shall be a good defence to prove that the act or acts concerned was or were done pursuant to a determination made or a direction given by a statutory body.

(6) For the purpose of determining liability for an offence under *subsection (1)*, any act done by an officer or an employee of an undertaking for the purposes of, or in connection with, the business or affairs of the undertaking shall be regarded as an act done by the undertaking.

F7[(7) In this section ‘competing undertakings’ means undertakings that provide or are capable of providing goods or services to the same purchaser or purchasers.]

Annotations

Amendments:

- F6** Substituted (15.05.2007) by *Communications Regulation (Amendment) Act 2007 (22/2007)*, s. 24, S.I. No. 224 of 2007.
- F7** Substituted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 48, S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

Editorial Notes:

- E15** Offence under section included in definition of “relevant offence” for purposes of *Criminal Justice Act 2011 (22/2011)* by *Criminal Justice Act 2011 (22/2011)*, s. 3 and sch. 1 item 31, S.I. No. 411 of 2011, as inserted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 90, S.I. No. 366 of 2014.

Offence in respect of breach of *section 5(1)* or Article 82 of the Treaty.

7.—(1) An undertaking that acts in a manner prohibited by *section 5(1)* or by Article 82 of the Treaty shall be guilty of an offence.

(2) In proceedings for an offence under *subsection (1)*, it shall be a good defence to prove that the act or acts concerned was or were done pursuant to a determination made or a direction given by a statutory body.

(3) For the purpose of determining liability for an offence under *subsection (1)*, any act done by an officer or an employee of an undertaking for the purposes of, or in connection with, the business or affairs of the undertaking shall be regarded as an act done by the undertaking.

Penalties and proceedings in relation to offences under *section 6* and *7*.

8.—(1) An undertaking guilty of an offence under *section 6* (being an offence involving an agreement, decision or concerted practice to which *subsection (2)* of that section applies) shall be liable—

(a) on summary conviction—

(i) in the case of an undertaking that is not an individual, to a F8[class A fine] or

(ii) in the case of an individual, to such a fine or to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment,

(b) on conviction on indictment—

(i) in the case of an undertaking that is not an individual, to a fine not exceeding whichever of the following amounts is the greater, namely,

F8[€5,000,000] or 10 per cent of the turnover of the undertaking in the financial year ending in the 12 months prior to the conviction, or

- (ii) in the case of an individual, to a fine not exceeding whichever of the following amounts is the greater, namely, F8[€5,000,000] or 10 per cent of the turnover of the individual in the financial year ending in the 12 months prior to the conviction or to imprisonment for a term not exceeding F8[10 years] or to both such fine (that is to say a fine not exceeding the greater of the foregoing monetary amounts) and such imprisonment.

(2) An undertaking guilty of an offence under *section 6* (other than one to which *subsection (1)* applies) or *section 7* shall, whether the undertaking is an individual or otherwise, be liable—

(a) on summary conviction, to a F8[class A fine] or

(b) on conviction on indictment, to a fine not exceeding whichever of the following amounts is the greater, namely, F8[€5,000,000] or 10 per cent of the turnover of the undertaking in the financial year ending in the 12 months prior to the conviction.

(3) *Sections 6* and *7* operate so that if the contravention concerned continues one or more days after the date of its first occurrence the undertaking referred to in *section 6* or *7*, as the case may be, is guilty of a separate offence under that section for each day that the contravention occurs; but in respect of the second or subsequent offence of which the undertaking is guilty by reason of that continued contravention, *subsections (1)* and *(2)* shall have effect as if—

(a) in the case of *subsection (1)*—

F8[(i) in paragraph (a), ‘class E fine’ were substituted for ‘class A fine’ and references to imprisonment were disregarded, and]

(ii) in *paragraph (b)*—

(I) references to a fine not exceeding F8[€50,000] were substituted for the references to a fine not exceeding the greater of the monetary amounts mentioned therein, and

(II) references to imprisonment were disregarded,

and

(b) in the case of *subsection (2)*—

F8[(i) in paragraph (a), ‘class E fine’ were substituted for ‘class A fine’, and]

(ii) in *paragraph (b)*, a reference to a fine not exceeding F8[€50,000] were substituted for the reference to a fine not exceeding the greater of the monetary amounts mentioned therein.

(4) Where a court imposes a fine or affirms or varies a fine imposed by another court for an offence under *section 6* or *7* in proceedings brought by F9[the competent authority], it shall, on the application of F9[that authority] (made before the time of such imposition, affirmation or variation), provide by order for the payment of the amount of the fine to F9[that authority] and such payment may be enforced by F9[that authority] as if the payment were due to F9[that authority] on foot of a decree or order made by the court in civil proceedings.

(5) The amount of any fine paid to, or recovered by, F9[the competent authority] under *subsection (4)* shall be disposed of by it in such manner as the Minister for Finance directs.

(6) Where an offence under *section 6* or *7* has been committed by an undertaking and the doing of the acts that constituted the offence has been authorised, or consented to, by a person, being a director, manager, or other similar officer of the undertaking, or a person who purports to act in any such capacity, that person as well as the undertaking shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(7) Where a person is proceeded against as aforesaid for such an offence and it is proved that, at the material time, he or she was a director of the undertaking concerned or a person employed by it whose duties included making decisions that, to a significant extent, could have affected the management of the undertaking, or a person who purported to act in any such capacity, it shall be presumed, until the contrary is proved, that that person consented to the doing of the acts by the undertaking which constituted the commission by it of the offence concerned under *section 6* or *7*.

(8) Where the affairs of a body corporate are managed by its members, *subsections (6) and (7)* shall apply in relation to the acts or defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

(9) Summary proceedings in relation to an offence under *section 6* or *7* may be brought by F9[the competent authority].

(10) An action under F8[*section 14* or *section 14A*] may be brought whether or not there has been a prosecution for an offence under *section 6* or *7* in relation to the matter concerned and such an action shall not prejudice the initiation of a prosecution for any such offence.

(11) Notwithstanding *section 10(4)* of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under *section 6* or *7* may be instituted within 2 years after the day on which the offence was committed.

F10[(11A) *Section 1(1)* of the Probation of Offenders Act 1907 shall not apply in relation to an offence under *section 6* or *7*.

(11B) F11[...]

(11C) F11[...]

(12) In this section “turnover” does not include any payment in respect of value-added tax on sales or the provision of services or in respect of duty of excise.

Annotations

Amendments:

- F8** Substituted (3.07.2012) by *Competition (Amendment) Act 2012* (18/2012), s. 2(a)-(g), S.I. No. 236 of 2012.
- F9** Substituted (15.05.2007) by *Communications Regulation (Amendment) Act 2007* (22/2007), s. 25, S.I. No. 224 of 2007.
- F10** Inserted (3.07.2012) by *Competition (Amendment) Act 2012* (18/2012), s. 2(h), S.I. No. 236 of 2012.
- F11** Repealed (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 7(1)(a), S.I. No. 366 of 2014.

Editorial Notes:

- E16** Previous affecting provision: subss. (11B) and (11C) inserted (3.07.2012) by *Competition (Amendment) Act 2012* (18/2012), s. 2(h), S.I. No. 236 of 2012; subsequently repealed as per F-note above.

Provisions as respects expert evidence.

9.—(1) In proceedings under this Act, the opinion of any witness who appears to the court to possess the appropriate qualifications or experience as respects the matter to which his or her evidence relates shall, subject to *subsection (2)*, be admissible in evidence as regards any matter calling for expertise or special knowledge that is relevant to the proceedings and, in particular and without prejudice to the generality of the foregoing, the following matters, namely—

- (a) the effects that types of agreements, decisions or concerted practices may have, or that specific agreements, decisions or concerted practices have had, on competition in trade,
- (b) an explanation to the court of any relevant economic principles or the application of such principles in practice, where such an explanation would be of assistance to the judge or, as the case may be, jury.

(2) Notwithstanding anything contained in *subsection (1)*, a court may, where in its opinion the interests of justice require it to so direct in the proceedings concerned, direct that evidence of a general or specific kind referred to in the said subsection shall not be admissible in proceedings for an offence under *section 6* or *7* or shall be admissible in such proceedings for specified purposes only.

Provision of information to juries.

10.—In a trial on indictment of an offence under *section 6* or *7*, the trial judge may order that copies of any or all of the following documents shall be given to the jury in any form that the judge considers appropriate:

- (a) any document admitted in evidence at the trial,
- (b) the transcript of the opening speeches of counsel,
- (c) any charts, diagrams, graphics, schedules or agreed summaries of evidence produced at the trial,
- (d) the transcript of the whole or any part of the evidence given at the trial,
- (e) the transcript of the closing speeches of counsel,
- (f) the transcript of the trial judge's charge to the jury.

Trial of persons for certain offences by Central Criminal Court.

11.—A person indicted (whether as a principal or an accessory) for an offence under *section 6* or *7* or the offence of attempting to commit such an offence or the offence of conspiracy to commit such an offence shall be tried by the Central Criminal Court.

Presumptions.

12.—(1) The presumptions specified in this section shall apply in any proceedings, whether civil or criminal, under this Act.

(2) Where a document purports to have been created by a person it shall be presumed, unless the contrary is shown, that the document was created by that person and that any statement contained therein, unless the document expressly attributes its making to some other person, was made by that person.

(3) Where a document purports to have been created by a person and addressed and sent to a second person, it shall be presumed, unless the contrary is shown, that the document was created and sent by the first person and received by the second person, and that any statement contained therein—

- (a) unless the document expressly attributes its making to some other person, was made by the first person, and
- (b) came to the notice of the second person.

(4) Where a document is retrieved from an electronic storage and retrieval system, it shall be presumed, unless the contrary is shown, that the author of the document

is the person who ordinarily uses that electronic storage and retrieval system in the course of his or her business.

(5) Where an authorised officer who, in the exercise of his or her powers F12[under section 37 of the Competition and Consumer Protection Act 2014], has removed one or more documents from any place, gives evidence in any proceedings under this Act that, to the best of the authorised officer's knowledge and belief, the material is the property of any person, then the material shall be presumed, unless the contrary is shown, to be the property of that person.

(6) Where, in accordance with *subsection (5)*, material is presumed in proceedings under this Act to be the property of a person and the authorised officer concerned gives evidence that, to the best of the authorised officer's knowledge and belief, the material is material which relates to any trade, profession, or, as the case may be, other activity, carried on by that person, the material shall be presumed, unless the contrary is proved, to be material which relates to that trade, profession, or, as the case may be, other activity, carried on by that person.

(7) References in this section to a document are references to a document in written, mechanical or electronic form and, for this purpose, "written" includes any form of notation or code whether by hand or otherwise and regardless of the method by which, or medium in or on which, the document concerned is recorded.

Annotations

Amendments:

- F12** Substituted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 49, S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

Admissibility of statements contained in certain documents.

13.—(1) If a document contains a statement by a person referred to in *subsection (2)* asserting that an act has been done, or is or was proposed to be done, by another person, being an act (the "relevant act") that relates to—

- (a) the entry into or the making or implementation of an agreement or decision, or the engaging in of a concerted practice, the subject of proceedings under this Act, or
- (b) the doing of the act or acts that constitute an abuse of a dominant position, the subject of proceedings under this Act,

then, subject to the conditions specified in *subsection (3)* being satisfied, that statement shall be admissible as evidence in the proceedings referred to in *paragraph (a)* or *(b)* that the relevant act was done by that other person or was proposed (at the time the statement was made or, as the case may be, at a previous time) to be done by him or her.

(2) The person mentioned in *subsection (1)* is a person who has done an act of the kind referred to in that subsection in relation to the agreement, decision, concerted practice or abuse of dominant position concerned (whether or not the same act which the other person referred to in that subsection is alleged to have done or proposed to do).

(3) The conditions mentioned in *subsection (1)* are that the document referred to in that subsection—

- (a) has come into existence before the commencement of the proceedings under this Act in which it is sought to tender the document in evidence, and

F13[(b) has been prepared otherwise than in response to any enquiry made or question put by a member or officer of the competent authority, a member

of the Garda Síochána, an officer of the European Commission or an authorised officer relative to any matter the subject of those proceedings.]

(4) In estimating the weight, if any, to be attached to a statement admitted in evidence by virtue of this section, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise.

(5) Where a statement is admitted in evidence by virtue of this section—

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

(6) Nothing in this section shall prejudice the admissibility in any proceedings under this Act of any document, as evidence of any matters stated in it, that is so admissible by virtue of any rule of law or other enactment.

Annotations

Amendments:

- F13** Substituted (15.05.2007) by *Communications Regulation (Amendment) Act 2007* (22/2007), s. 26, S.I. No. 224 of 2007.

Right of action for breaches of competition rules.

14.—(1) Any person who is aggrieved in consequence of any agreement, decision, concerted practice or abuse which is F14[prohibited under section 4 or 5, or by Article 101 or 102 of the Treaty on the Functioning of the European Union,] shall have a right of action under this subsection for relief against either or both of the following, namely—

- (a) any undertaking which is or has at any material time been a party to such an agreement, decision or concerted practice or has done any act that constituted such an abuse,
- (b) any director, manager or other officer of such an undertaking, or a person who purported to act in any such capacity, who authorised or consented to, as the case may be, the entry by the undertaking into, or the implementation by it of, the agreement or decision, the engaging by it in the concerted practice or the doing by it of the act that constituted the abuse.

(2) F15[...]

(3) Subject to *subsection (4)*, an action under *subsection (1)* F15[...] may be brought in the Circuit Court or in the High Court.

(4) Where an action under *subsection (1)* is brought in the Circuit Court any relief by way of damages F16[...] shall not, except by consent of the necessary parties in such form as may be provided for by rules of court, be in excess of the limit of the jurisdiction of the Circuit Court in an action founded on tort.

(5) F14 [The following reliefs, or any of them, may be granted to the plaintiff in an action under *subsection (1)*]:

(a) relief by way of injunction or F14 [declaration (including a declaration in respect of a contravention of section 4 or 5 or Article 101 or 102 of the Treaty on the Functioning of the European Union that has ceased)],

(b) damages F17 [...].

(6) F15 [...]

F14 [(7) Without prejudice to subsection (5), where in an action under subsection (1) it is finally decided by the Court that an undertaking has, contrary to section 5, or Article 102 of the Treaty on the Functioning of the European Union, abused a dominant position, the Court may, by order, either—

(a) require the undertaking to discontinue the abuse, or

(b) require the undertaking to adopt such measures for the purpose of—

(i) its ceasing to be in a dominant position, or

(ii) securing an adjustment of that position,

as may be specified in the order (including measures consisting of the sale of assets of the undertaking) within such period as may be so specified.]

(8) Where in an action under *subsection (1)* F18 [...] it is proved that the act complained of was done by an undertaking it shall be presumed, until the contrary is proved, that each (if any) director of the undertaking and person employed by it whose duties included making decisions that, to a significant extent, could have affected the management of the undertaking, and any other person who purported to act in any such capacity at the material time, consented to the doing of the said act.

(9) In an action under *subsection (1)* for damages, it shall be a good defence to prove that the act complained of was done pursuant to a determination made or a direction given by a statutory body.

F19 [(10) In this section ‘injunction’ means—

(a) an interim injunction,

(b) an interlocutory injunction, or

(c) an injunction of definite or indefinite duration.]

Annotations

Amendments:

F14 Substituted (3.07.2012) by *Competition (Amendment) Act 2012* (18/2012), s. 3(a), (d), (e) and (g), S.I. No. 236 of 2012.

F15 Deleted (3.07.2012) by *Competition (Amendment) Act 2012* (18/2012), s. 3(b), (c) and (f), S.I. No. 236 of 2012.

F16 Deleted (27.12.2016) by *European Union (Actions for Damages for Infringements of Competition Law) Regulations 2017* (S.I. No. 43 of 2017), reg. 4(4)(a), in effect as per reg. 1(2).

F17 Deleted (27.12.2016) by *European Union (Actions for Damages for Infringements of Competition Law) Regulations 2017* (S.I. No. 43 of 2017), reg. 4(4)(b), in effect as per reg. 1(2).

F18 Deleted (3.07.2012) by *Competition (Amendment) Act 2012* (18/2012), s. 3(h), S.I. No. 236 of 2012.

F19 Inserted (3.07.2012) by *Competition (Amendment) Act 2012 (18/2012)*, s. 3(i), S.I. No. 236 of 2012.

F20[Right of action of competent authority.

14A.— (1) The competent authority shall, in respect of any agreement, decision, concerted practice or abuse that is prohibited under section 4 or 5, or by Article 101 or 102 of the Treaty on the Functioning of the European Union, have a right of action under this subsection for relief against either or both of the following:

- (a) any undertaking which is or has at any material time been a party to such an agreement, decision or concerted practice or has done any act that constituted such an abuse;
- (b) any director, manager or other officer of such an undertaking, or a person who purported to act in any such capacity, who authorised or consented to, as the case may be, the entry by the undertaking into, or the implementation by it, of the agreement or decision, the engaging by it in the concerted practice or the doing by it of the act that constituted the abuse.

(2) An action under subsection (1) may be brought in the Circuit Court or in the High Court.

(3) Relief by way of injunction or declaration (including a declaration in respect of a contravention of section 4 or 5 or Article 101 or 102 of the Treaty on the Functioning of the European Union that has ceased) may be granted to the competent authority in an action under subsection (1).

(4) Without prejudice to subsection (3), where in an action under subsection (1) it is finally decided by the Court that an undertaking has, contrary to section 5, or Article 102 of the Treaty on the Functioning of the European Union, abused a dominant position, the Court may, by order either—

- (a) require the undertaking to discontinue the abuse, or
- (b) require the undertaking to adopt such measures for the purpose of—
 - (i) its ceasing to be in a dominant position, or
 - (ii) securing an adjustment of that position,

as may be specified in the order (including measures consisting of the sale of assets of the undertaking) within such period as may be so specified.

(5) Where in an action under subsection (1) it is proved that the act complained of was done by an undertaking it shall be presumed, until the contrary is proved, that each (if any) director of the undertaking and person employed by it whose duties included making decisions that, to a significant extent, could have affected the management of the undertaking, and any other person who purported to act in any such capacity at the material time, consented to the doing of the said act.

F21[(5A)(a) Where, in an action under subsection (1), the competent authority seeks relief by way of interlocutory injunction, the Court shall not, save in exceptional circumstances, as a condition of granting the injunction, require the competent authority to lodge an undertaking in respect of damages with the Court.

- (b) For the avoidance of doubt, where in an action under subsection (1), the competent authority seeks relief by way of interim injunction, nothing in paragraph (a) shall be construed as imposing an obligation on the Court to require a competent authority to lodge an undertaking in respect of damages as a condition of granting the injunction.]

(6) In this section ‘injunction’ means—

- (a) an interim injunction,
- (b) an interlocutory injunction, or
- (c) an injunction of definite or indefinite duration.]

Annotations**Amendments:**

F20 Inserted (3.07.2012) by *Competition (Amendment) Act 2012* (18/2012), s. 4, S.I. No. 236 of 2012.

F21 Inserted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 50, S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

F22[Applications to High Court for orders in relation to certain agreements.

14B.— (1) This section applies to an agreement entered into by the competent authority with an undertaking—

F23[(a) following an investigation referred to in—

- (i) paragraph (c) of subsection (1) of section 10 of the Competition and Consumer Protection Act 2014, by the Commission, or
- (ii) section 47A (inserted by section 31 of the Communications Regulation (Amendment) Act 2007 by the Commission for Communications Regulation, and,]

(b) that requires the undertaking to do or refrain from doing such things as are specified in the agreement in consideration of the competent authority agreeing not to bring proceedings under section 14A (inserted by section 4 of the Competition (Amendment) Act 2012) in relation to any matter to which that investigation related or any findings resulting from that investigation.

(2) The High Court may, upon the application of the competent authority, make an order in the terms of an agreement to which this section applies if it is satisfied that—

- (a) the undertaking that is a party to that agreement consents to the making of the order,
- (b) that undertaking obtained legal advice before so consenting,
- (c) the agreement is clear and unambiguous and capable of being complied with,
- (d) that undertaking is aware that failure to comply with any order so made would constitute contempt of court, and
- (e) the competent authority has complied with subsection (3).

(3) Where the competent authority proposes to make an application for an order under subsection (2) in respect of an agreement to which this section applies, it shall, not later than 14 days before the making of the application—

- (a) publish the terms of that agreement on a website maintained by the competent authority, and
- (b) publish a notice, in not fewer than 2 daily newspapers circulating throughout the State—
 - (i) stating that it intends to make such application,
 - (ii) specifying the date on which such application will be made, and
 - (iii) stating—

(I) that the agreement to which the proposed application relates is published, in accordance with paragraph (a), on a website maintained by it, and

(II) the address of that website.

(4) An order under subsection (2) shall not have effect—

(a) until the expiration of the period of 45 days from the making of the order, or

(b) where an application is made to the High Court under subsection (5) in respect of the order, until the making of a final determination in relation to that application.

(5) The High Court may, upon the application of any person (other than the competent authority or the undertaking to which an order under this section applies) made during the period referred to in paragraph (a) of subsection (4), make an order varying or annulling an order under subsection (2) if it is satisfied that the agreement in respect of which the order was made requires the undertaking to which the order applies to do or refrain from doing anything that would result in a breach of any contract between the undertaking concerned and the applicant or that would render a term of that contract not capable of being performed.

(6) The High Court shall not make an order under subsection (5) if it is satisfied that the contract or term of the contract to which the application for such order relates contravenes section 4 or 5, or Article 101 or 102 of the Treaty on the Functioning of the European Union.

(7) The High Court may, upon the application of the competent authority or an undertaking to which an order under subsection (2) applies, make an order varying or annulling the first-mentioned order if—

(a) the party (other than the applicant for the order) to the agreement to which the first-mentioned order applies consents to the application,

(b) the first-mentioned order contains a material error,

(c) there has been a material change in circumstances since the making of the first-mentioned order that warrants the court varying or annulling the order, or

(d) the court is satisfied that, in the interests of justice, the first-mentioned order should be varied or annulled.

(8) Subject to any order under subsection (9), an order under subsection (2) shall cease to have effect upon the expiration of 7 years from the making of the second-mentioned order.

(9) The High Court may, upon the application of the competent authority made not earlier than 3 months before the expiration of an order under subsection (2), make an order extending the period of the first-mentioned order (whether or not previously extended under this subsection) for a further period not exceeding 3 years.

(10) Paragraphs (a), (b), (c) and (d) of subsection (2) shall apply in respect of the determination of an application referred to in subsection (9) as they apply in respect of the determination of an application referred to in subsection (2).

(11) F24[...]

Annotations**Amendments:**

- F22** Inserted (3.07.2012) by *Competition (Amendment) Act 2012 (18/2012)*, s. 5, S.I. No. 236 of 2012.
- F23** Substituted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 51(a), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.
- F24** Deleted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 51(b), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

Appeal to High Court against declaration under *section 4(3)*.

15.—(1) Any undertaking or association of undertakings concerned or any other person aggrieved by the making of the particular declaration may appeal to the High Court against the making of a declaration under *section 4(3)*.

(2) Such an appeal shall be made to the High Court within 28 days after the date of the publication of the notice under *section 4(4)* in relation to the declaration or such greater period as the High Court may, on application being made to it, specify for the purposes of this subsection in relation to the particular appeal.

(3) On the hearing of an appeal under this section, the High Court may confirm, amend or annul the declaration concerned.

(4) The High Court, on application being made to it, may by order provide that, pending the hearing and determination of an appeal under this section in relation to a declaration, the declaration shall not have effect for the purposes of *section 4(2)*.

F25[PART 2A

COMPETITION IN GROCERY GOODS TRADE

Definitions and operation of this Part.

15A.— (1) In this Part—

‘allowance’ includes any discount, rebate, price concession or other advantage that is collateral to a sale or purchase of grocery goods but is not applied directly to the selling or purchase price;

‘grocery goods’ means any food or drink for human consumption that is intended to be sold as groceries, and includes—

(a) any substance or thing sold or represented for use as food or drink for human consumption,

(b) any substance or thing sold or represented for use as an additive, ingredient or processing aid in the preparation or production of food or drink for human consumption, and

(c) intoxicating liquors;

‘grocery goods undertaking’ means, subject to subsections (2) and (3), an undertaking that is engaged for gain in the production, supply or distribution of grocery goods, whether or not the undertaking is engaged in the direct sale of those goods to the public;

‘retailer’ means a grocery goods undertaking that sells or resells grocery goods directly to the public.

(2) For the purposes of this Part, an undertaking that produces, supplies or distributes an additive, ingredient or processing aid referred to in paragraph (b) of

the definition of 'grocery goods' in subsection (1) is not a grocery goods undertaking unless the additive, ingredient or processing aid is intended to be sold by a retailer as an additive, ingredient or processing aid.

(3) Subsection (2) applies only to the extent that the undertaking does not otherwise fall within the definition of 'grocery goods undertaking' in subsection (1).

(4) For the avoidance of doubt, this Part does not apply to that part of an undertaking's operation the business of which is to do any of the following:

(a) serve or supply food or drink in the course of providing catering, restaurant or take-away services or any similar hospitality services;

(b) serve or supply intoxicating liquor for consumption on the premises.

(5) This Part operates without prejudice to Part 2.]

Annotations

Amendments:

F25 Inserted (20.03.2006) by *Competition (Amendment) Act 2006 (4/2006)* s. 1, S.I. No. 127 of 2006.

F26 [Anti-competitive conduct in grocery goods trading.

15B.— (1) Subject to subsection (5), a grocery goods undertaking shall not directly or indirectly attempt to compel or coerce another grocery goods undertaking, whether by threat, promise or any like means, to resell or advertise for resale any grocery goods at—

(a) a price fixed directly or indirectly by the first mentioned grocery goods undertaking, or

(b) a price above a minimum price fixed directly or indirectly by the first mentioned grocery goods undertaking.

(2) Subject to subsection (5), a grocery goods undertaking shall not apply dissimilar conditions to equivalent transactions with any other grocery goods undertaking.

(3) Subject to subsection (5), a grocery goods undertaking shall not directly or indirectly compel or coerce, whether by threat, promise or any like means, another grocery goods undertaking to make any payment or grant any allowance for the advertising or display of grocery goods.

(4) Subject to subsection (5) and without limiting the generality of subsection (3), a retailer shall not directly or indirectly compel or coerce, whether by threat, promise or any like means, another grocery goods undertaking to make any payment or grant any allowance to the retailer in consideration of any of the following matters:

(a) providing space for grocery goods within a new retail outlet on or within the first 60 days after its opening to the public;

(b) providing space for grocery goods within a newly expanded or extended retail outlet on or within the first 60 days after the opening to the public of the expanded or extended part of the outlet;

(c) providing space for grocery goods within a retail outlet on or within the first 60 days after its opening to the public under new ownership.

(5) Conduct described in subsections (1) to (4) shall not be prohibited unless it has as its object or effect the prevention, restriction or distortion of competition in trade in any grocery goods in the State or in any part of the State.]

Annotations**Amendments:**

F26 Inserted (20.03.2006) by *Competition (Amendment) Act 2006 (4/2006)* s. 1, S.I. No. 127 of 2006.

F27[Right of action for breach of section 15B.

15C.— (1) Any person who is aggrieved in consequence of any conduct which is prohibited under section 15B shall have a right of action under this subsection for relief against any of the following:

(a) any grocery goods undertaking which is or has at any material time been a party to the prohibited conduct;

(b) any director, manager or other officer of such an undertaking, or a person who purported to act in any such capacity, who authorised or consented to, as the case may be, the prohibited conduct.

(2) The Authority shall have a right of action under this subsection in respect of conduct which is prohibited under section 15B.

F28[(3) Subject to subsection (4), an action under subsection (1) may be brought in the Circuit Court or in the High Court.]

F29[(3A) Subject to subsection (5), an action under subsection (2) may be brought in the Circuit Court or in the High Court.]

F28[(4) Subsections (4), (5), (8) and (9) of section 14 apply with the necessary changes for the purposes of an action under subsection (1) of this section and, for that purpose, a reference in subsections (4), (5), (8) and (9) of section 14 to an action under subsection (1) of that section is to be read as a reference to an action under subsection (1) of this section.]

F29[(5) Subsections (3) and (5) of section 14A (inserted by section 4 of the Competition (Amendment) Act 2012) apply with the necessary changes for the purposes of an action under subsection (2) of this section and, for that purpose, a reference in subsections (3) and (5) of section 14A to an action under subsection (1) of that section is to be read as a reference to an action under subsection (2) of this section.]]

Annotations**Amendments:**

F27 Inserted (20.03.2006) by *Competition (Amendment) Act 2006 (4/2006)*, s. 1, S.I. No. 127 of 2006.

F28 Substituted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 52(a) and (c), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

F29 Inserted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 52(b) and (d), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

F30[PART 2B

APPLICATION OF SECTION 4 TO COLLECTIVE BARGAINING AND AGREEMENTS IN RESPECT OF CERTAIN CATEGORIES OF WORKERS]

Annotations**Amendments:**

F30 Inserted (7.09.2017) by *Competition (Amendment) Act 2017* (12/2017), s. 2, commenced as per s. 4(4).

F30[Definitions. **15D.** In this Part—

‘collective bargaining’ has the same meaning as it has in the Industrial Relations (Amendment) Act 2001;

‘false self-employed worker’ means an individual who—

- (a) performs for a person (‘other person’), under a contract (whether express or implied and if express, whether orally or in writing), the same activity or service as an employee of the other person,
- (b) has a relationship of subordination in relation to the other person for the duration of the contractual relationship,
- (c) is required to follow the instructions of the other person regarding the time, place and content of his or her work,
- (d) does not share in the other person’s commercial risk,
- (e) has no independence as regards the determination of the time schedule, place and manner of performing the tasks assigned to him or her, and
- (f) for the duration of the contractual relationship, forms an integral part of the other person’s undertaking;

‘fully dependent self-employed worker’ means an individual—

- (a) who performs services for another person (whether or not the person for whom the service is being performed is also an employer of employees) under a contract (whether express or implied, and if express, whether orally or in writing), and
- (b) whose main income in respect of the performance of such services under contract is derived from not more than 2 persons;

‘relevant category of self-employed worker’ means—

- (a) a class of worker specified in *Schedule 4*, or
- (b) a class of false self-employed worker or fully dependent self-employed worker specified in an order made by the Minister under *section 15F*;

‘trade union’ has the same meaning as it has in the Industrial Relations Act 1946.]

Annotations**Amendments:**

F30 Inserted (7.09.2017) by *Competition (Amendment) Act 2017* (12/2017), s. 2, commenced as per s. 4(4).

F31[Collective bargaining and agreements in respect of certain categories of workers.]

15E.— *Section 4* shall not apply to collective bargaining and agreements in respect of a relevant category of self-employed worker.]

Annotations

Amendments:

F31 Inserted (7.09.2017) by *Competition (Amendment) Act 2017* (12/2017), s. 2, commenced as per s. 4(4).

F32[Prescribed relevant category of self-employed worker]

15F.— (1) A trade union which represents a class of—

- (a) false self-employed worker, or
- (b) fully dependent self-employed worker,

may, for the purposes of collective bargaining and agreements on behalf of the class of worker so represented, apply to the Minister in accordance with this section, to prescribe such class of false self-employed worker or fully dependent self-employed worker for the purposes of this Part.

(2) An application by a trade union under *subsection (1)* shall be made in the manner specified by the Minister and shall be accompanied by evidence to show—

- (a) that the class of false self-employed worker or fully dependent self-employed worker, as the case may be, the subject of the application, falls within the definition of false self-employed worker or fully dependent self-employed worker, as the case may be, and
- (b) that the prescribing of such class of false self-employed worker or fully dependent self-employed worker, as the case may be—
 - (i) will have no or minimal economic effect on the market in which the class of self-employed worker concerned operates,
 - (ii) will not lead to or result in significant costs to the State, and
 - (iii) will not otherwise contravene the requirements of this Act or any other enactment or rule of law (including the law in relation to the European Union) relating to the prohibition on the prevention, restriction or distortion of competition in trade in any goods or services.

(3) Subject to *subsection (5)*, where, in relation to an application under *subsection (1)*, the Minister is satisfied—

- (a) of the matters referred to in *paragraphs (a)* and *(b)* of *subsection (2)*, and
- (b) that it is appropriate to do so,

he or she may prescribe by order the class of false self-employed worker or fully dependent self-employed worker, as the case may be, as a relevant category of self-employed worker.

(4) Where the Minister is not satisfied in accordance with *subsection (3)*, he or she shall refuse an application under *subsection (2)*.

(5) An order under *subsection (3)* shall only be made after consultation by the Minister with—

(a) such other Minister of the Government who, in the opinion of the Minister, having regard to the functions of that other Minister of the Government, ought to be consulted, and

(b) any other person or body who, in the opinion of the Minister, having regard to the functions of that other person or body, ought to be consulted.

(6) Where a class of false self-employed worker or fully dependent self-employed worker has been prescribed by the Minister under this section and, since the making of the order—

(a) the market conditions or circumstances which pertained to the making of that order have changed substantially, or

(b) new information relevant to the application which was the subject of the order becomes available to the Minister,

the Minister may, if he or she is of the opinion that it is no longer appropriate for the class of false self-employed worker or fully dependent self-employed worker concerned to be so prescribed, revoke the prescription of the relevant category of self-employed worker by order.

(7) Whenever the Minister proposes to make an order under *subsection (6)*, he or she—

(a) shall inform in writing the trade union who made the application concerned of the proposal and of the reasons for it and he or she may specify a period for the making of a submission under *subsection (8)*,

(b) may invite such other persons as he or she considers appropriate to make submissions in respect of his or her proposal within such a period as he or she may specify,

(c) shall, in a case where the Minister consulted another Minister of the Government or other person or body under *subsection (5)* in respect of the making of an order under *subsection (3)*, the subject of the proposal, consult with that Minister of the Government or person or body in respect of the proposal concerned, and

(d) shall cause notice of the proposal to be published on the Department's website and in one national newspaper circulating within the State.

(8) A trade union notified under *subsection (7) (a)* or other person or body referred to in *subsection (7)(b)* may make a submission to the Minister within the period (if any) specified by the Minister under *subsection (7) (a)* or *(b)*, as may be appropriate, regarding the proposal setting out the reasons why the order should or should not be made.

(9) The Minister shall consider any submission made to him or her under *subsection (8)* before making an order under *subsection (6)*.

(10) Where the Minister makes an order under *subsection (3)* or *(6)*, he or she shall cause notice of the making of the order to be published on the Department's website and in one national newspaper circulating within the State.]

Annotations

Amendments:

F32 Inserted (7.09.2017) by *Competition (Amendment) Act 2017* (12/2017), s. 2, commenced as per s. 4(4).

PART 3

MERGERS AND ACQUISITIONS

Annotations

- C14** Application of Part restricted (15.07.2015) by *European Union (Bank Recovery and Resolution) Regulations 2015* (S.I. No. 289 of 2015), reg. 197, in effect as per reg. 1(2).

Non application of competition rules.

197. Parts 2 and 3 of the Competition Act 2002 (No. 14 of 2002) do not apply with respect to a transfer under a resolution order.

- C15** Application of Part restricted by *National Treasury Management Agency (Amendment) Act 2014* (23/2014), s. 44(1), not commenced as of date of revision.

Relevant acquisitions and relevant transfers

44.(1) Parts 2 and 3 of the Competition Act 2002 do not apply with respect to a relevant acquisition or a relevant transfer.

...

Modifications (not altering text):

- C16** Application of Part restricted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 96, S.I. No. 548 of 2011.

Application of certain laws in relation to transfers, etc., of credit institutions.

96.—Parts 2 and 3 of the Competition Act 2002 and section 7 of the Act of 2008 do not apply with respect to—

- (a) the appointment of a special manager pursuant to Part 6,
- (b) the acquisition or disposal of any asset or liability by such a special manager, or
- (c) a transfer under a transfer order pursuant to Part 5.

- C17** Application of Part restricted (21.12.2010) by *Credit Institutions (Stabilisation) Act 2010* (36/2010), s. 54, S.I. No. 623 of 2010.

Application of laws in relation to transfers, etc., of credit institutions.

54.— Parts 2 and 3 of the Competition Act 2002 and section 7 of the Act of 2008 do not apply with respect to—

- (a) the issue of shares in a relevant institution to the Minister or to a nominee of the Minister under a direction order,
- (b) the appointment of a special manager to a relevant institution,
- (c) the acquisition or disposal of an asset, or all of the assets, of a relevant institution or a liability of that institution by a special manager or under a direction order, or
- (d) a transfer under a transfer order.

- C18** Application of Part restricted by *National Pensions Reserve Fund Act 2000* (33/2000), s. 15A(1), as inserted (30.03.2009) by *Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009* (7/2009), s. 5, S.I. No. 102 of 2009.

Disapplication of certain requirements of competition law, etc., in certain circumstances.

15A.—(1) Parts 2 and 3 of the Competition Act 2002 do not apply with respect to a relevant acquisition or a relevant transfer.

...

C19 Application of Part restricted (21.12.2009) by *National Asset Management Agency Act 2009* (34/2009), s. 215(1), S.I. No. 545 of 2009.

Disapplication of certain provisions of Competition Act 2002 and Credit Institutions (Financial Support) Act 2008.

215.— (1) Parts 2 and 3 of the Competition Act 2002 do not apply with respect to the acquisition of bank assets under this Act.

...

C20 Application of Part restricted by *Building Societies Act 1989* (17/1989), s. 18A(3) as inserted (21.12.2009) by *National Asset Management Agency Act 2009* (34/2009), s. 231 and sch. 3 part 1 item 6, S.I. No. 545 of 2009.

Relationship framework

18A.— ...

(3) Parts 2 and 3 of the Competition Act 2002 shall not apply to the issue to the Minister for Finance, or that Minister's nominee, of one or more special investment shares.

...

C21 Application of Part restricted (21.01.2009) by *Anglo Irish Bank Corporation Act 2009* (1/2009), s. 15(1), commenced on enactment.

15.—(1) Parts 2 and 3 of the Competition Act 2002 do not apply with respect to the acquisition by the Minister, or the transfer by the Minister to the Minister's nominee, of shares in Anglo Irish Bank under this Act.

...

Editorial Notes:

E17 Previous affecting provision: part applied with modifications (2.10.2008) by *Credit Institutions (Financial Support) Act 2008* (18/2008) s. 7(16), (17), commenced on enactment; repealed (1.08.2013) by *Central Bank (Supervision and Enforcement) Act 2013* (26/2013), s. 92, S.I. No. 287 of 2013.

Mergers and acquisitions for the purposes of Act.

16.—(1) For the purposes of this Act, a merger or acquisition occurs if—

(a) 2 or more undertakings, previously independent of one another, merge, or

F33[(b) one or more individuals who already control one or more undertakings, or one or more undertakings, acquire direct or indirect control of the whole or part of one or more other undertakings, or, and]

F33[(c) the acquisition of part of an undertaking, although not involving the acquisition of a corporate legal entity, involves the acquisition of assets that constitute a business to which a turnover can be attributed, and for the purposes of this paragraph 'assets' includes goodwill.]

(2) For the purposes of this Act, control, in relation to an undertaking, shall be regarded as existing if, by reason of securities, contracts or any other means, or any combination of securities, contracts or other means, decisive influence is capable of being exercised with regard to the activities of the undertaking and, in particular, by—

(a) ownership of, or the right to use all or part of, the assets of an undertaking, or

(b) rights or contracts which enable decisive influence to be exercised with regard to the composition, voting or decisions of the organs of an undertaking.

(3) For the purposes of this Act, control is acquired by an individual or other undertaking if he or she or it—

(a) becomes holder of the rights or contracts, or entitled to use the other means, referred to in *subsection (2)*, or

(b) although not becoming such a holder or entitled to use those other means, acquires the power to exercise the rights derived therefrom.

(4) The creation of a joint venture to perform, F33[on a lasting basis], all the functions of an autonomous economic entity shall constitute a merger falling within *subsection (1)(b)*.

(5) In determining whether influence of the kind referred to in *subsection (2)* is capable of being exercised regard shall be had to all the circumstances of the matter and not solely to the legal effect of any instrument, deed, transfer, assignment or other act done or made.

(6) For the purposes of this Act, a merger or acquisition shall not be deemed to occur if—

(a) the person acquiring control is a receiver or liquidator acting as such or is an underwriter or jobber acting as such, or

(b) all of the undertakings involved in the merger or acquisition are, directly or indirectly, under the control of the same undertaking, or

(c) control is acquired solely as a result of a testamentary disposition, intestacy or the right of survivorship under a joint tenancy, or

(d) control is acquired by an undertaking referred to in *subsection (7)* in the circumstances specified in *subsection (8)*.

(7) The undertaking mentioned in *subsection (6)(d)* is an undertaking the normal activities of which include the carrying out of transactions and dealings in securities for its own account or for the account of others.

(8) The circumstances mentioned in *subsection (6)(d)* are that the control concerned is constituted by the undertaking's holding, on a temporary basis, securities acquired in another undertaking and any exercise by the undertaking of voting rights in respect of those securities, whilst that control subsists, is for the purpose of arranging for the disposal, within the specified period, of all or part of the other undertaking or its assets or securities and not for the purpose of determining the manner in which any activities of the other undertaking, being activities that could affect competition in markets for goods or services in the State, are carried on.

F34[(8A) Subsection (6) shall not apply where the undertaking referred to in subsection (7) has acquired control on the basis of the future onward sale of the business to an ultimate buyer, in circumstances where the ultimate buyer bears the major part of the economic risks.]

(9) In *subsection (8)* “specified period” means—

(a) the period of 1 year from the date on which control of the other undertaking was acquired, or

(b) if in a particular case the undertaking shows that it is not reasonably possible to effect the disposal concerned within the period referred to in *paragraph (a)*, within such longer period as the Authority determines and specifies with respect to that case.

Annotations**Amendments:**

- F33** Substituted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 53(a)-(b), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.
- F34** Inserted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 53(c), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

F35 [Application of sections 18 to 22

17.— (1) Sections 18 to 22 are subject to Part 3A (inserted by section 74 of the Competition and Consumer Protection Act 2014).

(2) Notwithstanding subsection (1), any commitments or conditions in a determination made under this Part shall not be revoked or amended by the Minister for Communications, Energy and Natural Resources in his or her determination under Part 3A.

(3) The Minister for Communications, Energy and Natural Resources may however impose additional conditions in his or her determination under Part 3A.]

Annotations**Amendments:**

- F35** Substituted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 54, subject to transitional provisions in s. 6.

Obligation to notify certain mergers and acquisitions.

18.—F36[(1) Where—

(a) in relation to a proposed merger or acquisition, in the most recent financial year—

(i) the aggregate turnover in the State of the undertakings involved is not less than €50,000,000, and

(ii) the turnover in the State of each of 2 or more of the undertakings involved is not less than €3,000,000, or

(b) a proposed merger or acquisition falls within a class of merger or acquisition specified in an order under subsection (5),

each of the undertakings involved in the merger or acquisition shall notify the Commission in writing, and provide full details, of the proposal to put the merger or acquisition into effect.

(1A) A notification under subsection (1) —

(a) shall be made before the proposed merger or acquisition is put into effect, and

(b) may be made after any of the following applicable events occurs:

(i) one of the undertakings involved has publicly announced an intention to make a public bid or a public bid is made but not yet accepted;

(ii) the undertakings involved demonstrate to the Commission a good faith intention to conclude an agreement or a merger or acquisition is agreed;

(iii) in relation to a scheme of arrangement, a scheme document is posted to shareholders.]

(2) For the purpose of *subsection (1)*—

(a) “turnover” does not include any payment in respect of value-added tax on sales or the provision of services or in respect of duty of excise,

(b) subject to *paragraph (c)* an undertaking shall not be deemed to be involved in a merger or acquisition by virtue only of its being the vendor of any securities or other property involved in the merger or acquisition, and

(c) in relation to a merger or acquisition that will occur by reason of the acquisition concerned being an acquisition referred to in *section 16(1)(c)*—

(i) *subparagraphs (i) and F37[(ii)] of paragraph (a) of subsection (1)*, in their application to the second-mentioned undertaking in *section 16(1)(c)*, shall apply as if the F37[references to turnover in the State] were, in relation to that undertaking, F37[references to turnover in the State] generated from the assets of that undertaking that are the subject of the acquisition mentioned in *section 16(1)(c)*, and

(ii) notwithstanding *paragraph (b)*, that second-mentioned undertaking shall, for the purposes of *paragraph (a) or (b) of subsection (1)* but not so as to place on it an obligation to notify the Authority of the proposal to put the merger or acquisition into effect, be deemed to be involved in the merger or acquisition.

F37[(3) In the case of a proposed merger or acquisition that is not required to be notified under *subsection (1)*, any of the undertakings involved in the merger or acquisition may, before putting the merger or acquisition into effect, notify the Commission in writing, and provide full details, of the proposal to put the merger or acquisition into effect, and such notification may be made after any of the applicable events referred to in *paragraph (b) of subsection (1A)* occurs.]

(4) Nothing in this section or any other provision of this Act prejudices the operation of F37[the Council Regulation].

(5) Where he or she is of opinion that the exigencies of the common good so warrant, the Minister may, after consultation with the Authority, by order specify a class or classes of merger or acquisition for the purposes of *subsection (1)(b)*.

(6) The Minister may by order amend or revoke an order under *subsection (5)* or a previous order under this subsection.

(7) Every order under this section shall have effect on and from the date on which it is made and shall be laid before each House of the Oireachtas as soon as may be after it is made; if a resolution confirming the order is not passed by each such House within the next 21 days after that House has sat after the order is laid before it, the order shall lapse, but without prejudice to the validity of anything previously done thereunder.

(8) A notification in accordance with this section shall be accompanied by such fee as may be prescribed and different fees may be prescribed for different classes of notification; if the notification is not accompanied by that fee the notification shall be invalid.

(9) Where there is a contravention of *subsection (1) or section 20(2) F37[an undertaking, or the person in control of an undertaking,]* which has failed to notify the Authority within the specified period or failed to supply the information required within the period specified by the Authority, as the case may be, shall be guilty of an offence and shall, subject to *subsection (10)*, be liable—

(a) on summary conviction, to a fine not exceeding €3,000,

(b) on conviction on indictment, to a fine not exceeding €250,000.

(10) *Subsection (9)* operates so that if the contravention concerned continues one or more days after the date of its first occurrence, F37[the undertaking or person] referred to in that subsection is guilty of a separate offence under that subsection for each day that the contravention occurs; but in respect of the second or subsequent offence of which he or she is guilty by reason of that continued contravention, *subsection (9)* shall have effect as if—

(a) in *paragraph (a)*, “€300” were substituted for “€3,000”,

(b) in *paragraph (b)*, “€25,000” were substituted for “€250,000”.

(11) For the purposes of *subsection (9)* the person in control of an undertaking is—

(a) in the case of a body corporate, any officer of the body corporate who knowingly and wilfully authorises or permits the contravention,

(b) in the case of a partnership, each partner who knowingly and wilfully authorises or permits the contravention,

(c) in the case of any other form of undertaking, any individual in control of that undertaking who knowingly and wilfully authorises or permits the contravention.

(12) A notification for the purposes of *subsection (1) or (3)* shall not be valid where any information provided or statement made under *subsection (1) or (3) or section 20(2)* is false or misleading in a material respect, F38[or if the Commission is of the opinion that the full details required under *subsection (1) or (3)*, or all the specified information requested under *section 20(2)*, have not been provided,] and any determination under this Part made on foot of such notification is void.

F38[(12A) Notwithstanding *section 19(2)*, the Commission may, for the purposes of this Part, request or accept notification of a merger or acquisition to which *subsection (1)* applies but which was purported to have been put into effect without having been notified in accordance with that subsection.]

(13) The transmission to the Authority by F39[the European Commission] of a copy of a notification made to the Commission under F37[the Council Regulation] shall constitute a notification under *subsection (1)* in relation to the merger or acquisition concerned.

(14) Irrespective of the date on which F39[the European Commission] transmits a copy of the notification referred to in *subsection (13)*, the date of receipt by the Authority of F40[that Commission’s] decision under F37[the Council Regulation] in relation to the merger or acquisition, the subject of the notification, shall be deemed to be the date of the notification for the purposes of this Act.

Annotations

Amendments:

F36 Substituted and inserted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 55(a), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

F37 Substituted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 55(b)-(f) and (i)-(j), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

F38 Inserted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 55(g)-(h), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

F39 Inserted (15.05.2007) by *Communications Regulation (Amendment) Act 2007 (22/2007)*, s. 28(a), S.I. No. 224 of 2007.

F40 Inserted (15.05.2007) by *Communications Regulation (Amendment) Act 2007* (22/2007), s. 28(b), S.I. No. 224 of 2007.

Editorial Notes:

E18 Power pursuant to subss. (5) and (6) exercised (1.05.2007) by *Competition Act 2002 (Section 18 (5) and (6)) Order 2007* (S.I. No. 122 of 2007).

E19 Power pursuant to subs. (8) exercised (1.01.2003) by *Competition Act 2002 (Notification Fee) Regulations 2002* (S.I. No. 623 of 2002).

E20 Previous affecting provision: application of section restricted (2.10.2008) by *Credit Institutions (Financial Support) Act 2008* (18/2008), s. 7(2), commenced on enactment; repealed (1.08.2013) by *Central Bank (Supervision and Enforcement) Act 2013* (26/2013), s. 92, S.I. No. 287 of 2013.

E21 Previous affecting provision: provision for references to Council Regulation (EEC) No. 4064/89 to be read as references to Council Regulation (EC) No. 139/2004 within the terms of the amending s. 7 made (2.10.2008) by *Credit Institutions (Financial Support) Act 2008* (18/2008), s. 7(18), commenced on enactment; repealed (1.08.2013) by *Central Bank (Supervision and Enforcement) Act 2013* (26/2013), s. 92, S.I. No. 287 of 2013.

E22 Previous affecting provision: power pursuant to subs. (5) exercised (1.01.2003) by *Competition Act 2002 (Section 18 (5)) Order 2002* (S.I. No. 622 of 2002), art 4; revoked (1.05.2007) by *Competition Act 2002 (Section 18 (5) and (6)) Order 2007* (S.I. No. 122 of 2007), art. 5.

Limitation on merger or acquisition being put into effect.

19.—(1) A merger or acquisition to which *paragraph (a) or (b) of section 18(1)* applies, or which is referred to in *subsection (3) of section 18* and has been notified to the Authority in accordance with that subsection, shall not be put into effect until—

- (a) subject to *subsection (3)*, the Authority, in pursuance of *section 21 or 22*, has determined that the merger or acquisition may be put into effect, or
- (b) the Authority has made a conditional determination in relation to the merger or acquisition, or
- (c) subject to *subsection (4)*, the period specified in *subsection (2) of section 21* has elapsed without the Authority having informed the undertakings which made the notification concerned of the determination (if any) it has made under *paragraph (a) or (b) of that subsection (2)*, or
- (d) subject to *subsection (5)*, F41[120 working days after the appropriate date have elapsed, or, where a requirement was made under *section 20(2)*, 120 working days and any period of suspension that applied pursuant to *section 22(4A) after the appropriate date have elapsed*] without the Authority having made a determination under *section 22* in relation to the merger or acquisition,

whichever first occurs.

(2) Any such merger or acquisition which purports to be put into effect, where that putting into effect contravenes *subsection (1)*, is void.

(3) Notwithstanding *subsection (1)(a)*, the determination referred to in that provision shall not operate to permit the merger or acquisition concerned to be put into effect if the merger or acquisition is not put into effect before the expiry of the period of 12 months after the date on which the determination is made.

(4) Notwithstanding *subsection (1)(c)*, the failure by the Authority to inform the undertakings concerned of the matter referred to in that provision shall not operate to permit the merger or acquisition concerned to be put into effect if the merger or acquisition is not put into effect before the expiry of the period of 13 months after the appropriate date.

(5) Notwithstanding *subsection (1)(d)*, the absence of a determination by the Authority in the circumstances referred to in that provision shall not operate to permit the merger or acquisition concerned to be put into effect if the merger or acquisition is not put into effect before the expiry of the period of F41[12 months after the relevant period referred to in subsection (1)(d) has elapsed].

(6) In this section “appropriate date” means—

F42[(a) unless paragraph (b) applies, the date of receipt by the Commission of the notification of the merger or acquisition concerned under section 18(1),

(aa) notwithstanding subsection (8), and unless paragraph (b) applies, the date of receipt by the Commission of the first notification of a merger or acquisition under section 18(3),]

(b) if the Authority has, under *section 20(2)*, made, within F41[30 working days] from the date of receipt by it of the notification of the merger or acquisition concerned under *section 18*, a requirement or requirements of one or more of the undertakings concerned—

(i) the date on which the requirement is complied with or, in case 2 or more requirements are made and each is complied with, whichever of the dates on which the requirements are complied with is the later or latest,

(ii) where the requirement is not complied with or each of the 2 or more requirements is not complied with, the date immediately following the expiry of the period specified in the requirement or, as the case may be, the date immediately following the expiry of whichever of the respective periods specified in the requirements is the last to expire, or

(iii) in case 2 or more requirements are made but one or more but not all of them are complied with, the later or latest of the following dates, namely the dates provided by applying—

(I) *subparagraph (i)* to the requirement or requirements complied with, and

(II) *subparagraph (ii)* to the requirement or requirements not complied with.

F41[(7) The reference, in the definition of ‘appropriate date’ in subsection (6), and in section 22(4A), to the period specified in a requirement, is a reference to—

(a) the period specified in the requirement as being the period within which the information concerned shall be supplied, and

(b) where a requirement has been extended under section 20(2A) or section 20(2B), the date specified in the requirement as so extended.]

(8) For the purpose of the reference in *subsection (6)*, and in any other provision of this Act, to the date on which the Authority receives a notification under *section 18*, if a single notification is not made by all the undertakings concerned, the said reference shall be construed as a reference to the later or latest of the dates on which a notification of the merger or acquisition concerned under *section 18* is received by the Authority.

(9) *Subsection (8)* is without prejudice to *section 18(14)*.

Annotations**Amendments:**

- F41** Substituted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 56(a), (b), (c)(ii) and (d), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.
- F42** Substituted and inserted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 56(c)(i), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

Examination by the Authority of notification.

20.—(1) In respect of a notification received by it, the Authority—

- (a) shall, unless the circumstances involving the merger or acquisition are such that the Authority considers it would not be in the public interest to comply with this paragraph—
- (i) cause a notice of the notification to be published within 7 days after the date of receipt of it,
- (ii) consider all submissions made, whether in writing or orally, by the undertakings involved in the merger or acquisition or by any individual or any other undertaking,
- (b) may enter into discussions with the undertakings involved in the merger or acquisition or with any individual or any other undertaking with a view to identifying measures which would ameliorate any effects of the merger or acquisition on competition in markets for goods or services, and
- (c) shall form a view as to whether the result of the merger or acquisition would be to substantially lessen competition in markets for goods or services in the State.

(2) Where the Authority is of the opinion that, in order to consider for the purposes of this Part a merger or acquisition, it requires further information it may, by notice in writing served on the undertaking, require any one or more of the undertakings concerned to supply to it within a specified period specified information, and an undertaking of whom such a requirement is made shall comply with it F43[and an officer (where the undertaking is a body corporate), partner (where the undertaking is a partnership) or any individual in control (in the case of any other form of undertaking) shall certify in writing that to the best of his or her knowledge and belief, the undertaking has complied with a requirement under this section].

F43[(2A) If, before the expiration of the period specified in a notice under subsection (2), the undertaking or undertakings concerned request, in writing, an extension to the specified period, the Commission may, where it considers it appropriate to do so, extend that period, and an undertaking to which such an extension is granted shall comply with the requirement under subsection (2) within the specified period as so extended.

(2B) The Commission, pursuant to a request from the undertaking or undertakings concerned, and where it considers it appropriate to do so, may further extend the period as extended under subsection (2A) or this subsection.]

(3) In the course of the Authority's activities under *subsection (1)(b)*, any of the undertakings involved in the merger or acquisition concerned may submit to the Authority proposals of the kind mentioned in *subsection (4)* with a view to the proposals becoming binding on it or them if the Authority takes the proposals into account and states in writing that the proposals form the basis or part of the basis of its determination under *section 21* or *22* in relation to the merger or acquisition.

(4) The proposals referred to in *subsection (3)* are proposals with regard to the manner in which the merger or acquisition may be put into effect or to the taking, in relation to the merger or acquisition, of any other measures referred to in *subsection (1)(b)*.

Annotations

Amendments:

F43 Inserted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 57, S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

Determination of issues concerned without full investigation, etc.

21.—(1) In this section “appropriate date” has the same meaning as it has in *section 19*.

(2) In respect of a notification received by it, the Authority shall, within F44[30 working days] after the appropriate date, inform the undertakings which made the notification and any individual or any other undertaking from whom a submission concerning the notification was received of whichever of the following determinations it has made, namely—

(a) that, in its opinion, the result of the merger or acquisition will not be to substantially lessen competition in markets for goods or services in the State and, accordingly, that the merger or acquisition may be put into effect, or

(b) that it intends to carry out an investigation under *section 22* in relation to the merger or acquisition.

(3) Where the Authority makes a determination referred to in *paragraph (a)* or *(b)* of *subsection (2)*, it shall publish that determination, with due regard for commercial confidentiality, within F44[60 working days] after the making of the determination.

(4) If any of the undertakings which have made the notification concerned submits to the Authority proposals to which *section 20(3)* applies, then *subsection (2)* shall have effect as if “F44[45 working days]” were substituted for “F44[30 working days]” in that subsection.

Annotations

Amendments:

F44 Substituted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 58, S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

Determination of issues concerned on foot of full investigation.

22.—(1) In this section “appropriate date” has the same meaning as it has in *section 19*.

(2) Having considered a notification made to it, the Authority may decide that it shall carry out an investigation (in this section referred to as a “full investigation”) in relation to the merger or acquisition concerned.

(3) On completion of a full investigation in relation to the merger or acquisition concerned, the Authority shall make whichever of the following determinations it considers appropriate, namely that the merger or acquisition—

(a) may be put into effect,

(b) may not be put into effect, or

(c) may be put into effect subject to conditions specified by it being complied with,

on the ground that the result of the merger or acquisition will or will not, as the case may be, be to substantially lessen competition in markets for goods or services in the State or, as appropriate, will not be to substantially lessen such competition if conditions so specified are complied with.

(4) Where the Authority makes a determination under *subsection (3)*, it shall reduce the determination to writing (and the determination in that form is referred to in *paragraph (a)* and *subsection (7)* as a “written determination”) and—

(a) furnish to the undertakings which made the notification a copy of the written determination within F45[120 working days] after the appropriate date, and

(b) publish the determination, with due regard for commercial confidentiality, within F45[60 working days] after the making of the determination.

F46[(4A) Notwithstanding *subsection (4)(a)*, if the Commission has, under *section 20(2)*, made, not later than 30 working days from the date of its determination under *section 21(2)(b)*, a requirement or requirements of one or more of the undertakings concerned, the period of 120 working days referred to in *subsection (4)(a)* shall stand suspended on the date that the first requirement is made and shall resume—

(a) on the date on which the requirement is complied with or, in case 2 or more requirements are made and each is complied with, on whichever of the dates on which the requirements are complied with is the later or latest,

(b) where the requirement is not complied with or each of the 2 or more requirements is not complied with, on the date immediately following the expiry of the period specified in the requirement or, as the case may be, on the date immediately following the expiry of whichever of the respective periods specified in the requirements is the last to expire, or

(c) in case 2 or more requirements are made but one or more but not all of them are complied with, on the later or latest of the following dates, namely the dates provided by applying—

(i) *paragraph (a)* to the requirement or requirements complied with, and

(ii) *paragraph (b)* to the requirement or requirements not complied with.

(4B) If any of the undertakings that have made the notification concerned submits to the Commission during a full investigation under this section proposals to which *section 20(3)* applies, *subsections (4) and (4A)*, *section 19(1)(d)* and, in the case of a media merger, *paragraph (c) of the definition of ‘relevant date’ in section 28A(1) F47[and paragraph (b) (inserted by section 4 of the Intellectual Property (Miscellaneous Provisions) Act 2014) of section 28B(2)]* (inserted by *section 74 of the Competition and Consumer Protection Act 2014*), shall apply as if ‘135 working days’ were substituted for ‘120 working days’ in those provisions.]

(5) A determination under *subsection (3)(c)* that the merger or acquisition may be put into effect subject to specified conditions being complied with is referred to in this section as a “conditional determination”.

(6) A conditional determination shall include a condition requiring the merger or acquisition to be put into effect within 12 months after the making of the determination.

(7) A written determination under *subsection (3)* shall state the reasons for its making and shall include a report in relation to the full investigation.

(8) Before making a determination under *subsection (3)*, the Authority shall have regard to any relevant international obligations of the State.

Annotations**Amendments:**

- F45** Substituted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 59(a), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.
- F46** Inserted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 59(b), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.
- F47** Inserted (23.12.2014) by *Intellectual Property (Miscellaneous Provisions) Act 2014 (36/2014)*, s. 4(1)(a), commenced on enactment, subject to transitional provision in subs. (2).

Provisions with regard to media mergers.

23.—F48[...]

Annotations**Amendments:**

- F48** Repealed (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 7(1)(b), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

Appeal to the High Court against determination of the Authority.

24.—(1) An appeal may be made to the High Court against a determination of the Authority under *paragraph (b) or (c) of section 22(3)*.

(2) F49[...]

(3) An appeal under this section—

(a) may be made by any of the undertakings which made the notification in relation to the merger or acquisition concerned, and

F50[(b) shall be made within 40 working days after the date on which the undertaking is informed by the Commission of the determination concerned or, in case the determination is one that was made under section 22(3)(c) in relation to a media merger, within 40 working days after the date the Minister for Communications, Energy and Natural Resources has informed the undertaking of his or her determination under paragraph (a) or (b) of section 28D(1), or under section 28G(1), as the case may be.]

(4) Any issue of fact or law concerning the determination concerned may be the subject of an appeal under this section but, with respect to an issue of fact, the High Court, on the hearing of the appeal, may not receive evidence by way of testimony of any witness and shall presume, unless it considers it unreasonable to do so, that any matters accepted or found to be fact by the Authority in exercising the relevant powers under *section 22* were correctly so accepted or found.

(5) Notwithstanding *subsection (4)*, the High Court, on the hearing of an appeal under this section, may receive evidence by way of the testimony of one or more witnesses if it considers it was unreasonable for the Authority to have accepted or found as a fact any matter concerned.

(6) Without limiting the exercise of the judicial function with respect to a particular case, it shall be the duty of the High Court, in so far as it is practicable, to hear and determine an appeal under this section within 2 months after the date on which the appeal is made to it.

(7) On the hearing of an appeal under this section, the High Court may, as it thinks fit—

(a) annul the determination concerned,

(b) confirm the determination concerned, F49[...]

(c) confirm the determination concerned subject to such modifications of it as the court determines and specifies in its F50[**decision, or**

F51[**(d) remit the matter to the Commission and, if appropriate, to the Minister for Communications, Energy and Natural Resources, with a direction to make a determination taking into account the findings of the High Court, and with any other directions that the High Court considers appropriate.**]

(8) The High Court may, where it appears to the court that the circumstances so warrant, F49[...] extend the period mentioned in *subsection (3)(b)* in which an appeal under this section may be made to it.

(9) An appeal to the Supreme Court against a decision of the High Court under any of the foregoing provisions of this section shall lie only on a question of law.

Annotations

Amendments:

F49 Deleted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 60(a), (c)(i) and (d), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

F50 Substituted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 60(b) and (c)(ii), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

F51 Inserted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 60(c)(iii), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

Laying of order under *section 23(4)* before Houses of the Oireachtas.

25.—F52[...]

Annotations

Amendments:

F52 Repealed (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 7(1)(b), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

Enforcement of certain commitments, determinations and orders.

26.—(1) In this section—

“commitment” means an obligation on the part of an undertaking arising by virtue of a proposal put forward by it being the subject of a statement in writing by the Authority such as is mentioned in *section 20(3)*;

“determination” means a determination of the Authority made under *section 21* or *22*;

F53[...]

(2) It shall be lawful for a court of competent jurisdiction to grant an injunction on the motion of the Authority or of any other person to enforce compliance with the terms of F54[a commitment or a determination], for the time being in force.

(3) *Subsection (2)* shall not affect any other right of the Authority or other person to bring proceedings (whether civil or criminal) for the enforcement of compliance with the terms of F54[a commitment or a determination].

(4) A person who contravenes (whether by act or omission) a provision of F54[a commitment or a determination] for the time being in force shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment, or

(b) on conviction on indictment, to a fine not exceeding €10,000 or to imprisonment for a term not exceeding 2 years or to both such fine and such imprisonment.

(5) Every person who aids, abets or assists another person, or conspires with another person, to do anything (whether by way of act or of omission) the doing of which is an offence by virtue of *subsection (4)* shall himself or herself be guilty of an offence under this section and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(6) Where an offence under *subsection (4)* or *(5)* which is committed by a body corporate or by a person purporting to act on behalf of a body corporate or an unincorporated body of persons is proved to have been so committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person who is a director, manager, secretary, member of the committee of management or other controlling authority of any such body, or who is any other similar officer of any such body, that person shall also be guilty of an offence and shall be liable to be proceeded against and punished as if he or she was guilty of the first-mentioned offence.

(7) *Subsections (4), (5) and (6)* operate so that if the contravention concerned continues one or more days after the date of its first occurrence, the person referred to in the subsection concerned is guilty of a separate offence under that subsection for each day that the contravention occurs; but in respect of the second or subsequent offence of which he or she is guilty by reason of that continued contravention, *subsection (4)* shall have effect as if—

(a) in *paragraph (a)*, “€300” were substituted for “€3,000”, and

(b) in *paragraph (b)*, “€1,000” were substituted for “€10,000”.

(8) Summary proceedings in relation to an offence under this section may be brought by the Authority.

(9) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this section may be instituted within 12 months after the day on which the offence was committed.

F55[(10) The Commission may monitor and review commitments or conditions contained in a determination.]

Annotations

Amendments:

- F53** Deleted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 61(a), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

- F54** Substituted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 61(b)-(d), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.
- F55** Inserted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 61(e), S.I. 366 of 2014, subject to transitional provisions in s. 6.

Alteration of certain monetary amounts.

27.—(1) The Minister may make an order once, and once only, in each year, beginning with the year following the year in which this section is commenced, amending *subsection (1)(a) of section 18* by substituting for the monetary amount standing specified in *subparagraph (i)* or **F56[(ii)]** of that provision for the time being a monetary amount that is greater than that amount.

(2) In making an order under *subsection (1)*, the Minister shall have regard to, and only to, such economic data as the Minister considers to be relevant to the purpose.

(3) Every order under this section shall have effect on and from the date on which it is made and shall be laid before each House of the Oireachtas as soon as may be after it is made; if a resolution confirming the order is not passed by each such House within the next 21 days after that House has sat after the order is laid before it, the order shall lapse, but without prejudice to the validity of anything previously done thereunder.

Annotations

Amendments:

- F56** Substituted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 62, S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

Relationship between this Part and other enactments.

28.—(1) Nothing in an enactment specified in *subsection (2)* prejudices the operation of **F57[this Part or Part 3A]**.

(2) The enactment mentioned in *subsection (1)* is an enactment (other than an enactment contained in **F57[this Part or Part 3A]**) that requires, in respect of the doing of the act or acts that comprise a merger or acquisition to which *paragraph (a)* or *(b)* of **F57[section 18(1), or section 28B(1)]** applies, the doing of that act or those acts to be either—

(a) sanctioned, whether such sanctioning takes the form of the making by a court of an order or the granting by a person of any other form of consent, or

(b) the subject of any form of registration of a resolution passed by one or more undertakings.

(3) Neither the giving of a sanction such as is referred to in *subsection (2)(a)* nor the carrying out of a registration such as is referred to in *subsection (2)(b)* shall be done or completed in relation to a merger or acquisition to which *paragraph (a)* or *(b)* of **F57[section 18(1), or section 28B(1)]** applies unless and until no step remains to be taken, or power of any person or court or of either House of the Oireachtas remains to be exercised, under **F57[this Part or Part 3A]**, being a step or power the taking or exercising of which would, by virtue of this Part, prevent the merger or acquisition from being put into effect.

Annotations**Amendments:**

- F57** Substituted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 63, S.I. No. 366 of 2014, subject to transitional provisions in s.6.

F58[PART 3A

MEDIA MERGERS]

Annotations**Amendments:**

- F58** Part 3A (ss. 28A - 28O) inserted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 74, S.I. 401 of 2014, subject to transitional provisions in s. 6.

F59[Interpretation and application.

28A.— (1) In this Part—

‘advisory panel’ has the meaning assigned to it by section 28F;

‘broadcasting service’ has the same meaning as it has in the Act of 2009;

‘carries on a media business in the State’ means, in relation to a media business—

- (a) having a physical presence in the State, including a registered office, subsidiary, branch, representative office or agency, and making sales to customers located in the State, or
- (b) having made sales in the State of at least €2 million in the most recent financial year;

‘diversity of content’ means the extent to which the broad diversity of views (including diversity of views on news and current affairs) and diversity of cultural interests prevalent in Irish society is reflected through the activities of media businesses in the State including their editorial ethos, content and sources;

‘diversity of ownership’ means the spread of ownership and control of media businesses in the State linked to the market share of those media businesses as measured by listenership, readership, reach or other appropriate measures;

‘full media merger examination’ has the meaning assigned to it by section 28E;

‘Joint Oireachtas Committee’ has the same meaning as it has in the Act of 2009;

‘media business’ means the business (whether all or part of an undertaking’s business) of—

- (a) the publication of newspapers or periodicals consisting substantially of news and comment on current affairs, including the publication of such newspapers or periodicals on the internet,
- (b) transmitting, re-transmitting or relaying a broadcasting service,
- (c) providing any programme material consisting substantially of news and comment on current affairs to a broadcasting service, or

- (d) making available on an electronic communications network any written, audio-visual or photographic material, consisting substantially of news and comment on current affairs, that is under the editorial control of the undertaking making available such material;

‘media merger’ means—

- (a) a merger or acquisition in which 2 or more of the undertakings involved carry on a media business in the State, or
- (b) a merger or acquisition in which one or more of the undertakings involved carries on a media business in the State and one or more of the undertakings involved carries on a media business elsewhere;

‘plurality of the media’ includes both diversity of ownership and diversity of content;

‘programme material’ has the same meaning as it has in the Act of 2009;

‘reach’ means the proportion of a population or audience that consumes any part of the output of a media business in a given period;

‘relevant criteria’ means the following matters:

- (a) the likely effect of the media merger on plurality of the media in the State;
- (b) the undesirability of allowing any one undertaking to hold significant interests within a sector or across different sectors of media business in the State;
- (c) the consequences for the promotion of plurality of the media in the State of intervening to prevent the media merger or attaching conditions to the approval of the media merger;
- (d) if appropriate, the adequacy of the following to protect the public interest in plurality of the media in the State:
 - (i) the scale and reach of RTÉ and TG4;
 - (ii) Part 6 of the Act of 2009;
 - (iii) the ownership and control policy of the Broadcasting Authority of Ireland for the time being in force;
- (e) the proposed commitments that the undertakings are prepared to offer and which the Minister for Communications, Energy and Natural Resources may incorporate pursuant to section 28D(5) or section 28E(10) in his or her determination;
- (f) the extent to which the public interest can be secured by the imposition of any conditions by the Minister for Communications, Energy and Natural Resources under section 28D or section 28G;

‘relevant date’ means, in relation to a media merger, 10 working days from whichever of the following dates is applicable:

- (a) the date of a determination by the Commission under paragraph (a) of section 21(2) or under paragraph (a) or (c) of section 22(3);
- (b) the day after the period specified in subsection (2) of section 21 has elapsed without the Commission having informed the undertakings that made the notification concerned of the determination (if any) it has made under paragraph (a) or (b) of that subsection (2);
- (c) where the Commission has made a determination under section 21(2)(b), the day after—

(i) 120 working days have elapsed after the appropriate date within the meaning of section 19(6), or

(ii) where a requirement or requirements referred to in section 22(4A) were made under section 20(2), 120 working days and any period of suspension that applied pursuant to section 22(4A) have elapsed after the appropriate date within the meaning of section 19(6),

without the Commission having made a determination under section 22;

(d) the date of a decision of the European Commission under Article 6(1)(b) or Article 8(1) or (2) of the Council Regulation ;

(e) the date that Article 10(6) of the Council Regulation comes into effect;

‘RTÉ’ means Raidió Teilifís Éireann;

‘TG4’ means Teilifís na Gaeilge;

‘undertakings involved’ shall—

(a) be construed in accordance with Part 3, or

(b) in the case of a merger or acquisition to which section 28B(6) applies, mean the undertakings concerned in accordance with the Council Regulation.

(2) For the avoidance of doubt, this Part applies to a media merger that has been notified to the European Commission in accordance with the Council Regulation, and consideration of, and a determination on, such a media merger under this Part by the Minister for Communications, Energy and Natural Resources shall be an appropriate measure to protect the legitimate interest in plurality of the media within the meaning of Article 21(4) of that Council Regulation.]

Annotations

Amendments:

F59 Inserted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 74, S.I. No. 401 of 2014, subject to transitional provisions in s. 6.

F60[Notification of media merger to Minister for Communications, Energy and Natural Resources.

28B.— (1) In the case of a merger or acquisition that is a media merger, the undertakings involved that notified the Commission under section 18(1), or that notified the European Commission, as the case may be, shall notify the Minister for Communications, Energy and Natural Resources in writing, and shall provide him or her with full details, of the proposal to put the merger or acquisition into effect.

(2) A notification to the Minister for Communications, Energy and Natural Resources under subsection (1) —

(a) shall be made on or before the relevant date, and

F61[(b) notwithstanding paragraph (a), shall not be made before whichever of the following dates is applicable:

(i) the date of a determination by the Commission under paragraph (a) of section 21(2) or under paragraph (a) or (c) of section 22(3);

(ii) the day after the period specified in subsection (2) of section 21 has elapsed without the Commission having informed the undertakings that made the notification concerned of the determination (if any) it has made under paragraph (a) or (b) of that subsection (2);

(iii) where the Commission has made a determination under section 21(2) (b), the day after—

(I) 120 working days have elapsed after the appropriate date within the meaning of section 19(6), or

(II) where a requirement or requirements referred to in section 22(4A) were made under section 20(2), 120 working days and any period of suspension that applied pursuant to section 22(4A) have elapsed after the appropriate date within the meaning of section 19(6),

without the Commission having made a determination under section 22;

(iv) the date of a decision of the European Commission under Article 6(1) (b) or Article 8(1) or (2) of the Council Regulation;

(v) the date that Article 10(6) of the Council Regulation comes into effect.]

(3) When making a notification under subsection (1), each of the undertakings involved in the media merger shall provide full information to the Minister for Communications, Energy and Natural Resources on all circumstances in relation to the media merger concerned that may impair plurality of the media in the State and shall notify the Minister for Communications, Energy and Natural Resources of any changes in the information.

(4) The undertakings involved in a media merger may make submissions to the Minister for Communications, Energy and Natural Resources in relation to the applicability of the guidelines referred to in section 28L to the media merger.

(5) If the Commission makes a determination referred to in paragraph (a) or (b) of section 21(2) or paragraph (a), (b) or (c) of section 22(3) in relation to a media merger it shall, immediately after doing so, inform the Minister for Communications, Energy and Natural Resources of that fact.

(6) If the European Commission makes a decision under Article 6(1)(a), (b) or (c) or Article 8(1), (2) or (3) of the Council Regulation or if Article 10(6) of that Council Regulation takes effect in relation to a media merger the undertakings involved shall, immediately after having being notified of the decision or of Article 10(6) having taken effect, as the case may be, inform the Minister for Communications, Energy and Natural Resources.

(7) A notification for the purposes of subsection (1) shall not be valid and any determination under this Part made on foot of such notification is void—

(a) where any information provided or statement made under subsection (1), (3) or (4) or section 28D(3) or 28E(7) is false or misleading in a material respect, or

(b) if the Minister for Communications, Energy and Natural Resources is of the opinion that full details referred to in subsection (1), full information or changes to the information referred to in subsection (3), or the specified information referred to in sections 28D(3) or 28E(7), were not provided.

(8) Where there is a contravention of subsection (1) or (3), the person in control of an undertaking that has failed to notify the Minister for Communications, Energy and Natural Resources or that has failed to supply the information required, as the case may be, shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €250,000.

(9) Subsection (8) operates so that if the contravention concerned continues one or more days after the date of its first occurrence, the person referred to in that

subsection is guilty of a separate offence under that subsection for each day that the contravention occurs; but in respect of the second or subsequent offence of which he or she is guilty by reason of that continued contravention, subsection (8) shall have effect as if—

(a) in paragraph (a), ‘a class E fine’ were substituted for ‘a class A fine’, and

(b) in paragraph (b), ‘€25,000’ were substituted for ‘€250,000’.

(10) For the purposes of subsection (8) the person in control of an undertaking is—

(a) in the case of a body corporate, any officer of the body corporate who knowingly and wilfully authorises or permits the contravention,

(b) in the case of a partnership, each partner who knowingly and wilfully authorises or permits the contravention,

(c) in the case of any other form of undertaking, any individual in control of that undertaking who knowingly and wilfully authorises or permits the contravention.

(11) Summary proceedings in relation to an offence under this section may be brought by the Minister for Communications, Energy and Natural Resources.]

Annotations

Amendments:

F60 Inserted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 74, S.I. No. 401 of 2014, subject to transitional provisions in s. 6.

F61 Inserted (23.12.2014) by *Intellectual Property (Miscellaneous Provisions) Act 2014* (36/2014), s. 4(1)(b), commenced on enactment, subject to transitional provision in subs. (2).

F62 [Limitation on media merger being put into effect.

28C.— (1) Notwithstanding any other provision of this Act or of any other enactment, a media merger shall not be put into effect before the Minister for Communications, Energy and Natural Resources makes a determination under paragraph (a) or (b) of section 28D(1) or paragraph (a) or (c) of section 28G(1).

(2) Notwithstanding subsection (1), a determination referred to in that provision shall not operate to permit the merger or acquisition concerned to be put into effect if the merger or acquisition is not put into effect before the expiry of the period of 12 months from the date on which the determination is made.

(3) Any media merger that purports to be put into effect, where that putting into effect contravenes this section, is void.]

Annotations

Amendments:

F62 Inserted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 74, S.I. No. 401 of 2014, subject to transitional provisions in s. 6.

F63[Initial examination by Minister for Communications, Energy and Natural Resources of media merger notification.

28D.— (1) Not later than 30 working days (or 45 working days, where proposed commitments referred to in subsection (5) have been made) from the relevant date or from the appropriate date, whichever is the later, the Minister for Communications, Energy and Natural Resources shall inform the undertakings that have made the media merger notification under section 28B of whichever of the following determinations he or she has made, namely—

- (a) that in his or her opinion the result of the media merger will not be contrary to the public interest in protecting plurality of the media in the State, and accordingly that the media merger may be put into effect,
- (b) that, in light of proposed commitments offered by the undertakings, in his or her opinion the result of the media merger will not be contrary to the public interest in protecting plurality of the media in the State, and accordingly the media merger may be put into effect subject to the incorporation of those proposed commitments as specified conditions to be complied with, or
- (c) that he or she is concerned that the media merger may be contrary to the public interest in protecting plurality of the media in the State, and accordingly that he or she intends to request the Broadcasting Authority of Ireland to carry out an examination under section 28E.

(2) In making a determination under subsection (1) as to whether the result of the media merger is likely to be contrary to the public interest in protecting plurality of the media in the State, the Minister for Communications, Energy and Natural Resources shall have regard to—

- (a) the relevant criteria,
- (b) any guidelines issued under section 28L,
- (c) all submissions made and information provided to the Minister for Communications, Energy and Natural Resources by the undertakings involved in the media merger,
- (d) and take full account of, where applicable, the determination of the Commission under paragraph (a) of section 21(2) or under paragraph (a) or (c) of section 22(3),
- (e) and take full account of, where applicable, the decision by the European Commission under Article 6(1)(b) or Article 8(1) or (2) of the Council Regulation,
- (f) relevant reports published by the Minister for Communications, Energy and Natural Resources under section 28M, and
- (g) relevant research published by the Broadcasting Authority of Ireland under section 28M.

(3) Where the Minister for Communications, Energy and Natural Resources requires further information for the purposes of this section, he or she may by notice in writing require any one or more of the undertakings involved to supply to him or her specified information within a specified period, and an undertaking of whom such a requirement is made shall comply with it.

(4) For the purposes of subsection (2), the Minister for Communications, Energy and Natural Resources may enter into discussions with the undertakings involved in the media merger or with any individual or any other undertaking with a view to identifying measures which would ameliorate any effects of the media merger on plurality of the media in the State.

(5) In the course of the discussions under subsection (4), any of the undertakings involved in the media merger concerned may submit to the Minister for Communications, Energy and Natural Resources proposed commitments of the kind mentioned

in subsection (6) with a view to the proposed commitments becoming binding on it or them if the Minister for Communications, Energy and Natural Resources incorporates the proposed commitments as specified conditions to be complied with in his or her determination under subsection (1)(b) in relation to the media merger.

(6) The proposed commitments referred to in subsection (5) are proposed commitments with regard to the manner in which the media merger may be put into effect or to the taking, in relation to the media merger, of any other measures referred to in subsection (4).

(7) As soon as may be after the Minister for Communications, Energy and Natural Resources makes a determination under subsection (1), he or she—

(a) shall furnish to the undertakings involved a copy of the determination, and

(b) may publish, with due regard for commercial confidentiality—

(i) the fact of the making of the determination,

(ii) whether the determination was made under paragraph (a), (b) or (c) of subsection (1), and

(iii) where his or her determination was made under subsection (1)(b), a summary of the conditions specified in the determination.

(8) After the Minister for Communications, Energy and Natural Resources has furnished the determination to the undertakings involved in accordance with subsection (7)(a) —

(a) he or she may correct the determination at any time before the determination is published under paragraph (c) so as to remove any clerical or typographical errors or any errors of a similar nature and shall inform the undertakings involved of any such changes made, but may not reconsider or re-open any aspect of the determination,

(b) not later than 10 working days from the date of receipt of the determination under subsection (7)(a), the undertakings involved may request the Minister for Communications, Energy and Natural Resources in writing to omit from the version of the determination to be published under paragraph (c) any information that they consider to be commercially sensitive, and

(c) he or she shall publish the determination not later than 15 working days from the date of the determination, with due regard for commercial confidentiality.

(9) In this section, reference to ‘appropriate date’ means—

(a) unless paragraph (b) applies, the date of receipt by the Minister for Communications, Energy and Natural Resources of the notification of the media merger concerned under section 28B,

(b) if the Minister for Communications, Energy and Natural Resources has made, under subsection (3), not later than 30 working days from the date of receipt by him or her of the notification of the media merger concerned under section 28B, a requirement or requirements of one or more of the undertakings involved—

(i) the date on which the requirement is complied with or, in case 2 or more requirements are made and each is complied with, whichever of the dates on which the requirements are complied with is the later or latest,

(ii) where the requirement is not complied with or each of the 2 or more requirements is not complied with, the date immediately following the expiry of the period specified in the requirement or, as the case may be,

the date immediately following the expiry of whichever of the respective periods specified in the requirements is the last to expire, or

(iii) in case 2 or more requirements are made but one or more but not all of them are complied with, the later or latest of the following dates, namely the dates provided by applying—

(I) subparagraph (i) to the requirement or requirements complied with, and

(II) subparagraph (ii) to the requirement or requirements not complied with.

(10) The reference in the definition of ‘appropriate date’ in subsection (9) to the period specified in a requirement is a reference to the period specified in the requirement as being the period within which the information concerned shall be supplied.

(11) For the purpose of the reference in subsection (9), and in any other provision of this Act, to the date on which the Minister for Communications, Energy and Natural Resources receives a notification under section 28B, if a single notification is not made by all the undertakings involved, the said reference shall be construed as a reference to the later or latest of the dates on which a notification of the merger or acquisition involved under section 28B is received by the Minister for Communications, Energy and Natural Resources.]

Annotations

Amendments:

F63 Inserted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 74, S.I. No. 401 of 2014, subject to transitional provisions in s. 6.

F64 [Full media merger examination.

28E.— (1) Where the Minister for Communications, Energy and Natural Resources makes a determination under section 28D(1)(c), he or she shall request the Broadcasting Authority of Ireland to carry out an examination (in this Part referred to as a ‘full media merger examination’) in relation to the media merger concerned.

(2) On receipt of a request under subsection (1), the Broadcasting Authority of Ireland shall, as soon as may be—

(a) cause a copy of the request to be published on the website of the Broadcasting Authority of Ireland,

(b) invite submissions to be made not later than 20 working days from the date of publication of the request pursuant to paragraph (a), and

(c) cause a copy of the request to be sent to the Joint Oireachtas Committee and invite a submission from that Joint Oireachtas Committee within the period specified in paragraph (b).

(3) The submissions referred to in paragraphs (b) and (c) of subsection (2) —

(a) shall be furnished, pursuant to subsection (9)(c), to the undertakings involved in the media merger,

(b) shall be furnished to the Minister for Communications, Energy and Natural Resources and where an advisory panel has been established under section 28F, to the advisory panel, to enable them to perform their functions under this Part,

- (c) may be referred to or quoted from in, or annexed to, the documents referred to in subsections (9)(a) and (12)(b) and section 28G(4)(c), and
- (d) shall not be published or otherwise disclosed to the public by the Minister for Communications, Energy and Natural Resources, the Broadcasting Authority of Ireland or the advisory panel before the Minister for Communications, Energy and Natural Resources publishes the documents referred to in section 28G(4)(c).

(4) The Broadcasting Authority of Ireland shall—

- (a) not later than 80 working days from the date of the request under subsection (1) or the applicable date, whichever is the later, make a report in writing to the Minister for Communications, Energy and Natural Resources in relation to its examination, and
- (b) as soon as may be after making the report under paragraph (a), send the report to the undertakings involved.

(5) A report under subsection (4) shall contain a recommendation as to whether the media merger should be put into effect with or without conditions or should not be put into effect.

(6) The Broadcasting Authority of Ireland, in order to make a report under subsection (4), shall form a view as to whether the result of the media merger is likely to be contrary to the public interest in protecting plurality of the media in the State, and for that purpose, shall have regard to—

- (a) the relevant criteria,
- (b) any guidelines issued by the Minister for Communications, Energy and Natural Resources under section 28L,
- (c) all submissions made and information provided—
 - (i) to the Minister for Communications, Energy and Natural Resources, during his or her initial examination under section 28D, by the undertakings involved in the media merger, and
 - (ii) to the Broadcasting Authority of Ireland, during the full media merger examination, by the undertakings involved in the media merger, by any other person in response to an invitation for submissions under subsection (2)(b), or by the Joint Oireachtas Committee in response to an invitation for a submission under subsection (2)(c),
- (d) and take full account of, where applicable, the determination of the Commission under paragraph (a) of section 21(2) or under paragraph (a) or (c) of section 22(3),
- (e) and take full account of, where applicable, the decision by the European Commission under Article 6(1)(b) or Article 8(1) or (2) of the Council Regulation,
- (f) where applicable, the opinion of the advisory panel established under section 28F and any clarifications of the opinion provided by the advisory panel in accordance with that section,
- (g) if the undertakings involved have responded to the draft report and recommendation provided to them pursuant to subsection (9), the draft report and recommendation and the responses of the undertakings involved to the draft report and recommendation,
- (h) relevant reports published by the Minister for Communications, Energy and Natural Resources under section 28M, and

(i) relevant research published by the Broadcasting Authority of Ireland under section 28M.

(7) Where the Broadcasting Authority of Ireland requires further information for the purposes of this section, it may, by notice in writing served on the undertakings, require any one or more of the undertakings involved to supply to it specified information within a specified period, and an undertaking of whom such a requirement is made shall comply with it.

(8) For the purposes of paragraph (6), the Broadcasting Authority of Ireland may enter into discussions with the undertakings involved in the media merger or with any individual or any other undertaking with a view to identifying measures which would ameliorate any effects of the media merger on plurality of the media in the State.

(9) The Broadcasting Authority of Ireland shall, not later than 30 working days before it is due to make its report under subsection (4), furnish the undertakings involved with—

(a) its draft report and draft recommendation to which the undertakings involved may respond not later than 10 working days from the date of receiving the draft report and draft recommendation,

(b) if applicable, the opinion and any clarifications issued by the advisory panel under section 28F, and

(c) if applicable, the submissions referred to in subsection (6)(c).

(10) In the course of any discussions under subsection (8), any of the undertakings involved in the media merger concerned may submit to it, not later than 20 working days before the Broadcasting Authority of Ireland is due to make its report to the Minister for Communications, Energy and Natural Resources under subsection (4), proposed commitments of the kind mentioned in subsection (11) with a view to the proposed commitments becoming binding on it or them if the Minister for Communications, Energy and Natural Resources incorporates the proposed commitments as specified conditions to be complied with in his or her determination under section 28G(1)(c) in relation to the media merger.

(11) The proposed commitments referred to in subsection (10) are proposed commitments with regard to the manner in which the media merger may be put into effect or to the taking, in relation to the media merger, of any other measures referred to in subsection (8).

(12) Not later than 7 working days from the date of the making of its report to the Minister for Communications, Energy and Natural Resources under subsection (4), the Broadcasting Authority of Ireland—

(a) may, without reconsidering or re-opening any aspect of its report, correct the report so as to remove any clerical or typographical errors or any errors of a similar nature, and

(b) where one or more such corrections have been made, shall—

(i) send the corrected report to the Minister for Communications, Energy and Natural Resources and the undertakings involved, and

(ii) inform the Minister for Communications, Energy and Natural Resources and the undertakings involved of the corrections made.

(13) In this section, reference to ‘applicable date’ means—

(a) unless paragraph (b) applies, the date the Minister for Communications, Energy and Natural Resources makes a determination under section 28D(1)(c),

(b) if the Broadcasting Authority of Ireland has made, under F65[subsection (7)], not later than 30 working days from the date the Minister for Communications, Energy and Natural Resources makes a determination under section 28D(1)(c), a requirement or requirements of one or more of the undertakings involved—

(i) the date on which the requirement is complied with or, in case 2 or more requirements are made and each is complied with, whichever of the dates on which the requirements are complied with is the later or latest,

(ii) where the requirement is not complied with or each of the 2 or more requirements is not complied with, the date immediately following the expiry of the period specified in the requirement or, as the case may be, the date immediately following the expiry of whichever of the respective periods specified in the requirements is the last to expire, or

(iii) in case 2 or more requirements are made but one or more but not all of them are complied with, the later or latest of the following dates, namely the dates provided by applying—

(I) subparagraph (i) to the requirement or requirements complied with, and

(II) subparagraph (ii) to the requirement or requirements not complied with.

(14) The reference in the definition of ‘applicable date’ in subsection (13) to the period specified in a requirement is a reference to the period specified in the requirement as being the period within which the information concerned shall be supplied.]

Annotations

Amendments:

F64 Inserted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 74, S.I. No. 401 of 2014, subject to transitional provisions in s. 6.

F65 Substituted (23.12.2014) by *Intellectual Property (Miscellaneous Provisions) Act 2014* (36/2014), s. 4(1)(c), commenced on enactment, subject to transitional provision in subs. (2).

F66[Advisory panel.

28F.— (1) As soon as may be after the Minister for Communications, Energy and Natural Resources requests the Broadcasting Authority of Ireland to conduct a full media merger examination under section 28E, he or she may, if he or she considers that the opinion of an advisory panel is required in order to assist the Broadcasting Authority of Ireland in carrying out the full media merger examination and in making its report under section 28E, establish an advisory panel (in this Part referred to as an ‘advisory panel’) to provide a reasoned opinion in writing to the Broadcasting Authority of Ireland on the application of the relevant criteria to the media merger in question and to provide clarifications of the opinion where requested by the Broadcasting Authority of Ireland in accordance with subsection (6)(b).

(2) An advisory panel shall consist of at least 3 and not more than 5 persons appointed by the Minister for Communications, Energy and Natural Resources, each of whom shall have knowledge of, and expertise in, law, journalism, media, business or economics.

(3) The Minister for Communications, Energy and Natural Resources shall appoint one member of the advisory panel as chairperson of the panel.

(4) A person is not eligible to be appointed as a member of an advisory panel if the person, for the time being—

- (a) is entitled under the Standing Orders of either House of the Oireachtas to sit therein,
- (b) is a member of the European Parliament,
- (c) is entitled under the Standing Orders of a local authority to sit as a member thereof,
- (d) is a member, officer or employee of the Broadcasting Authority of Ireland, or
- (e) has a pecuniary interest or other beneficial interest in, or material to, any matter which is to be considered by the advisory panel.

(5) An advisory panel shall determine its own procedure.

(6) Notwithstanding subsection (5) —

- (a) an advisory panel shall submit its opinion referred to in subsection (1) to the Broadcasting Authority of Ireland in relation to the application of the relevant criteria to the media merger in question not later than 20 working days from the date of a request under subsection (1), but no such opinion shall be requested or provided after the draft report and recommendation has been sent to the undertakings involved under section 28E(9), and
- (b) an advisory panel shall provide clarification in writing of its opinion referred to in subsection (1) pursuant to a request in writing for such clarification within such period as the Broadcasting Authority of Ireland may specify in the request, but no such clarification shall be requested or provided after the draft report and recommendation has been sent to the undertakings involved under section 28E(9).

(7) Following the determination of the Minister for Communications, Energy and Natural Resources under section 28G in respect of the relevant media merger, an advisory panel shall stand dissolved.

(8) For the purposes of this section, a person shall be regarded as having a beneficial interest in, or material to, a matter which is to be considered by the advisory panel in each of the following cases:

- (a) the person, any connected relative of the person or a nominee of either of them is a member of a company or any other body which has a beneficial interest in, or material to, any matter which is to be considered by the advisory panel;
- (b) the person or any connected relative of the person is in partnership with or is in the employment of a person who has a beneficial interest in or material to any such matter;
- (c) the person or any connected relative of the person is a party to any arrangement or agreement (whether or not enforceable) concerning land to which any such matter relates.

(9) For the purposes of this section, a person shall not be regarded as having a beneficial interest in, or material to, any matter by reason only that he or she or any company or other person or any other body mentioned in subsection (8) has an interest which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering or discussing, or in voting on, any question in respect of the matter or in performing any function in relation to that matter.

(10) In this section—

‘civil partner’ means a civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

‘connected relative’, in relation to a person, means a spouse, partner, civil partner, parent, brother, sister, child or a spouse, partner or civil partner of the child of the person.]

Annotations

Amendments:

F66 Inserted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 74, S.I. No. 401 of 2014, subject to transitional provisions in s. 6.

F67 [Determination of Minister for Communications, Energy and Natural Resources after full media merger examination.

28G.— (1) The Minister for Communications, Energy and Natural Resources shall, not later than 20 working days from the date the report of the Broadcasting Authority of Ireland was made to him or her under section 28E(4), make whichever of the following determinations he or she considers appropriate, namely that the media merger—

- (a) may be put into effect,
- (b) may not be put into effect, or
- (c) may be put into effect, subject to the conditions specified in the determination being complied with,

on the ground that he or she considers that the result of the media merger will or will not, as the case may be, be contrary to the public interest in protecting plurality of the media in the State or, as appropriate, will not be contrary to the public interest in protecting plurality of the media in the State if conditions so specified are complied with.

(2) When making a determination under subsection (1), the Minister for Communications, Energy and Natural Resources shall have regard to—

- (a) the relevant criteria,
- (b) the report of the Broadcasting Authority of Ireland under section 28E,
- (c) any guidelines issued under section 28L,
- (d) all submissions made and information provided—
 - (i) to the Minister for Communications, Energy and Natural Resources, during his or her initial examination under section 28D, by the undertakings involved in the media merger, and
 - (ii) to the Broadcasting Authority of Ireland, during the full media merger examination, by the undertakings involved in the media merger, by any other person in response to an invitation for submissions under section 28E(2)(b), or by the Joint Oireachtas Committee in response to an invitation for a submission under section 28E(2)(c),
- (e) and take full account of, where applicable, the determination of the Commission under paragraph (a) of section 21(2) or under paragraph (a) or (c) of section 22(3),
- (f) and take full account of, where applicable, the decision by the European Commission under Article 6(1)(b) or Article 8(1) or (2) of the Council Regulation,

- (g) where applicable, the opinion of the advisory panel established under section 28F and any later clarifications of the opinion provided by the advisory panel in accordance with that section,
 - (h) if the undertakings involved have responded to the draft report and recommendation provided to them pursuant to section 28E(9), the draft report and recommendation and the responses of the undertakings involved to the draft report and recommendation,
 - (i) relevant reports published by the Minister for Communications, Energy and Natural Resources under section 28M, and
 - (j) relevant research published by the Broadcasting Authority of Ireland under section 28M.
- (3) As soon as may be after the Minister for Communications, Energy and Natural Resources makes a determination under subsection (1), he or she—
- (a) shall furnish to the undertakings involved a copy of the determination, and
 - (b) may publish in *Iris Oifigiúil*, with due regard for commercial confidentiality—
 - (i) the fact of the making of the determination,
 - (ii) whether the determination was made under paragraph (a), (b) or (c) of subsection (1), and
 - (iii) where his or her determination was made under subsection (1)(c), a summary of the conditions specified in the determination.
- (4) After the Minister for Communications, Energy and Natural Resources has furnished the determination to the undertakings involved in accordance with subsection (3)(a) —
- (a) he or she may correct the determination at any time before the determination is published under paragraph (c)(i) so as to remove any clerical or typographical errors or any errors of a similar nature and shall inform the undertakings involved of any such changes made, but may not reconsider or re-open any aspect of the determination,
 - (b) not later than 15 working days from the date the determination is furnished to them under subsection (3)(a), the undertakings involved may request the Minister for Communications, Energy and Natural Resources in writing to omit from the version of the determination to be published under paragraph (c) any information that they consider to be commercially sensitive, and
 - (c) he or she shall publish on the internet, after 15 working days, but not later than 30 working days, from the date of the determination, with due regard for commercial confidentiality—
 - (i) the determination,
 - (ii) the report of the Broadcasting Authority of Ireland to the Minister for Communications, Energy and Natural Resources under section 28E, and
 - (iii) where applicable, the opinion of the advisory panel established under section 28F and any clarifications of the opinion provided by the advisory panel.]

Annotations**Amendments:**

- F67** Inserted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 74, S.I. No. 401 of 2014, subject to transitional provisions in s. 6.

F68[Review of conditions in determination under section 28G(1)(c) .

28H.— (1) Where all the undertakings involved in a media merger are of the opinion that the market conditions applicable to the merger have substantially changed since the date the Broadcasting Authority of Ireland made its report to the Minister for Communications, Energy and Natural Resources under section 28E(4), the undertakings involved may, not later than 40 working days from the date the determination under section 28G(1)(c) is notified to them, request the Minister for Communications, Energy and Natural Resources to review the conditions contained in the determination.

(2) On receipt of a request under subsection (1), the Minister for Communications, Energy and Natural Resources shall—

(a) consider whether the market conditions have substantially changed, and

(b) if he or she is satisfied that the market conditions have substantially changed, he or she shall carry out a review of the conditions contained in the determination to ascertain whether one or more of those conditions should be amended or revoked because they are no longer necessary, in light of the substantial change in the market conditions, to protect plurality of the media in the State.

(3) Following a review under subsection (2) and not later than 40 working days from the date of a request under subsection (1), the Minister for Communications, Energy and Natural Resources may, with the consent of the undertakings involved, amend or revoke in writing one or more of the conditions contained in the determination.

(4) If the Minister for Communications, Energy and Natural Resources amends or revokes one or more of the conditions contained in the determination pursuant to subsection (3), as soon as may be, he or she—

(a) shall furnish to the undertakings involved a copy of the amended conditions or if all the conditions have been revoked, a statement to that effect, and

(b) may publish, with due regard for commercial confidentiality—

(i) the fact of the amendment or revocation of one or more of the conditions under this section, and

(ii) a summary of the amended conditions or if all the conditions have been revoked, a statement to that effect.]

Annotations**Amendments:**

- F68** Inserted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 74, S.I. No. 401 of 2014, subject to transitional provisions in s. 6.

F69[Enforcement of certain determinations.

28I.— (1) It shall be lawful for the High Court to grant an injunction on the motion of the Minister for Communications, Energy and Natural Resources, the Broadcasting Authority of Ireland or any of the undertakings involved in the media merger to enforce compliance with the terms of a determination for the time being in force.

(2) Subsection (1) shall not affect any other right of the Minister for Communications, Energy and Natural Resources to bring proceedings (whether civil or criminal) for the enforcement of compliance with the terms of a determination.

(3) A person who contravenes (whether by act or omission) a provision of a determination for the time being in force commits an offence and shall be liable—

- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment, or
- (b) on conviction on indictment, to a fine not exceeding €10,000 or to imprisonment for a term not exceeding 2 years or to both such fine and such imprisonment.

(4) Every person who aids, abets or assists another person, or conspires with another person, to do anything (whether by way of act or of omission) the doing of which is an offence by virtue of subsection (3) shall himself or herself commit an offence under this section and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(5) Where an offence under subsection (3) or (4) which is committed by a body corporate or by a person purporting to act on behalf of a body corporate or an unincorporated body of persons is proved to have been so committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person who is a director, manager, secretary, member of the committee of management or other controlling authority of any such body, or who is any other similar officer of any such body, that person shall also commit an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(6) Subsections (3), (4) and (5) operate so that if the contravention concerned continues one or more days after the date of its first occurrence, the person referred to in the subsection concerned is guilty of a separate offence under that subsection for each day that the contravention occurs, but in respect of the second or subsequent offence of which he or she is guilty by reason of that continued contravention, subsection (3) shall have effect as if—

- (a) in paragraph (a), ‘a class E fine’ were substituted for ‘a class A fine’, and
- (b) in paragraph (b), ‘€1,000’ were substituted for ‘€10,000’.

(7) Summary proceedings in relation to an offence under this section may be brought by the Minister for Communications, Energy and Natural Resources.

(8) In this section ‘determination’ means a determination of the Minister for Communications, Energy and Natural Resources made under section 28D or 28G.]

Annotations

Amendments:

- F69** Inserted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 74, S.I. No. 401 of 2014, subject to transitional provisions in s. 6.

F70 [Limitation of judicial review of determination.]

28J.— (1) Leave shall not be granted for judicial review of a determination of the Minister for Communications, Energy and Natural Resources under section 28D or 28G unless—

- (a) the application for leave to seek judicial review is brought by an undertaking involved in the media merger to which the determination relates,
- (b) either—

- (i) the application is made to the High Court not later than 40 working days from the date of the determination of the Minister for Communications, Energy and Natural Resources under section 28D or 28G, or
 - (ii) the High Court is satisfied that—
 - (I) there are substantial reasons why the application was not made within that period, and
 - (II) it is just in all the circumstances to grant leave, having regard to the interests of other affected persons and the public interest,
- and
- (c) the High Court is satisfied that the application raises a substantial issue for the High Court's determination.

(2) The High Court may make such order on the hearing of the judicial review as it thinks fit, including an order remitting the matter back to the Minister for Communications, Energy and Natural Resources with such directions as the High Court thinks appropriate or necessary.

(3) The determination of the High Court of an application for leave to apply for judicial review, or an application for judicial review, is final and no appeal lies from the decision of the High Court to the Supreme Court in either case, except with the leave of the High Court, which shall only be granted if the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

(4) Subsection (3) does not apply to a determination of the High Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution.]

Annotations

Amendments:

- F70** Inserted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 74, S.I. No. 401 of 2014, subject to transitional provisions in s. 6.

F71[Fees.

28K.— (1) The Broadcasting Authority of Ireland may charge, receive and recover, for the costs incurred by it during a full media merger examination, such fees as it may, with the consent of the Minister for Communications, Energy and Natural Resources given with the approval of the Minister for Public Expenditure and Reform, from time to time determine.

(2) The fees determined under subsection (1) shall be paid by the undertakings that notified the media merger under section 28B in the time and manner specified by the Broadcasting Authority of Ireland, with the consent of the Minister for Communications, Energy and Natural Resources given with the approval of the Minister for Public Expenditure and Reform.

(3) The Broadcasting Authority of Ireland may provide for different fees in different circumstances or classes of circumstances or for different cases or classes of cases and for the manner in which fees are to be disposed of.

(4) The Broadcasting Authority of Ireland shall arrange for the publication on the internet of fees payable as soon as practicable after the fees have been determined under subsection (1).

(5) The Broadcasting Authority of Ireland may recover any amount due and owing to it under this section from the person by whom it is payable as a simple contract debt in any court of competent jurisdiction.]

Annotations

Amendments:

F71 Inserted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 74, S.I. No. 401 of 2014, subject to transitional provisions in s. 6.

F72[Guidelines.

28L.— (1) The Minister for Communications, Energy and Natural Resources may, from time to time, following consultation with the Broadcasting Authority of Ireland and such other persons as he or she considers appropriate, prepare and make guidelines on the general applicability of the relevant criteria to media mergers, including in particular:

- (a) levels of media ownership including across different sectors of the media that would, subject to the particular circumstances of each media merger, be regarded as contrary to the public interest;
- (b) indicators of diversity of content and of diversity of ownership and control of media businesses that would be used in determining whether a media merger would be regarded as contrary to the public interest;
- (c) if appropriate, the manner in which he or she shall have regard to the adequacy of the following to protect the public interest in plurality of the media in the State:
 - (i) the scale and reach of RTÉ and TG4;
 - (ii) Part 6 of the Act of 2009;
 - (iii) the ownership and control policy of the Broadcasting Authority of Ireland for the time being in force;
- (d) what will constitute significant interests within a sector or across different sectors of media businesses in the State for the purposes of paragraph (b) of the definition of ‘relevant criteria’ in section 28A(1);
- (e) the nature of the proposed commitments that the undertakings involved in a merger may offer pursuant to section 28D(5) or section 28E(10) that could be incorporated as conditions in a determination by the Minister for Communications, Energy and Natural Resources under section 28D(1)(b) or section 28G(1)(c);
- (f) the nature of the other conditions that may be imposed by the Minister for Communications, Energy and Natural Resources in a determination under section 28G(1)(c);
- (g) such other matters regarding media mergers as the Minister for Communications, Energy and Natural Resources considers appropriate.

(2) The Minister for Communications, Energy and Natural Resources may, from time to time, following consultation with the Broadcasting Authority of Ireland and such other persons as he or she considers appropriate, prepare and make guidelines on the manner in which he or she shall carry out his or her functions under section 28H(2), including in particular, the factors he or she shall take into account in considering whether market conditions have substantially changed and, if they have so changed, the manner in which he or she shall review the conditions contained in a determination.

(3) Before making guidelines under subsection (1) or (2), the Minister for Communications, Energy and Natural Resources—

- (a) shall publish on the internet a draft of the proposed guidelines and allow persons 30 working days from the date of publication to make written representations to him or her in relation to the draft guidelines, and
- (b) may, having considered any representations received, make the guidelines, with or without modification.

(4) The guidelines shall be published by the Minister for Communications, Energy and Natural Resources on the internet in such form or manner as he or she thinks appropriate and the guidelines published shall specify the date from which they have effect.]

Annotations

Amendments:

- F72** Inserted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 74, S.I. No. 401 of 2014, subject to transitional provisions in s. 6.

F73[Report and research.

28M.— (1) The Broadcasting Authority of Ireland shall, not later than one year from the date of the commencement of this section, and every 3 years thereafter, prepare a report which shall—

- (a) describe the ownership and control arrangements for undertakings carrying on a media business in the State,
- (b) describe the changes to the ownership and control arrangements of such undertakings over the previous 3 years, and
- (c) analyse the effects of such changes on plurality of the media in the State,

and the Broadcasting Authority of Ireland shall furnish the report to the Minister for Communications, Energy and Natural Resources as soon as may be after it has been prepared.

(2) The Minister for Communications, Energy and Natural Resources shall, as soon as reasonably practicable after the report has been prepared, cause a copy of the report to be laid before each House of the Oireachtas.

(3) As soon as practicable after the report has been laid before each House of the Oireachtas, the Minister for Communications, Energy and Natural Resources shall publish it on the internet.

(4) The Broadcasting Authority of Ireland shall conduct periodic methodological research on matters relating to plurality of the media, which may include the development of appropriate measurement indices, and shall record in writing and publish the results of such research.

(5) The Broadcasting Authority of Ireland—

- (a) may conduct such other research relating to plurality of the media that it considers necessary, and
- (b) shall conduct such other research relating to plurality of the media as the Minister for Communications, Energy and Natural Resources may request,

and shall record in writing and publish the results of such research.]

Annotations**Amendments:**

- F73** Inserted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 74, S.I. No. 401 of 2014, subject to transitional provisions in s. 6.

F74 [Sharing of information and documents and disclosure of confidential information.]

28N.— (1) A person shall not disclose confidential information obtained by him or her while performing functions as—

- (a) a member, an officer, or a member of the staff of, or an adviser or consultant to, the Broadcasting Authority of Ireland, or a member of the staff of such adviser or consultant, or
- (b) a member of an advisory panel established under section 28F,

unless he or she is duly authorised by the Broadcasting Authority of Ireland to so do.

(2) Subsection (1) shall not operate to prohibit the disclosure of confidential information by a person referred to in that subsection to the Broadcasting Authority of Ireland, the advisory panel or to the Minister for Communications, Energy and Natural Resources in the circumstances referred to in subsection (3).

(3) The Minister for Communications, Energy and Natural Resources, the Broadcasting Authority of Ireland or an advisory panel established under section 28F may share information or documents with each other if satisfied that the information or documents are required by each other for the performance of functions under this Part.

(4) A person who contravenes subsection (1) shall be guilty of an offence and shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both.

(5) In this section—

‘confidential information’ includes—

- (a) information that is expressed by the undertakings involved in the merger or acquisition to be confidential either as regards particular information or as regards information of a particular class or description, and
- (b) submissions of a commercially sensitive nature made by any other person;

‘public body’ means—

- (a) a Department of State,
- (b) the Garda Síochána,
- (c) the Permanent Defence Force within the meaning of the Defence Act 1954,
- (d) a local authority within the meaning of the Local Government Act 2001, or
- (e) a body established by or under any enactment or charter other than the Companies Acts ;

‘submissions of a commercially sensitive nature’ means submissions the disclosure of which could reasonably be expected to—

- (a) substantially and materially prejudice the commercial or industrial interests of—
 - (i) the person who made the submission,

- (ii) the person to whom the submission relates, or
- (iii) a class of persons in which a person referred to in subparagraph (i) or (ii) falls,
- (b) substantially prejudice the competitive position of a person in the conduct of the person's business, profession or occupation, or
- (c) substantially prejudice the financial position of the State or a public body.]

Annotations**Amendments:**

- F74** Inserted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 74, S.I. No. 401 of 2014, subject to transitional provisions in s. 6.

F75[Expenses in administration of Part.

280.— The expenses incurred by the Minister for Communications, Energy and Natural Resources in the administration of this Part shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.]

Annotations**Amendments:**

- F75** Inserted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 74, S.I. No. 401 of 2014, subject to transitional provisions in s. 6.

PART 4

THE COMPETITION AUTHORITY

The Competition Authority.

29.—F76[...]

Annotations**Amendments:**

- F76** Part 4 (ss. 29 - 47) repealed (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 7(1)(c), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

Functions of the Authority.

30.—F77[...]

Annotations**Amendments:**

- F77** Part 4 (ss. 29 - 47) repealed (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 7(1)(c), S.I. No. 366 of 2014, subject to transitional provisions in s. 6 and saver in s. 45.

Editorial Notes:

- E23** Previous affecting provision: subs. (4)(b) amended (3.07.2012) by *Competition (Amendment) Act 2012* (18/2012), s. 6, S.I. No. 236 of 2012; section repealed as per F-note above.
- E24** Previous affecting provision: subs. (4)(b) amended (20.03.2006) by *Competition (Amendment) Act 2006* (4/2006), s. 2, S.I. No. 127 of 2006; section repealed as per F-note above.

Investigations of the Authority — general provisions.

31.—F78[...]**Annotations****Amendments:**

- F78** Part 4 (ss. 29 - 47) repealed (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 7(1)(c), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

Prohibition on unauthorised disclosure of information.

32.—F79[...]**Annotations****Amendments:**

- F79** Part 4 (ss. 29 - 47) repealed (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 7(1)(c), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

Strategic plans and work programmes.

33.—F80[...]**Annotations****Amendments:**

- F80** Part 4 (ss. 29 - 47) repealed (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 7(1)(c), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

Provisions for co-operation between the Authority and statutory bodies.

34.—F81[...]

Annotations**Amendments:**

F81 Part 4 (ss. 29 - 47) repealed (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 7(1)(c), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

Editorial Notes:

E25 Previous affecting provision: power pursuant to section exercised (22.02.2011) by *Competition Act 2002 (Section 34(11)) (National Transport Authority) Order 2011* (S.I. No. 72 of 2011); section repealed as per F-note above.

E26 Previous affecting provision: power pursuant to section exercised (21.12.2009) by *Competition Act 2002 (Section 34(11)) (Commission For Taxi Regulation) Order 2009* (S.I. No. 555 of 2009); section repealed as per F-note above.

E27 Previous affecting provision: subs. (13) inserted (15.05.2007) by *Communications Regulation (Amendment) Act 2007* (22/2007), s. 29, S.I. No. 224 of 2007; section repealed as per F-note above.

E28 Previous affecting provision: power pursuant to section exercised (7.03.2005) by *Competition Act 2002 (Section 34(11))(Health Insurance Authority) Order 2005* (S.I. No. 127 of 2005); section repealed as per F-note above.

E29 Previous affecting provision: power pursuant to section exercised (9.04.2003) by *Competition Act 2002 (Section 34(11))(Director of Consumer Affairs) Order 2003* (S.I. No. 130 of 2003); section repealed as per F-note above.

Membership. **35.—F82[...]**

Annotations**Amendments:**

F82 Part 4 (ss. 29 - 47) repealed (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 7(1)(c), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

Editorial Notes:

E30 Previous affecting provision: subss. (4) and (5) substituted (19.06.2010) by *Competition (Amendment) Act 2010* (12/2010), s. 2(b) and (c), commenced on enactment; section repealed as per F-note above.

E31 Previous affecting provision: subss. (2A), (6A) and (7A) inserted (19.06.2010) by *Competition (Amendment) Act 2010* (12/2010), s. 2(a), (d) and (e), commenced on enactment; section repealed as per F-note above.

Disqualification. **36.—F83[...]**

Annotations**Amendments:**

F83 Part 4 (ss. 29 - 47) repealed (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 7(1)(c), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

Meetings and
business.

37.—F84[...]

Annotations

Amendments:

F84 Part 4 (ss. 29 - 47) repealed (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 7(1)(c), S.I. No. 366 of 2014, subject to transitional provisions.

Functions and
accountability of
chairperson.

38.—F85[...]

Annotations

Amendments:

F85 Part 4 (ss. 29 - 47) repealed (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 7(1)(c), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

Staff.

39.—F86[...]

Annotations

Amendments:

F86 Part 4 (ss. 29 - 47) repealed (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 7(1)(c), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

Seal of the
Authority.

40.—F87[...]

Annotations

Amendments:

F87 Part 4 (ss. 29 - 47) repealed (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 7(1)(c), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

Accounts and
audits.

41.—F88[...]

Annotations

Amendments:

F88 Part 4 (ss. 29 - 47) repealed (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 7(1)(c), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

Annual report.

42.—F89[...]

Annotations**Amendments:**

- F89** Part 4 (ss. 29 - 47) repealed (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 7(1)(c), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

Grants and
borrowing
powers.

43.—F90[...]**Annotations****Amendments:**

- F90** Part 4 (ss. 29 - 47) repealed (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 7(1)(c), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

Editorial Notes:

- E32** Previous affecting provision: functions transferred and references to “Department of Finance” and “Minister for Finance” construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3, 5 and sch. 1 part 2, in effect as per art. 1(2); section repealed as per F-note above.
- E33** Previous affecting provision: functions transferred and references to “Minister” and “Department of Finance” construed (6.07.2011) by *Ministers and Secretaries (Amendment) Act 2011* (10/2011), ss. 7, 9, 11 and sch. 2 part 1, commenced as per s. 1(2) and S.I. No. 401 of 2011; section repealed as per F-note above.

Superannuation. **44.—F91[...]**

Annotations**Amendments:**

- F91** Part 4 (ss. 29 - 47) repealed (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 7(1)(c), S.I. No. 366 of 2014, subject to transitional provisions in s. 6 and saver in s. 29(11).

Editorial Notes:

- E34** Previous affecting provision: any defined benefit scheme established under section is excluded from *Pensions Act 1990* (25/1990), Part IV by *Occupational Pension Schemes (Funding Standard) Regulations 1993* (S.I. No. 419 of 1993), reg. 6 and sch. C, as substituted (18.04.2013) by *Occupational Pension Schemes (Funding Standard) (Amendment) Regulations 2013* (S.I. No. 135 of 2013), reg. 2; section repealed as per F-note above.
- E35** Previous affecting provision: any defined benefit scheme established under section is excluded from *Pensions Act 1990* (25/1990), Part III by *Occupational Pension Schemes (Preservation of Benefits) Regulations 2002* (S.I. No. 279 of 2002), reg. 11 and schedule, the schedule as substituted (26.02.2009) by *Occupational Pension Schemes (Preservation of Benefits) (Amendment) Regulations 2009* (S.I. No. 70 of 2009), reg. 2; section repealed as per F-note above.

E36 Previous affecting provision: any defined benefit scheme established under section is excluded from *Pensions Act 1990* (25/1990), Part IV by *Occupational Pension Schemes (Funding Standard) Regulations 1993* (S.I. No. 419 of 1993) reg. 6 and sch. C, sch. C as substituted (1.08.2008) by *Occupational Pension Schemes (Funding Standard)(Amendment) Regulations 2008* (S.I. No. 295 of 2008), reg. 4; section repealed as per F-note above.

Authorised officers and their powers.

45.—F92[...]

Annotations

Amendments:

F92 Part 4 (ss. 29 - 47) repealed (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 7(1)(c), S.I. No. 366 of 2014, subject to transitional provisions in s. 6 and saver in s. 35(2)(b).

Editorial Notes:

E37 Previous affecting provision: subs. (13) amended (3.07.2012) by *Competition (Amendment) Act 2012* (18/2012), s. 7(1)(b), S.I. No. 236 of 2012; section repealed as per F-note above.

E38 Previous affecting provision: subs. (7) amended (20.03.2012) by *Competition (Amendment) Act 2012* (18/2012), s. 7(1)(a), S.I. No. 236 of 2012; section repealed as per F-note above.

E39 Previous affecting provision: subs. (13) amended (20.03.2006) by *Competition (Amendment) Act 2006* (4/2006), s. 3, S.I. No. 127 of 2006; section repealed as per F-note above.

E40 Previous affecting provision: subs. (7) amended (30.06.2005) by *Investment Funds, Companies and Miscellaneous Provisions Act 2005* (12/2005), s. 76(2), S.I. No. 323 of 2005; section repealed as per F-note above.

E41 Previous affecting provision: subs. (6) repealed (30.06.2005) by *Investment Funds, Companies and Miscellaneous Provisions Act 2005* (12/2005), s. 76(1), S.I. No. 323 of 2005; section repealed as per F-note above.

Relationship of Authority with foreign competition bodies.

46.—F93[...]

Annotations

Amendments:

F93 Part 4 (ss. 29 - 47) repealed (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 7(1)(c), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

F94[Power to disclose certain information relating to offences under this Act.]

47.—F95[...]

Annotations**Amendments:**

- F94** Substituted (15.05.2007) by the *Communications Regulation (Amendment) Act 2007* (22/2007), s. 30, S.I. No. 224 of 2007.
- F95** Part 4 (ss. 29 - 47) repealed (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 7(1)(c), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

Editorial Notes:

- E42** *Competition and Consumer Protection Act 2014* (29/2014), s. 64, provides for the substitution of “Commission for Communications Regulation” for “Commission” in subs. (2). However, the section was repealed by *Competition and Consumer Protection Act 2014* (29/2014), s. 7(1)(c), as per F-note above.
- E43** Previous affecting provision: section substituted (15.05.2007) by the *Communications Regulation (Amendment) Act 2007* (22/2007), s. 30, S.I. No. 224 of 2007; section repealed as per F-note above.

F96[PART 4A

PERFORMANCE OF FUNCTIONS OF COMMISSION UNDER THIS ACT

Function of the Commission to investigate complaints relating to the electronic communications market.

47A.— The Commission [Commission for Communications Regulation] has, in addition to its other functions under this Act or any other enactment, the function of investigating, either on its own initiative or in response to a complaint made to it by any person, the existence of an agreement, decision or practice of a kind specified in section 4 F98 [or Article 101 of the Treaty on the Functioning of the European Union], or the occurrence of an abuse of the kind specified in section 5 F98 [or Article 102 of the Treaty on the Functioning of the European Union], involving the provision of an electronic communications service or electronic communications network, or associated facilities.]

Annotations**Amendments:**

- F96** Inserted (15.05.2007) by *Communications Regulation (Amendment) Act 2007* (22/2007), s. 31, S.I. No. 224 of 2007.
- F97** Substituted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 65(a), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.
- F98** Inserted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 65(b) and (c), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

F99[Delegation of functions of Commission.

47B.— (1) Except as provided by subsection (2), the F100 [Commission for Communications Regulation] may delegate the performance of any of its functions under this Act to any member of the F100 [Commission for Communications Regulation] or F100 [or any member of the staff of the Commission for Communications Regulation].

(2) The F100 [Commission for Communications Regulation] may not delegate the performance of—

(a) its function under section 4(3), or

(b) the power to prosecute an offence under section 6 or 7, or for relief under section 14.]

Annotations

Amendments:

F99 Inserted (15.05.2007) by *Communications Regulation (Amendment) Act 2007 (22/2007)*, s. 31, S.I. No. 224 of 2007.

F100 Substituted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 66, S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

F101[Commission to notify Authority before acting under this Act.] **47C.**— Before performing any of its functions under this Act, the **F102**[Commission for Communications Regulation] shall notify the Authority in writing of its intention to perform that function.]

Annotations

Amendments:

F101 Inserted (15.05.2007) by *Communications Regulation (Amendment) Act 2007 (22/2007)*, s. 31, S.I. No. 224 of 2007.

F102 Substituted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 67, S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

F103[Responsibilities of Authority with respect to notifying existence of certain agreements, decisions, practices and abuses.]

47D.— (1) If—

(a) at any time the Authority suspects on reasonable grounds that there exists or has existed an agreement, decision or practice of a kind specified in section 4, or there is occurring or has occurred an abuse of the kind specified in section 5, and

(b) it appears to the Authority that the agreement, decision or practice, or the abuse, relates to the provision of an electronic communications service or electronic communications network, or an associated facility,

it shall notify its suspicion in writing to the **F104**[Commission for Communications Regulation], together with particulars setting out the basis for the suspicion.

(2) If at any time the **F104**[Commission for Communications Regulation] suspects on reasonable grounds that there exists or has existed an agreement, decision or practice of a kind specified in section 4, or there is occurring or has occurred an abuse of the kind specified in section 5, it shall notify that suspicion in writing to the Authority. This subsection applies irrespective of whether it appears to the **F104**[Commission for Communications Regulation] that the suspected breach relates to the provision of an electronic communications service or electronic communications network, or an associated facility.]

Annotations**Amendments:**

F103 Inserted (15.05.2007) by *Communications Regulation (Amendment) Act 2007* (22/2007), s. 31, S.I. No. 224 of 2007.

F104 Substituted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 68, S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

F105 [Authority and Commission to make every effort to settle disputed questions.

47E.— (1) The Authority and the **F106** [Commission for Communications Regulation] shall make every effort to settle by agreement any question arising as to which of them should perform the functions conferred on a competent authority by Part 2 (section 4(3) excepted) that may relate to the provision of an electronic communications service or electronic communications network, or associated facilities.

(2) If at any time the Authority or the **F106** [Commission for Communications Regulation] considers that the question cannot be resolved by agreement, it may refer the question for resolution by the Minister.

(3) As soon as practicable after the question has been referred under subsection (2), the Minister shall determine the question and then notify the Authority and the **F106** [Commission for Communications Regulation] of the determination. In making a determination, the Minister shall—

(a) consult with the Minister for Communications, Marine and Natural Resources, and

(b) take into account any representations made with respect to the question by the Authority or the **F106** [Commission for Communications Regulation].

(4) The determination of the Minister under subsection (3) is final.]

Annotations**Amendments:**

F105 Inserted (15.05.2007) by *Communications Regulation (Amendment) Act 2007* (22/2007), s. 31, S.I. No. 224 of 2007.

F106 Substituted (31.10.2014) by *Competition and Consumer Protection Act 29/2014*, s. 69, S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

F107 [Undertaking not liable to be prosecuted by both Authority and Commission for same offence.

47F.— If an undertaking that provides an electronic communications service or electronic communications network, or associated facilities, is being, or has been, prosecuted for an offence under section 6 or 7 by the Authority or by the **F108** [Commission for Communications Regulation], the undertaking is not liable to be prosecuted for the same offence by the other of those entities.]

Annotations**Amendments:**

F107 Inserted (15.05.2007) by *Communications Regulation (Amendment) Act 2007* (22/2007), s. 31, S.I. No. 224 of 2007.

F108 Substituted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 70, S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

F109[Co-operation agreement between Authority and the Commission with respect to performing their respective functions under this Act.

47G.— (1) As soon as practicable after the commencement of this Part, the Authority and the **F110**[Commission for Communications Regulation] shall enter into negotiations for a co-operation agreement that will—

- (a) facilitate the performance of their respective functions under this Act, and
- (b) avoid duplicating activities by the Authority and the **F110**[Commission for Communications Regulation] in relation to the performance of those functions, and
- (c) ensure, as far as practicable, consistency between decisions made, and other steps taken, by the Authority and the **F110**[Commission for Communications Regulation] so far as any part of those decisions or steps relates to the performance of those functions.

(2) As far as practicable, a co-operation agreement shall—

- (a) require the Authority and the **F110**[Commission for Communications Regulation] to consult each other before performing any of their respective functions under this Act if the performance of the functions concerned involves the same issues, and
- (b) enable the Authority and the **F110**[Commission for Communications Regulation] to provide each other with information in its possession if the information is required by the other to perform its functions under this Act.

(3) The Authority and the **F110**[Commission for Communications Regulation] may vary a co-operation agreement by further agreement.

(4) The Authority and the **F110**[Commission for Communications Regulation] shall respectively provide the Minister for Enterprise, Trade and Employment and the Minister for Communications, Marine and Natural Resources with a copy of a co-operation agreement, or a variation of such an agreement, as soon as practicable after the agreement or variation has been entered into.

(5) A co-operation agreement, and any variation to it, is to be in writing.

(6) As soon as practicable after a co-operation agreement, or variation of the agreement, is entered into, the Authority and the **F110**[Commission for Communications Regulation] shall publish in such manner as they think appropriate a notice to the effect that the agreement or variation has been entered into. The notice shall state—

- (a) that a copy of the agreement or variation can be inspected at premises of the Authority and premises of the **F110**[Commission for Communications Regulation], or by a means, specified in the notice, and
- (b) that a copy of the agreement or variation can be purchased from either the Authority or the **F110**[Commission for Communications Regulation] in a manner so specified.

However, if either the Authority or the **F110**[Commission for Communications Regulation] has complied with this subsection, the other of them is taken to have so complied.

(7) As soon as practicable after a co-operation agreement, or a variation of the agreement, is entered into, the Authority shall arrange for a copy of the agreement or variation to be laid before each House of the Oireachtas.

(8) The Authority and the F110[Commission for Communications Regulation] shall each make available to members of the public copies of a co-operation agreement, or a variation of the agreement, for inspection and for purchase (at a cost not exceeding the reasonable cost of making a copy and the cost (if any) of posting it).

(9) If information is provided by the Authority or the F110[Commission for Communications Regulation] under a co-operation agreement to which this section applies, any enactment restricting or prohibiting the disclosure of that information by the provider of the information also applies to the receiver of the information.]

Annotations

Amendments:

F109 Inserted (15.05.2007) by *Communications Regulation (Amendment) Act 2007* (22/2007), s. 31, S.I. No. 224 of 2007.

F110 Substituted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 71, S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

PART 5

MISCELLANEOUS

Repeals.

48.—The following are repealed:

- (a) the Industrial and Provident Societies (Amendment) Act, 1971,
- (b) the Mergers, Take-overs and Monopolies (Control) Act, 1978,
- (c) sections 24, 25 and 26 of the Restrictive Practices (Amendment) Act, 1987,
- (d) the Competition Act, 1991, and
- (e) the Competition (Amendment) Act, 1996.

Restrictive Practices (Groceries) Order, 1987.

49.—F111[...]

Annotations

Amendments:

F111 Repealed (20.03.2006) by *Competition (Amendment) Act 2006* (4/2006), s. 5(1) and Schedule, S.I. No. 127 of 2006.

Protections for person reporting breaches of Act.

50.—(1) A person who, apart from this section, would be so liable shall not be liable in damages in respect of the communication, whether in writing or otherwise, by him or her to the Authority of his or her opinion that—

- (a) an offence under *section 6* or *7* has been or is being committed, or
- (b) any other provision of this Act that prohibits an undertaking from doing a particular thing or things has not been or is not being complied with,

unless it is proved that he or she has not acted reasonably F112[...] in forming that opinion and communicating it to the Authority.

(2) The reference in *subsection (1)* to liability in damages shall be construed as including a reference to liability to be the subject of an order providing for any other form of relief.

F113[(2A) Subsection (1) does not apply to a communication that is a protected disclosure within the meaning of the Protected Disclosures Act 2014.]

(3) An employer shall not penalise an employee for having formed an opinion of the kind referred to in *subsection (1)* and communicated it, whether in writing or otherwise, to the Authority if the employee has acted reasonably F112[...] in forming that opinion and communicating it to the Authority.

F114[(3A) Subsection (3) does not apply to a communication that is a protected disclosure within the meaning of the Protected Disclosures Act 2014.]

(4) *Schedule 3* shall have effect for the purposes of *subsection (3)*.

(5) A person who states to the Authority that an undertaking has committed or is committing an offence under *section 6* or *7* or has failed or is failing to comply with a provision of this Act referred to in *subsection (1)(b)* knowing that statement to be false shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment.

F115[(5A) Subsection (5) does not apply to the making of a statement that is a protected disclosure within the meaning of the Protected Disclosures Act 2014.]

(6) Notwithstanding *section 10(4)* of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under *subsection (5)* may be instituted within 2 years after the day on which the offence was committed or, if later, 2 years after the day on which evidence that, in the opinion of the person by whom the proceedings are brought, is sufficient to justify the bringing of the proceedings comes to that person's knowledge.

(7) For the purposes of *subsection (6)*, a certificate signed by or on behalf of the person bringing the proceedings as to the day on which the evidence referred to in that subsection relating to the offence concerned came to his or her knowledge shall be *prima facie* evidence thereof and in any legal proceedings a document purporting to be a certificate issued for the purpose of this subsection and to be so signed shall be deemed to be so signed and shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate.

(8) *Subsection (1)* is in addition to, and not in substitution for, any privilege or defence available in legal proceedings, by virtue of any enactment or rule of law in force immediately before the commencement of this section, in respect of the communication by a person to another (whether that other person is the Authority or not) of an opinion of the kind referred to in *paragraph (a)* or *(b)* of *subsection (1)*.

Annotations

Amendments:

F112 Deleted (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 72, S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

F113 Inserted (15.07.2014) by *Protected Disclosures Act 2014* (14/2014), s. 24(1) and sch. 4 part 1, S.I. No. 327 of 2014.

F114 Inserted (15.07.2014) by *Protected Disclosures Act 2014* (14/2014), s. 24(1) and sch. 4 part 1, S.I. No. 327 of 2014.

F115 Inserted (15.07.2014) by *Protected Disclosures Act 2014* (14/2014), s. 24(1) and sch. 4 part 1, S.I. No. 327 of 2014.

Editorial Notes:

E44 Redress and appeal procedures for purposes of subs. (3) provided (1.10.2015) by *Workplace Relations Act 2015* (16/2015), s. 41, 44 and sch. 5 part 1 item 11, sch. 6 part 1 item 17, sch. part 2 item 17, S.I. No. 410 of 2015.

E45 Section included in definitions of “employment enactment” and “relevant enactment” (1.08.2015) by *Workplace Relations Act 2015* (16/2015), s. 2 and sch. 1 part 2 item 4, S.I. No. 338 of 2015, with the following effects:

- Authorised officers or inspectors under employment enactments deemed to be appointed under *Workplace Relations Act 2015* (16/2015), s. 26(2) and subject to termination under s. 26(4).
- Powers of inspectors for purposes of relevant enactments defined in *Workplace Relations Act 2015* (16/2015), s. 27.
- Workplace Relations Commission, an inspector or an adjudication officer authorised to disclose employer’s registered number or employee’s PPSN to enable Labour Court to perform functions under relevant enactments by *Workplace Relations Act 2015* (16/2015) s. 31(5).
- Power of Workplace Relations Commission and official body to disclose information to each other concerning the commission of offence under relevant enactment provided by *Workplace Relations Act 2015* (16/2015), s. 32.
- Power of Workplace Relations Commission and contracting authority to disclose information to each other concerning the commission of offence under employment enactment/ relevant enactment provided by *Workplace Relations Act 2015* (16/2015), s. 33.
- Powers of Minister to prosecute under relevant enactments transferred to Workplace Relations Commission and references construed by *Workplace Relations Act 2015* (16/2015), s. 37.
- Functions of EAT to hear claims under employment enactments transferred to Workplace Relations Commission and references to EAT construed by *Workplace Relations Act 2015* (16/2015) s. 66(1), (2), not commenced as of date of revision.

Amendment of Industrial and Provident Societies Act, 1893.

51.—The Industrial and Provident Societies Act, 1893, is amended—

(a) in section 51, by the substitution for “For the purposes of this Act” of “Subject to section 51A of this Act, for the purposes of this Act”, and

(b) by the insertion of the following section after section 51:

“51A. In relation to special resolutions for the purposes of sections 52 and 53 of this Act, section 51 of this Act shall have effect as if—

(a) in paragraph (a) ‘of not less than three fourths’ were deleted, and

(b) in paragraph (b), ‘where such special resolution is passed by a majority of less than three fourths of such members,’ were inserted before ‘confirmed’.”.

Regulations and orders.

52.—(1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.

(2) Every regulation under this Act and every order under this Act (other than an order under section 2, subsection (4) or (5) of section 18 F116[...] or section 27(1)) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation or order is passed by either such House within the next 21 days on which that House has sat after the regulation or order is laid before it, the regulation or order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Annotations**Amendments:**

F116 Deleted (31.10.2014) by *Competition and Consumer Protection Act 2014 (29/2014)*, s. 73, S.I. No. 366 of 2014.

Expenses.

53.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Provision with respect to fees payable under this Act.

54.—The Public Offices Fees Act, 1879, shall not apply to fees payable under this Act.

Saving and transitional provisions.

55.—*Schedule 2* shall have effect for the purposes of this Act.

Section 3.

SCHEDULE 1

STATUTORY BODIES AND THEIR RESPONSIBLE MINISTERS OF THE GOVERNMENT

F117[...]

Annotations**Amendments:**

F117 Schedule repealed (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), s. 7(1)(d), S.I. No. 366 of 2014, subject to transitional provisions in s. 6.

Editorial Notes:

- E46** Previous affecting provision: schedule amended (22.02.2011) by *Competition Act 2002 (Section 34(11)) (National Transport Authority) Order 2011* (S.I. No. 72 of 2011), art. 2; schedule repealed as per F-note above.
- E47** Previous affecting provision: schedule amended (21.12.2009) by *Competition Act 2002 (Section 34(11)) (Commission For Taxi Regulation) Order 2009* (S.I. No. 555 of 2009), art. 2; schedule repealed as per F-note above.
- E48** Previous affecting provision: schedule amended (15.05.2007) by *Communications Regulation (Amendment) Act 2007* (22/2007), s. 32, S.I. No. 224 of 2007; schedule repealed as per F-note above.
- E49** Previous affecting provision: schedule amended (1.05.2007) by *Consumer Protection Act 2007* (19/2007), s. 40(1) and sch. 3 part 1, S.I. No. 178 of 2007; schedule repealed as per F-note above.
- E50** Previous affecting provision: schedule amended (7.03.2005) by *Competition Act 2002 (Section 34(11))(Health Insurance Authority) Order 2005* (S.I. No. 127 of 2005), art. 3; schedule repealed as per F-note above.
- E51** Previous affecting provision: schedule amended (9.04.2003) by *Competition Act 2002 (Section 34(11))(Director of Consumer Affairs) Order 2003* (S.I. No. 130 of 2003), art. 3; substituted as per F-note above.

Section 55.

SCHEDULE 2

SAVING AND TRANSITIONAL PROVISIONS

Continuance in office of members of the Authority

1. A person who was a member of the Authority immediately before the commencement of *section 35* shall continue in office as such a member for the remainder of the term of office for which he or she was appointed, unless he or she sooner dies or resigns from office or otherwise ceases to hold office.

Transfer of certain staff

2. (1) Every officer of the Minister who has been designated by the Minister at any time before such day as may be appointed by the Minister by order for the purposes of this paragraph shall, on the day of such designation, be transferred to, and become a member of, the staff of the Authority.

(2) The Minister shall not make an order under *subparagraph (1)* without having notified in writing any recognised trade unions or staff associations concerned and the Authority of his or her intention to do so and considering any representations made by them or any of them in relation to the matter within such time as may be specified in the notification.

(3) Save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, an officer of the Minister designated by the Minister under *subparagraph (1)*, who is transferred by that subparagraph to the staff of the Authority shall not, while in the service of the Authority, receive a lesser scale of pay or be made subject to less beneficial terms and conditions of service (other than those relating to tenure of office) than the scale of pay to which he or she was entitled and terms and conditions of service (other than those relating to tenure of office) to which he or she was subject immediately before the day on which he or she was so transferred.

(4) Until such time as the scales of pay and the terms and conditions of service (other than those relating to tenure of office) of staff so transferred are varied by the Authority, following consultation with any recognised trade unions and staff associations concerned, the scales of pay to which they were entitled and the terms and conditions of service (other than those relating to tenure of office), restrictions, requirements and obligations to which they were subject immediately before their transfer shall continue to apply to them and may be applied or imposed by the Authority while they are in the service of the Authority. No such variation shall operate to worsen the scales of pay or the terms or conditions of service applicable to a member of such staff immediately before the day on which he or she was transferred save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned.

(5) The terms and conditions relating to tenure of office which are granted by the Authority to a member of the staff of the Authority who was designated by the Minister and under *subparagraph (1)* transferred to its staff shall not, while he or she is in the service of the Authority, be less favourable to him or her than those prevailing for the time being in the civil service; any alteration in the conditions in regard to tenure of office of any such member shall not be such as to render those conditions less favourable to him or her than those prevailing in the civil service at the time of such alteration save in accordance with a collective agreement negotiated with any recognised trade unions or staff associations concerned. If a dispute arises between the Authority and any such member as to conditions prevailing in the civil service, the matter shall be determined by the Minister for Finance after consultation with the Minister.

(6) In relation to staff transferred by *subparagraph (1)* to the staff of the Authority, previous service in the civil service shall be reckonable for the purposes of, but subject to any other exemptions or exclusions in, the Redundancy Payments Acts, 1967 to 1990, the Organisation of Working Time Act, 1997, the Minimum Notice and Terms of Employment Acts, 1973 and 1984, and the Unfair Dismissals Acts, 1977 to 1993.

(7) In this paragraph “recognised trade union or staff association” means a trade union or staff association recognised by the Authority for the purposes of negotiations which are concerned with the remuneration or conditions of employment, or the working conditions, of employees.

Certificates, licences and notifications

3. (1) On the commencement of *section 48(d)*—

(a) every certificate issued under *section 4(4)* of the Competition Act, 1991, and in force immediately before that commencement shall stand revoked;

(b) every licence granted under section 4(2) of the Competition Act, 1991, and in force immediately before that commencement (other than a licence to which *subparagraph (2)* applies) shall stand revoked, and

(c) every notification made under section 7 of the Competition Act, 1991, shall cease to have effect.

(2) Every licence granted under section 4(2) of the Competition Act, 1991, in respect of a category of agreements, decisions or concerted practices and in force immediately before the commencement of *section 4* shall continue in being as if it were a declaration made under *subsection (3)* of the latter section and may be revoked by the Authority accordingly.

Mergers or take-overs notified before commencement of section 18, etc.

4. (1) In this paragraph “Act of 1978” means the Mergers, Take-overs and Monopolies (Control) Act, 1978.

(2) Notwithstanding the repeals effected by *section 48*, the provisions of the Act of 1978, and of every instrument thereunder in force immediately before the commencement of *section 18*, shall continue in force for the purposes mentioned in *subparagraphs (3)* and *(4)*.

(3) A merger or take-over (within the meaning of the Act of 1978) notified to the Minister in accordance with section 5 of that Act before the commencement of *section 18* shall continue to be dealt with under that Act after that commencement and the provisions of that Act and of every instrument thereunder shall, accordingly, apply for that purpose.

(4) A proposed merger or take-over prohibited either absolutely or except on conditions by virtue of section 9 of the Act of 1978 (whether such prohibition took effect before the commencement of *section 18* or, in the case of a merger or take-over referred to in *subparagraph (3)*, after that commencement) shall continue to be so prohibited indefinitely save where the Minister, by virtue of the exercise by him or her of the powers under subsection (4) of that section 9, otherwise determines.

Section 21 of Interpretation Act, 1937

5. The provisions of this Schedule are without prejudice to the generality of section 21 of the Interpretation Act, 1937, (which, amongst other things, enables the prosecution of offences committed under repealed enactments).

Section 50.

SCHEDULE 3

Redress for Contravention of Section 50(3)

1. F118[...]

2. In proceedings under F119[**Part 4 of the Workplace Relations Act 2015**] in relation to a complaint that *section 50(3)* has been contravened, it shall be presumed, until the contrary is proved, that the employee concerned acted reasonably and in good faith in forming the opinion and making the communication concerned.

3. If a penalisation of an employee, in contravention of *section 50(3)*, constitutes a dismissal of the employee within the meaning of the Unfair Dismissals Acts, 1977

to 1993, relief may not be granted to the employee in respect of that penalisation both under F119[Part 4 of the Workplace Relations Act 2015] and under those Acts.

4. F118[...]

F119[5. A decision of an adjudication officer under section 41 of the Workplace Relations Act 2015 in relation to a complaint of a contravention of section 50(3) shall do one or more of the following, namely—

- (a) declare that the complaint was or, as the case may be, was not well founded,
- (b) require the employer to comply with section 50(3) and, for that purpose, require the employer to take a specified course of action,
- (c) require the employer to pay to the employee compensation of such amount (if any) as the adjudication officer considers just and equitable having regard to all of the circumstances, but not exceeding 104 weeks' remuneration in respect of the employee's employment calculated in accordance with regulations under section 17 of the Unfair Dismissals Act 1977.]

6. F118[...]

F120[6A. A decision of the Labour Court under section 44 of the Workplace Relations Act 2015, on appeal from a decision of an adjudication officer referred to in paragraph 5, shall affirm, vary or set aside the decision of the adjudication officer.]

Annotations

Amendments:

- F118** Repealed (1.10.2015) by *Workplace Relations Act 2015* (16/2015), s. 8(1) and sch. part 1 ref. 16, S.I. No. 410 of 2015, subject to transitional provision in subs. (2).
- F119** Substituted (1.10.2015) by *Workplace Relations Act 2015* (16/2015), s. 52(1) and sch. 7 part 1 ref. 17(a), (b), (c), S.I. No. 410 of 2015, subject to transitional provision in subs. (3).
- F120** Inserted (1.10.2015) by *Workplace Relations Act 2015* (16/2015), s. 52(1) and schedule 7 part 1 ref. 17(d), S.I. No. 410 of 2015, subject to transitional provision in subs. (3).

Editorial Notes:

- E52** Relevant redress provision for purposes of para. 5 specified (1.10.2015) by *Workplace Relations Act 2015* (16/2015), s. 41(5)(b)(i) and sch. 6 part 1 item 17, S.I. No. 410 of 2015.
- E53** Relevant redress provision for purposes of para. 6A specified (1.10.2015) by *Workplace Relations Act 2015* (16/2015), s. 44(1)(b)(i) and sch. 6 part 2 item 17(d), S.I. No. 410 of 2015.

F121[SCHEDULE 4

RELEVANT CATEGORIES OF SELF-EMPLOYED WORKER

- (1) Actors engaged as voice-over actors
- (2) Musicians engaged as session musicians
- (3) Journalists engaged as freelance journalists]

Annotations**Amendments:**

F121 Inserted (7.09.2017) by *Competition (Amendment) Act 2017 (12/2017)*, s. 3 and sch., commenced as per s. 4(4).