



Number 29 of 2014

Competition and Consumer Protection Act 2014



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COMPETITION AND CONSUMER PROTECTION ACT 2014

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Number 29 of 2014

COMPETITION AND CONSUMER PROTECTION ACT 2014

An Act to provide for the establishment of a body to be known in the Irish language as An Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí or in the English language the Competition and Consumer Protection Commission, to provide for the dissolution of the Competition Authority and the National Consumer Agency, to amend the law relating to media mergers and for that and other purposes to amend the Competition Act 2002, the Central Bank Act 1942, the Personal Injuries Assessment Board Act 2003, the Consumer Protection Act 2007, the Criminal Justice Act 2011 and the Communications (Retention of Data) Act 2011, and to provide for related matters. [28th July, 2014]

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title, collective citations, construction and commencement

1. (1) This Act may be cited as the Competition and Consumer Protection Act 2014.
- (2) The Competition Acts 2002 to 2012 and *Parts 3 and 4* may be cited together as the Competition Acts 2002 to 2014 and shall be construed together as one Act.
- (3) The Consumer Protection Act 2007 and *Parts 5 and 6* may be cited together as the Consumer Protection Acts 2007 and 2014 and shall be construed together as one Act.
- (4) The Communications (Retention of Data) Act 2011 and *section 89* may be cited together as the Communications (Retention of Data) Acts 2011 and 2014 and shall be construed together as one Act.
- (5) This Act, other than *Part 4*, 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, and for the repeal of different provisions effected by *section 7*.
- (6) *Part 4* shall come into operation on such day or days as the Minister for Communications, Energy and Natural Resources 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.

Interpretation**2.** In this Act—

“Act of 2002” means the Competition Act 2002;

“Act of 2007” means the Consumer Protection Act 2007;

“authorised officer” shall be construed in accordance with *section 35*;

“Commission” has the meaning assigned to it by *section 9*;

“contravention” has the same meaning as it has in the Act of 2002;

“enactment” has the same meaning as it has in the Interpretation Act 2005;

“establishment day” shall be construed in accordance with *section 8*;

“dissolved body” has the meaning assigned to it by *section 38*;

“financial year” means a period of 12 months ending on 31 December in any year and, in the case of the first financial year of the Commission, means the period commencing on the establishment day and ending on 31 December in the year in which the establishment day falls;

“goods” has the same meaning as it has in the Act of 2007;

“Minister” means the Minister for Jobs, Enterprise and Innovation;

“prescribed” means prescribed by regulations made by the Minister;

“recognised trade union or staff association” means a trade union or staff association recognised by the Commission for the purposes of negotiations which are concerned with the remuneration or conditions of employment, or the working conditions of employees;

“relevant statutory provisions” means—

- (a) “relevant statutory provisions” within the meaning of the Act of 2007,
- (b) the Act of 2002, and any instrument made under that Act for the time being in force, and
- (c) this Act, and any instrument made under this Act for the time being in force;

“services” has the same meaning as it has in the Act of 2007;

“undertaking” has the same meaning as it has in the Act of 2002.

Orders and regulations

- 3.** (1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.
- (2) Without prejudice to any provision of this Act, regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.
- (3) Every order (other than an order under *section 1(5)* or *section 8* made by the Minister

or an order under *section 1(6)* made by the Minister for Communications, Energy and Natural Resources) and regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House sits after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Time limit for institution of summary proceedings

4. Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be instituted within 2 years from the date on which the offence was alleged to have been committed.

Expenses

5. The expenses incurred by the Minister in the administration of this Act 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.

Transitional provisions relating to mergers

6. Where a merger or acquisition was notified under Part 3 of the Act of 2002 before the commencement of *section 7(1)(b)* and *Parts 3 and 4*, then, upon such commencement, the Act of 2002 shall apply to the merger or acquisition as if the amendments effected by *section 7(1)* and *Parts 3 and 4* had not been made.

Repeals

7. (1) The following provisions of the Act of 2002 are repealed:
 - (a) subsections (11B) and (11C) (inserted by section 2(h) of the Competition (Amendment) Act 2012) of section 8;
 - (b) sections 23 and 25;
 - (c) Part 4;
 - (d) Schedule 1.
- (2) Part 2 (other than sections 24A to 24E) of the Act of 2007 is repealed.

PART 2

ESTABLISHMENT OF COMMISSION AND DISSOLUTION OF BODIES

CHAPTER 1

*Establishment of Commission***Establishment day**

8. The Minister shall, by order, appoint a day to be the establishment day for the purposes of this Act.

Establishment of Competition and Consumer Protection Commission

9. (1) There shall stand established on the establishment day, a body which shall be known, in the Irish language, as An Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí or, in the English language, as the Competition and Consumer Protection Commission (in this Act referred to as the “Commission”), to perform the functions conferred on it by this Act.
- (2) The Commission shall be a body corporate with perpetual succession and an official seal and shall have power to sue, and may be sued, in its corporate name, and shall, with the consent of the Minister given with the approval of the Minister for Public Expenditure and Reform, have power to acquire, hold and dispose of land or an interest in land, and shall have power to acquire, hold and dispose of any other property.
- (3) The seal of the Commission shall be authenticated by—
- (a) the signatures of 2 members of the Commission, or
 - (b) the signatures of both a member and a member of the staff of the Commission, authorised by the Commission to act in that behalf.
- (4) Judicial notice shall be taken of the seal of the Commission and any document purporting to be an instrument made by, and to be sealed with the seal of, the Commission shall, unless the contrary is shown, be received in evidence and be deemed to be such instrument without further proof.
- (5) Subject to this Act, the Act of 2002 and the Act of 2007 the Commission shall be independent in the performance of its functions.

Functions of Commission

10. (1) The Commission shall have, in addition to the functions assigned to it by any other provision of this Act, or of any other enactment, the following functions:
- (a) to promote competition;
 - (b) to promote and protect the interests and welfare of consumers;

- (c) to carry out an investigation, either on its own initiative or in response to a complaint made to it by any person, into any suspected breach of—
 - (i) the relevant statutory provisions, that may be occurring or has occurred,
 - (ii) Article 101 or 102 of the Treaty on the Functioning of the European Union, that may be occurring or has occurred, or
 - (iii) notwithstanding their repeal, the Competition (Amendment) Act 1996 and the Competition Act 1991, that has occurred;
 - (d) to enforce the relevant statutory provisions;
 - (e) to encourage compliance with the relevant statutory provisions, which may include the publication of notices containing practical guidance as to how those provisions may be complied with;
 - (f) to set the strategic objectives for the Commission; and
 - (g) to ensure that appropriate systems and procedures are in place to achieve the Commission's strategic objectives and to take all reasonable steps available to it to achieve those objectives.
- (2) This section and the other provisions of this Part are without prejudice to the Central Bank Act 1942 in relation to the concurrent vesting in the Central Bank of Ireland of certain functions under the Act of 2007.
- (3) Without prejudice to the generality of *subsection (1)*, in performing its functions under this Act, the Commission—
- (a) may, and shall at the request of the Minister, advise and, as appropriate, make recommendations to the Government, the Minister, any other Minister of the Government, any Minister of State, any public body or any prescribed body within the meaning of *section 19* in relation to any matter concerning, or which the Commission considers would be likely to impact on—
 - (i) consumer protection and welfare, or
 - (ii) competition,or both,
 - (b) shall foster and promote contacts, and co-operate and consult with consumer groups and such other persons or bodies as the Commission considers could assist in the promotion or development of consumer protection and welfare and competition matters,
 - (c) shall promote, where appropriate, the development of alternative dispute resolution procedures as a means of resolving disputes arising out of consumer transactions,
 - (d) shall promote public awareness and conduct public information campaigns for the purpose of educating and providing information to the public in relation to consumer protection and welfare,

- (e) shall promote public awareness and conduct public information campaigns in relation to issues of competition,
- (f) shall promote educational initiatives and activities relating to consumer and competition information and awareness and advise, when requested, the Minister or any other Minister of the Government, Department of State, educational or training institution or any public body whose activities are concerned with matters relating to any of the purposes of this Act, the Act of 2002 or the Act of 2007,
- (g) shall review and may approve codes of practice in accordance with section 88 of the Act of 2007,
- (h) shall prepare and publish guidelines to traders or persons representing traders in accordance with section 90 of the Act of 2007,
- (i) shall promote and encourage the establishment by a trader or traders, whether generally or in respect of a particular service or services, of quality assurance schemes, that is to say schemes the purpose of which is—
 - (i) to maintain and improve the quality and reliability of the service or services provided to consumers, and
 - (ii) to enable consumers to identify traders who meet the requirements of the scheme concerned,
- (j) shall promote the interests of consumers by—
 - (i) providing information in relation to financial services, including information in relation to the costs to consumers, and the risks and benefits associated with the provision of those services, and
 - (ii) promoting the development of financial education and capability,
- (k) may, and shall when requested by the Minister, advise and, as appropriate, make recommendations to the Government, the Minister, any other Minister of the Government or any Minister of State, in relation to any proposals for legislative change, or any other policy matters, concerning—
 - (i) consumer protection and welfare, or
 - (ii) competition,

or both,
- (l) may, and shall when requested by the Minister, and after consultation with such persons as it considers appropriate having regard to the proposals to be submitted, submit to the Minister, any other Minister of the Government or any Minister of State any proposals it considers appropriate for amendment of any enactment, or for new enactments, concerning—
 - (i) consumer protection and welfare, or
 - (ii) competition,

or both,

- (m) may co-operate with other authorities whether in the State or elsewhere charged with responsibility for the enforcement of laws relating to consumer protection and welfare and competition or the promotion of consumer protection and welfare and competition between undertakings,
 - (n) shall, as it considers appropriate, conduct or commission research, studies and analysis on matters relating to the functions of the Commission and may publish, in the form and manner that the Commission thinks fit, such findings as it considers appropriate (which may consist of, or include, a study or analysis of any development outside the State),
 - (o) for the purposes of performing its functions under *paragraphs (d), (e), (f) and (n)*, may, through the provision of financial or other resources, support the activities relating to consumer protection and welfare and competition of such voluntary bodies as the Commission considers appropriate,
 - (p) may identify and comment on constraints imposed by any enactment or administrative practice on the operation of competition in the economy,
 - (q) shall perform such other functions transferred to the Commission pursuant to *section 39* including the functions transferred to the National Consumer Agency under subsection (2) of section 37 of the Act of 2007.
- (4) The Minister may request the Commission to carry out a study or analysis of—
- (a) any issue relating to consumer protection and welfare,
 - (b) any practice or method of competition affecting the supply and distribution of goods or the provision of services, or
 - (c) any other matter relating to competition,
- and to submit a report to the Minister in relation to the study or analysis, and the Commission shall comply with such a request within such period and in such form and manner as the Minister may specify in the request.
- (5) The Commission shall have all such powers as are necessary or expedient for the performance of its functions and shall ensure that its functions are performed effectively and efficiently.
- (6) The Commission may delegate the performance of any of its functions to any member of the Commission or to any member of its staff duly authorised in that behalf by the Commission.
- (7) Notwithstanding *subsection (6)*, the Commission may not delegate the performance of the following functions—
- (a) making a declaration under subsection (3) of section 4 of the Act of 2002 that a specified category of agreements, decisions or concerted practices complies with the conditions referred to in subsection (5) of that section,
 - (b) making a determination in relation to a merger or acquisition under section 22(3)

of the Act of 2002,

- (c) the initiation of enforcement proceedings under Parts 2 and 2A and section 26 of the Act of 2002 and Part 5 of the Act of 2007,
 - (d) functions under Chapter 5 (inserted by *Part 6*) of Part 3 of the Act of 2007, and
 - (e) functions under *sections 22, 28, 30 and 32*.
- (8) Nothing in this section or any other provision of this Act imposes a duty on the Commission to consider whether to investigate a matter that is referred to it but the Commission may, in the case of a matter referred to it, consider whether to do so (and, accordingly, may proceed to investigate the matter) where it is satisfied the matter may affect competition or the interests and welfare of consumers or both.
- (9) In this section, “public body” has the same meaning as in the Act of 2007.

Supplementary powers of Commission with respect to carrying out certain functions

- 11.** (1) To enable the Commission to perform the functions set out in *section 10(3)(j)*, the Commission may—
- (a) undertake studies, analyses and surveys with respect to the provision of financial services to consumers,
 - (b) collect and compile information for that purpose, and
 - (c) publish the results of any such studies, analyses or surveys.
- (2) In undertaking a study, analysis or survey under *subsection (1)*, the Commission—
- (a) may, by notice in writing, require any person who, in the opinion of the Commission has information, or has control of a record or other thing, that is relevant to the study, analysis or survey to provide the information, record or thing to the Commission, and
 - (b) may, by the same or another notice in writing, require the person to attend before a member or member of the staff of the Commission for that purpose.
- (3) A person who—
- (a) intentionally prevents the Commission from exercising a function conferred by *subsection (1)*,
 - (b) intentionally obstructs or hinders the Commission in the exercise of such a power,
 - (c) without reasonable excuse, fails to comply with a requirement made to the person in accordance with *subsection (2)*, or
 - (d) in purporting to comply with a requirement made under *subsection (2)* to provide information, provides the Commission with information that the person knows, or ought reasonably to know, is false or misleading in a material respect,
- is guilty of an offence.

- (4) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or
 - (b) on conviction on indictment, to a fine not exceeding €30,000 or imprisonment for a term not exceeding 5 years or both.
- (5) Summary proceedings for an offence under this section may be brought and prosecuted by the Commission.

Membership of Commission

12. (1) A person who immediately before the establishment day was—
- (a) a member of the Competition Authority, or
 - (b) the chief executive officer of the National Consumer Agency,
- shall, on the establishment day, become and be a member of the Commission, and shall continue as such member for the remainder of the term of office for which he or she was appointed, unless he or she sooner dies, resigns from office or otherwise ceases to hold office.
- (2) The person who immediately before the establishment day was the chairperson of the Competition Authority shall, on the establishment day, become and be the chairperson of the Commission, and shall continue as such chairperson for the remainder of the term of office for which he or she was appointed, unless he or she sooner dies, resigns from office or otherwise ceases to hold office.
 - (3) Subject to *subsections (1) and (2)* the membership of the Commission shall consist of—
 - (a) a chairperson and such number of other whole-time members, not being less than 2 nor more than 6, as the Minister determines and appoints (but that limitation on numbers does not affect an appointment under *paragraph (b)*),
 - (b) in any case where it appears to the Minister that a member referred to in *paragraph (a)* is temporarily unable to discharge his or her duties, a whole-time member appointed by the Minister, for all or part of that period of inability, to act in that member's place, and
 - (c) such number of part-time members as the Minister may determine and appoint.
 - (4) Without prejudice to *subsection (3)(b)*, where it appears to the Minister that the chairperson of the Commission is temporarily unable to discharge his or her duties, the Minister may authorise another whole-time member to act, for all or part of that period of inability, in the chairperson's place and for so long as such a member is so authorised and references in this Act to the chairperson of the Commission shall be construed as including references to that member.
 - (5) (a) If a member of the Commission dies, retires, resigns, ceases to be qualified for office and ceases to hold office, is removed from office or otherwise ceases to be a member of the Commission, the Minister may, subject to *subsections (7) and*

- (8), appoint a person to be a member of the Commission to fill the vacancy so occasioned.
- (b) *Paragraph (a)* shall not operate to prevent the appointment of a person to be a member of the Commission under *subsection (3)(a)* to fill a vacancy occasioned by any of the circumstances referred to in the said *paragraph (a)*.
- (6) Subject to *subsection (7)*, the members of the Commission shall be recruited in accordance with the Public Service Management (Recruitment and Appointments) Act 2004 and appointed by the Minister.
- (7) *Subsection (6)* does not apply to—
- (a) a person to whom *subsection (1)* or *(2)* applies,
 - (b) an appointment under *paragraph (b)* or *(c)* of *subsection (3)* or the reappointment under that subsection of a person as a member of the Commission, or
 - (c) an appointment under *subsection (5)* of a person as a member of the Commission.
- (8) An appointment under *paragraph (b)* or *(c)* of *subsection (3)* or under *subsection (5)* shall not be made unless the person who the Minister proposes to appoint possesses, in the opinion of the Minister, sufficient expertise in, or experience of, one or more of the following areas, namely, law, economics, public administration, consumer affairs, or business generally.
- (9) The term of office of a member of the Commission shall be fixed by the Minister when appointing him or her and shall not exceed 5 years.
- (10) Notwithstanding *subsection (9)*, a person appointed to be a member of the Commission under *subsection (5)* shall, subject to *subsection (11)*, hold office for such period not exceeding 6 months as the Minister may determine commencing on the date of his or her appointment.
- (11) The Minister may extend a period of appointment under *subsection (10)* for—
- (a) such period not exceeding 6 months as he or she may determine, or
 - (b) such periods, the aggregate of which shall not exceed 6 months, as he or she may determine.
- (12) Subject to *subsection (13)*, a member of the Commission whose term of office expires by the effluxion of time shall be eligible for reappointment to the Commission.
- (13) A member of the Commission who has served 2 terms of office shall not be eligible for reappointment to the Commission, and any period during which a person serves as a member of the Commission by virtue of *subsection (1)* shall, for the purposes of this subsection, be deemed not to be a term of office.
- (14) A person appointed to be a member of the Commission under *subsection (5)* shall, subject to *subsection (22)* and *section 16*, be eligible to be appointed to be a member of the Commission under *subsection (3)*, upon the expiration of—
- (a) the period referred to in *subsection (10)*, or

(b) that period as extended under *subsection (11)*,

as may be appropriate, unless he or she was removed from office pursuant to *subsection (19)*.

- (15) Each member of the Commission shall hold office on such conditions as may be fixed by the Minister after consultation with the Minister for Public Expenditure and Reform.
- (16) A member of the Commission may be paid such remuneration, if any, as the Minister with the consent of the Minister for Public Expenditure and Reform determines.
- (17) Subject to *subsection (6)*, the Public Service Management (Recruitment and Appointments) Act 2004 shall not apply to the office of a member.
- (18) If a member of the Commission is personally interested in a particular matter with which the Commission is dealing, he or she shall inform the Minister accordingly and shall not act as a member during the consideration of the matter.
- (19) The Minister may remove from office a member of the Commission who has become incapable through ill-health of performing efficiently his or her duties as such member or whose removal appears to the Minister to be necessary in the interests of the effective and economical performance of the functions of the Commission.
- (20) Where the Minister removes a member of the Commission from office, he or she shall lay before each House of the Oireachtas a statement in writing of the reasons for such removal.
- (21) A member of the Commission may resign from the Commission by letter addressed to the Minister and the resignation shall take effect on the date specified in the letter, or the date on which the Minister receives the letter, whichever is the later.
- (22) A person shall be disqualified from holding and shall cease to hold office as a member of the Commission if he or she—
 - (a) is adjudicated bankrupt,
 - (b) makes a composition or arrangement with his or her creditors,
 - (c) is convicted of an indictable offence in relation to a company,
 - (d) is convicted of an offence involving fraud or dishonesty, whether or not in connection with a company,
 - (e) is the subject of an order under section 160 of the Companies Act 1990, has a declaration under section 150 of the Companies Act 1990 made against him or her or is subject or is deemed to be subject to a disqualification order by virtue of Part VII of that Act,
 - (f) has a conflict of interest of such significance that, in the opinion of the Minister requires that he or she should not hold or should cease to hold such office, or
 - (g) is sentenced to a term of imprisonment by a court of competent jurisdiction.

Indemnity for members, members of staff and authorised officers of Commission

13. (1) Where the Commission is satisfied that a person to whom this section applies has discharged his or her duties in pursuance of the functions of the Commission in good faith, the Commission may, in the manner and to the extent and subject to the terms and conditions that the Commission may determine from time to time in consultation with the Minister, indemnify that person against all actions or claims however they arise in respect of the discharge by him or her of his or her duties.
- (2) This section applies to—
- (a) a member of the Commission (including the chairperson),
 - (b) a member of the staff of the Commission, and
 - (c) an authorised officer.

Functions of chairperson

14. The chairperson shall carry on and manage, and control generally the staff, administration and business of the Commission.

Meetings and procedures of Commission

15. (1) The Commission shall hold such and so many meetings as may be necessary for the due fulfilment of its functions.
- (2) At a meeting of the Commission—
- (a) the chairperson of the Commission shall, if present, be the chairperson of the meeting, or
 - (b) if and so long as the chairperson of the Commission is not present, or if that office is vacant, the members of the Commission who are present shall choose one of their number to be chairperson of the meeting.
- (3) Every question at a meeting on which a vote is required shall be determined by a majority of the votes of the members of the Commission present and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a second or casting vote.
- (4) Subject to *subsection (5)*, the Commission may act notwithstanding one or more vacancies among its members.
- (5) The quorum for a meeting of the Commission shall, unless the Minister otherwise directs, be 3.
- (6) The Commission may transact any of its business at a meeting at which its members participate by telephone, closed circuit television or any other means of communication by which all members can hear and be heard at the same time.
- (7) A member of the Commission who participates in a meeting referred to in *subsection (6)* is taken for all purposes to have been present at the meeting and any such member shall have the same voting rights as if he or she were physically present.

- (8) Subject to the provisions of this Act, the Act of 2002 and the Act of 2007, the Commission shall regulate its procedures by rules or otherwise in such manner as it shall from time to time determine.

Membership of either House of Oireachtas, European Parliament or local authority

16. (1) Where a member of the Commission is—

- (a) nominated as a member of Seanad Éireann,
- (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament,
- (c) regarded pursuant to Part XIII of the Second Schedule to the Act of 1997 as having been elected to that Parliament, or
- (d) elected or co-opted as a member of a local authority,

he or she shall thereupon cease to be a member of the Commission.

(2) Where a member of the staff of the Commission is—

- (a) nominated as a member of Seanad Éireann,
- (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament,
- (c) regarded pursuant to Part XIII of the Second Schedule to the Act of 1997 as having been elected to that Parliament, or
- (d) elected or co-opted as a member of a local authority,

he or she shall thereupon stand seconded from employment by the Commission and shall not be paid by, or be entitled to receive from, the Commission any remuneration or allowances in respect of the period commencing on such nomination or election, or when he or she is so regarded as having been elected or on such election or co-option (as the case may be), and ending when he or she ceases to be a member of either such House, a member of such Parliament or a member of the local authority.

(3) A person who is for the time being—

- (a) entitled under the Standing Orders of either House of the Oireachtas to sit therein,
- (b) a member of the European Parliament, or
- (c) entitled under the standing orders of a local authority to sit as a member thereof,

shall, while he or she is so entitled or is such a member, be disqualified for membership of the Commission or for employment in any capacity by the Commission.

(4) A period mentioned in *subsection (2)* shall not, for the purposes of any superannuation benefit, be reckoned as service with the Commission.

(5) In this section—

“Act of 1997” means the European Parliament Elections Act 1997;

“local authority” has the same meaning as in the Local Government Act 2001.

Review of legislation

- 17.** (1) The Minister may consult the Commission regarding proposals for legislation relating to one or both of the following:
- (a) consumer protection and welfare; or
 - (b) competition.
- (2) The Commission shall—
- (a) keep under review the relevant statutory provisions,
 - (b) submit, from time to time, to the Minister or such other Minister of the Government having responsibility for any other statutory provisions relating to, or which impact on, consumer protection and welfare or competition, or both, any proposals that it considers appropriate relating to any of the relevant statutory provisions or any other statutory provisions or for making or revoking any instruments under those provisions,
 - (c) undertake such reviews of the relevant statutory provisions as the Minister may direct, and
 - (d) assist in the preparation of such draft legislation as the Minister may direct.
- (3) Before submitting proposals under *subsection (2)* to the Minister or any other Minister of the Government, as the case may be, the Commission shall consult any other person who it appears to the Commission is appropriate in the circumstances to be consulted, or whom the Minister or the other Minister of the Government, as the case may be, directs is to be consulted.

Investigations by Commission

- 18.** (1) The Commission may, to enable it to perform its functions under this Act, do all or any of the following things:
- (a) summon witnesses to attend before it;
 - (b) examine on oath (which the Commission, or any member of staff of the Commission duly authorised by the Commission, is by this section authorised to administer) the witnesses attending before it;
 - (c) require any such witness to produce to the Commission any books, documents and records in his or her power or control;
 - (d) by notice in writing, require any person or undertaking to provide it with such written information as the Commission considers necessary to enable it to carry out its functions.
- (2) A witness before the Commission pursuant to *subsection (1)(a)*, shall be entitled to the

same immunities and privileges as if he or she were a witness before the High Court.

- (3) A summons to be issued for the purposes of *subsection (1)(a)* shall be signed by a member of the Commission.
- (4) A person who—
 - (a) on being duly summoned as a witness before the Commission makes default in attending,
 - (b) being in attendance as a witness refuses to take an oath legally required by the Commission to be taken, or to produce any books, documents and records in his or her power or control legally required by the Commission to be produced by him or her, or to answer any question to which the Commission may legally require an answer,
 - (c) provides the Commission with information that the person knows, or ought reasonably to know, is false or misleading in a material respect,
 - (d) fails, without reasonable cause, to provide information pursuant to a notice under *paragraph (d)* of *subsection (1)*, or
 - (e) does any other thing which, if the Commission were a court having power to commit for contempt of court, would be contempt of such court,
 is guilty of an offence.
- (5) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both, or
 - (b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 5 years or both.
- (6) *Paragraph (b)* of *subsection (5)* 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 paragraph is guilty of a separate offence under that paragraph for each day that the contravention occurs; but in respect of the second or subsequent offence of which the person is guilty by reason of that continued contravention, *paragraph (b)* of *subsection (5)* shall have effect as if “€25,000” were substituted for “€250,000” and references to imprisonment were disregarded.

Provision for co-operation between Commission and certain prescribed bodies

- 19.** (1) The Commission may enter into an arrangement or arrangements with each of the prescribed bodies for the purposes of—
- (a) facilitating co-operation between the Commission and the prescribed bodies in the performance of their respective functions in so far as they relate to—
 - (i) consumer protection and welfare issues, or
 - (ii) issues of competition between undertakings,

- (b) avoiding duplication of activities by the Commission and any of the prescribed bodies,
- (c) ensuring, as far as practicable, consistency between decisions made or other steps taken by the Commission and the prescribed bodies in so far as any part of those decisions or steps consists of or relates to—
 - (i) consumer protection and welfare or issues of concern to consumers, or
 - (ii) a determination of any issue of competition between undertakings,
- (d) enabling the Commission to be consulted in relation to any decisions by prescribed bodies which affect consumers or issues of competition between undertakings, or
- (e) where appropriate, conducting joint studies or analyses of matters relating to consumer protection and welfare, issues of concern to consumers or issues of competition,

and each such agreement that is entered into is referred to in this section as a “co-operation agreement”.

- (2) It shall not be necessary for the purposes of *subsection (1)* that the same prescribed bodies be party to each agreement entered into with the Commission in pursuance of that subsection.
- (3) A co-operation agreement shall include provisions—
 - (a) enabling each party to furnish to another party information in its possession if the information is required by that other party for the purpose of the performance by it of any of its functions,
 - (b) enabling each party to forbear to perform any of its functions in relation to a matter in circumstances where it is satisfied that another party is performing functions in relation to that matter,
 - (c) requiring each party to consult with any other party before performing any functions in circumstances where the respective exercise by each party of the functions concerned involves the determination of issues of consumer protection and welfare or competition issues that are identical to one another or are within the same category of such an issue, being a category specified in the co-operation agreement, and
 - (d) ensuring that no person is the subject of—
 - (i) proceedings (whether civil or criminal) under this Act, the Act of 2002, the Act of 2007 or any other enactment, or
 - (ii) the exercise of any power under section 73 or 75 of the Act of 2007,in respect of an alleged contravention of a provision of this Act, the Act of 2002, the Act of 2007 or any other enactment, by more than one of the parties.
- (4) A co-operation agreement may be varied by the parties concerned.

- (5) The Minister and any other appropriate Minister shall each be furnished by the Commission with a copy of every co-operation agreement (including any variation of the agreement) that has been made within one month after the agreement (or the variation of it) has been made.
- (6) A co-operation agreement, or any variation made to it, shall be in writing and, as soon as practicable after the agreement or variation has been made and furnished to the Minister and any other appropriate Minister, each of the parties shall arrange for it to be published on the internet.
- (7) Without prejudice to *subsection (8)*, nothing in any enactment shall be read as preventing the provisions of a co-operation agreement from having effect in accordance with their terms.
- (8) If information is furnished by one party to another party pursuant to a provision of a co-operation agreement of the kind referred to in *subsection (3)(a)*, the provisions of any enactment concerning the disclosure of that information by the first-mentioned party shall apply to the second-mentioned party with respect to that information.
- (9) A failure by the Commission or a prescribed body to comply with a provision of a co-operation agreement shall not invalidate the exercise by it of any power.
- (10) (a) In this section—
 - “appropriate Minister” means the Minister of the Government on whom functions stand conferred in relation to the prescribed body in question;
 - “party” means a party to a co-operation agreement and a reference to another party (whether that expression or the expression “the other party” is used) shall, where there are 2 or more other parties to the agreement, be construed as a reference to one or more of those other parties or each of them, as appropriate;
 - “prescribed body” means each of the following:
 - (i) the Broadcasting Authority of Ireland;
 - (ii) the Central Bank of Ireland;
 - (iii) the Commission for Aviation Regulation;
 - (iv) the Commission for Communications Regulation;
 - (v) the Commission for Energy Regulation;
 - (vi) the Data Protection Commissioner;
 - (vii) the Environmental Protection Agency;
 - (viii) the Financial Services Ombudsman;
 - (ix) the Food Safety Authority of Ireland;
 - (x) the Health Insurance Authority;
 - (xi) the National Transport Authority;
 - (xii) a body prescribed by the Minister.

- (b) Before prescribing a body for the purposes of this section, the Minister shall consult with such Minister or Ministers of the Government as he or she considers appropriate.
- (c) In prescribing a body for the purposes of this section the Minister shall have regard to the functions and activities of the body in so far as those functions and activities relate to consumer protection and welfare and issues of competition.

Directions of Minister

- 20.** (1) The Minister may, in relation to the performance by the Commission of its functions, give a direction in writing to the Commission requiring it to comply with such policies of the Government as are specified in the direction.
- (2) The Minister shall lay a copy of a direction under *subsection (1)* before each House of the Oireachtas.
- (3) The Commission shall comply with a direction under *subsection (1)*.
- (4) For the purposes of this section “functions” does not include—
- (a) a function specified in *subsection (7)* of *section 10*,
 - (b) making a determination in relation to a merger or acquisition under *section 21(2)* of the Act of 2002, or
 - (c) carrying out an investigation under *paragraph (c)* of *subsection (1)* of *section 10*.

Grants to Commission

- 21.** In each financial year, the Minister may advance to the Commission out of moneys provided by the Oireachtas such sums as the Minister may, with the consent of the Minister for Public Expenditure and Reform, determine.

Power to borrow

- 22.** (1) The Commission may, with the consent of the Minister and the Minister for Public Expenditure and Reform and subject to such conditions (if any) as they may specify, from time to time, borrow money (whether on the security of the assets of the Commission or not).
- (2) The aggregate standing borrowed under this section at any one time shall not exceed such amount as the Minister may, with the consent of the Minister for Public Expenditure and Reform, determine.

Relationship of Commission with foreign competition or consumer bodies

- 23.** (1) The Commission may, with the consent of the Minister, enter into arrangements with a foreign competition or consumer body whereby each party to the arrangements may—
- (a) furnish to the other party information in its possession if the information is

required by that other party for the purpose of performance by it of any of its functions, and

- (b) provide such other assistance to the other party as will facilitate the performance by that other party of any of its functions.
- (2) The Commission shall not furnish any information to a foreign competition or consumer body pursuant to such arrangements unless it requires of, and obtains from, that body an undertaking in writing by it that it will comply with terms specified in that requirement, being terms that correspond to the provisions of any enactment concerning the disclosure of that information by the Commission.
- (3) The Commission may give an undertaking to a foreign competition or consumer body that it will comply with terms specified in a requirement made of the Commission by the body to give such an undertaking where—
 - (a) those terms correspond to the provisions of any law in force in the state in which the body is established, being provisions which concern the disclosure by the body of the information referred to in *paragraph (b)*, and
 - (b) compliance with the requirement is a condition imposed by the body for furnishing information in its possession to the Commission pursuant to the arrangements referred to in *subsection (1)*.
- (4) In this section “foreign competition or consumer body” means a person in whom there are vested functions under the law of another state with respect to the enforcement or the administration of provisions of that state’s law concerning—
 - (a) competition between undertakings (whether in a particular sector of that state’s economy or throughout that economy generally), or
 - (b) consumer protection and welfare (whether in a particular sector of that state’s economy or throughout that economy generally).

Disclosure of information relating to offences

- 24.** (1) Notwithstanding *section 25*, information, which in the opinion of the Commission may relate to the commission of an offence which is not an offence under the relevant statutory provisions, may be disclosed by a member of the staff of the Commission authorised by the Commission to act in that behalf to—
- (a) a member of An Garda Síochána,
 - (b) the Director of Corporate Enforcement,
 - (c) an officer of the Revenue Commissioners,
 - (d) the Central Bank of Ireland,
 - (e) the Commission for Communications Regulation,
 - (f) the Department of Social Protection,
 - (g) the Irish Auditing and Accounting Supervisory Authority,

- (h) the Broadcasting Authority of Ireland,
 - (i) the Commission for Aviation Regulation,
 - (j) the Commission for Energy Regulation,
 - (k) the Data Protection Commissioner,
 - (l) the Environmental Protection Agency,
 - (m) the Financial Services Ombudsman,
 - (n) the Food Safety Authority of Ireland,
 - (o) the Health Insurance Authority,
 - (p) the National Transport Authority, or
 - (q) such other person as may be prescribed after consultation by the Minister with any other Minister of the Government appearing to the Minister to be concerned.
- (2) Notwithstanding any other law, information which, in the opinion of any body or person referred to in *paragraphs (a) to (q) of subsection (1)*, may relate to the commission of an offence under any of the relevant statutory provisions, may be disclosed by that body or person to the Commission, a member of the Commission, member of the staff of the Commission or an authorised officer.

Prohibition on unauthorised disclosure of confidential information

- 25.** (1) A person shall not, unless authorised by the Commission or by a member of the staff of the Commission duly authorised in that behalf so to do, or required by law, disclose confidential information obtained by him or her in his or her capacity, or while performing duties as—
- (a) a member of the Commission,
 - (b) a member of the staff of the Commission,
 - (c) an authorised officer, or
 - (d) a person engaged by the Commission in any other capacity.
- (2) *Subsection (1)* shall not apply to—
- (a) a communication made by a member of the Commission, a member of the staff of the Commission, or an authorised officer, in the performance of any of his or her functions under this Act, being a communication the making of which was necessary for the performance by the member, member of the staff of the Commission or authorised officer of any such function, or
 - (b) the disclosure by a member of the Commission, a member of the staff of the Commission or an authorised officer to any person or body mentioned in *paragraphs (a) to (q) of section 24(1)* of information which, in the opinion of the member, member of the staff of the Commission, or authorised officer, may relate to the commission of an offence (whether an offence under this Act or not).

- (3) A person who contravenes *subsection (1)* commits 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.
- (4) Nothing in *subsection (1)* shall prevent the disclosure of information by means of a report made—
 - (a) to the Commission, or
 - (b) by or on behalf of the Commission to the Minister.
- (5) In this section “confidential information” includes—
 - (a) information that is expressed by the Commission to be confidential either as regards particular information or as regards information of a particular class or description, and
 - (b) proposals of a commercial nature or tenders submitted to the Commission by contractors, consultants or any other person.

Accountability of chairperson to Committee of Public Accounts

- 26.** (1) The chairperson of the Commission shall, whenever required in writing to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that Committee in relation to—
- (a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General that the Commission is required by this Act to prepare,
 - (b) the economy and efficiency of the Commission in the use of its resources,
 - (c) the systems, procedures and practices employed by the Commission for the purpose of evaluating the effectiveness of its operations, and
 - (d) any matter affecting the Commission referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993, or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in *paragraph (a), (b) or (c)*) that is laid before Dáil Éireann.
- (2) In the performance of his or her duties under this section, the chairperson of the Commission shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

Accountability of chairperson to other Oireachtas Committees

- 27.** (1) Subject to *subsection (2)*, the chairperson of the Commission shall, at the request in writing of a Committee, attend before it to give account for the general administration of the Commission.

- (2) The chairperson of the Commission shall not be required to give account before a Committee in relation to—
 - (a) any matter which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State,
 - (b) any matter specified in *paragraphs (a) to (d) of subsection (7) of section 10*, or
 - (c) a determination in relation to a merger or acquisition under *section 21(2) of the Act of 2002*.
- (3) Where the chairperson of the Commission is of the opinion that a matter in respect of which he or she is requested to give an account before a Committee is a matter to which *subsection (2)* applies, he or she shall inform the Committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the Committee at a time when the chairperson of the Commission is before it, the information shall be so conveyed in writing.
- (4) Where the chairperson of the Commission has informed a Committee of his or her opinion in accordance with *subsection (3)* and the Committee does not withdraw the request referred to in *subsection (1)* in so far as it relates to a matter the subject of that opinion—
 - (a) the chairperson of the Commission may, not later than 21 days after being informed by the Committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question whether the matter is one to which *subsection (2)* applies, or
 - (b) the Chairperson of the Committee may, on behalf of the Committee, make such an application,and the High Court shall determine the matter.
- (5) Pending the determination of an application under *subsection (4)*, the chairperson of the Commission shall not attend before the Committee to give account for the matter the subject of the application.
- (6) If the High Court determines that the matter concerned is one to which *subsection (2)* applies, the Committee shall withdraw the request referred to in *subsection (1)*, but if the High Court determines that *subsection (2)* does not apply, the chairperson of the Commission shall attend before the Committee to give account for the matter.
- (7) In the performance of his or her duties under this section, the chairperson of the Commission shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.
- (8) In this section “Committee” means a Committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee referred to in *section 26* or the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann) or a sub-Committee of such a Committee.

Staff

- 28.** (1) The Commission may, with the consent of the Minister given with the approval of the Minister for Public Expenditure and Reform, appoint such and so many persons to be members of the staff of the Commission as it may from time to time determine.
- (2) The terms and conditions of service of a member of the staff of the Commission shall, with the consent of the Minister given with the approval of the Minister for Public Expenditure and Reform, be such as may be determined from time to time by the Commission.
- (3) There shall be paid by the Commission to the members of its staff such remuneration and allowances as, from time to time, the Commission, with the consent of the Minister given with the approval of the Minister for Public Expenditure and Reform, determines.

Superannuation

- 29.** (1) Subject to *subsection (2)*, as soon as may be after the establishment day, the Commission shall prepare and submit to the Minister a scheme or schemes for the granting of superannuation benefits to or in respect of—
- (a) persons who were accepted into its employment in accordance with *section 40*, and
- (b) such other persons as it considers appropriate, including—
- (i) the person referred to in *paragraph (b) of section 12(1)*, and
- (ii) persons who elect to become members of the staff of the Commission pursuant to section 24G (inserted by *section 76*) of the Act of 2007.
- (2) A scheme prepared and submitted under this section shall not provide for the granting of superannuation benefits to or in respect of any person referred to in *subsection (1)* where the Single Public Service Pension Scheme applies to that person by virtue of Chapter 2 of Part 2 of the Act of 2012.
- (3) Every scheme prepared and submitted under this section shall fix the time and conditions of retirement for all persons to, or in respect of whom, superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.
- (4) The Commission may at any time prepare and submit to the Minister a scheme amending or revoking a scheme previously submitted and approved under this section.
- (5) A scheme or amending scheme submitted to the Minister under this section shall, if approved by the Minister with the consent of the Minister for Public Expenditure and Reform, be carried out by the Commission in accordance with its terms.
- (6) (a) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit pursuant to a scheme under this section, such dispute shall be submitted to such person and determined in such manner as may be specified in the scheme.

- (b) A scheme under this section shall make provision for an appeal from a determination of a person referred to in *paragraph (a)* to such other person as may be specified in the scheme.
- (7) A superannuation benefit shall not be granted by the Commission to or in respect of any persons who are members of a scheme under this section and no other arrangement shall be entered into for the provision of any superannuation benefit to such persons on their ceasing to hold office, other than in accordance with such scheme or schemes submitted and approved under this section or an arrangement approved by the Minister and the Minister for Public Expenditure and Reform.
- (8) (a) Subject to *subsection (12)*, and save in accordance with a collective agreement negotiated with a recognised trade union or staff association and approved by the Minister with the consent of the Minister for Public Expenditure and Reform, a scheme under this section shall, as respects a person referred to in *paragraph (a)* of *subsection (1)*, provide for the granting to or in respect of him or her of superannuation benefits upon and subject to such terms and conditions as are not less favourable and not more favourable to him or her than the terms and conditions in relation to the grant of such benefits that applied to him or her immediately before the establishment day.
- (b) Any period of service by a person as a member of the staff of a dissolved body which was a period of reckonable service for the purposes of a scheme for the granting of superannuation benefits to or in respect of members of the staff of the dissolved body shall be regarded as a period of reckonable service for the purposes of any scheme under this section.
- (9) Subject to *subsection (12)*, where, in the period beginning on the establishment day and ending immediately before the commencement of a scheme under this section, a superannuation benefit falls due for payment to or in respect of a person who was accepted into the employment of the Commission in accordance with *section 40* to whom the Single Public Service Pension Scheme does not apply by virtue of Chapter 2 of Part 2 of the Act of 2012, the benefit shall be calculated and paid by the Commission in accordance with such schemes, arrangements or enactments in relation to superannuation, as applied to the person immediately before the establishment day and, for that purpose, his or her pensionable service with the Commission shall be aggregated with his or her previous pensionable service.
- (10) Subject to *subsection (12)*, every scheme or arrangement in relation to superannuation administered by a dissolved body immediately prior to the establishment day shall—
 - (a) on and after the establishment day, and
 - (b) only in so far as the schemes or arrangements concerned relate to former members of the staff (other than those to whom *subsection (1)* or *(2)* refers) of the dissolved bodies, including those who are deceased,
 continue in force as if made by the Commission.
- (11) Subject to *subsection (12)*, and notwithstanding the repeal of section 44 of the Act of 2002 by *section 7(1)(c)*, a scheme made under paragraph 5 of the Schedule to the

Competition Act 1991 continued in force by subsection (7) of the said section 44, and in force immediately before the establishment day, shall continue in force on and after that day.

- (12) *Paragraph (a) of subsection (8) and subsections (9), (10) and (11)* shall not apply in relation to a provision of a scheme or arrangement in relation to superannuation in respect of which the consent or approval of the Minister for Finance, the Minister for Public Expenditure and Reform or any other Minister of the Government was required by or under any enactment but not obtained.
- (13) The Minister shall cause every scheme submitted and approved under this section to be laid before each House of the Oireachtas as soon as may be after it is approved, and if either such House, within the next 21 days on which that House sits after the scheme is laid before it, passes a resolution annulling the scheme, the scheme shall be annulled accordingly, but without prejudice to anything previously done thereunder.
- (14) In this section—

“Act of 2012” means the Public Service Pensions (Single Scheme and Other Provisions) Act 2012;

“superannuation benefit” means a pension, gratuity or other allowance payable on resignation, retirement or death.

Strategy statement and work programme

- 30.** (1) The Commission shall, as soon as practicable after the commencement of this section, and thereafter not earlier than 6 months before and not later than the expiration of each subsequent period of 3 years following that commencement, prepare and submit to the Minister a strategy statement in respect of the period of 3 years immediately following the year in which the strategy statement is so submitted.
- (2) The Minister shall, as soon as practicable after a strategy statement has been submitted to him or her under *subsection (1)*, cause a copy of it to be laid before each House of the Oireachtas.
 - (3) The Commission shall ensure that, as soon as practicable after copies of a strategy statement are laid before both Houses of the Oireachtas in accordance with *subsection (2)*, the strategy statement is published on the internet.
 - (4) When preparing a strategy statement, the Commission may consult such persons as it considers appropriate.
 - (5) The Commission shall prepare and submit to the Minister, at least 2 months before the commencement of each financial year, a work programme relating to the discharge of its functions, including—
 - (a) having regard to the strategy statement, the objectives of the Commission for that year and its strategy for achieving those objectives,
 - (b) the priorities of the Commission for that year, having regard to those objectives and its available resources, and

- (c) any other matters that the Minister may from time to time specify when issuing directions or guidelines under *subsection (6)*.
- (6) The Minister may, from time to time, issue directions or guidelines to the Commission concerning the preparation of the work programme and the Commission shall comply with those directions and prepare the work programme in accordance with those guidelines.
- (7) In this section “strategy statement” means a statement that—
 - (a) specifies the key objectives, outputs and related strategies, including use of resources, of the Commission,
 - (b) except for the first strategy statement, includes a review of the outcomes and effectiveness of the preceding strategy statement,
 - (c) includes any other matters that the Minister may direct, and
 - (d) is prepared in a form and manner that is in accordance with any directions issued from time to time by the Minister.

Accounts of Commission

31. (1) The Commission shall—

- (a) submit estimates of income and expenditure to the Minister in such form, in respect of such periods and at such times as may be required by the Minister, and
- (b) furnish to the Minister any information which the Minister may require in relation to such estimates, including proposals and future plans relating to the performance by the Commission of its functions.
- (2) The Commission shall keep in such form as may be approved by the Minister with the consent of the Minister for Public Expenditure and Reform all proper and usual accounts of all money received or expended by it and, in particular, shall keep in such form as aforesaid all such special accounts as the Minister may, with the consent of the Minister for Public Expenditure and Reform, from time to time direct.
- (3) The Commission shall, whenever so requested by the Minister, permit any person appointed by the Minister to examine the books or other records of account of the Commission in respect of any financial year or other period and shall facilitate any such examination, and the Commission shall pay such fee for the examination as may be fixed by the Minister.
- (4) Accounts kept in accordance with this section shall be submitted, not later than 1 April in the year immediately following the financial year to which they relate or on such earlier date as the Minister may, from time to time specify, to the Comptroller and Auditor General for audit and, immediately after the audit, a copy of the accounts, and of such other (if any) accounts as the Minister, after consultation with the Minister for Public Expenditure and Reform, may direct and a copy of the Comptroller and Auditor General’s report on the accounts shall be presented to the Minister who shall, as soon as may be after they are so presented, cause copies thereof to be laid before each House of the Oireachtas.

Reporting by Commission

32. (1) The Commission shall not later than 30 June in each year prepare and submit to the Minister a report on its activities in the immediately preceding year (in this section referred to as the “annual report”), and the Minister shall, as soon as may be after receiving the annual report, cause copies of the annual report to be laid before each House of the Oireachtas.
- (2) An annual report shall include information in such form and regarding such matters as the Minister may direct but nothing in this subsection shall be construed as requiring the Commission to include information the inclusion of which would, in the opinion of the Commission, be likely to prejudice the performance of its functions.
- (3) The Commission may from time to time furnish to the Minister such information about the performance of its functions as it considers appropriate and shall furnish the Minister with advice on any matter relating to those functions, as the Minister may from time to time request (other than information the provision of which would, in the opinion of the Commission, be likely to prejudice the performance of its functions).
- (4) The Commission shall arrange for an annual report that has been laid before each House of the Oireachtas in accordance with *subsection (1)* to be published on the internet as soon as practicable after copies of the report are so laid.

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.
- (3) Without prejudice to *subsection (4)*, where, in the circumstances referred to in *subsection (2)*, information has been disclosed or taken possession of pursuant to this Act, the person—
- (a) to whom such information has been so disclosed, or
- (b) who has taken possession of it,
- shall (unless the person has, within the period subsequently mentioned in this subsection, been served with notice of an application under *subsection (4)* in relation to the matter concerned) apply to the High Court for a determination as to whether the information is privileged legal material and an application under this section shall be made within 30 days after the disclosure or the taking of possession.
- (4) A person who, in the circumstances referred to in *subsection (2)*, is compelled to

disclose information, or from whose possession information is taken, pursuant to this Act, may apply to the High Court for a determination as to whether the information is privileged legal material.

- (5) Pending the making of a final determination of an application under *subsection (3)* or *(4)*, the High Court may give such interim or interlocutory directions as the court considers appropriate including, without prejudice to the generality of the foregoing, directions as to—
- (a) the preservation of the information, in whole or in part, in a safe and secure place in any manner specified by the court,
 - (b) the appointment of a person with suitable legal qualifications possessing the level of experience, and the independence from any interest falling to be determined between the parties concerned, that the court considers to be appropriate for the purpose of—
 - (i) examining the information, and
 - (ii) preparing a report for the court with a view to assisting or facilitating the court in the making by the court of its determination as to whether the information is privileged legal material.
- (6) An application under *subsection (3)*, *(4)* or *(5)* shall be by motion and may, if the High Court directs, be heard otherwise than in public.
- (7) In this section—
- “computer” includes a personal organiser or any other electronic means of information storage or retrieval;
- “information” means information contained in a book, document or record, a computer or otherwise;
- “privileged legal material” means information which, in the opinion of the court, a person is entitled to refuse to produce on the grounds of legal professional privilege.

CHAPTER 2

Authorised Officers

Definitions

34. In this Chapter—

“activity” includes any activity in connection with the business of supplying or distributing goods or providing a service, or in connection with the organisation or assistance of persons engaged in any such business;

“place” has the same meaning as it has in section 29 (inserted by section 1 of the Criminal Justice (Search Warrants) Act 2012) of the Offences Against the State Act 1939;

“records” includes, in addition to records in writing—

- (a) discs, tapes, sound-tracks or other devices in which information, sounds or

signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form,

- (b) films, tapes or other devices in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in visual form, and
- (c) photographs,

and a reference to a copy of records includes, in the case of records falling within *paragraph (a)* only, a transcript of the sounds or signals embodied therein, in the case of records falling within *paragraph (b)*, a still reproduction of the images embodied therein and, in the case of records falling within both of those paragraphs, such a transcript and such a still reproduction;

“tape” includes—

- (a) a disc, magnetic tape, soundtrack or other device in which sounds or signals may be embodied for the purpose of being reproduced (with or without the aid of some other instrument) in audible form, and
- (b) a film, disc, magnetic tape or other device in which visual images may be embodied for the purpose of being reproduced (with or without the aid of some other instrument) in visual form.

Appointment of authorised officers

35. (1) The Commission may appoint in writing such and so many persons, including members of the staff of the Commission, to be authorised officers for the purposes of all or any of the relevant statutory provisions and such appointment may be specified to be for a fixed period.

(2) An authorised officer appointed under—

- (a) section 30 of the Act of 2007, or
- (b) section 45 of the Act of 2002,

and holding office immediately before the establishment day shall, on and after that day, be deemed to have been appointed under this section.

(3) Every authorised officer appointed under this section shall be furnished with a warrant of appointment which shall be issued by the Commission, and shall, when exercising any power conferred on him or her by any of the relevant statutory provisions if requested by a person affected, produce the warrant of appointment or copy of it to that person.

(4) An appointment under this section shall cease—

- (a) if the Commission revokes the appointment,
- (b) if the appointment is for a fixed period, on the expiry of that period, or
- (c) if the person appointed is a member of staff of the Commission, when that person ceases to be a member of staff of the Commission.

- (5) An authorised officer, when exercising any powers conferred on an authorised officer by this Act, may be accompanied by such other authorised officers or members of An Garda Síochána or both as he or she considers necessary.
- (6) For the avoidance of doubt, nothing in *subsection (5)* affects the exercise by an authorised officer who is a member of An Garda Síochána of any power, which apart from that subsection, he or she could exercise by virtue of *subsection (1)* of *section 36* or *subsection (1)* of *section 37* or otherwise.
- (7) A person who falsely represents himself or herself as an authorised officer 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 12 months or both.
- (8) A person who—
 - (a) obstructs or impedes an authorised officer in the exercise of a power under *section 36* or *37*,
 - (b) without reasonable excuse, fails to comply with a request or requirement of an authorised officer under *section 36* or *37*, or
 - (c) in purported compliance with such a request or requirement gives information that is false or misleading in a material respect,shall be guilty of an offence.
- (9) A person guilty of an offence under *subsection (8)* shall be liable—
 - (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or both, or
 - (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 3 years, or both.
- (10) Where a member of An Garda Síochána is of the opinion that an offence under *subsection (8)(a)* is being or has been committed, then the member may arrest that person without warrant.
- (11) In proceedings by way of summons for an offence under any of the relevant statutory provisions in which the prosecutor is the Director of Public Prosecutions or the Commission, a document within the meaning of *section 7(1)* of the Courts Act 1964 may be served by an authorised officer.
- (12) In—
 - (a) an action under *section 14A* or *15C* of the Act of 2002,
 - (b) an investigation under Chapter 5 (inserted by *section 83*) of Part 3 of the Act of 2007, or
 - (c) proceedings for an offence under any of the relevant statutory provisions,the production to the court of a document purporting to be a warrant or other document whereby the Commission appointed, on a specified date, a person under this section to be an authorised officer for the purposes of this Act shall, without proof

of any signature on it or that the signatory was the proper person to sign it, be sufficient evidence, until the contrary is proved, that the first-mentioned person is or, as the case may be, was at all material times (but not earlier than the date aforesaid) a person appointed under this section to be an authorised officer for the purposes of this Act.

Powers of authorised officers for purposes of enforcing relevant statutory provisions (other than Act of 2002)

36. (1) An authorised officer may, for the purpose of enforcing any of the relevant statutory provisions (other than the Act of 2002)—

- (a) at all reasonable times enter any place at which there are reasonable grounds to believe that any trade or business or any activity in connection with a trade or business is being, or has been, carried on, or that books, documents or records in relation to that trade, business or activity are kept, and search and inspect the place and any books, documents or records that are at that place,
- (b) secure for later inspection any, or any part of any place at which such books, documents or records are kept or there are reasonable grounds for believing that such books, documents or records are kept,
- (c) remove and retain any books, documents or records relating to a trade, business or activity for such periods as may be reasonable for further examination and take any other steps which appear to the authorised officer to be necessary for preserving, or preventing interference with, such books, documents or records, subject to a warrant being issued for such purposes by a judge of the District Court,
- (d) require any person who carries on a trade, business or activity and any person employed in connection therewith to—
 - (i) give to the authorised officer his or her name, home address and occupation, and
 - (ii) provide to the authorised officer any books, documents or records relating to that activity which are in that person's power or control, and to give to the officer such information as he or she may reasonably require in regard to any entries in such books, documents or records, and where such books, documents or records are kept in a non-legible form to reproduce them in a legible form,
- (e) inspect and take copies of or extracts from any such books, documents or records at the place including in the case of information in a non-legible form, copies of or extracts from such information in a permanent legible form,
- (f) require any person mentioned in *paragraph (d)* to give to the authorised officer any information which the authorised officer may reasonably require in regard to such trade, business or activity or in respect of the persons carrying on such trade, business or activity or employed in connection with such trade, business or activity, (including in particular, in the case of an unincorporated body of

persons, information in regard to the membership thereof and its committee of management or other controlling authority),

- (g) require any such person to give to the authorised officer any other information which the authorised officer may reasonably require in respect of such trade, business or activity,
 - (h) require any person by or on whose behalf data equipment is or has been used or any person having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to afford the authorised officer all reasonable assistance in relation to it and assist in the retrieval of information connected with the operation of such data equipment, apparatus or material,
 - (i) summon, at any reasonable time, any other person employed in connection with such trade, business or activity to give to the authorised officer any information which the authorised officer may reasonably require in relation to such trade, business or activity and to produce to the authorised officer any books, documents or records which are in the control of that other person.
- (2) An authorised officer may at all reasonable times for the purpose of enforcing any of the relevant statutory provisions (other than the Act of 2002) enter any place at which there are reasonable grounds to believe that any trade or business or any activity in connection with a trade or business is, or has been, carried on and inspect any goods at the place and may—
- (a) on paying or making tender of payment therefor, take any of the goods, or
 - (b) confirm by such other method as appropriate the price at which the goods are on offer or any other information relating to the goods for the purpose of an investigation.
- (3) An authorised officer shall not in the exercise of his or her powers under this section, other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant from the District Court under *subsection (4)* authorising such entry.
- (4) (a) Without prejudice to the powers conferred on an authorised officer by or under any provision of this section, an authorised officer may, for the purposes of an investigation into an offence under any of the relevant statutory provisions (other than the Act of 2002) apply to a judge of the District Court for a warrant in relation to any place.
- (b) On an application being made under this subsection, if a judge of the District Court is satisfied by information on oath of an authorised officer that there are reasonable grounds for suspecting that evidence of, or relating to, the commission of an offence under any of the relevant statutory provisions (other than the Act of 2002) is to be found in any place, the judge may issue a warrant authorising an authorised officer (accompanied by such other authorised officers or members of An Garda Síochána or both as provided for in *subsection (5)* of *section 35*) at any time or times within one month from the date of issue of the warrant, on

production if so requested of the warrant, to enter and search that place using reasonable force where necessary, and exercise all or any of the powers conferred on an authorised officer under this section.

- (5) Where an advertisement in relation to the supply or provision of any product is published and does not include the name and address of the person who procured such publication or his or her agent, the publisher of the advertisement shall, if the Commission or an authorised officer so requests within 12 months of the publication of the advertisement, give to the Commission or the authorised officer, the name and address of such person or his or her agent.
- (6) A person who fails to comply with a request under *subsection (5)* or, in purported compliance with such a request, gives information that is false or misleading in a material respect, 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 12 months or both.
- (7) In this section “advertisement” has the same meaning as it has in the Act of 2007.

Powers of authorised officers in relation to investigations under Act of 2002

37. (1) For the purpose of obtaining any information which may be required in relation to a matter under investigation under the Act of 2002 an authorised officer may, on production of a warrant issued under *subsection (3)* authorising him or her to exercise one or more specified powers under *subsection (2)*, exercise that power or those powers.
- (2) The powers mentioned in *subsection (1)* are the following:
- (a) to enter, if necessary by reasonable force, and search any place at which any activity in connection with the business of supplying or distributing goods or providing a service, or in connection with the organisation or assistance of persons engaged in any such business, is carried on;
 - (b) to enter, if necessary by reasonable force, and search any place occupied by a director, manager or any member of staff of an undertaking that carries on an activity or of an association of undertakings that carry on activities, being, in either case, a place in respect of which there are reasonable grounds to believe books, documents or records relating to the carrying on of that activity or those activities are being kept in it;
 - (c) to seize and retain any books, documents or records relating to an activity found at any place referred to in *paragraph (a)* or *(b)* and take any other steps which appear to the officer to be necessary for preserving, or preventing interference with, such books, documents or records;
 - (d) to require any person who carries on an activity referred to in *paragraph (a)* and any person employed in connection therewith to—
 - (i) give to the authorised officer his or her name, home address and occupation, and

- (ii) provide to the authorised officer any books, documents or records relating to that activity which are in that person's power or control, and to give to the officer such information as he or she may reasonably require in regard to any entries in such books, documents or records, and where such books, documents or records are kept in a non-legible form to reproduce them in a legible form;
 - (e) to inspect and take copies of or extracts from any such books, documents or records, including in the case of information in a non-legible form, copies of or extracts from such information in a permanent legible form;
 - (f) to require a person mentioned in *paragraph (d)* to give to the authorised officer any information he or she may require in regard to the persons carrying on the activity referred to in *paragraph (a)* (including in particular, in the case of an unincorporated body of persons, information in regard to the membership thereof and its committee of management or other controlling authority) or employed in connection therewith;
 - (g) to require a person mentioned in *paragraph (d)* to give to the authorised officer any other information which the officer may reasonably require in regard to the activity referred to in *paragraph (a)*.
- (3) If a judge of the District Court is satisfied by information on oath of an authorised officer that there are reasonable grounds for suspecting that evidence of, or relating to, the commission of an offence under the Act of 2002 is to be found in any place, the judge may issue a warrant authorising an authorised officer (accompanied by such other authorised officers or members of An Garda Síochána or both as provided for in *subsection (5) of section 35*) at any time or times within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter and search the place using reasonable force where necessary, and exercise all or any of the powers conferred on an authorised officer under this section.
- (4) The reference in *subsection (3)* to an offence under the Act of 2002 shall, for the purposes of this section, be deemed to include a reference to the taking by the Commission of proceedings (whether civil or criminal), and the taking of proceedings by the Director of Public Prosecutions, in relation to any contravention of an enactment repealed by section 48 of the Act of 2002 that the Commission suspects has occurred.
- (5) Where a member of An Garda Síochána arrests, whether in a Garda Síochána station or elsewhere, a person whom he or she, with reasonable cause, suspects of committing or of having committed an offence under section 6 or 7 of the Act of 2002 and the person has been taken to and detained in a Garda Síochána station, or if the person is arrested in a Garda Síochána station, has been detained in the station, pursuant to section 4 of the Criminal Justice Act 1984, an authorised officer or officers (but not more than 2 such officers) may, if and for so long as the officer or officers is, or are, accompanied by a member of An Garda Síochána, attend at, and participate in, the questioning of a person so detained in connection with the investigation of the offence, but only if the member of An Garda Síochána requests the authorised officer or officers to do so and the member is satisfied that the attendance at, and

participation in, such questioning of the authorised officer or officers is necessary for the proper investigation of the offence concerned.

- (6) An authorised officer who attends at, and participates in, the questioning of a person in accordance with *subsection (5)* may not commit any act or make any omission which, if committed or made by a member of An Garda Síochána, would be a contravention of any regulation made under section 7 of the Criminal Justice Act 1984.
- (7) An act committed or omission made by an authorised officer who attends at, and participates in, the questioning of a person in accordance with *subsection (6)* which, if committed or made by a member of An Garda Síochána, would be a contravention of any regulation made under section 7 of the Criminal Justice Act 1984 shall not of itself render the authorised officer liable to any criminal or civil proceedings or of itself affect the lawfulness of the custody of the detained person or the admissibility in evidence of any statement made by him or her.
- (8) Where a person is before a court charged with an offence under section 6 or 7 of the Act of 2002, a copy of any recording of the questioning of the person by a member of An Garda Síochána or authorised officer while he or she was detained in a Garda Síochána station, or such questioning elsewhere, in connection with the investigation of the offence shall be given to the person or his or her legal representative only if the court so directs and subject to such conditions (if any) as the court may specify.
- (9) A recording referred to in *subsection (8)* of the questioning of a person shall not be given to the person by An Garda Síochána except in accordance with a direction or order of a court made under that subsection or otherwise.
- (10) A court may admit in evidence at the trial of a person in respect of an offence under section 6 or 7 of the Act of 2002—
 - (a) a recording by electronic or similar means, or
 - (b) a transcript of such a recording,or both, of the questioning of the person by a member of An Garda Síochána or authorised officer at a Garda Síochána station or elsewhere in connection with the investigation of the offence.
- (11) Any statement made by the person concerned that is recorded in a recording which is admitted in evidence under *subsection (10)* may be admissible in evidence at the trial concerned notwithstanding the fact that—
 - (a) it was not taken down in writing at the time it was made, or
 - (b) that statement is not in writing and signed by the person who made it,or both.
- (12) *Subsections (10) and (11)* shall not affect the admissibility in evidence at the trial of a person in respect of an offence of any statement that is recorded in writing made by the person during questioning by a member of An Garda Síochána or authorised officer at a Garda Síochána station or elsewhere in connection with the investigation

of the offence (whether or not that statement is signed by the person) and irrespective of whether the making of that statement is recorded by electronic or similar means.

- (13) Section 9 of the Criminal Law Act 1976 shall apply in relation to a search carried out by an authorised officer pursuant to a warrant issued under *subsection (3)* as it applies to a search carried out by a member of An Garda Síochána in the course of exercising his or her powers under that Act.
- (14) In this section “recording” means a recording on tape of—
 - (a) an oral communication, statement or utterance, or
 - (b) a series of visual images which, when reproduced on tape, appear as a moving picture,
 or both.

CHAPTER 3

Dissolution of National Consumer Agency and Competition Authority

Dissolution of National Consumer Agency and Competition Authority

- 38. (1) The National Consumer Agency and the Competition Authority (each of which is, in this Act, referred to as a “dissolved body”) are dissolved.
- (2) This section shall come into operation on the establishment day.

Transfer of functions to Commission

- 39. (1) All functions that, immediately before the establishment day, were vested in the dissolved bodies are transferred to the Commission.
- (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.
- (3) A reference 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 the chief executive of the National Consumer Agency shall, on and after that day, be construed as a reference to the chairperson of the Commission.
- (4) This section shall come into operation on the establishment day.

Transfer of staff to Commission

- 40. (1) Save in accordance with a collective agreement negotiated with a recognised trade union or staff association, the Commission shall accept into its employment on the establishment day each person (other than the chief executive of the National

Consumer Agency) who immediately before that day was a member of the staff of a dissolved body on such terms and conditions of service relating to remuneration as are not less favourable than the terms and conditions of service relating to remuneration to which the person was subject immediately before that day.

- (2) The terms and conditions to which a person is subject upon his or her becoming a member of the staff of the Commission in accordance with *subsection (1)* shall be deemed to have been determined by the Commission in accordance with *subsection (2)* of *section 28*.
- (3) In relation to a person transferred to the staff of the Commission under *subsection (1)*, previous service with a dissolved body shall be reckonable for the purpose of, but subject to any exceptions or exclusions in, the following enactments:
 - (a) the Redundancy Payments Acts 1967 to 2012;
 - (b) the Protection of Employees (Part-Time Work) Act 2001;
 - (c) the Protection of Employees (Fixed-Term Work) Act 2003;
 - (d) the Minimum Notice and Terms of Employment Acts 1973 to 2005;
 - (e) the Unfair Dismissals Acts 1977 to 2007;
 - (f) the Terms of Employment (Information) Acts 1994 to 2012;
 - (g) the Organisation of Working Time Act 1997;
 - (h) the Parental Leave Acts 1998 and 2006;
 - (i) the Carer's Leave Act 2001;
 - (j) the Maternity Protection Acts 1994 and 2004;
 - (k) the Adoptive Leave Acts 1995 and 2005.

Transfer of land and other property

41. (1) On the establishment day, all lands that, immediately before that day, were vested in a dissolved body and all rights, powers and privileges relating to or connected with such lands shall, without any conveyance or assignment, stand vested in the Commission for all the estate or interest therein that, immediately before the establishment day, were vested in the dissolved body, but subject to all trusts and equities affecting the lands continuing to subsist and being capable of being performed.
- (2) On the establishment day all property (other than land), including choses-in-action, that immediately before that day, was vested in a dissolved body shall stand vested in the Commission without any assignment.
- (3) Every chose-in-action vested in the Commission by virtue of *subsection (2)* may, on and from the establishment day, be sued on, recovered or enforced by the Commission in its own name, and it shall not be necessary for the Commission, or the dissolved body, to give notice to any person bound by the chose-in-action of the vesting effected by that subsection.

Transfer of rights and liabilities, and continuation of leases, licences and permissions granted by dissolved body

42. (1) All rights and liabilities of a dissolved body arising by virtue of any contract or commitment (expressed or implied) entered into by it before the establishment day shall on that day stand transferred to the Commission.
- (2) Every right and liability transferred by *subsection (1)* to the Commission may, on and after the establishment day, be sued on, recovered or enforced by or against the Commission in its own name, and it shall not be necessary for the Commission, or a dissolved body, to give notice to the person whose right or liability is transferred by that subsection of such transfer.
- (3) Every lease, licence, wayleave or permission granted by a dissolved body in relation to land or other property vested in the Commission by or under this Act, and in force immediately before the establishment day, shall continue in force as if granted by the Commission.

Liability for loss occurring before establishment day

43. (1) A claim in respect of any loss or injury alleged to have been suffered by any person arising out of the performance before the establishment day of any of the functions of a dissolved body shall on and after that day, lie against the Commission and not against the dissolved body.
- (2) Any legal proceedings pending immediately before the establishment day to which a dissolved body is a party, shall be continued, with the substitution in the proceedings of the Commission in so far as they so relate, for the dissolved body.
- (3) Where, before the establishment day, agreement has been reached between the parties concerned in settlement of a claim to which *subsection (1)* relates, the terms of which have not been implemented, or judgment in such a claim has been given in favour of a person but has not been enforced, the terms of the agreement or judgment, as the case may be, shall, in so far as they are enforceable against a dissolved body, be enforceable against the Commission and not the dissolved body.
- (4) Any claim made or proper to be made by a dissolved body in respect of any loss or injury arising from the act or default of any person before the establishment day shall be regarded as having been made by or proper to be made by the Commission and may be pursued and sued for by the Commission as if the loss or injury had been suffered by the Commission.

Provisions consequent upon transfer of functions, assets and liabilities to Commission

44. (1) Anything commenced and not completed before the establishment day by or under the authority of a dissolved body may be carried on or completed on or after the establishment day by the Commission.
- (2) Every instrument made under an enactment and every document (including any certificate) granted or made by a dissolved body shall, if and in so far as it was operative immediately before the establishment day, have effect on and after that day

as if it had been granted or made by the Commission.

- (3) References to a dissolved body in the memorandum or articles of associations of any company shall, on and after the establishment day, be construed as references to the Commission.
- (4) Any money, stocks, shares or securities transferred by *section 41* or *42* that immediately before the establishment day were standing in the name of a dissolved body shall, on the request of the Commission, be transferred into its name.
- (5) A certificate signed by the Minister that any property, right or liability has or, as the case may be, has not vested in the Commission under *section 41* or *42* shall be sufficient evidence, unless the contrary is shown, of the fact so certified for all purposes.

Saving for certain acts

- 45. Nothing in this Act affects the validity of any act done before the establishment day by or under the authority of a dissolved body and every such act shall, if and in so far as it was operative immediately before that day, have effect on or after that day as if it had been done by or on behalf of the Commission.

Final accounts and final annual report of dissolved bodies

- 46. (1) The Commission shall, in respect of the period specified under *subsection (3)*, prepare final accounts of each of the dissolved bodies.
- (2) The Commission shall submit the final accounts to the Comptroller and Auditor General for audit not later than 12 months after the establishment day.
- (3) For the purposes of *subsection (1)*, the Minister may specify a period that is longer or shorter than a financial year of a dissolved body.
- (4) The Commission shall prepare a final annual report for each of the dissolved bodies and submit the reports to the Minister not later than 6 months after the establishment day.
- (5) *Section 31* shall apply with the necessary modifications in relation to final accounts prepared under this section.
- (6) *Section 32* shall apply with the necessary modifications in relation to an annual report prepared under this section.

PART 3

AMENDMENTS OF ACT OF 2002

Amendment of section 3 of Act of 2002

- 47. Subsection (1) of section 3 of the Act of 2002 is amended—

(a) by inserting the following definitions:

“ ‘Act of 2009’ means the Broadcasting Act 2009;

‘Council Regulation’ means Council Regulation (EC) No. 139/2004 of 20 January 2004¹ on the control of concentrations between undertakings;”,

(b) by substituting the following definition for the definition of “authorised officer”:

“ ‘authorised officer’ has the same meaning as it has in the *Competition and Consumer Protection Act 2014*;”,

(c) by substituting the following definition for the definition of “Commission”:

“ ‘Commission’ means the Competition and Consumer Protection Commission;”,

(d) in the definition of “competent authority” by substituting “Commission for Communications Regulation” for “Commission” in each place it occurs,

(e) by substituting the following definition for the definition of “electronic communications network”:

“ ‘electronic communications network’ has the same meaning as it has in the Act of 2009;”,

and

(f) by substituting the following definition for the definition of “undertaking”:

“ ‘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.”.

Amendment of section 6 of Act of 2002

48. Section 6 of the Act of 2002 is amended by substituting the following subsection for subsection (7):

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

Amendment of section 12 of Act of 2002

49. Section 12 of the Act of 2002 is amended by substituting “under *section 37* of the *Competition and Consumer Protection Act 2014*” for “under section 45”.

¹ O.J. No. L 24, 29.1.2004, p.1.

Amendment of section 14A of Act of 2002

50. Section 14A of the Act of 2002 is amended by inserting the following subsection after subsection (5):

“(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.”.

Amendment of section 14B of Act of 2002

51. Section 14B of the Act of 2002 is amended—

(a) in subsection (1), by substituting the following paragraph for paragraph (a):

“(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”*,

and

(b) by deleting subsection (11).

Amendment of section 15C of Act of 2002

52. Section 15C of the Act of 2002 is amended—

(a) by substituting the following subsection for subsection (3):

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

(b) by inserting the following subsection after subsection (3):

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

(c) by substituting the following subsection for subsection (4):

“(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.”,

and

(d) by inserting the following subsection after subsection (4):

“(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.”.

Amendment of section 16 of Act of 2002

53. Section 16 of the Act of 2002 is amended—

(a) in subsection (1)—

(i) by substituting the following paragraph for paragraph (b):

“(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

(ii) by substituting the following paragraph for paragraph (c):

“(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.”,

(b) in subsection (4), by substituting “on a lasting basis” for “on an indefinite basis”, and

(c) by inserting the following subsection after subsection (8):

“(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.”.

Amendment of section 17 of Act of 2002

54. The Act of 2002 is amended by substituting the following section for section 17:

“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.”.

Amendment of section 18 of Act of 2002**55.** Section 18 of the Act of 2002 is amended—

- (a) by substituting the following subsections for subsection (1):

“(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.”,

- (b) in paragraph (c)(i) of subsection (2)—

- (i) by substituting “(ii)” for “(iii)”,

- (ii) by substituting “references to turnover in the State” for “references in them to the world-wide turnover and turnover in the State”, and
- (iii) by substituting “references to turnover in the State” for “references, respectively, to the world-wide turnover and turnover in the State”,
- (c) by substituting the following subsection for subsection (3):
 - “(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.”,
- (d) in subsection (4), by substituting “the Council Regulation” for “Council Regulation (EEC) No. 4064/89 on the control of concentrations between undertakings”,
- (e) in subsection (9), by substituting “an undertaking, or the person in control of an undertaking,” for “the person in control of an undertaking”,
- (f) in subsection (10), by substituting “the undertaking or person” for “the person”,
- (g) in subsection (12), by inserting “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,” after “material respect,”,
- (h) by inserting the following subsection after subsection (12):
 - “(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.”,
- (i) in subsection (13), by substituting “the Council Regulation” for “Council Regulation (EEC) No. 4064/89 on the control of concentrations between undertakings”, and
- (j) in subsection (14), by substituting “the Council Regulation” for “Council Regulation No. 4064/89”.

Amendment of section 19 of Act of 2002

56. Section 19 of the Act of 2002 is amended—

- (a) in paragraph (d) of subsection (1), by substituting “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” for “4 months after the appropriate date have elapsed”,

- (b) in subsection (5), by substituting “12 months after the relevant period referred to in subsection (1)(d) has elapsed” for “16 months after the appropriate date”,
- (c) in subsection (6)—
 - (i) by substituting the following paragraphs for paragraph (a):
 - “(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),”,
 - and
 - (ii) by substituting, in subsection (b), “30 working days” for “1 month”,
 - and
- (d) by substituting the following subsection for subsection (7):
 - “(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.”.

Amendment of section 20 of Act of 2002

57. Section 20 of the Act of 2002 is amended—

- (a) in subsection (2), by inserting “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” after “with it”, and
- (b) by inserting the following subsections after subsection (2):
 - “(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.”.

Amendment of section 21 of Act of 2002

58. Section 21 of the Act of 2002 is amended—

- (a) in subsection (2), by substituting “30 working days” for “1 month”,
- (b) in subsection (3), by substituting “60 working days” for “2 months”, and
- (c) in subsection (4)—
 - (i) by substituting “45 working days” for “45 days”, and
 - (ii) by substituting “30 working days” for “1 month”.

Amendment of section 22 of Act of 2002

59. Section 22 of the Act of 2002 is amended—

- (a) in subsection (4)—
 - (i) in paragraph (a), by substituting “120 working days” for “4 months”, and
 - (ii) in paragraph (b), by substituting “60 working days” for “one month”,and
- (b) by inserting the following subsections after subsection (4):
 - “(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) (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.”.

Amendment of section 24 of Act of 2002

60. Section 24 of the Act of 2002 is amended—

- (a) by deleting subsection (2),
- (b) in subsection (3), by substituting the following paragraph for paragraph (b):
 - “(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.”,
- (c) in subsection (7)—
 - (i) in paragraph (b), by deleting “or”,
 - (ii) in paragraph (c), by substituting “decision, or” for “decision.”, and
 - (iii) by inserting the following paragraph after paragraph (c):
 - “(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.”,
- and
- (d) in subsection (8), by deleting “or shall, where the operation of section 25(1) results in an order under section 23(4) being annulled after the expiry of the period hereafter mentioned,”.

Amendment of section 26 of Act of 2002

61. Section 26 of the Act of 2002 is amended—

- (a) in subsection (1), by deleting “; ‘order’ means an order made by the Minister under section 23(4)”,
- (b) in subsection (2), by substituting “a commitment or a determination” for “a commitment, a determination or an order”,
- (c) in subsection (3), by substituting “a commitment or a determination” for “a commitment, a determination or an order”,
- (d) in subsection (4), by substituting “a commitment or a determination” for “a commitment, a determination or an order”, and
- (e) by inserting the following subsection after subsection (9):

“(10) The Commission may monitor and review commitments or conditions contained in a determination.”.

Amendment of section 27 of Act of 2002

62. Subsection (1) of section 27 of the Act of 2002 is amended by substituting “(ii)” for “(iii)”.

Amendment of section 28 of Act of 2002

63. Section 28 of the Act of 2002 is amended—

- (a) by substituting “this Part or Part 3A” for “this Part” in each place where it occurs, and
- (b) by substituting “section 18(1), or section 28B(1),” for “section 18(1)” in each place where it occurs.

Amendment of section 47 of Act of 2002

64. Subsection (2) of section 47 of the Act of 2002 is amended by substituting “Commission for Communications Regulation” for “Commission” in each place where it occurs.

Amendment of section 47A of Act of 2002

65. Section 47A of the Act of 2002 is amended—

- (a) by substituting “Commission for Communications Regulation” for “Commission”,
- (b) by inserting “or Article 101 of the Treaty on the Functioning of the European Union” after “section 4”, and
- (c) by inserting “or Article 102 of the Treaty on the Functioning of the European Union” after “section 5”.

Amendment of section 47B of Act of 2002

66. Section 47B of the Act of 2002 is amended—

- (a) in subsection (1)—
 - (i) by substituting “Commission for Communications Regulation” for “Commission” in each place where it occurs, and
 - (ii) by substituting “or any member of the staff of the Commission for Communications Regulation” for “any member of the Commission’s staff”,
- and
- (b) in subsection (2), by substituting “Commission for Communications Regulation” for “Commission”.

Amendment of section 47C of Act of 2002

67. Section 47C of the Act of 2002 is amended by substituting “Commission for Communications Regulation” for “Commission”.

Amendment of section 47D of Act of 2002

68. Section 47D of the Act of 2002 is amended—

- (a) in subsection (1), by substituting “Commission for Communications Regulation” for “Commission”, and
- (b) in subsection (2), by substituting “Commission for Communications Regulation” for “Commission” in each place where it occurs.

Amendment of section 47E of Act of 2002

69. Section 47E of the Act of 2002 is amended—

- (a) in subsection (1), by substituting “Commission for Communications Regulation” for “Commission”,
- (b) in subsection (2), by substituting “Commission for Communications Regulation” for “Commission”, and
- (c) in subsection (3), by substituting “Commission for Communications Regulation” for “Commission” in each place where it occurs.

Amendment of section 47F of Act of 2002

70. Section 47F of the Act of 2002 is amended by substituting “Commission for Communications Regulation” for “Commission”.

Amendment of section 47G of Act of 2002

71. Section 47G of the Act of 2002 is amended—

- (a) in subsection (1), by substituting “Commission for Communications Regulation” for “Commission” in each place where it occurs,
- (b) in subsection (2), by substituting “Commission for Communications Regulation” for “Commission” in each place where it occurs,
- (c) in subsection (3), by substituting “Commission for Communications Regulation” for “Commission”,
- (d) in subsection (4), by substituting “Commission for Communications Regulation” for “Commission”,
- (e) in subsection (6), by substituting “Commission for Communications Regulation” for “Commission” in each place where it occurs,
- (f) in subsection (8), by substituting “Commission for Communications Regulation” for “Commission”, and
- (g) in subsection (9), by substituting “Commission for Communications Regulation” for “Commission”.

Amendment of section 50 of Act of 2002

72. Section 50 of the Act of 2002 is amended—

- (a) in subsection (1), by deleting “and in good faith”, and
- (b) in subsection (3), by deleting “and in good faith”.

Amendment of section 52 of Act of 2002

73. Section 52 of the Act of 2002 is amended, in subsection (2), by deleting “, section 23(4)”.

PART 4

MEDIA MERGERS

Media Mergers

74. The Act of 2002 is amended by inserting the following Part after Part 3:

“PART 3A

MEDIA MERGERS

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.

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

- (b) notwithstanding paragraph (a), shall not be made before the Commission, or the European Commission, as the case may be, has been notified of the proposal to put the merger or acquisition 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.

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.

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.

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 subsection (8), 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

Expenses in administration of Part

28O. 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.”.

PART 5

AMENDMENTS OF ACT OF 2007

Amendment of section 2 of Act of 2007

75. Section 2 of the Act of 2007 is amended—

- (a) by substituting the following definition for the definition of “authorised officer”:

“ ‘authorised officer’ has the same meaning as it has in the *Competition and Consumer Protection Act 2014*;”,
- (b) by substituting the following definition for the definition of “consumer”:

“ ‘consumer’ means a natural person (whether in the State or not) who is acting wholly or mainly for purposes unrelated to the person’s trade, business or profession;”,
- (c) in the definition of “goods” by substituting the following paragraph for paragraph (e):

“(e) computer software, including content stored in a digital format or content stored electronically in a format which is not digital;”,
- (d) by inserting the following definition:

“ ‘relevant statutory instruments’ means the statutory instruments for the time being in force specified in Schedule 9;”,

(e) in the definition of “relevant statutory provisions”—

(i) by inserting the following paragraph after paragraph (a):

“(aa) relevant statutory instruments;”,

(ii) by substituting “(j) the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (S.I. No. 484 of 2013);” for “(i) the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (S.I. No. 484 of 2013);”, and

(iii) by inserting the following paragraph after paragraph (j):

“(k) the European Union (Consumer Information, Cancellation and Other Rights) (Amendment) Regulations 2014 (S.I. No. 250 of 2014).”,

(f) by substituting the following definition for the definition of “transactional decision”:

“ ‘transactional decision’ means, in relation to a consumer transaction, whether or not that transaction is completed, any decision by the consumer concerning whether, how or on what terms to do, or refrain from doing, any of the following:

- (a) purchase the product;
- (b) make payment in whole or in part for the product;
- (c) retain or return the product after its purchase;
- (d) dispose of the product;
- (e) exercise a contractual right in relation to the product;”.

Amendment of Part 2 of Act of 2007

76. Chapter 1 of Part 2 of the Act of 2007 is amended by inserting the following sections after section 24E:

“Arrangements in relation to the collection of information relevant to levy collection

24F. (1) The Commission may, for the purpose of obtaining any information which may be required in relation to the calculation of levies to be imposed under section 24B require persons who are subject to such levies to provide the Commission within such reasonable period as the Commission may determine, with such information as the Commission may reasonably require in relation to the calculation of the amounts of the said levies.

(2) A person who—

- (a) without reasonable excuse, fails to comply with a requirement under this section, or
- (b) in purported compliance with such a requirement provides information that he or she knows to be false or misleading in a material respect,

commits an offence and is liable on summary conviction to the fines and penalties provided in section 79.

Arrangements for the secondment of certain employees

24G. (1) In this section—

‘Bank’ means the Central Bank of Ireland;

‘secondee’ means an employee seconded from the Bank to the Commission under the arrangements referred to in subsection (2).

- (2) The Bank and the Commission may make arrangements for the secondment of employees from the Bank to the Commission for the purpose of carrying out the functions specified in *section 10(3)(j)* of the *Competition and Consumer Protection Act 2014*.
- (3) The length of any secondment period or extension to an existing secondment period shall be agreed by the chairperson of the Commission, the Governor of the Bank and the employee of the Bank.
- (4) Subject to subsection (6), a secondee may not later than 2 years after the establishment day elect to become a member of the staff of the Commission.
- (5) A secondee may continue on secondment to the Commission for as long as the chairperson of the Commission and the Governor of the Bank consent. A secondee who continues on secondment without electing to become a member of staff of the Commission continues to be an employee of the Bank and his or her terms of employment (including any term conferring a right to an increase in remuneration) continue to be those applicable to his or her employment by the Bank.
- (6) An election under subsection (4) to become a member of staff of the Commission is subject to the consent of—
 - (i) the chairperson of the Commission,
 - (ii) the Governor of the Bank,
 - (iii) the Minister for Public Expenditure and Reform, and
 - (iv) the Minister for Jobs, Enterprise and Innovation,and shall take effect immediately after the latest of those consents is given.
- (7) If a secondee elects to become a member of staff of the Commission, the terms and conditions relating to remuneration by the Commission

at the time the election takes effect shall not be less favourable than the terms and conditions relating to remuneration at the time of his or her employment by the Bank (subject to any provision in any enactment).

- (8) If a person's employment is transferred under this section, the person's previous service with the Bank is to be counted as service for the purposes of, but subject to any exceptions or exclusions in, the following Acts:
- (a) the Redundancy Payments Acts 1967 to 2012;
 - (b) the Protection of Employees (Part-Time Work) Act 2001;
 - (c) the Protection of Employees (Fixed-Term Work) Act 2003;
 - (d) the Organisation of Working Time Act 1997;
 - (e) the Terms of Employment (Information) Acts 1994 to 2012;
 - (f) the Minimum Notice and Terms of Employment Acts 1973 to 2005;
 - (g) the Unfair Dismissals Acts 1977 to 2007;
 - (h) the Maternity Protection Acts 1994 and 2004;
 - (i) the Parental Leave Acts 1998 and 2006;
 - (j) the Adoptive Leave Acts 1995 and 2005;
 - (k) the Carer's Leave Act 2001."

Amendment of section 55 of Act of 2007

77. Section 55 of the Act of 2007 is amended—

- (a) in subsection (1) by substituting the following paragraph for paragraph (o):

“(o) undertaking to provide after-sales service to consumers with whom the trader has communicated prior to a transaction in a language which is not an official language of the relevant State in which the trader is located and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction;”,

and

- (b) by deleting subsection (2).

Amendment of section 83 of Act of 2007

78. Section 83 of the Act of 2007 is amended—

- (a) in subsection (1) by substituting “If a person is charged with an offence under section 65(2) of this Act” for “If a person is indicted for an offence under this Act,”, and

(b) by deleting subsection (4).

Amendment of section 87 of Act of 2007

79. Section 87 of the Act of 2007 is amended—

(a) in subsection (1), by deleting “and in good faith”, and

(b) in subsection (3), by deleting “and in good faith”.

Amendment of section 90 of Act of 2007

80. Section 90 of the Act of 2007 is amended in paragraph (c) of subsection (1) by substituting “*section 10(3)(i) of the Competition and Consumer Protection Act 2014*” for “section 8(2)(m)”.

Insertion of Schedule 9 to Act of 2007

81. The Act of 2007 is amended by inserting the following Schedule after Schedule 8:

“SCHEDULE 9

Section 2

RELEVANT STATUTORY INSTRUMENT

Number and Year (1)	Citation (2)
S.I. No. 63 of 2005	European Communities (Distance Marketing of Consumer Financial Services) (Amendment) Regulations 2005
S.I. No. 376 of 2007	European Communities (Labelling, Presentation and Advertising of Foodstuffs) (Amendment) Regulations 2007
S.I. No. 587 of 2007	European Communities (Plastics and other materials) (Contact with food) Regulations 2007
S.I. No. 774 of 2007	European Communities (Misleading and Comparative Marketing Communications) Regulations 2007
S.I. No. 808 of 2007	European Communities (Labelling, Presentation and Advertising of Foodstuffs) (Amendment) (No. 2) Regulations 2007
S.I. No. 316 of 2008	European Communities (Cooperation between National Authorities Responsible for the Enforcement of Consumer Protection Laws) (Amendment) Regulations 2008
S.I. No. 407 of 2008	European Communities (Machinery) Regulations 2008
S.I. No. 424 of 2008	European Communities (Labelling, Presentation and Advertising of Foodstuffs) (Amendment) Regulations 2008

Number and Year (1)	Citation (2)
S.I. No. 566 of 2008	European Communities (Prepacked Products) Regulations 2008
S.I. No. 61 of 2009	European Communities (Labelling, Presentation and Advertising of Foodstuffs) (Amendment) Regulations 2009
S.I. No. 88 of 2009	European Communities (Plastics and other materials) (Contact with food) (Amendment) Regulations 2009
S.I. No. 383 of 2009	European Communities (Payment Services) Regulations 2009
S.I. No. 463 of 2009	European Communities (Plastics and other materials) (Contact with food) (Amendment) (No. 2) Regulations 2009
S.I. No. 1 of 2010	European Communities (Placing on the Market of Pyrotechnic Articles) Regulations 2010
S.I. No. 281 of 2010	European Communities (Consumer Credit Agreements) Regulations 2010
S.I. No. 416 of 2010	European Communities (Placing on the Market of Pyrotechnic Articles) (Amendment) Regulations 2010
S.I. No. 555 of 2010	European Communities (Court Orders for the Protection of Consumer Interests) Regulations 2010
S.I. No. 105 of 2011	European Communities (Plastics and other materials) (Contact with Foodstuffs) (Amendment) Regulations 2011
S.I. No. 310 of 2011	European Communities (Machinery) (Amendment) Regulations 2011
S.I. No. 333 of 2011	European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011
S.I. No. 337 of 2011	European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011
S.I. No. 485 of 2012	European Communities (Cooperation between National Authorities Responsible for the Enforcement of Consumer Protection Laws) (Amendment) Regulations 2012
S.I. No. 13 of 2013	European Communities (Safety of Toys) (Amendment) Regulations 2013
S.I. No. 122 of 2013	European Communities (Cooperation between National Authorities Responsible for the Enforcement of Consumer Protection Laws) (Amendment) Regulations 2013
S.I. No. 160 of 2013	European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations 2013

Number and Year (1)	Citation (2)
S.I. No. 200 of 2013	European Communities (Cooperation between National Authorities Responsible for the Enforcement of Consumer Protection Laws) (Amendment) (No. 2) Regulations 2013
S.I. No. 373 of 2013	European Communities (Placing on the Market of Pyrotechnic Articles) (Amendment) Regulations 2013
S.I. No. 381 of 2013	European Communities (Labelling, Presentation and Advertising of Foodstuffs) (Amendment) Regulations 2013

”.

Miscellaneous consequential amendments to Act of 2007**82.** The Act of 2007 is amended—

- (a) in section 24A, by substituting “*section 10(3)(j)* of the *Competition and Consumer Protection Act 2014*” for “section 8(3)(ha)”,
- (b) in subsection (2) of section 24B, by substituting “*section 10(3)(j)* of the *Competition and Consumer Protection Act 2014*” for “section 8(3)(ha)”, and
- (c) in subsections (1) and (2) of section 24C by substituting “*section 10(3)(j)* of the *Competition and Consumer Protection Act 2014*” for “section 8(3)(ha)” in each place where it occurs.

PART 6**GROCERY GOODS****Grocery goods undertakings****83.** The Act of 2007 is amended in Part 3 by inserting the following Chapter after Chapter 4:**“CHAPTER 5***Grocery Goods Undertakings***Interpretation****63A.** In this Chapter—

‘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;

‘contravention notice’ has the meaning assigned to it by section 63D;

‘grocery goods’ means—

(a) any food or drink that is intended to be sold for human consumption and includes—

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

(ii) 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 that is intended to be sold by a retailer as such an additive, ingredient or processing aid, and

(iii) intoxicating liquors,

but does not include food or drink served or supplied on the premises of a grocery goods undertaking in the course of providing catering, restaurant or take-away services or any similar hospitality services, or intoxicating liquor served or supplied for consumption on the premises of a grocery goods undertaking,

(b) household cleaning products,

(c) toiletries, and

(d) garden plants and garden plant bulbs;

‘grocery goods undertaking’ means an undertaking that is engaged for gain in the production, supply, distribution, wholesale or retail of grocery goods, whether or not the undertaking is engaged in the direct sale of those goods to the public;

‘marketing costs’ means costs relating to the marketing of grocery goods, including costs relating to—

(a) visits to a supplier by employees or representatives of a retailer or wholesaler directly involved in the purchase of grocery goods,

(b) artwork or packaging design,

(c) consumer or marketing research,

(d) marketing consequent upon or related to the opening or refurbishment of a retail or wholesale premises, and

(e) hospitality for the staff or representatives of a retailer or wholesaler,

in relation to the goods concerned;

‘payment’ means any compensation, consideration, allowance or inducement in any form (monetary or otherwise) and includes more favourable contractual terms;

‘promotion’ means an offer for sale at an introductory or a reduced retail price or with some other benefit to consumers that is intended to subsist

for a specified period;

‘relevant grocery goods undertaking’ means a grocery goods undertaking engaged in the production, supply, distribution, wholesale or retail of grocery goods in the State, that has, or is a member of a group of related undertakings that has, an annual worldwide turnover of more than €50 million;

‘related undertaking’, in relation to a person (the first-mentioned person), means—

- (a) if the first-mentioned person is a company, another company that is related within the meaning of section 140(5) of the Companies Act 1990,
- (b) a partnership of which the first-mentioned person is a member,
- (c) if the businesses of the first-mentioned person and another person have been so carried on that the separate business of each of them, or a substantial part thereof, is not readily identifiable, that other person,
- (d) if the decision as to how and by whom the businesses of the first-mentioned person and another person shall be managed can be made either by the same person or by the same group of persons acting in concert, that other person,
- (e) a person who performs a specific and limited purpose by or in connection with the business of the first-mentioned person, or
- (f) if provision is required to be made for the first-mentioned person and another person in any consolidated accounts compiled in accordance with the Seventh Council Directive 83/349/EEC of 13 June 1983², that other person;

‘retailer’ means a grocery goods undertaking that offers for sale, sells or resells grocery goods directly, or indirectly through franchise arrangements, to the public in the State;

‘shrinkage’ means losses that occur as a result of theft, loss or accounting error, after goods are delivered by a grocery goods undertaking to a retailer’s premises;

‘supplier’ means a grocery goods undertaking carrying on (or actively seeking to carry on) a business in the direct supply to any wholesaler or retailer of grocery goods for resale in the State, and includes any such undertaking whether located in the State or not;

‘wastage’ means grocery goods that become unfit for sale after their delivery by a grocery goods undertaking to a retailer or a wholesaler;

‘wholesaler’ means a grocery goods undertaking that purchases goods

² O.J. No. L 193, 18.7.1983, p.1.

from a supplier for resale to a retailer.

Regulations in respect of grocery goods undertakings

63B. (1) Where the Minister considers it to be appropriate having regard to—

- (a) the desirability of the promotion of competitive trade between grocery goods undertakings,
- (b) the interests of consumers of grocery goods, in particular in relation to quality, value for money and access to choice,
- (c) the importance of grocery goods undertakings conducting their trading relationships in good faith and in a fair, open and transparent manner,
- (d) the importance of maintaining freedom of contract between grocery goods undertakings,
- (e) the importance of providing grocery goods undertakings with reasonable certainty in respect of the risks and costs of trading,
- (f) the economic importance to the State of the production, supply, distribution, wholesale and retail sectors in respect of grocery goods,
- (g) the impact on the development and maintenance of strong, innovative, efficient and competitive production and supply bases in the grocery goods sector, and
- (h) the impact on the development and maintenance of a competitive retail sector in respect of grocery goods,

he or she may, having consulted with the Commission and such other persons (including relevant grocery goods undertakings and other grocery goods undertakings) as he or she considers appropriate, make regulations in relation to particular aspects of the commercial relationships between relevant grocery goods undertakings and other grocery goods undertakings, in relation to the sale or supply of grocery goods.

(2) Notwithstanding the generality of subsection (1), regulations made under that subsection may—

- (a) specify the form of contract to be entered into by a grocery goods undertaking for the sale or supply of grocery goods to, or the purchase or receipt of goods from, a relevant grocery goods undertaking,
- (b) specify the ways in which a contract for the sale or supply of grocery goods referred to in paragraph (a) may be—
 - (i) varied,
 - (ii) terminated, or

- (iii) renewed,
- (c) specify the circumstances in which arrangements relating to the supply or delivery, including the frequency and timing in relation to the supply or delivery, of grocery goods may be varied,
- (d) specify the manner in which certain terms and conditions are to be incorporated into contracts for the sale or supply of grocery goods referred to in paragraph (a), including terms and conditions in relation to—
 - (i) payment for grocery goods supplied to relevant grocery goods undertakings,
 - (ii) the ordering, supply, price, marketing and sale of goods on promotion and the duration of the promotion,
 - (iii) where a contract provides for payment arising from the negligence or fault of the supplier, the circumstances in which wastage that occurs at the premises of a relevant grocery goods undertaking is to be considered as due to the negligence or fault of the supplier, and
 - (iv) the circumstances and manner in which a relevant grocery goods undertaking may require a grocery goods undertaking to make any payment, either directly or indirectly, towards the resolution of a customer complaint,
- (e) provide that a relevant grocery goods undertaking shall not enter into or renew any contract for the sale or supply of grocery goods referred to in paragraph (a) unless terms and conditions specified in regulations made under this section in relation to the following form part of the contract:
 - (i) the conditions under which a relevant grocery goods undertaking may, or may not, directly or indirectly require a supplier or retailer to obtain any goods or services from a third party from whom the relevant grocery goods undertaking receives payment for this arrangement;
 - (ii) the extent of the liability of a party to a contract for the sale or supply of grocery goods referred to in paragraph (a) for delays or failures in performance of the contract resulting from circumstances beyond the reasonable control of that party, and the actions that may or shall be taken by the parties to the contract in such circumstances,
- (f) limit the circumstances in which a relevant grocery goods undertaking may seek payment from a grocery goods undertaking in respect of—
 - (i) shrinkage,

- (ii) wastage, or
- (iii) marketing costs,
- (g) specify the circumstances in which a relevant grocery goods undertaking may, or may not, seek payment from a grocery goods undertaking for the purchase of grocery goods for resale by the relevant grocery goods undertaking from the grocery goods undertaking,
- (h) provide for the manner in which forecasts for the supply of grocery goods are to be prepared and for the communication of the basis on which they are prepared,
- (i) specify the circumstances in which a relevant grocery goods undertaking that is a retailer or wholesaler may, or may not, seek payment from a supplier to retain shelf space, or to secure better positioning on shelves, or an increase in the allocation of shelf space, for the grocery goods of that supplier,
- (j) prohibit a relevant grocery goods undertaking from directly or indirectly compelling a grocery goods undertaking to make any payment or grant any allowance—
 - (i) in respect of a promotion of the grocery goods of a grocery goods undertaking in the premises of the relevant grocery goods undertaking,
 - (ii) for the advertising or display of the grocery goods of the grocery goods undertaking in the premises of the relevant grocery goods undertaking, or
 - (iii) to retain shelf space, or to secure better positioning on shelves, or an increase in the allocation of shelf space, for the grocery goods of that grocery goods undertaking,
- (k) specify arrangements regarding promotions of grocery goods and related activities and the circumstances in which such arrangements shall be included in the contract for the sale or supply of grocery goods referred to in paragraph (a),
- (l) provide for limitations on the obligation of grocery goods undertakings to participate in promotions by relevant grocery goods undertakings or similar activities in relation to grocery goods,
- (m) prohibit a relevant grocery goods undertaking from requiring a grocery goods undertaking to obtain any goods or services from a third party from whom the relevant grocery goods undertaking receives payment for this arrangement,
- (n) specify arrangements for the preparation by relevant grocery goods undertakings of an annual compliance report in respect of compliance with regulations made under this section, and for the

submission of this report to the Commission,

- (o) provide for the maintenance of records, and specify the records to be maintained, by relevant grocery goods undertakings in relation to the sale or supply of grocery goods to or from grocery goods undertakings,
 - (p) provide for the nature or type of information, documents or records that shall be maintained and kept by relevant grocery goods undertakings, and the length of time that such information, documents or records shall be kept,
 - (q) specify the manner and timeframe in which payments for grocery goods supplied to relevant grocery goods undertakings are to be made,
 - (r) provide for the designation and training of staff in relevant grocery goods undertakings to be responsible for compliance with any regulations made under this section and the dissemination of information in relation to the implementation of such regulations to other staff in the undertaking, and
 - (s) contain transitional provisions relating to the contracts for the sale or supply of grocery goods referred to in paragraph (a) to which the regulations, or different provisions of the regulations, will apply and any other relevant transitional provisions.
- (3) Subject to this section, when making regulations under this section, the Minister may prescribe one or more classes (whether retailers, suppliers or wholesalers) of relevant grocery goods undertakings or grocery goods undertakings, or one or more classes of grocery goods, to which one or more of the regulations shall apply.
- (4) Regulations under this section shall only apply to contracts entered into or renewed on or after the date on which the regulations come into operation.
- (5) The Minister may, after he or she makes regulations under this section, and after consultation with the Commission and such other persons (including relevant grocery goods undertakings and other grocery goods undertakings) as he or she considers appropriate, prepare and make guidelines for the purpose of providing practical guidance as regards the operation of, and compliance with, this Chapter and any regulations made under this Chapter.
- (6) Guidelines issued under subsection (5) shall—
- (a) be published by the Minister in such manner as he or she considers appropriate,
 - (b) be published by the Commission in such manner as it considers appropriate, and

- (c) be made available for inspection by any person free of charge during ordinary office hours at the principal office of the Commission.

Inspections and investigations by the Commission

- 63C.** (1) The Commission may from time to time carry out such and so many inspections of relevant grocery goods undertakings as it considers necessary to monitor compliance with regulations under section 63B.
- (2) In addition to carrying out inspections under subsection (1), the Commission may, where it has reasonable grounds to believe that a relevant grocery goods undertaking may be failing or may have failed to comply with regulations under section 63B, investigate any complaints it receives in relation to such an alleged failure.
 - (3) The Commission may decide not to investigate a complaint referred to in subsection (2), or to discontinue an investigation of a complaint, on the grounds that—
 - (a) the complaint is frivolous or vexatious or was not made in good faith,
 - (b) the subject-matter of the complaint is trivial,
 - (c) the conduct complained of occurred at too remote a time to justify investigation, or
 - (d) there is or was available to the complainant an alternative and satisfactory means of redress in relation to the conduct complained of.
 - (4) The Commission may make preliminary inquiries for the purpose of deciding whether a complaint should be investigated and may in writing request the complainant to provide further written particulars of the complaint within a period specified by the Commission in the request.
 - (5) The Commission may decide not to continue to investigate a complaint if the complainant fails to comply with a request for further written particulars within the time specified in the request under subsection (4).
 - (6) As soon as practicable after deciding not to investigate a complaint, or to discontinue an investigation of a complaint, the Commission shall inform the complainant in writing of the decision and the reasons for the decision.

Contravention notices

- 63D.** (1) Where, on foot of an investigation carried out by the Commission under section 63C, the Commission is of the opinion that a relevant grocery goods undertaking is contravening or has contravened any provision of regulations made under section 63B that is stated in those

regulations to be a penal provision, the Commission may instruct an authorised officer to serve, personally or by post, a notice (in this Chapter referred to as a ‘contravention notice’) on the relevant grocery goods undertaking.

(2) A contravention notice shall—

- (a) state that the Commission is of the opinion that the relevant grocery goods undertaking is contravening or has contravened regulations under section 63B,
- (b) state the reason for that opinion,
- (c) identify the relevant penal provision of the regulations in respect of which that opinion is held,
- (d) direct the relevant grocery goods undertaking to remedy the contravention by a date specified in the notice that shall not be earlier than the end of the period within which an appeal may be made under subsection (6),
- (e) include information regarding the making of an appeal under subsection (6),
- (f) include any other requirement that the Commission considers appropriate, in order to remedy the contravention, and
- (g) be signed and dated by a person duly authorised by the Commission to do so.

(3) A contravention notice may include directions—

- (a) as to the measures to be taken to remedy any contravention or matter to which the notice relates, or to otherwise comply with the notice, and
 - (b) to bring the notice to the attention of any person who may be affected by it.
- (4) A relevant grocery goods undertaking on whom a contravention notice has been served who is of the opinion that the contravention notice has been complied with shall confirm in writing to the Commission that the matters referred to in the notice have been so remedied.
- (5) Where a relevant grocery goods undertaking on whom a contravention notice has been served confirms in writing to the Commission in accordance with subsection (4) that the matters referred to in the contravention notice have been remedied, the Commission shall, on being satisfied that the matters have been so remedied, not later than one month from receipt of such confirmation, give notice to the relevant grocery goods undertaking concerned of compliance with the contravention notice.
- (6) A relevant grocery goods undertaking on which a contravention notice

has been served may, within 21 days beginning on the day on which the notice is served, appeal against the notice to a judge of the Circuit Court in the circuit court area in which the notice was served and in determining the appeal the judge may, if he or she is satisfied that it is reasonable to do so, confirm, vary or cancel the notice.

- (7) A relevant grocery goods undertaking who appeals under subsection (6) shall at the same time notify the Commission of the appeal and the grounds for the appeal and the Commission shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.
- (8) Where an appeal under subsection (6) is made, and the contravention notice is not cancelled, the notice as confirmed or varied shall take effect on the later of—
 - (a) the day next following the day on which the notice is confirmed or varied on appeal or the appeal is withdrawn, or
 - (b) the day specified in the notice.
- (9) Where there is no appeal under subsection (6), the contravention notice shall take effect on the later of—
 - (a) the end of the period for making an appeal, or
 - (b) the day specified in the notice.
- (10) The Commission may—
 - (a) withdraw a contravention notice at any time, or
 - (b) where no appeal is made or pending under subsection (6), extend the period specified under subsection (2)(d).

Enforcement

- 63E.** (1) A relevant grocery goods undertaking that contravenes a requirement in a contravention notice commits an offence and is liable—
- (a) on summary conviction, to the fines and penalties provided for in section 79, or
 - (b) on conviction on indictment, to the fines and penalties provided for in section 79.
- (2) A relevant grocery goods undertaking that, without reasonable excuse, contravenes a provision of regulations under section 63B that is declared in the regulations to be a penal provision commits an offence and is liable—
- (a) on summary conviction, to the fines and penalties provided for in section 79, or
 - (b) on conviction on indictment, to the fines and penalties provided for in section 79.

- (3) Any person who is aggrieved in consequence of a relevant grocery goods undertaking's failure to comply with any provision of regulations under section 63B or a contravention notice shall have a right of action under this subsection for relief against that relevant grocery goods undertaking.
- (4) An action under subsection (3) may be brought in the Circuit Court.
- (5) Any relief by way of damages, including exemplary damages, for an action under subsection (3) 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.”.

Amendment of section 86 of Act of 2007

- 84.** Section 86 of the Act of 2007 is amended by substituting “Subject to section 86A(4), the Commission”, for “The Agency”.

Commission may publish certain information in respect of grocery goods undertakings

- 85.** The Act of 2007 is amended in Part 5 by inserting the following Chapter after Chapter 6:

“CHAPTER 6A

Publication of Names (Grocery Goods Undertakings List)

Commission may publish certain information in respect of grocery goods undertakings

- 86A.** (1) The Commission shall keep and maintain a list (the ‘grocery goods undertakings list’) of names and addresses of the following persons, together with a description of their trade, business or profession and the particulars described in subsection (2):
- (a) any person on whom a fine or other penalty was imposed by a court by or under Chapter 5 of Part 3;
 - (b) any person against whom a contravention notice takes effect under section 63D(8) or (9).
- (2) The grocery goods undertakings list shall specify, in relation to each person named in the list, any particulars the Commission considers appropriate in respect of the following:
- (a) the matter occasioning any fine or penalty imposed on the person by the court and the amount or nature of that fine or penalty;
 - (b) the matter occasioning any order made by the court against the person and the nature of that order;
 - (c) the matter occasioning any contravention notice served on the person under this Act.

- (3) The Commission may, at any time and in any form or manner the Commission considers appropriate, publish or cause to be published all or any part of the grocery goods undertakings list.
- (4) An entry in the grocery goods undertakings list in relation to a person referred to in paragraph (a) or (b) of subsection (1) shall not be included in the consumer protection list under section 86.”.

Res judicata

86. (1) Where, in proceedings under Chapter 5 (inserted by *section 83*) of Part 3 of the Act of 2007, a court finds, as part of a final decision in relation to the matters to which those proceedings relate, that a relevant grocery goods undertaking contravened—

- (a) a provision of regulations made under section 63B of that Act, or
- (b) a requirement in a contravention notice,

then, for the purposes of any subsequent proceedings (other than proceedings for an offence) under that Chapter, the finding shall be *res judicata* (whether or not the parties to the said subsequent proceedings are the same as the parties to the first-mentioned proceedings).

(2) In this section—

“contravention notice” has the same meaning as it has in Chapter 5 of Part 3 of the Act of 2007;

“finding” includes a conviction for an offence, whether or not that conviction is consequent upon a plea of guilty by an accused person;

“relevant grocery goods undertaking” has the same meaning as it has in Chapter 5 of Part 3 of the Act of 2007.

PART 7

MISCELLANEOUS

Amendment of Central Bank Act 1942

87. The Central Bank Act 1942 is amended—

- (a) in section 2, by deleting the definition of “Agency”,
- (b) in section 5A, (amended by section 14 of the Central Bank Reform Act 2010)—
 - (i) by substituting “the Competition and Consumer Protection Commission” for “the Agency” in each place where it occurs,
 - (ii) by substituting the following subsection for subsection (5):

“(5) The functions of the Competition and Consumer Protection Commission referred to in subsection (4) are the following functions,

namely, functions under—

- (a) *subsections (1), (5), (6) and (8) of section 10 of the Competition and Consumer Protection Act 2014* in relation to—
 - (i) sections 41 to 56 (other than section 50) of the Consumer Protection Act 2007, and
 - (ii) the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 and 2000,
- (b) *sections 34, 35 and 36 of the Competition and Consumer Protection Act 2014*, and
- (c) sections 71, 72, 73, 75, 81, 82, 84, 86, 88 and 90 of the Consumer Protection Act 2007.”,
- (iii) in subsection (6), by inserting “and the *Competition and Consumer Protection Act 2014*” after “Consumer Protection Act 2007”,
- (iv) in subsection (7)(a), by substituting “under *section 19 of the Competition and Consumer Protection Act 2014*” for “under section 21 of the Consumer Protection Act 2007”,
- (v) in subsection (9), by inserting “or the *Competition and Consumer Protection Act 2014*” after “Consumer Protection Act 2007” and by substituting “under *section 19 of the Competition and Consumer Protection Act 2014*” for “under section 21 of that Act”,
- (c) in section 5C (inserted by section 14 of the Central Bank Reform Act 2010), by substituting the following subsection for subsection (3):
 - “(3) Subject to section 33AK, if the Competition and Consumer Protection Commission is of the opinion that information obtained by the Bank pursuant to subsections (1) and (2) is relevant to the exercise of that Commission’s functions under *section 10(3)(j) of the Competition and Consumer Protection Act 2014*, the Bank shall provide the requested information to the Commission at the Commission’s request.”,
- (d) in section 33AK—
 - (i) in subsection (3)(a), by deleting paragraph (iva), and
 - (ii) in subsection (5), by substituting the following paragraph for paragraph (al):
 - “(al) to the Competition and Consumer Protection Commission, if the confidential information is required for the performance of the Commission’s functions, or”,
- (e) in section 61E, by deleting paragraph (d) of subsection (1),
- (f) in section 61H, by substituting the following paragraph for paragraph (c) of subsection (4):
 - “(c) the Competition and Consumer Protection Commission;”,

and

(g) in Part 1 of Schedule 2, by inserting the following item after item 42:

“

43	No. ____ of 2014	<i>Competition and Consumer Protection Act 2014</i>	Parts 1 and 2 (other than section 37)
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Amendment of Personal Injuries Assessment Board Act 2003

88. Section 56 of the Personal Injuries Assessment Board Act 2003 is amended by substituting the following subsection for subsection (6):

“(6) The chief executive, and a person nominated for such appointment by the chairperson of the Competition and Consumer Protection Commission, shall each be a member of the Board.”.

Amendment of Communications (Retention of Data) Act 2011

89. The Communications (Retention of Data) Act 2011 is amended—

(a) in section 1, by inserting the following definition:

“ ‘competition offence’ means an offence under section 6 of the Competition Act 2002, that is an offence involving an agreement, decision or concerted practice to which subsection (2) of that section applies;”,

(b) in section 6—

(i) by inserting the following subsection after subsection (3):

“(3A) A member of the Competition and Consumer Protection Commission may request a service provider to disclose to that member data retained by the service provider in accordance with section 3 where that member is satisfied that the data are required for the prevention, detection, investigation or prosecution of a competition offence.”,

and

(ii) in subsection (4), by substituting “subsection (1), (2), (3) or (3A)” for “subsection (1), (2) or (3)”,

(c) in section 9—

(i) by inserting the following subsection after subsection (3):

“(3A) The Competition and Consumer Protection Commission shall prepare and submit a report to the Minister for Jobs, Enterprise and Innovation in respect of data specified in Schedule 2 that were the subject of all disclosure requests made under section 6(3A) during the relevant period.”,

- (ii) in subsection (4), by substituting “subsection (1), (2), (3) or (3A)” for “subsection (1), (2) or (3)”,
- (iii) by inserting the following subsection after subsection (7):
 - “(7A) The Minister for Jobs, Enterprise and Innovation shall review the report submitted under subsection (3A) and shall forward it to the Minister, along with any comments that he or she may have with respect to it.”,
- and
- (iv) in subsection (8), by substituting “subsections (6), (7) and (7A)” for “subsection (6) and (7)”,
- (d) in section 10, by substituting the following paragraph for paragraph (a) of subsection (5):
 - “(a) direct An Garda Síochána, the Permanent Defence Force, the Revenue Commissioners or the Competition and Consumer Protection Commission to destroy the relevant data and any copies of the data,”,
- and
- (e) in section 12, by substituting the following paragraph for paragraph (b) of subsection (1):
 - “(b) ascertain whether An Garda Síochána, the Permanent Defence Force, the Revenue Commissioners and the Competition and Consumer Protection Commission are complying with its provisions, and”.

Amendment of Schedule 1 to Criminal Justice Act 2011

- 90.** Schedule 1 to the Criminal Justice Act 2011 is amended by inserting the following paragraph after paragraph 30:

“Competition offence

- 31.** An offence under section 6 of the Competition Act 2002, that is an offence involving an agreement, decision or concerted practice to which subsection (2) of that section applies.”.

Amendment of European Communities (Cross-Border Mergers) Regulations 2008

- 91.** The European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008) are amended—

- (a) in Regulation 10(2)(c), by inserting the following clause after clause (i):
 - “(ia) a determination by the Minister for Communications, Energy and Natural Resources under section 28D(1)(a) or (b) or section 28G(1)(a) or (c) (inserted by *section 74* of the *Competition and*

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Consumer Protection Act 2014) of the Competition Act 2002”,

and

(b) in Regulation 16(1), by substituting the following paragraph for paragraph (d):

“(d) the relevant period referred to in section 19(1)(d) of that Act has elapsed without the Competition and Consumer Protection Commission having made a determination under section 22 of that Act in relation to the merger or acquisition.”.