



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Administrative Leniency Policy

In respect of investigations by ComReg under the
Competition Act 2002

Reference:	ComReg 23/88
Version:	Final
Date:	21/09/2023

Preface

In accordance with the Competition Act 2002 (as amended) (the “Competition Act 2002”), the term competent authority includes the Competition and Consumer Protection Commission (“CCPC”) and the Commission for Communications Regulation (“ComReg”) (where the CCPC and ComReg have agreed that in relation to a particular matter, ComReg should perform competition functions or the Minister for Enterprise, Trade and Employment has made a determination that ComReg should exercise those functions).

For further information on how ComReg and the CCPC interact on the issue of leniency in the electronic communications sector, please see the Joint Policy on Leniency in the Electronic Communications Sector (“Joint Policy”) available on ComReg’s website at <https://www.comreg.ie/publications/>.

The ComReg Administrative Leniency Policy (“ComReg ALP” or “this Policy”) outlines ComReg’s policy in relation to applications for leniency from undertakings for disclosing their participation in cartels and outlines the requirements applicant undertakings must meet in order to qualify for leniency in accordance with the Competition Act 2002 and specifically Part 2E thereof (as inserted by the Competition (Amendment) Act 2022 (the “2022 Act”)).¹ This Policy only applies where the leniency application is made by an undertaking in relation to a cartel which relates to the electronic communications sector (meaning in respect of the provision of an electronic communications service or an electronic communications network or associated facility). Where a cartel does not relate to the electronic communications sector, only the CCPC’s Administrative Leniency Policy will apply.²

Parts 1 to 5 of this Policy are prepared in accordance with, *inter alia*, section 15AI(2), 15AJ(2), 15AL(2), and 15AM(3) of the Competition Act 2002 and give general guidance regarding how ComReg operates its leniency programme for cartels. Part 6 of this Policy is prepared in accordance with Section 15AP(1) of the 2002 Act and gives general guidance regarding how ComReg operates its leniency programme for resale price maintenance (“RPM”). This Policy will take effect on the day that Part 2E of the 2002 Act comes into operation.

The Competition Act 2002, as amended by the 2022 Act, provides that ComReg may impose administrative financial sanctions on undertakings and associations of undertakings for, *inter alia*, cartel offences (i.e., infringements of section 4 of the Competition Act 2002 and/or Article 101 Treaty on the Functioning of the European Union (“TFEU”)), of up to €10 million or 10% of total worldwide turnover (whichever is greater) of the undertaking or association of undertakings in the financial year

¹ See Sections 15AL(2) and 15AJ(2) 25 of the Competition Act 2002.

² [CCPC’s ALP](#).

preceding ComReg's decision.³

The term "leniency", in the context of this Policy, refers to both immunity from administrative financial sanctions, as well as a reduction of any such administrative financial sanctions, which would otherwise have been imposed by ComReg on an undertaking participating in a cartel in contravention of section 4 of the Competition Act 2002 and/or Article 101 TFEU.

This Policy, pursuant to Part 2E of the Competition Act 2002 and modelled on the European Competition Network's revised Model Leniency Programme, encourages self-reporting of unlawful cartels by cartel participants at the earliest possible stage in return for leniency. ComReg may grant leniency to an undertaking, upon application, in exchange for the voluntary disclosure of information regarding cartel conduct which satisfies specific criteria prior to or during ComReg's investigation, as further set out in this Policy. ComReg may grant leniency to a participant in RPM as outlined in Part 6 of this Policy.

This Policy is separate to and in addition to the CCPC's Administrative Leniency Policy ("CCPC ALP") and the Cartel Immunity Programme, which outlines the joint policy of both the CCPC and the Director of Public Prosecutions ("DPP") ("CIP")⁴ in considering applications for immunity from prosecution for criminal cartel offences under the Competition Act 2002.⁵

Potential leniency applicants are strongly advised to review the provisions of this Policy, the CCPC ALP, the CIP and the Joint Policy and to seek legal advice.

This Policy will be reviewed from time to time and published on ComReg's website.

1. Introduction

- 1.1 This Policy sets out ComReg's approach to applications for leniency received in respect of undertakings which are participating or have participated in a cartel in the electronic communications sector.
- 1.2 ComReg may also extend this Policy to cover applications for leniency in respect of infringements other than cartels. ComReg has identified one such infringement, resale price maintenance ("RPM") and sets out below in Part 6 how this Policy applies to RPM.

³ See Section 15AA and 15AC of the Competition Act 2002.

⁴ The CIP is available on the websites of both the CCPC (<https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/02/2015-01-20-Revised-CIP-Final.pdf>) and the DPP (<https://www.dppireland.ie/publication-category/cartel-immunity-programme/>)

⁵ ComReg does not at present have in place a criminal immunity programme.

- 1.3 An undertaking is 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.⁶
- 1.4 A cartel is an agreement or concerted practice between two or more competing undertakings aimed at coordinating their competitive behaviour on the market or influencing the relevant parameters of competition through practices, including the fixing or coordination of purchase or selling prices or other trading conditions, including in relation to intellectual property rights; the allocation of production or sales quotas; the sharing of markets and/or customers; bid-rigging⁷; restrictions of imports or exports; or anti-competitive actions against other competing undertakings.⁸
- 1.5 Cartels are prohibited by section 4 of the Competition Act 2002 and Article 101 of the TFEU. ComReg treats all instances of cartel conduct extremely seriously. Cartel conduct has severely negative consequences for consumers, businesses and the economy in general, as it causes them to pay more for goods and/or services than they otherwise would have paid. Cartels are particularly harmful due to their secret nature and can in general be seen as conspiracies against consumers and the public interest in having competitive markets.
- 1.6 As set out in the Preface, the term leniency in this Policy refers to both immunity from administrative financial sanctions and a reduction of administrative financial sanctions. It is important to note that: i) immunity from administrative financial sanctions, under this Policy, is only available to the first participant in a given cartel that applies for leniency; and ii) a possible reduction of up to 50% of any administrative financial sanctions, that would otherwise be imposed, is available to a second or subsequent participant in the same cartel that applies for leniency. In both instances the particular applicant undertaking must satisfy all the requirements as set out in this Policy.
- 1.7 In this Policy, the term leniency refers to a grant of conditional leniency in relation to administrative financial sanctions by ComReg unless otherwise specified. This means that even where ComReg has granted leniency under this Policy, such grant of leniency is conditional in that it may be withdrawn by ComReg, including where the applicant fails to comply with the leniency conditions, as set out in this Policy, the Competition Act 2002 and/or as may be specified by ComReg on a case by case basis.
- 1.8 This Policy sets out a framework for rewarding cooperation with a cartel investigation. Any undertaking may apply for leniency under this Policy, including any undertaking that has materially facilitated the formation or operation of a cartel, even where such

⁶ See Section 3(1) of the Competition Act 2002.

⁷ Bid-rigging is defined in Section 4(11) of the Competition Act 2002 as inserted by Section 5 of the 2022 Act.

⁸ See Section 3(1) of the Competition Act 2002 as amended by Section 4 of the 2022 Act.

undertaking is not engaged in the same line of business as the cartel.

- 1.9 In accordance with the Joint Policy operated jointly by the CCPC and ComReg, a single queue system in relation to applications for leniency for all cartels (whether or not they relate to the electronic communications sector) will be operated by the CCPC. The single queue system avoids procedural issues that may arise in respect of the making of a leniency application in the electronic communications sector, where both the CCPC and ComReg are competent authorities. Under the single queue system agreed between the CCPC and ComReg, any application for leniency for a cartel will be made only to the CCPC as provided for in the Joint Policy. Any application shall be made by calling the CCPC's immunity and leniency phone (+353 87 763 1378).
- 1.10 Undertakings wishing to apply for leniency are referred to the Competition Act 2002 and the TFEU and may contact the CCPC's immunity and leniency phone (+353 87 763 1378) if they have any queries relating to how to apply for leniency. This Policy does not constitute legal advice and does not in any way affect the right of any potential applicant to obtain legal advice and/or arrange legal representation.

Obtaining Leniency

- 1.11 Applications for leniency under this Policy must be made to the CCPC only. After the CCPC has received an application for leniency, allocated a provisional marker and the marker has been perfected, the CCPC and ComReg will decide whether a particular cartel matter shall be allocated to the CCPC or ComReg in accordance with the Joint Policy and, in the event of the case being allocated to the latter, ComReg may then decide to grant leniency to an applicant pursuant to Part 2E of the Competition Act 2002 where the conditions set out in the paragraphs below are fulfilled.

Immunity from administrative financial sanctions

- 1.12 ComReg may grant leniency, in the form of immunity from administrative financial sanctions, if the applicant is the first participant in a cartel that makes an application in line with this Policy and complies with the conditions, including those of the Competition Act 2002 and this Policy, as follows:

Type 1A

- 1.13 ComReg may grant an undertaking immunity from any administrative financial sanction which would otherwise have been imposed where:
- a. the undertaking is the first undertaking in an alleged cartel to submit evidence which, in ComReg's view⁹, will enable ComReg to carry out searches in connection with an alleged cartel under section 39(3B)(a) of the Communications Regulation Act 2002 ("CRA 2002") (or would enable the CCPC to carry out searches in connection with the alleged cartel under section 37 of the Competition and Consumer Protection Act 2014 ("CCPA 2014"));
 - b. ComReg and the CCPC did not, at the time of receipt of the leniency application, already have sufficient evidence to carry out such a search, or sufficient evidence to seek a court warrant for such a search, or had not already carried out a search in connection with the alleged cartel under section 39(3B)(a) of the CRA 2002 or section 37 of the CCPA 2014 (together with sub-paragraph (a), "the Type 1A Evidential Requirement"); and
 - c. the undertaking satisfies the general conditions for leniency set out at paragraph 1.22 below which follow those set out in section 15AK of the Competition Act 2002 (the "General Conditions for Leniency").

Type 1B

- 1.14 In cases where Type 1A immunity is not available (for example, where ComReg or the CCPC has already carried out a search in connection with the alleged cartel

⁹ ComReg will evaluate whether this condition would have been fulfilled at the time the leniency application was submitted to the CCPC in accordance with the Joint Policy.

under section 39 of the CRA 2002 or section 37 of the CCPA 2014 and/or already has in its possession sufficient evidence to carry out such a search), ComReg may grant an undertaking Type 1B immunity from any administrative financial sanctions which would otherwise have been imposed where:

- a. The undertaking is the first undertaking in an alleged cartel to submit evidence which, in ComReg's view, is sufficient to ground a finding of an infringement of section 4 of the Competition Act 2002 and/or Article 101 TFEU in respect of the alleged cartel;
- b. At the time of receipt of the leniency application, neither ComReg nor the CCPC had sufficient evidence to find such an infringement of section 4 of the Competition Act 2002 and/or Article 101 TFEU in connection with the alleged cartel;
- c. No other undertaking previously qualified for immunity from administrative financial sanctions in relation to the same alleged cartel (together with sub paragraphs (a) and (b), the "Type 1B Evidential Requirement"); and
- d. the applicant satisfies the General Conditions for Leniency set out at paragraph 1.22 below which follow those set out in section 15AK(1) of the Competition Act 2002.

Disclosure Requirement for Type 1A and 1B immunity

- 1.15 In applications for Type 1A and Type 1B immunity, in order to be granted immunity from administrative financial sanctions, the undertaking must disclose to ComReg the fact of its participation in the cartel concerned, together with all the details thereof in accordance with paragraph 2.12(b)(i) below and section 15AK(1)(b)(i) of the Competition Act 2002 (the "Disclosure Requirement").

Excluded applicants

- 1.16 As provided for by section 15AI(5)(d) of the Competition Act 2002 an undertaking which took steps to coerce another undertaking to join a cartel or remain in it is not eligible for immunity from administrative financial sanctions under this Policy.

Reduction of administrative financial sanctions ("Type 2 Leniency")

- 1.17 Undertakings that do not qualify for immunity from administrative financial sanctions may benefit from a reduction of any administrative financial sanctions that would otherwise have been imposed.
- 1.18 In order to qualify for a reduction of administrative financial sanctions, an undertaking must:

- a. disclose its participation in the cartel concerned;
 - b. provide evidence of the alleged cartel which represents significant added value relative to the evidence already in ComReg's or the CCPC's possession at the time of the leniency application; and
 - c. satisfy the General Conditions for Leniency set out at paragraph 2.12 below which follow those set out in section 15AK(1) of the Competition Act 2002.
- 1.19 The concept of 'significant added value' in paragraph 1.18 above refers to the extent to which ComReg considers that the evidence provided by the undertaking strengthens, by its very nature and/or its level of detail, ComReg's ability to prove the existence and/or membership of the alleged cartel.
- 1.20 Reductions granted to an undertaking following a Type 2 Leniency application shall not exceed 50% of the administrative financial sanctions which would otherwise have been imposed.
- 1.21 If an undertaking submits compelling evidence in a Type 2 Leniency application, which ComReg uses to establish additional facts which lead to an increase of the amount of the administrative financial sanctions imposed by ComReg on other undertakings participating in the cartel concerned, such additional facts will not be taken into account by an adjudicator of ComReg when setting any administrative financial sanctions to be imposed on the undertaking which provided this evidence.

General Conditions for Leniency

- 1.22 In order to qualify for leniency under this Policy, an applicant shall:
- a. end its involvement in the alleged cartel at the latest immediately following its leniency application, except for what would in the view of ComReg, be reasonably necessary to preserve the integrity of its investigation,
 - b. cooperate, genuinely, fully, on a continuous basis and expeditiously with ComReg, from the time of its leniency application made to the CCPC in line with the single queue system, until ComReg has closed its enforcement proceedings against all parties under investigation by adopting a decision or has otherwise terminated its enforcement proceedings. Such cooperation includes:
 - (i) providing ComReg or the CCPC (as appropriate) promptly with all relevant information and evidence relating to the alleged cartel that comes into the applicant's possession or is accessible to it, including in particular:

- the name and address of the undertaking applying;
 - the names of all other undertakings that participate or have participated in the alleged cartel;
 - a detailed description of the alleged cartel, including the affected goods and/or services, the affected territory(ies), the duration of the alleged cartel, and the nature of the alleged cartel conduct;
 - evidence of the alleged cartel in its possession or under its control (in particular any contemporaneous evidence); and
 - information on any past or possible future leniency applications in relation to the alleged cartel to any other competent authorities, including the CCPC, competition authorities of EU Member States, the European Commission, or competition authorities of third countries;
- (ii) remaining at the disposal of ComReg to promptly reply to any requests that may contribute to the establishment of the relevant facts;
 - (iii) making current directors, managers and other members of staff available for interviews with ComReg and making reasonable efforts to make former directors, managers and other members of staff available for interviews with ComReg;
 - (iv) not destroying, falsifying or concealing relevant information or evidence; and
 - (v) unless and to the extent otherwise explicitly authorised by ComReg or the CCPC (as appropriate) not disclosing the fact of, or any of the content of, its leniency application before ComReg has issued a statement of objections in the enforcement proceedings before it;
- and
- c. When contemplating making a leniency application to the CCPC in line with the single queue system, but prior to doing so, the applicant must not have:
 - (i) destroyed, falsified or concealed evidence which falls within the scope of the leniency application, or
 - (ii) disclosed, directly or indirectly, the fact of, or any of the content of the leniency application it is contemplating except to other

competent authorities or any competition authorities of EU Member States or the European Commission or competition authorities of third countries.

- 1.23 Joint applications for leniency by two or more independent undertakings will not be considered. This does not preclude leniency applications by a single economic entity on behalf of its constituent companies.
- 1.24 Failure to comply with the General Conditions for Leniency and/or the requirements set out in this Policy may result in ComReg refusing to grant leniency or withdrawing the grant of leniency (see Part 4 below).
- 1.25 In accordance with section 15AK(6) of the Competition Act 2002, an undertaking that makes a leniency application to the CCPC in accordance with this Policy and the Joint Policy and a servant or agent of such undertaking, that intentionally or negligently provides to the CCPC and/or ComReg information which is false or misleading in a material respect or destroys, falsifies or conceals relevant evidence, is guilty of an offence.

2. Authority to Apply for Leniency and Impact of Immunity on Directors, Officers and Employees of an Undertaking

- 2.1 Every undertaking applying in accordance with this Policy, whatever its legal form, must be able to show that it has made a formal decision to apply for leniency. A person making an application on behalf of an undertaking must satisfy the CCPC that he/she is duly authorised to act on behalf of the undertaking in question.
- 2.2 ComReg does not have the power to impose administrative financial sanctions on individuals who are not undertakings and who have participated in a cartel infringement. Notwithstanding this, pursuant to sections 15AO(1) and 15AO(3) of the Competition Act 2002, all current and/or former directors, managers, and other members of staff of the applicant undertaking will be fully protected from any sanctions that may be imposed by ComReg or another relevant enforcement authority in administrative and non-criminal judicial proceedings and shall not be subject to criminal prosecution in Ireland, in relation to their involvement in the cartel covered by the application for immunity from administrative financial sanctions

provided that:

- a. the immunity application meets the Type 1A Evidential Requirement or the Type 1B Evidential Requirement as applicable (set out at paragraphs 2.3(a) and (b) and 2.4 (a) – (c) respectively);
- b. the undertaking meets the Disclosure Requirement for Type 1A and Type 1B immunity (set out in paragraph 2.12(b)(i) of this Policy and in section 15AK91)(b)(i) of the Competition Act 2002);
- c. the relevant individuals actively cooperate with the competent authority concerned (which may include ComReg, the CCPC and the DPP or another relevant enforcement authority where the proceedings concerned are criminal)¹⁰; and
- d. the application for immunity predates the time when the relevant individuals were made aware of proceedings leading to the potential imposition of sanctions on an individual referred to above.

2.3 It continues to be possible for individuals who are not undertakings to apply for immunity from criminal prosecution for cartel offences under the Competition Act 2002, outside of this Policy, through the CCPC's CIP. Any undertaking may also apply for immunity from criminal prosecution for cartel offences under the Competition Act 2002, using the CCPC's CIP on its own behalf and on behalf of its employees, directors and officers who require individual immunity. Please refer to the CCPC's CIP and the CCPC's Guidance Note on the interaction between the CIP and ALP for further information.

¹⁰ This requirement should be considered in light of any guidelines published by the competent authority on the cooperation of individuals, as provided for in section 15AO(4) of the Competition Act 2002.

3. The Leniency Process

- 3.1 In this Policy, “marker” means protection afforded to an undertaking applying for leniency by and at the discretion of the CCPC, consistent with the single queue system, for a specified period of time whereby the undertaking is given time to gather necessary information and evidence in order to meet the relevant evidential threshold for leniency. The marker protects the undertaking’s place in the queue for leniency for a given period of time, as determined by the CCPC on a case by case basis.
- 3.2 An undertaking wishing to apply for leniency may approach the CCPC through the CCPC’s immunity and leniency phone (+353 87 763 1378) in order to seek informal guidance on the operation of this Policy, the CCPC’s ALP and the Joint Policy prior to making a formal application for leniency and/or to enquire if leniency is available.
- 3.3 In order for the CCPC to determine whether leniency may be available in a particular instance, the undertaking or its legal advisor must present an outline of the relevant facts, including the market(s) and the nature of the alleged cartel conduct involved. Such an enquiry may be made without disclosing the undertaking’s identity. If the undertaking proceeds to make a formal application for leniency, such undertaking’s identity will need to be disclosed either at the point at which the application for a marker is made or within a period of time granted by the CCPC in its sole discretion.

Step 1: Obtaining a Marker

- 3.4 Applications for leniency can only be made by calling the CCPC’s immunity and leniency phone (+353 87 763 1378). The CCPC’s immunity and leniency phone may be contacted between the hours of 10am and 5pm (Dublin time) Monday to Friday, except public or bank holidays.
- 3.5 An undertaking wishing to make an application for immunity may initially apply for a “marker”. In order to obtain a marker, the undertaking or its legal advisor must provide, either at the point at which the application for a marker is made or within a specified period of time granted by the CCPC at its discretion, the undertaking’s name, address and phone number, an outline of the facts which led to the application for a marker and any other information reasonably required by the CCPC.¹¹ Applications for markers in respect of the same alleged cartel will be queued and dealt with in the order of receipt by the CCPC.
- 3.6 The undertaking will be given a reasonable period of time within which to perfect the marker by submitting its full application for leniency. This period of time for perfecting the marker will be decided by the CCPC at its sole discretion and will take account of whether the undertaking is the first applicant applying for Type 1A or Type 1B

¹¹ Section 15AM(2)(b) of the Competition Act 2002.

immunity or a second or subsequent applicant applying for Type 2 leniency. This period will usually not exceed 10 working days. The CCPC shall notify the undertaking in writing of this period, save in circumstances where written notification is deemed by the CCPC to pose a danger to the investigation being carried out by it or by ComReg. Where a marker is perfected, the information and evidence that is then provided will be deemed to have been submitted on the date when the marker was initially requested.

- 3.7 The CCPC may, at its sole discretion and upon written request from the undertaking applying for leniency, prior to the expiry of the initial period, extend the period specified for perfecting the marker. Usually, such an extension will not exceed 20 working days.

Step 2: Perfecting the Marker

- 3.8 To perfect the marker, the undertaking must, within the period specified by the CCPC, provide the CCPC with a leniency statement containing:
- a. the name and address of the applicant undertaking;
 - b. the names of all other undertakings that participate or participated in the alleged cartel;
 - c. a detailed description of the alleged cartel, including the affected goods or services, the affected territory(ies), the duration, and the nature of the alleged cartel conduct and a description of the role that the applicant had in relation to the alleged cartel;
 - d. information on any past or possible future leniency applications made to any other competent authorities, competition authorities of EU Member States, the European Commission, or competition authorities of third countries in relation to the alleged cartel;¹²
 - e. an outline of the process which led to the leniency application, including the form of formal decision to make the application;
 - f. confirmation of whether an application for immunity from prosecution for criminal cartel offences under the Competition Act 2002 has been / will be made under the CCPC's CIP;
 - g. an outline of the nature of the evidence at the undertaking's disposal; and
 - h. any other information reasonably required by the CCPC.
- 3.9 This information may be submitted to the CCPC either orally or in writing.
- 3.10 If a marker expires before it is perfected (and not extended by the CCPC before expiry), or the application is otherwise refused by the CCPC, the CCPC will consider any other applications for leniency in the queue and/or any subsequent applications.

¹² Section 15AM(2)(b) of the Competition Act 2002, cross-referring to Section 15AK(1)(b)(i) of the Competition Act 2002.

Nothing prevents the holder of an expired marker from re-applying, but in those circumstances, its original place in the queue will not be protected.

Step 3: Granting of Leniency

Procedure for immunity applications

- 3.11 Once a marker has been perfected in respect of an undertaking's leniency application to the CCPC and where the matter may relate to the electronic communications sector, the CCPC and ComReg shall agree the next steps on how the case shall be progressed.
- 3.12 In circumstances where ComReg is to carry out a particular investigation, where: (i) the undertaking is the first applicant in the alleged cartel to make an immunity application to the CCPC in respect of this Policy and (ii) ComReg has verified that the information and evidence submitted is sufficient to meet either the Type 1A Evidential Requirement or the Type 1B Evidential Requirement as applicable, ComReg will grant the undertaking conditional immunity from administrative financial sanctions.
- 3.13 If the Type 1A Evidential Requirement and the Type 1B Evidential Requirement are not met, ComReg will inform the undertaking that its application for immunity from administrative financial sanctions has been rejected. The undertaking may then request ComReg to consider its application as a Type 2 Leniency application for a reduction in administrative financial sanctions.
- 3.14 If ComReg, having granted conditional immunity from administrative financial sanctions, finds that the undertaking applying for leniency acted as a coercer in relation to the alleged cartel or that the undertaking has not fulfilled all of the conditions attached to leniency, ComReg will inform the applicant of this as soon as practicable and leniency will be withdrawn.
- 3.15 If immunity from administrative financial sanctions has been refused or withdrawn because ComReg finds at any stage of the application that the conditions attached to leniency have not been fulfilled, the undertaking will not benefit from any other favourable treatment under this Policy in respect of the same alleged cartel.

Procedure for applications for reductions of administrative financial sanctions

- 3.16 Where an undertaking applies for Type 2 Leniency, ComReg will assess the evidence submitted as part of such application. If ComReg comes to the preliminary conclusion that the evidence submitted by an undertaking constitutes "significant added value" within the meaning as set out at paragraph 2.9 above, it will inform the undertaking of its intention to apply a reduction of administrative financial sanctions. This confirmation will be given as early as practicable and no later than the date the

statement of objections in relation to the alleged cartel is issued to the parties involved.

- 3.17 ComReg will decide, at the end of the leniency process, the level of reduction to apply, relative to the administrative financial sanction which would otherwise be imposed, as follows:
- a. for the first undertaking to provide significant added value: a reduction of 30%-50% will be available;
 - b. for the second undertaking to provide significant added value: a reduction of 20%-30% will be available; and
 - c. for any subsequent undertaking(s) that provides significant added value: a reduction of up to 20% will be available.

In exceptional circumstances, ComReg may depart from these bands, e.g. where a second or subsequent undertaking has provided evidence which adds significant value to a much greater degree than that previously provided. However, reduction of administrative financial sanction will never exceed 50% of the sanction which would otherwise be imposed.

- 3.18 In order to determine the appropriate level of reduction of administrative financial sanctions within these bands, ComReg will take into account the time at which the evidence was submitted to the CCPC and/or ComReg (including whether the undertaking was the first, second or third applicant) and ComReg's assessment of the overall value added to its case by that evidence.
- 3.19 As set out above in Part 1 of this Policy, any grant of leniency by ComReg is conditional, unless otherwise specified, upon the undertaking's continued compliance with the leniency conditions set out in this Policy and/or as may be specified by ComReg on a case by case basis. ComReg will continue to monitor the undertaking's compliance with such leniency conditions until the very end of its investigation and any resulting enforcement proceedings. If ComReg finds that one or more of the conditions for leniency have not been fulfilled, leniency may be withdrawn and the undertaking will not benefit from any favourable treatment under this Policy in respect of the same alleged cartel.

Step 4: Full Disclosure

- 3.20 Having reached a decision to grant conditional leniency, ComReg will advise the undertaking accordingly. The undertaking must then provide ComReg with full, frank and truthful disclosure of information, including (in addition to the obligations outlined in Part 2 above):
- a. all dates, locations, content of and participants in alleged cartel contacts

and/or meetings;

- b. contact details of all current and former officers, directors, partners, managers and employees who have been identified as likely witnesses;
- c. all relevant explanations in connection with evidence provided in support of the leniency application; and
- d. all evidence relating to the alleged cartel in the possession of the applicant or available to it, in particular electronic and contemporaneous evidence.

3.21 The undertaking will provide such evidence and information to ComReg on the understanding that it will not be used in any proceedings by ComReg or the CCPC against the undertaking unless the grant of leniency is withdrawn due to the undertaking's failure to comply with the requirements of this Policy. See Part 5 for further information on the consequences of a failure to comply with the requirements of this Policy.

Step 5: Final Leniency

3.22 When the terms, obligations and conditions set out in this Policy have been fully satisfied, including where any resulting enforcement proceedings have come to an end, ComReg will confirm that the undertaking has full leniency, i.e. immunity from administrative financial sanctions or that the undertaking will benefit from a reduction in administrative financial sanctions in respect of the alleged cartel as applicable.

Summary applications

3.23 Summary applications for leniency, containing a limited set of information as compared to a full leniency application, may be made to national competition authorities by undertakings that have applied to the European Commission for leniency, either by applying for a summary application marker or by submitting a full application in relation to the same alleged cartel. A summary application for leniency in the electronic communications sector shall be made to the CCPC in accordance with the CCPC's Administrative Leniency Policy.

3.24 At such time as a summary application becomes a full application for leniency, the Joint Policy shall apply.

Provision for Leniency Applications to be Made Orally

3.25 As set out in paragraph 3.9 above, leniency applications may be made to the CCPC either orally or in writing. Where leniency statements are made orally, statements may be recorded in any form deemed appropriate by the CCPC. The undertaking will still need to provide the CCPC with copies of all pre-existing documentary evidence of the alleged cartel.

Failed Leniency Applications and Use of Evidence

- 3.26 Despite an undertaking applying for leniency in accordance with this Policy in good faith, there may be instances where leniency is not available. Such an applicant is referred to in this Policy as a “failed bona fide applicant”. This may occur, for example, where:
- a. in relation to Type 1 applications, the information and evidence supplied by the applicant for immunity is already in the CCPC’s or ComReg’s possession or is insufficient to meet the Type 1A Evidential Requirement or the Type 1B Evidential Requirement (i.e. it does not provide a sufficient basis for ComReg to conduct a search or ground a finding of an infringement in relation to the alleged cartel);
 - b. in relation to Type 2 applications, the information and evidence supplied is insufficient to meet the Type 2 Evidential Requirement (i.e. it does not meet the standard of adding significant value relative to the evidence already in the CCPC’s or ComReg’s possession); or
 - c. although the undertaking considered that the conduct disclosed in the leniency application amounted to cartel activity, the CCPC or ComReg considers that the nature of the alleged infringement is not such as to amount to cartel activity or that it relates to cartel activity carried on in jurisdictions other than Ireland or the EU.
- 3.27 Information and evidence submitted to the CCPC or ComReg by such a failed bona fide applicant, or transferred to the CCPC or ComReg by the other competent authority, which is self-incriminatory, will not subsequently be relied on as evidence by the CCPC or ComReg against that undertaking (or any of its cooperating directors, managers or other members of staff) in any criminal or administrative enforcement proceedings relating to the same alleged cartel. This does not prevent ComReg from using any information and evidence submitted to the CCPC or ComReg by a failed bona fide applicant, or transferred to the CCPC or ComReg by the other competent authority, against such applicant where such information: (i) could have been obtained through public sources; (ii) is of a purely factual nature (as distinct from being self-incriminatory); or (iii) relates to another alleged cartel, not disclosed by the failed bona fide applicant.
- 3.28 ComReg reserves the right to pursue enforcement proceedings against a failed bona fide applicant using information and evidence obtained in accordance with its normal powers of investigation. A failed bona fide applicant for immunity from administrative financial sanctions may approach the CCPC with an application for a reduction of administrative financial sanctions.
- 3.29 Nothing in this Part 3 operates to prevent ComReg from using any information and evidence provided by a failed bona fide applicant against third parties.

4. Failure to Comply with the Requirements of this Policy

- 4.1 Failure to comply with the General Conditions for Leniency and/or requirements set out in this Policy may result in ComReg refusing or withdrawing the grant of leniency.
- 4.2 ComReg may withdraw a grant of leniency where it considers this to be appropriate in the circumstances, including where an undertaking fails to cooperate genuinely, fully, on a continuous basis and expeditiously with ComReg as required by this Policy, makes false or misleading statements, interferes with witnesses and/or where evidence is uncovered suggesting that the undertaking coerced others into joining the alleged cartel or remaining in it or that the undertaking destroyed, falsified or concealed evidence relating to the leniency application.
- 4.3 In the event that an undertaking fails to comply with the requirements of this Policy and/or fails to provide genuine, full, continuous and expeditious cooperation, ComReg will give the undertaking written notice of any such failure(s). Where such failure(s) is(are), in ComReg's view, capable of being remedied, the notice shall specify a period within which the undertaking must remedy such failure(s). If the undertaking fails to remedy the failure(s) identified, ComReg may, without further notice, revoke the leniency granted to such undertaking.
- 4.4 If leniency is withdrawn by ComReg under paragraph 4.2 above, ComReg will inform the undertaking accordingly. In such case, the undertaking will not benefit from any favourable treatment under this Policy and ComReg may take whatever action it considers appropriate in the circumstances, which may include pursuing enforcement proceedings against the undertaking in question. Without prejudice to any of the above, failure to comply with the requirements of this Policy includes failure by an applicant to fully procure the complete and timely cooperation of its directors, managers and other members of staff.
- 4.5 Where an undertaking, at any stage from the time of its leniency application until ComReg has closed its enforcement proceedings against all parties under investigation, acts in bad faith and/or fails to cooperate genuinely, fully, continuously and expeditiously such that ComReg decides to withdraw a grant of leniency, ComReg reserves the right to use any information provided by such undertaking against that failed applicant (and against any third parties).

5. Confidentiality

- 5.1 A leniency applicant's identity will be kept confidential for as long as permissible under Irish and European law. Information disclosed pursuant to this Policy will not be disclosed to any third party other than in accordance with the normal practices and procedures pertaining to cartel investigations and proceedings. In particular, information may be disclosed:
- a. where disclosure is required by law;
 - b. where disclosure is for the purpose of the administration and enforcement of the Competition Act 2002 and Articles 101 and/or 102 TFEU;
 - c. where disclosure is necessary for the prevention of crime;
 - d. where disclosure is required in the course of an investigation or proceedings/prosecution;
 - e. where an undertaking agrees to and signs a waiver allowing the CCPC or ComReg to share information with another competition authority investigating the alleged cartel in another jurisdiction where the same applicant has also applied for immunity or leniency in respect of the same alleged cartel.
- 5.2 Where ComReg chooses to pursue administrative enforcement proceedings in relation to the alleged cartel, the fact that an undertaking has applied for leniency, together with the information it has submitted and on which ComReg intends to rely, will be set out in the statement of objections issued to the other parties to the proceedings. No access to any records of the leniency statements (whether oral or written) will be granted before the CCPC has issued its statement of objections to the parties under investigation.
- 5.3 ComReg and the CCPC may, to the extent required for the purposes of complying with Part 2E of the 2002 Act, this Policy, the Joint Policy and the CCPC's ALP, share information and evidence in relation to a leniency statement submitted to either authority, subject to the application of appropriate safeguards.
- 5.4 In addition to the circumstances described above, ComReg may share a leniency application with a competition authority of another EU Member State or the European Commission where:
- a. the undertaking applying for leniency consents to the sharing by signing a waiver; or
 - b. the undertaking has applied for leniency with both the CCPC in accordance with this Policy and that other competition authority in relation to the same alleged cartel; or
 - c. the receiving authority provides a written commitment not to use the information shared with it to impose sanctions on the undertaking, its subsidiaries or its

employees.

6. RPM

- 6.1 RPM is the term used to describe an agreement or concerted practice between a supplier and its reseller that has as its direct or indirect object the establishment of a fixed or minimum resale price or price level to be charged by the reseller. RPM is prohibited by section 4 of the Competition Act 2002 and Article 101 of the TFEU and is regarded as a serious infringement of competition law.
- 6.2 Part 2D of the Competition Act 2002 provides that ComReg may impose administrative financial sanctions on undertakings and associations of undertakings for, amongst other things, cartel infringements and RPM (i.e., infringements of section 4 of the Competition Act 2002 and/or Article 101 of the TFEU). Such sanctions can be imposed up to a maximum of €10 million or 10% of total worldwide turnover of the undertaking or association of undertakings in the financial year preceding ComReg's decision (whichever is greater).
- 6.3 Under section 15AP of the Competition Act 2002, ComReg may put in place leniency programmes for infringements of competition law other than cartels. The following paragraphs of the ComReg ALP set out the terms upon which ComReg may grant leniency in respect of RPM.

Availability of immunity and reduction of fines

- 6.4 Subject to the paragraphs of the ComReg ALP which follow, the terms that apply to leniency applications by participants in cartels under this Policy shall apply *mutatis mutandis* to applications in respect of RPM.
- 6.5 ComReg may grant Type 1A immunity from any administrative financial sanction which would otherwise have been imposed in relation to conduct involving RPM where the conditions in Part 1 of this Policy are satisfied. However, it is ComReg's policy that an undertaking which instigated the RPM should generally not be eligible for Type 1A immunity or Type 1B immunity under this Policy¹³.
- 6.6 As regards an application made by an undertaking that did not instigate the RPM, ComReg is unlikely to grant Type 1B immunity where the application relates solely to conduct involving alleged RPM. ComReg considers that in circumstances where Type 1A immunity is not available (for example, where ComReg has already carried out a search in connection with the alleged infringement and/or already has in its possession sufficient evidence to carry out such a search), an applicant in a case involving alleged RPM is unlikely to be able to provide sufficient additional evidence to justify immunity.

¹³ See Section 15AC of the Competition Act 2002.

- 6.7 However, an undertaking that does not qualify for immunity from administrative financial sanction (i.e., either Type 1A immunity or Type 1B immunity) in relation to conduct involving RPM, may benefit from Type 2 Leniency. Reductions granted to an undertaking following a Type 2 leniency application in relation to conduct involving RPM shall not exceed 50% of the administrative financial sanction which would otherwise have been imposed.