

TRAINING & DEVELOPMENT PROGRAMME

Knowledge Network

Webinar Series

The Competition Bill 2022

Tuesday, 12 April 2022 | 12.00pm to 12.30pm

Transmission begins at 12.00pm



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The Competition Bill 2022

12 April 2022

Philip Andrews, Clare McNamara, Laura McGovern, Florence Loric, Rosaleen Byrne and Seán O’Dea



Origins of the Bill – ECN+ Directive and More



Brussels, 9.7.2014
COM(2014) 453 final

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL

Ten Years of Antitrust Enforcement under Regulation 1/2003:
Achievements and Future Perspectives

{SWD(2014) 230 final}
{SWD(2014) 231 final}

- **ECN+ (follows 10 year review of ECN Reg 1/2003)**
 - “... in Ireland, the NCA does not have the ability to seek the imposition of civil/administrative fines for the breach of either EU or national competition rules. It can do so solely in criminal proceedings, involving trial by jury which in practice means that prosecutions are only brought against hard-core cartels. [...] it appears that the power to impose civil/administrative sanctions will only be introduced if this would be made mandatory through EU legislation.”
 - “... there can be no effective public enforcement in the antitrust field without deterrent civil/administrative sanctions on undertakings”
- **Zalewski v Adjudication Officer [2021] IESC 24**
 - Article 37 “limited functions and powers of a judicial nature, in matters other than criminal matters”
 - Justice in public; hearings; evidence on oath; witnesses; impartiality and independence

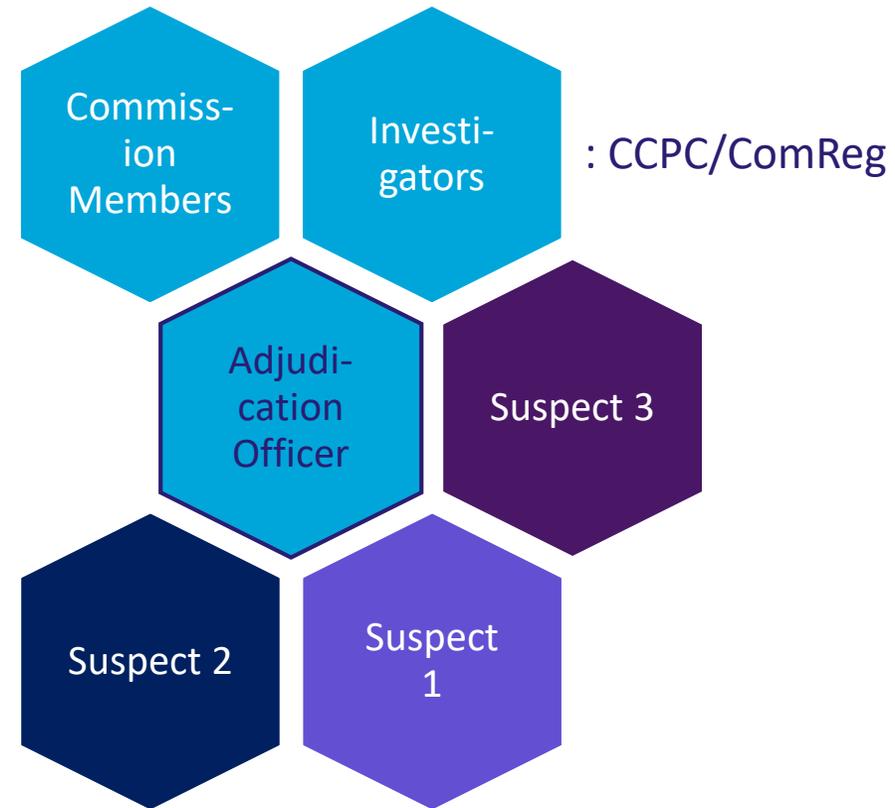
The Bill – Implementing ECN+ Directive and More

- The Bill implements ECN+ amendments in respect of EU *but also* Irish competition law
- It also changes areas like merger control and criminal enforcement

Provision	ECN+	Competition Bill
Finding of Infringement by Agency / Structural Remedies (on “ <i>the balance of probability</i> ”)	Article 10	Sections 15X & 15Z
Administrative/Civil Fines (up to 10% of turnover)	Articles 13-15	Sections 15X & 15AA
Periodic Penalty Payments	Article 16	Sections 15AD
Interim Measures (‘Prohibition Notices’)	Article 11	Section 15H
Leniency Regimes	Articles 17-23	Sections 15AH-15AP
Minimum Investigative Powers	Articles 6-9	Sections 31 & 32

The Proposed New Irish Administrative Sanctions Regime

- Investigation
 - Interim Measures/Prohibition Notice
 - Choice of Enforcement Route
 - Statement of Objections
 - Leniency
- If opinion of authority = Infringement...
- Referral to Independent Adjudication Officer
 - Settlement (may incl. fines on consent)
 - Finding
 - Potential Fines, Other Remedies
 - Court Confirmation/Appeal/Remittal



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