

Notice in Respect of Vertical Agreements and Concerted Practices

Decision No. N/23/001

Date: 1 March 2023

1. The functions of the Competition and Consumer Protection Commission (the “CCPC”) include enforcing and encouraging compliance with the Competition Act 2002, as amended (the “Act”). Section 10(1)(e) of the Competition and Consumer Protection Act 2014 provides that the CCPC may publish notices containing practical guidance as to how the provisions of the Act may be complied with.
2. On 1 March 2023, the CCPC issued a Declaration in respect of Vertical Agreements and Concerted Practices (the “Declaration”)¹ in accordance with section 4(3) of the Act. The Declaration exempts certain specified categories of agreements and concerted practices from the prohibition set out in section 4 of the Act. The CCPC considers it appropriate to supplement the Declaration with guidance on how interested parties/undertakings may assess vertical agreements so as to ensure that they can avail themselves of the exemption provided for by the Declaration.
3. The Declaration closely resembles Commission Regulation (EU) 2022/720 (the Vertical Block Exemption Regulation, “VBER”).² The European Commission has also published Guidelines on Vertical Restraints (the “EU Guidelines”).³ Accordingly, and subject to the exceptions set out in paragraphs 4 and 5 below, the European Commission’s Guidelines on Vertical Restraints (the “EU Guidelines”), which give practical assistance on assessing whether vertical agreements conflict with the VBER, may also be referred to for guidance in assessing whether an agreement is likely to fall outside section 4(1) of the Act.
4. Article 2(2) of the VBER features an exemption for vertical agreements entered into between an association and individual members, or between an association and individual suppliers, only if all the members of the association are retailers of goods, and where no individual member (or its connected undertakings) of the association has an annual turnover in excess of €50 million. There is no equivalent exemption for the Irish market in the Declaration, and therefore

¹ [Declaration in respect of Vertical Agreements and Concerted Practices](#)

² Commission Regulation (EU) 2022/720 of 10 May 2022 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices [2022] OJ L 134/4.

³ Commission Notice – Guidelines on vertical restraints [2022] OJ C 248/1. The EU Guidelines are available online at [content/EN/TXT/PDF/?uri=CELEX:52022XC0630\(01\)&from=EN](https://eur-lex.europa.eu/content/EN/TXT/PDF/?uri=CELEX:52022XC0630(01)&from=EN)

paragraph 69 of the EU Guidelines cannot be relied upon as guidance for the purposes of the Declaration. Vertical agreements entered into between an association and individual members, or between an association and individual suppliers are not, however, intended to be excluded from the general scope of the Declaration.

5. Additionally, in its Notice on Activities of Trade Associations and Compliance with Competition Law (“the Trade Associations Notice”),⁴ the CCPC’s predecessor, the Competition Authority, issued guidance to undertakings regarding the limits that competition law places on joint or co-ordinated action by competitors (for example, through trade associations). Insofar as vertical agreements entered into between an association and individual members, or between an association and individual suppliers, contain competing undertakings, then the guidance set out in the Trade Associations Notice will apply. Paragraph 4.48 of the Trade Association Notice states:

“There are no absolute market share thresholds indicating when a group purchasing arrangement will result in the creation of market power. However, the European Commission have indicated in their Horizontal Guidelines that group purchasing arrangements leading to a combined market share of less than 15% in both the purchasing and selling markets are unlikely to raise concerns under the competition rules.”

6. The CCPC has not issued any guidance equivalent to the European Commission’s Notice on Agreements of Minor Importance (“the De Minimis Notice”).⁵ Insofar as parties are guided by the De Minimis Notice in respect of the scope of the EU Guidelines, similar considerations do not necessarily apply with regard to the Declaration.

⁴ Notice on Activities of Trade Associations and Compliance with Competition Law (Decision No. N/09/002, November 2009), available online at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/05/N-09-002-Notice-on-Activities-of-Trade-Associations-and-Compliance-with-Competition-Law.pdf>

⁵ Notice on agreements of minor importance which do not appreciably restrict competition under Article 101(1) of the Treaty on the Functioning of the European Union (De Minimis Notice) [2014] OJ C 291/1.