



Settlement Procedure

**Procedure for settlement of
investigations into suspected
infringements of relevant
competition law**

[Made pursuant to Section 15AF(1)(d)
and Section 15M(6)(c) of the
Competition Act 2002, as amended]

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Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

Introductory Note

On the 29th of June 2022 the Competition (Amendment) Act 2022 (the “2022 Act”) was signed into law. The provisions of the 2022 Act¹ came into operation on 27 September 2023. The 2022 Act was enacted to implement Directive (EU) 2019/1 of the European Parliament and of the Council, also known as the ECN+ Directive.

Sections 4 and 13 of the 2022 Act set out provisions introducing a settlement procedure, which will be part of the competition enforcement toolkit of the Competition and Consumer Protection Commission. These provisions amend the relevant sections of the Competition Act 2002 (as amended) (the “2002 Act”). The references in this document are to the relevant sections of the 2002 Act as amended or inserted by the 2022 Act and not to sections 4 and 13 of the 2022 Act.

¹ With the exception of section 26 of the 2022 Act.

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1. INTRODUCTION

The Settlement Procedure

- 1.1 The Settlement Procedure (“Settlement” or “this Procedure”)² outlines the approach of the Competition and Consumer Protection Commission (the “CCPC”) in entering into discussions and agreeing a settlement with an undertaking³ under investigation for a suspected infringement of relevant competition law.⁴ This Procedure applies to investigations being carried out pursuant to section 10(1)(c) of the Competition and Consumer Protection Act 2014 as amended (the “2014 Act”) and Part 2C of the 2002 Act. This Procedure applies to those investigations pending before the CCPC at the time of or after its publication and in respect of which the CCPC has elected to pursue or is intending to pursue the administrative competition enforcement route.⁵
- 1.2 Successful application of the Settlement Procedure will culminate in an agreement between the CCPC and an undertaking under investigation (a “Settlement Agreement”), pursuant to which:
- (a) that undertaking acknowledges that it is committing or has committed an infringement of relevant competition law;
 - (b) the CCPC applies a discount to the amount of the administrative financial sanction it will seek to impose;⁶ and
 - (c) the undertaking consents to the imposition of this specific administrative financial sanction, as well as any behavioural and/or structural remedy that the CCPC will seek to impose.

² This Procedure is made pursuant to Section 15AF(1)(d) and Section 15M(6)(c) of the Competition Act 2002, as amended (the “2002 Act”).

³ In this Procedure, the term “*undertaking*” also includes, where relevant, the term “*association of undertakings*” unless otherwise specified.

⁴ In this Procedure, the term “*relevant competition law*” has the same meaning as in section 3 of the 2002 Act and means any of the following provisions: Articles 101 and 102 of the Treaty on the Functioning of the European Union and sections 4 and 5 of the 2002 Act.

⁵ For more information, see paragraph 4.10(c) of the CCPC’s *Guidance Note on the CCPC’s Choice of Enforcement Regime for Breaches of Competition Law* which is available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2023/07/CCPC-Guidance-Note-on-Choice-of-Enforcement-Regime.pdf>

⁶ The CCPC considers that, save for in exceptional cases, it will seek to impose an administrative financial sanction in all cases resolved through the Settlement Procedure.

- 1.3 The purpose of Settlement from the CCPC's perspective is to achieve procedural efficiencies in appropriate cases. In cases where the CCPC agrees with an undertaking under investigation to enter a Settlement process, it will adopt a streamlined administrative procedure with a view to bringing the investigation to a prompt conclusion.
- 1.4 A Settlement process will commence when the CCPC and the undertaking under investigation enter 'Settlement Discussions'. This refers to the process of engagement between the CCPC and an undertaking regarding the potential conclusion of a Settlement Agreement. Settlement Discussions will conclude either:
- (a) when a Settlement Agreement has been reached; or
 - (b) when either the CCPC or the undertaking has exercised its right to withdraw from Settlement Discussions.
- Settlement Discussions may take place in the form of in-person and/or virtual meetings, and/or written correspondence.
- 1.5 A successful Settlement process will result in the CCPC and the undertaking entering into a Settlement Agreement,⁷ after which the CCPC will conclude its investigation by preparing a Simplified Investigation Report⁸ and making a referral to an Adjudication Officer⁹ for an order on consent.¹⁰
- 1.6 The Settlement Procedure is entirely discretionary and voluntary. The undertaking may withdraw from the process at any time before a referral is made for an order on consent and the undertaking has confirmed to the Adjudication Officer its consent to the Settlement Agreement.¹¹
- 1.7 The purpose of this document is to provide guidance to undertakings and their advisors on the CCPC's approach in relation to settlement of investigations into suspected infringements of

⁷ Within the meaning of section 15L(5)(d) of the 2002 Act. For further information, paragraph 3.33 and 3.57 below.

⁸ As defined in section 15L(8)(a) of the 2002 Act.

⁹ Referrals for an order on consent following a settlement process are made pursuant to section 15M(1) of the 2002 Act. 'Adjudication Officers' are individuals appointed by the Minister for Enterprise Trade and Employment to make decisions under section 15X of the 2002 Act on behalf of the CCPC. Adjudication Officers are independent of the CCPC in the performance of their functions.

¹⁰ In accordance with section 15X(8) of the 2002 Act. A template Order on Consent is set out in Appendix A of this document.

¹¹ Section 15U(1)(c) of the 2002 Act.

relevant competition law (including the conduct of Settlement Discussions and entering into Settlement Agreements). There may be circumstances where it is appropriate to depart from the general approach set out in this Procedure, and therefore this document is not intended to be a binding statement of how the CCPC may exercise its discretion in a particular situation. This Procedure may be reviewed by the CCPC from time to time and any amendments will be published on the CCPC's website accordingly.

Principles of Settlement

- 1.8 As noted above, the goal of Settlement from the CCPC's perspective is procedural efficiency. Settlement allows the CCPC to achieve efficiencies through a streamlined administrative procedure, which is expected to result in earlier adoption of infringement decisions, earlier resolution of cases, and resource savings. In return, the CCPC is prepared to reward cooperation by undertakings through this Procedure by discounting the administrative financial sanction that it would otherwise have sought to impose.
- 1.9 Settlement in appropriate cases can be of benefit to both the CCPC and to undertakings under investigation since additional costs, time commitment and administrative burden of continued investigation and adjudication may be avoided or reduced.
- 1.10 The Settlement Procedure is not a forum for debate. The CCPC will not accept attempts by undertakings to use the Settlement Procedure as a forum to debate the merits of the CCPC's investigation, its preliminary views, or the evidence and analysis on which any preliminary views are based.
- 1.11 Similarly, the CCPC will not accept 'plea-bargaining' or negotiation whereby an undertaking seeks to agree to admit its liability and responsibility for an infringement of relevant competition law of lesser gravity, duration, or scope in exchange for the CCPC closing its investigation and imposing a lesser administrative sanction. Where undertakings attempt such bargaining or negotiation, in the ordinary course, the CCPC will immediately withdraw from Settlement Discussions.
- 1.12 If, following Settlement Discussions, the CCPC and the undertaking agree to enter into a Settlement Agreement, such agreement will detail the infringement of relevant competition law which the undertaking acknowledges that it is committing or has committed and will set out the specific administrative financial sanction (and/or any behavioural and/or structural

remedies) to which the undertaking consents. The Settlement Agreement is then referred to an Adjudication Officer for an order on consent.

Interaction between Settlement and other procedures

Commitments

1.13 The conclusion of an investigation through a Settlement Agreement is different to the conclusion of an investigation through a commitment agreement.¹² A Settlement Agreement, confirmed by an Adjudication Officer by an order on consent, establishes the existence of an infringement, setting out all the relevant parameters thereof, including the liability of the undertaking and may result in the imposition of an administrative financial sanction (and structural and/or behavioural remedies, where appropriate). On the other hand, commitment agreements do not establish the existence of an infringement, nor do they impose an administrative financial sanction. Rather, commitment agreements bring suspected anticompetitive behaviour to an end by making legally binding on undertakings the commitments offered by them to address the CCPC's concerns.

Leniency

1.14 The Settlement Procedure is also distinct from the CCPC's Administrative Leniency Policy ("ALP").¹³ Although an undertaking may (in relevant cases) avail of both the ALP and the Settlement Procedure, there is no obligation on that undertaking to avail of both instruments. The ALP aims to reward the cooperation of undertakings that have participated in cartels who are willing to provide evidence of the infringement to the CCPC at an early stage in the investigation. In return, the CCPC will grant leniency in respect of (or immunity from) any administrative financial sanction which the CCPC would otherwise seek to impose. Settlement on the other hand, as noted above, is an instrument to generate procedural efficiencies across all investigations into suspected breaches of competition law. A leniency application is not a pre-condition for entering into Settlement Discussions. An undertaking which has not applied for leniency may engage in Settlement Discussions with the CCPC. Equally, an undertaking which has applied for leniency is not required to enter into a Settlement Agreement with the CCPC.

¹² Pursuant to section 15AE of the 2002 Act.

¹³ The CCPC's ALP is available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2023/07/CCPC-Administrative-Leniency-Policy.pdf>

- 1.15 In practice, it is expected that if the CCPC is in the position to enter into Settlement Discussions, it will likely be past the point where leniency applications will be accepted. This is because the CCPC will not enter into Settlement Discussions until it has gathered sufficient evidence such that it is prepared to form a preliminary view that an infringement of relevant competition law may have occurred or may be occurring. This will tend to rule out the ALP, which undertakings can avail of only where the CCPC does not already have sufficient evidence to carry out or significantly advance an investigation.¹⁴

Effect of Settlement

- 1.16 Where an undertaking has agreed to enter into a Settlement Agreement, the CCPC will prepare a Simplified Investigation Report, which is then referred to an Adjudication Officer for an order on consent. This order may result in the imposition of an administrative financial sanction, and/or a structural or behavioural remedy or both.¹⁵
- 1.17 Unlike commitments, Settlement establishes the existence of an infringement and the undertaking's responsibility for the infringement. Consequently, it constitutes a precedent which may be relied on to establish recidivism¹⁶ for subsequent infringements.

¹⁴ See the CCPC's ALP for more information.

¹⁵ Please note the order remains subject to the court confirmation process in accordance with section 15AZ of the 2002 Act.

¹⁶ Repeated infringements of relevant competition law by the undertaking in the State or in another EU Member State is referred to as 'recidivism'. Recidivism may be considered an aggravating factor when determining the amount of an administrative financial sanction to be imposed on an undertaking.

2. SUITABILITY OF INVESTIGATIONS FOR SETTLEMENT

Scope of the Settlement Procedure

2.1 In principle, the Settlement Procedure can be applied to any suspected infringement of relevant competition law where the CCPC has elected to pursue (or is intending to pursue) the administrative enforcement route in respect of a particular investigation.¹⁷

Discretionary and voluntary nature of the Settlement Procedure

2.2 The prospect of Settlement Discussions may be raised by either the CCPC on its own initiative or by the undertaking under investigation.

2.3 However, the Settlement Procedure is discretionary and voluntary:

- **Discretionary:** Settlement in any given case remains at the CCPC's discretion. There is no obligation on the CCPC to enter into Settlement Discussions where such a request has been submitted by undertakings under investigation, nor do undertakings have a right to such Settlement Discussions. Similarly, there is no obligation on the CCPC to conclude a Settlement Agreement.
- **Voluntary:** there is no obligation on an undertaking to enter into any Settlement Discussions where these are offered by the CCPC, nor to enter into any Settlement Agreement arrived at following these Settlement Discussions.

2.4 As noted above, the CCPC's willingness to engage in Settlement Discussions is driven by expected efficiencies and resource savings; and should in no way be seen as a reflection of the strength of a particular case. Therefore, no inferences should be drawn from the CCPC's willingness or otherwise to enter into Settlement Discussions. Nor will the CCPC draw inferences from the undertaking's willingness to engage in such Settlement Discussions.

The CCPC's consideration of the suitability of the Settlement Procedure

2.5 The CCPC will make a case-by-case assessment as to the suitability of entering into Settlement Discussions, be it on the CCPC's own volition, or in response to a request from an undertaking

¹⁷ See paragraph 1.1 above. For more information on the CCPC's choice of enforcement regime in respect of a given investigation, please see the CCPC's *Guidance Note on the CCPC's Choice of Enforcement Regime for Breaches of Competition Law*, which is available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2023/07/CCPC-Guidance-Note-on-Choice-of-Enforcement-Regime.pdf>

under investigation. The CCPC's main considerations for the suitability of the case for resolution by way of Settlement are:

- (a) the CCPC has formed, or is prepared to form, a preliminary view that an infringement of relevant competition law may have occurred, or may be occurring (i.e., the evidential standard for issuing a Statement of Objections¹⁸ (an "SO") regarding the suspected infringement has been met such that the CCPC has issued, or is prepared to issue an SO);
- (b) that the matter is not to be treated as a criminal matter; and,
- (c) whether efficiency gains and resource savings accruing from entering into Settlement Discussions (and concluding a Settlement Agreement) with an undertaking at that stage of the CCPC's investigation are likely to be sufficient to justify a discount to an administrative sanction that the CCPC would otherwise seek to impose.

2.6 The CCPC will keep these considerations under ongoing review during the course of its investigation and during any Settlement Discussions.

2.7 In the light of this case-by-case consideration, it is not possible for the CCPC to set out the characteristics of particular cases where it is likely to approach undertakings with a view to entering Settlement Discussions.

2.8 As an exception to this general rule, in circumstances of multi-party investigations, the CCPC *may* be more likely to make an approach regarding potential Settlement Discussions to undertakings involved in the investigation where Settlement Discussions have already been initiated with another undertaking involved in that investigation. In such circumstances the CCPC will not disclose which undertaking sought to initiate Settlement Discussions, nor the stage of these discussions. The purpose of this will be to ensure that any efficiency gains can be maximised through potentially concluding Settlement Agreements with all of the undertakings involved.

¹⁸ Under section 15L(5)(d) of the 2002 Act, the CCPC can enter into a Settlement Agreement only after it has issued an SO, which will set out its preliminary view, and the basis for its view, that the undertaking is responsible for an infringement of the relevant competition law.

3. SETTLEMENT PROCEDURE

Initiation of Settlement Procedure

- 3.1 In principle, Settlement Discussions can be commenced either before or after the issuance of an SO. However, a final Settlement Agreement can only be concluded after the issuance of an SO and the receipt and consideration of any written response of the undertaking to whom the SO was addressed. In effect, this means that the CCPC must issue an SO in each case before the Settlement Procedure can be concluded and the CCPC cannot agree to settle with an undertaking before an SO has been issued.
- 3.2 The commencement of Settlement Discussions does not suspend the CCPC's ongoing investigation. For the avoidance of doubt, and as explained in further detail below, the CCPC may revert to the standard administrative procedure if Settlement Discussions do not proceed in a satisfactory manner.
- 3.3 Certain aspects of the Settlement Procedure will differ depending on whether Settlement Discussions commence before or after the issuance of a SO. However, the following features will be common to both routes:
- (a) the CCPC will have gathered and analysed sufficient evidence such that it is in a position to issue an SO;¹⁹
 - (b) Settlement Discussions with the CCPC take place on a without prejudice basis;
 - (c) discussions may take place orally, with the general exception of the Settlement Submission;²⁰
 - (d) any correspondence in writing must be made under separate cover, on headed-paper of the undertaking, in a document that only discusses Settlement;²¹ and,

¹⁹ As noted above, under section 15L(5)(d) of the 2002 Act, the CCPC can enter into a Settlement Agreement only after it has issued and SO, which will set out its preliminary view, and the basis for its view, that the undertaking is responsible for an infringement of the relevant competition law.

²⁰ The term 'Settlement Submission' is defined in section 3 of the 2002 Act. This document is submitted by the undertaking in the context of the Settlement Procedure. See further section 3.26 to 3.29 and 3.53 – 3.56 below.

²¹ Such correspondence should be addressed to the Director and relevant Deputy Director(s) of the division of the CCPC carrying out the investigation.

- (e) the discounts from leniency applications and settlement are discrete.²²

Route 1: Commencement of Settlement Discussions before SO issued

Potential reduction in amount of administrative financial sanction

- 3.4 The CCPC expects that there will be higher efficiency gains and resource savings accruing from a Settlement Agreement that is concluded following Settlement Discussions that commence before the CCPC has issued an SO.
- 3.5 As such, the CCPC will apply a **reduction of up to 30%** to an administrative financial sanction if a Settlement Agreement is concluded in cases where the Settlement Discussions that resulted in an undertaking making a Settlement Submission commenced before the issuance of an SO.
- 3.6 The actual discount awarded in a given case will take account of the resource savings achieved in settling each particular case, i.e., on a case-by-case basis.

Initiation of Settlement Discussions

- 3.7 Either the CCPC or the undertaking under investigation may express its willingness to enter into Settlement Discussions to the other. As set out above, Settlement is discretionary and voluntary. Where the CCPC seeks to initiate Settlement Discussions, it will typically approach the undertaking and specify the period within which the undertaking must respond to its invitation.
- 3.8 Undertakings should be aware that the CCPC will not enter Settlement Discussions at early stages of its investigation as it is unlikely to be in a position to issue an SO. However, in these circumstances, where an undertaking has approached the CCPC seeking to initiate Settlement Discussions, if the CCPC is at a later stage in a position to issue an SO, it may contact that undertaking and invite it to participate in Settlement Discussions.
- 3.9 Where both the CCPC and the undertaking under investigation are amenable to commencing Settlement Discussions prior to the issuing of an SO, the CCPC will typically issue: (i) a

²² For example, if the CCPC awards a leniency applicant a 50% reduction of the amount of the administrative financial sanction and Settlement Discussions result in the undertaking making a Settlement Submission before the issuance of a SO, it may get up to a 30% reduction on the remaining balance. The CCPC will not “sum” the two reductions to single reduction - i.e., an 80% reduction would not be applied. The total reduction would amount to 65% of the amount calculated as a result of applying any additions/reductions for aggravating/mitigating factors and any specific increase for deterrence to the basic amount of the administrative financial sanction (i.e., the 50% reduction for leniency, plus a reduction of 30% of the remaining 50% balance).

'Summary Statement of Facts';²³ and, (ii) an initial proposal for an administrative financial sanction²⁴ to the undertaking for discussion at a meeting between the CCPC and the undertaking.

Summary Statement of Facts

3.10 Where Settlement Discussions begin prior to the CCPC having issued an SO, the CCPC will produce and furnish a 'Summary Statement of Facts' to the undertaking engaging in Settlement Discussions along with a timeline²⁵ by which Settlement Discussions must be concluded.

Issuing of a Summary Statement of Facts

3.11 The Summary Statement of Facts will be in writing and set out:

- (a) that the CCPC is prepared to issue an SO setting out that the CCPC has formed a preliminary view that an infringement or infringements of relevant competition law may have occurred or may be occurring and that the undertaking concerned is responsible for such an infringement;
- (b) the basis on which the CCPC has formed its preliminary views; and,
- (c) the evidence used to determine and support its preliminary views.

3.12 Accompanying this Summary Statement of Facts, the CCPC will provide copies of non-confidential versions of the key pieces of evidence relied on by the CCPC in the Summary Statement of Facts as well as a list of the accessible documents²⁶ in the CCPC's case file at the time. The undertaking engaging in Settlement Discussions will then have the option to request that non-confidential copies of any or all of the documents marked as accessible in this list are made available to it. However, the extent to which access to documents is requested will

²³ See paragraph 3.11. Alternatively, a draft SO may be provided. This will depend on a number of factors, such as, the timing of the Settlement Discussions and whether the issue of a draft SO would provide additional procedural efficiencies. Further references to Summary Statement of Facts should be read to include such a draft SO, where issued for the purpose of advancing the Settlement Procedure.

²⁴ This document will typically set out a calculation in tabular format and generally will not include the same level of narrative detail and consideration for each specific factor relevant to the calculation that may be expected if the CCPC were seeking the imposition of an administrative financial sanction under section 15AA(1)(a) of the 2002 Act on foot of a decision under section 15X(2)(a)(i) of the 2002 Act – i.e., it will be a simple table presenting the calculation. See Appendix B for a sample.

²⁵ The appropriate timeline will be identified having regard to the particular circumstances of a given case (for example, the nature and complexity of the facts at issue or the number of undertakings potentially engaging in Settlement Discussions) rather than a set period determined as a matter of policy applying to every case.

²⁶ This list will be consistent with that referred to in paragraph 3.3 of the CCPC's Access to File Procedures.

influence the CCPC's ongoing assessment of the procedural efficiencies and resource savings that can be achieved from Settlement and may result in the CCPC reducing the potential level of discount of administrative financial sanctions it would be willing to agree, or ultimately lead it to withdraw from Settlement Discussions.

Representations on Summary Statement of Facts

- 3.13 The undertaking engaging in Settlement Discussions may make limited representations on CCPC's Summary Statement of Facts. As set out above, the CCPC does not regard the Settlement Procedure as a negotiation or plea-bargaining process. The Summary Statement of Facts will not provide a fully detailed analysis as would be the case in an SO.
- 3.14 The CCPC expects that any representations by an undertaking on the Summary Statement of Facts should be limited to: (i) confirming the facts and issues addressed in the Summary Statement of Facts; and/or, (ii) pointing out material factual inaccuracies in the Summary Statement of Facts. Where the undertaking's representations amount to a wholesale rejection of the facts of the alleged infringement as set out in the Summary Statement of Facts, the CCPC will reassess whether the case remains suitable for Settlement. This will be determined on a case-by-case basis.
- 3.15 A core purpose in issuing the Summary Statement of Facts is to allow the undertaking, having seen the key evidence on which the CCPC is relying, to satisfy itself that it is prepared to admit to the suspected infringement by reference to the Summary Statement of Facts, including the nature, scope and duration of the infringement. It is also to allow the CCPC and the undertaking to come to a common understanding on the facts surrounding the alleged infringement.
- 3.16 Where the CCPC is of the view that an undertaking is attempting to abuse the Settlement Procedure, the CCPC may withdraw from Settlement Discussions.

Consideration of administrative sanctions

Calculation of administrative financial sanctions

- 3.17 Alongside the Summary Statement of Facts, the CCPC will provide the undertaking with its initial proposal for an administrative financial sanction (specifying the percentage discount to be applied if Settlement Discussions result in a Settlement Agreement). The CCPC will use the methodology set out in its *Guidelines on the determination of administrative financial*

*sanctions and periodic penalty payments*²⁷ as the basis for any calculation of the initial proposal for an administrative financial sanction.

- 3.18 The undertaking may make representations (in writing or orally) regarding the CCPC's initial proposal for an administrative financial sanction, and in particular, the factors taken into account by the CCPC and the weight the CCPC attached to each factor.
- 3.19 Having considered any representations, the CCPC will present to the undertaking a final administrative financial sanction that it envisages seeking on a take it or leave it basis.
- 3.20 The undertaking will be requested to confirm that it is prepared to consent to the imposition of this specific administrative financial sanction. Failure by the investigated undertaking to provide this confirmation will result in the CCPC withdrawing from the Settlement Discussions and reverting to the standard administrative procedure.

Consideration of any behavioural and/or structural remedies

- 3.21 Where the circumstances of a particular case so-warrant, the CCPC may consider that it may be appropriate for a Settlement Agreement to include consent to the imposition of structural and/or behavioural remedies. This may be in addition to an administrative financial sanction.
- 3.22 Where the CCPC considers that a behavioural and/or structural remedy may be warranted, the CCPC will set out in writing any proposed remedies at the same time as it provides the Summary Statement of Facts and its initial proposal in respect of an administrative financial sanction prior to a meeting between the CCPC and the undertaking.
- 3.23 The scope of these potential remedies will be subject to discussion and agreement between the CCPC and the undertaking. Where such remedies are considered by the CCPC to be required and where the undertaking is not forthcoming in consenting to them, the CCPC will be more likely to re-consider the procedural efficiencies that may be accrued from continuing the Settlement Procedure.
- 3.24 The undertaking will be requested to confirm that it is prepared to consent to the imposition of the envisaged behavioural and/or structural remedy (or remedies). Failure by the

²⁷ Available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2023/07/CCPC-Guidelines-on-the-determination-of-admin-financial-sanctions-and-periodic-penalty-payments.pdf>.

investigated undertaking to provide this confirmation will result in the CCPC withdrawing from Settlement Discussions and reverting to the standard administrative procedure.

- 3.25 For the avoidance of doubt, the CCPC does not consider remedies as providing a way to offset a higher level of administrative financial sanction.

Settlement Submission

- 3.26 Where an undertaking has made any representations on the Summary Statement of Facts and has confirmed it will consent to the administrative financial sanction that the CCPC will seek to impose (and any structural and/or behavioural remedy (or remedies)), the undertaking will be required to make a Settlement Submission to the CCPC.

- 3.27 The undertaking will be required to make its Settlement Submission in writing.²⁸

- 3.28 In its Settlement Submission, an undertaking shall, at a minimum:

- (a) detail the material facts surrounding the alleged infringement(s) (including the scope, object, duration and implementation (where applicable)), and the legal characterisation;
- (b) make a clear and unequivocal admission and acknowledgement of liability in relation to all of the alleged infringements;
- (c) confirm in writing that it has immediately ceased the allegedly infringing conduct from the day Settlement Discussions began (if it had not already done so);
- (d) agree to request limited access to the CCPC's file upon issuance of the SO (particularly, only those documents referred to in the SO);
- (e) agree to limit any response to the SO to confirming that Settlement Discussions and the Settlement Submission have been reflected in the SO, and, pointing out material factual inaccuracies;²⁹

²⁸ In exceptional circumstances, the CCPC may consider a well-reasoned request from the undertaking to make this Settlement Submission orally. However, the CCPC reserves the right to record and transcribe this oral Settlement Submission. The CCPC expects that a representative of the respondent undertaking will in turn, once accuracy of this transcription has been confirmed, sign this transcription.

²⁹ The undertaking should acknowledge that it is fully aware of its rights to respond to the SO, but is agreeing to limit those rights in exchange for lesser administrative financial sanction.

- (f) confirm that it will agree to the imposition of the specific envisaged administrative financial sanction (with this amount being specified in euro) (and any behavioural remedy and/or structural remedy);
- (g) agree to be bound by the order on consent, and not appeal the decision, even if another infringing party successfully appeals the decision;
- (h) agree not to disclose to any third party in any jurisdiction the contents of the discussions or of the documents to which they have had access in the course of Settlement Discussions, unless they have a prior explicit authorization by the CCPC; and,
- (i) any other specific requirements that relate to the circumstances of the case. For example, the settling undertaking may be required to make some of its employees or officers available to the CCPC for interview and to provide additional witness statements.

3.29 A Settlement Submission shall be drawn up by the undertaking as a formal request, on headed paper of the undertaking, to the CCPC to resolve the investigation (insofar as it relates to that undertaking) through entering into Settlement Agreement³⁰ and referring the matter³¹ for an order on consent,³² acknowledging that this results in a more streamlined administrative procedure being followed.

The SO

3.30 Following receipt of the Settlement Submission, the CCPC will incorporate the details of the Settlement Submission into an SO and issue it to the undertaking.³³ The SO will draw on the Settlement Discussions and the Settlement Submission and will generally be shorter than an SO issued in a case where the Settlement Procedure has not been pursued.

3.31 In order to continue in the Settlement Procedure, and as acknowledged by the undertaking in its Settlement Submission, any response by the undertaking to the SO should be limited to: (i)

³⁰ In accordance with section 15L(5)(d) of the 2002 Act.

³¹ In accordance with section 15M(1) of the 2002 Act.

³² In accordance with section 15X(8) of the 2002 Act.

³³ In accordance with section 15L of the 2002 Act.

confirming that Settlement Discussions and the Settlement Submission have been reflected in the SO; and, (ii) pointing out material factual inaccuracies in the SO.

3.32 The CCPC considers that in line with the Settlement Submission, on issuance of the SO, the undertaking is expected to request a limited access to file. Where a respondent undertaking does ask for more expansive access to file, the CCPC will reconsider whether the expected efficiencies are likely to be achieved in continuing the Settlement Procedure.

Settlement Agreement and referral

3.33 Assuming that the undertaking continues to engage fully with the Settlement Procedure, following the response to the SO (or the expiration of the period within which such submissions may be made), the CCPC will proceed to prepare a Settlement Agreement³⁴ and a Simplified Investigation Report.³⁵

Settlement Agreement

3.34 A Settlement Agreement shall be between the undertaking and the CCPC and shall:

- (a) confirm that the undertaking has made a Settlement Submission and the contents thereof;
- (b) confirm that this Settlement Submission was reflected by the CCPC in the SO;
- (c) contain a summary of the facts of the case;
- (d) specify the allegations against the undertaking concerned;
- (e) reiterate the clear and unequivocal admission and acknowledgement of liability in relation to all of the alleged infringements, as was contained in the Settlement Submission;
- (f) set out the specific administrative financial sanction that the undertaking consents to being imposed;
- (g) specify any structural and/or behavioural remedies to which the undertaking consents to being imposed;

³⁴ As referred to in section 15L(5)(d) of the 2002 Act.

³⁵ Pursuant to section 15L(8) of the Act.

- (h) confirm that the undertaking consents to the CCPC referring the matter to an Adjudication Officer³⁶ to seek an order on consent;³⁷ and,
- (i) state that the undertaking commits to confirming to the Adjudication Officer that it acknowledges the infringement of relevant competition law and consents to the imposition of specific administrative sanctions pursuant to section 15X(8) and section 15U(1)(c) of the 2002 Act.³⁸

3.35 The CCPC will then issue the Settlement Agreement to the undertaking for its signature.

Simplified Investigation Report

3.36 Where both the CCPC and the undertaking have entered into the Settlement Agreement, the CCPC shall as soon as is possible provide the Simplified Investigation Report to the undertaking and make a referral to an Adjudication Officer for an order on consent.

3.37 A Simplified Investigation Report shall contain:

- (a) a summary of the facts of the case;
- (b) the allegations against the undertaking concerned;
- (c) the specific administrative financial sanction or structural or behavioural remedy which the competent authority is seeking to be imposed by the Adjudication Officer; and,
- (d) a statement that the CCPC and the undertaking or association of undertakings concerned consent to the imposition of the administrative financial sanction, and/or structural or behavioural remedy specified in the Simplified Investigation Report.

3.38 For the avoidance of doubt, notwithstanding that a Settlement Agreement has been signed by the CCPC and the undertaking and referred to an Adjudication Officer for an order on consent,

³⁶ In accordance with section 15M(1) of the 2002 Act.

³⁷ Under section 15X(8) of the 2002 Act.

³⁸ Should the undertaking subsequently breach this commitment, the CCPC will, generally, identify this as a potentially aggravating factor in any submissions, pursuant to section 15X(3)(b)(ii) and section 15X(3)(b)(iii) of the 2002 Act, on the determination of the amount of any administrative financial sanction that the adjudication officer proposes to impose.

at any time before the Adjudication Officer has made an order, the CCPC may withdraw the referral.³⁹

Route 2: Commencement of Settlement Discussions after SO issued

Potential reduction in amount of administrative financial sanction

- 3.39 The CCPC expects that there will be lower efficiency gains and resource savings accruing from a Settlement Agreement that is concluded following Settlement Discussions that commence after the CCPC has issued an SO.
- 3.40 As such, the CCPC will apply a **reduction of up to 10%** to an administrative financial sanction if a Settlement Agreement is concluded following Settlement Discussions that result in an undertaking making a Settlement Submission after the issuance of an SO.
- 3.41 The actual discount awarded in a given case will take account of the resource savings achieved in settling each particular case, i.e., on a case-by-case basis.

Initiation of Settlement Discussions

- 3.42 Under this route, the CCPC may include an invitation to commence Settlement Discussions when it issues an SO. The CCPC may also issue such an invitation after the SO has been issued and after the undertaking to which it is addressed has responded to the SO. The CCPC will specify the period within which the undertaking must respond to this invitation. Alternatively, an undertaking to which an SO has been addressed may approach the CCPC with a view to commencing such Settlement Discussions when it has received the SO.

The SO

- 3.43 Should the CCPC and the undertaking both consent to enter Settlement Discussions, the CCPC will specify a timetable within which Settlement Discussions must be concluded. Where an undertaking has not yet responded to an SO before commencing Settlement Discussions, the CCPC may extend the period within which a recipient of an SO may respond to the SO⁴⁰ in order to facilitate the successful conclusion of Settlement Discussions. However, the CCPC will keep its assessment of potential efficiencies gained through the pursuance of Settlement

³⁹ In accordance with section 15N of the 2002 Act. For example, this may be the case where new evidence comes to light which materially changes the CCPC's understanding of the facts of the alleged infringement(s).

⁴⁰ In accordance with section 15L(4) of the 2002 Act.

under review. The CCPC will not accept undertakings using the Settlement Procedure as a mechanism to prolong the case.

- 3.44 Where the undertaking has not responded to the SO before or during the course of the Settlement Discussions, the undertaking may make representations to the CCPC on the SO. However, these representations should be limited to addressing material factual inaccuracies in the SO to ensure that the Settlement Discussions can be as productive as possible. The undertaking's rights to respond substantively are not affected by this, and the undertaking may exercise its right to respond in full to the SO at any time. Undertakings should be aware that responding substantively to the SO and refuting some or all the objections raised therein during the course of Settlement Discussions is likely to result in the CCPC withdrawing from the Settlement Procedure.

Consideration of administrative sanctions

Calculation of administrative financial sanctions

- 3.45 For the first meeting during Settlement Discussions, the CCPC will, in writing, set out its initial proposal for an administrative financial sanction, which will specify the percentage discount to be applied if Settlement Discussions result in a Settlement Agreement.⁴¹ The CCPC will use the methodology set out in its *Guidelines on the determination of administrative financial sanctions and periodic penalty payment* as the basis for any calculation of the applicable administrative financial sanction.
- 3.46 Having considered any representations, the CCPC will present to the undertaking a final administrative financial sanction that it envisages seeking on a take it or leave it basis.
- 3.47 The undertaking will be requested to confirm that it is prepared to consent to the imposition of this specific administrative financial sanction. Failure by the investigated undertaking to provide this confirmation will result in the CCPC withdrawing from the Settlement Discussions and reverting to the standard administrative procedure.

Consideration of any behavioural and/or structural remedies

⁴¹ See footnote 14 above regarding the contents of this document.

- 3.48 Where the circumstances of a particular case so-warrant, the CCPC may consider that it may be appropriate for a Settlement to include the imposition of structural and/or behavioural remedies. This may be in addition to an administrative financial sanction.
- 3.49 Where the CCPC considers that a behavioural and/or structural remedy may be warranted, the CCPC will set out in writing any proposed remedies alongside its initial proposal for an administrative sanction to the extent that any proposed remedies have not already been reflected in the SO. The CCPC expects that the timeline for submissions on respondent on both of these will typically run simultaneously, but depending on the complexity of the proposed remedies, the CCPC may extend the timeline for submissions.
- 3.50 The scope of these potential remedies will be subject to discussion and agreement between the CCPC and the undertaking. Where such remedies are considered by the CCPC to be required and where the undertaking is not forthcoming in consenting to them, the CCPC will be more likely to re-consider the procedural efficiencies that may be accrued from continuing the Settlement Procedure.
- 3.51 The undertaking will be requested to confirm that it is prepared to consent to the imposition of the envisaged behavioural and/or structural remedy (or remedies). Failure by the investigated undertaking to provide this confirmation will lead to the CCPC withdrawing from Settlement Discussions and reverting to the standard administrative procedure.
- 3.52 For the avoidance of doubt, the CCPC does not consider remedies as providing a way to offset a higher level of administrative financial sanction.

Settlement Submission

- 3.53 Having considered the SO, and the envisaged administrative financial sanction, and/or structural and/or behavioural remedy (or remedies), should the undertaking opt to pursue the Settlement Procedure, the undertaking will be required to make a Settlement Submission to the CCPC.
- 3.54 The undertaking will be required to make its Settlement Submission in writing.⁴²

⁴² In exceptional circumstances, the CCPC may consider a well-reasoned request from the undertaking to make this Settlement Submission orally. However, the CCPC reserves the right to record and transcribe this oral Settlement Submission. The CCPC expects that a representative of the respondent undertaking will in turn, once accuracy of this transcription has been confirmed, sign this transcription.

3.55 In its Settlement Submission, an undertaking shall, at a minimum:

- (a) detail the material facts surrounding the alleged infringement(s) (including the scope, object, duration and implementation (where applicable)), and the legal characterisation;
- (b) make a clear and unequivocal admission and acknowledgement of liability in relation to all of the alleged infringements;
- (c) confirm in writing that it has immediately ceased the allegedly infringing conduct from the day Settlement Discussions began (if it had not already done so);;
- (d) agree to request limited access to the CCPC's file upon issuance of the SO (particularly, only those documents referred to in the SO) to the extent access has not already been granted;
- (e) as relevant:
 - (i) revoke any previous, substantive responses to a SO; or,
 - (ii) agree to limit any response to the SO to pointing out material factual inaccuracies;
- (f) confirm that it has agreed to the imposition of the specific envisaged administrative financial sanction (with this amount being specified in euro), (and any behavioural remedy and/or structural remedy);
- (g) agree to be bound by an infringement decision, and not appeal the infringement decision, even if another infringing party successfully appeals the decision;
- (h) agree to not disclose to any third party in any jurisdiction the contents of the discussions or of the documents to which they have had access in the course of Settlement Discussions, unless they have a prior explicit authorization by the CCPC; and,
- (i) any other specific requirements that relate to the circumstances of the case and the stage which it has reached. For example, the settling undertaking may be required to make some of its employees or officers available for interview and to provide additional witness statements where the circumstances of a case demand it.

3.56 A Settlement Submission shall be drawn up by the undertaking as a formal request, on headed paper of the undertaking, to the CCPC to resolve the investigation (insofar as it relates to that undertaking) through entering into Settlement Agreement⁴³ and referring the matter⁴⁴ for an order on consent,⁴⁵ acknowledging that this results in a more streamlined administrative procedure being followed.

Settlement Agreement and referral

3.57 Assuming that the undertaking continues to engage fully with the Settlement Procedure, (for example, the undertaking has not subsequently submitted a response to the SO refuting the objections raised therein), the CCPC will proceed to prepare a Settlement Agreement⁴⁶ and a Simplified Investigation Report.⁴⁷

Settlement Agreement

3.58 A Settlement Agreement shall be between the undertaking and the CCPC and shall:

- (a) confirm that the undertaking has made a Settlement Submission and the contents thereof;
- (b) contain a summary of the facts of the case;
- (c) specify the allegations against the undertaking concerned;
- (d) reiterate the clear and unequivocal admission and acknowledgement of liability in relation to all of the alleged infringements as was contained in the Settlement Submission;
- (e) set out the specific administrative financial sanction that the undertaking consents to being imposed;
- (f) specify any structural and/or behavioural remedies to which the undertaking consents to being imposed;

⁴³ In accordance with section 15L(5)(d) of the 2002 Act.

⁴⁴ In accordance with section 15M(1) of the 2002 Act.

⁴⁵ In accordance with section 15X(8) of the 2002 Act.

⁴⁶ As referred to in section 15L(5)(d) of the 2002 Act.

⁴⁷ Pursuant to section 15L(8) of the Act.

- (g) confirm that the undertaking consents to the CCPC referring the matter to an Adjudication Officer⁴⁸ to seek an order on consent;⁴⁹ and,
- (h) state that the undertaking commits to confirming to the Adjudication Officer that it acknowledges the infringement of relevant competition law and consents to the imposition of specific administrative sanctions pursuant to section 15X(8) and section 15U(1)(c) of the 2002 Act.⁵⁰

3.59 The CCPC will then issue the Settlement Agreement to the undertaking for its signature.

Simplified Investigation Report

3.60 Where both the CCPC and the undertaking have entered into the Settlement Agreement, the CCPC shall as soon as possible provide the Simplified Investigation Report⁵¹ to the undertaking and make a referral to an Adjudication Officer for an order on consent.

3.61 A Simplified Investigation Report shall contain the matters set out in paragraph 3.37 above.

3.62 For the avoidance of doubt, notwithstanding that a Settlement Agreement has been signed by the CCPC and the undertaking, and referred to an Adjudication Officer for an order on consent, at any time before the Adjudication Officer has made an order, the CCPC may withdraw the referral.⁵²

⁴⁸ In accordance with section 15M(1) of the 2002 Act

⁴⁹ Under section 15X(8) of the 2002 Act.

⁵⁰ Should the undertaking subsequently breach this commitment, the CCPC will, generally, identify this as a potentially aggravating factor in any submissions, pursuant to section 15X(3)(b)(ii) and section 15X(3)(b)(iii) of the 2002 Act, on the determination of the amount of any administrative financial sanction that the adjudication officer proposes to impose.

⁵¹ The summary of the facts of the case and the specification of the allegations against the undertaking concerned should be identical in the Settlement Agreement and the Simplified Investigation Report.

⁵² In accordance with section 15N of the 2002 Act. For example, this may be the case where new evidence comes to light which materially changes the CCPC's understanding of the facts of the alleged infringement(s).

4. WITHDRAWAL FROM THE SETTLEMENT PROCEDURE

- 4.1 Where either the CCPC or the undertaking withdraws from the Settlement Procedure, the CCPC will revert to the standard administrative procedure in its investigation.

Withdrawal from the Settlement Procedure by the CCPC

- 4.2 The CCPC retains the right to withdraw from the Settlement Procedure at any time prior to the Adjudication Officer making an order on consent pursuant to section 15X(8) of the 2002 Act.⁵³ In particular, such a decision to withdraw is likely to be taken by the CCPC in circumstances where it is no longer of the view that sufficient procedural efficiencies will be gained as a result of the process and/or the CCPC considers that the settling undertaking is not following the requirements of the Settlement Procedure.
- 4.3 In the case of multi-party investigations, the CCPC is more likely to consider withdrawal from the Settlement Procedure where it is clear that Settlement may not be agreed with all other undertakings also involved in that same suspected infringement such that any efficiencies gained from Settlement are likely to be minimal. The CCPC will take a case-by-case assessment in this respect.

Withdrawal from the Settlement Procedure by an undertaking

- 4.4 An undertaking may withdraw from the Settlement Procedure at any time prior to the undertaking confirming to the Adjudication Officer that it acknowledges the infringement of relevant competition law and consent to the imposition of specific administrative sanctions pursuant to section 15X(8) and section 15U(1)(c) of the 2002 Act.

5. TREATMENT OF SETTLEMENT MATERIALS

- 5.1 The CCPC reserves the right to use any material disclosed as part of the Settlement Procedures to the extent permitted by law.
- 5.2 Where the undertaking withdraws from the Settlement Procedure, the CCPC will revert to the standard administrative procedure in its investigation and the settlement submissions made by the undertaking prior to withdrawal will fall to be treated as withdrawn settlement submissions for the purposes of the legislative restrictions on disclosure. In this regard, to the extent that any submissions during Settlement Discussions are made in writing, this should be done under separate cover.⁵⁴

Restrictions on disclosure of settlement submissions

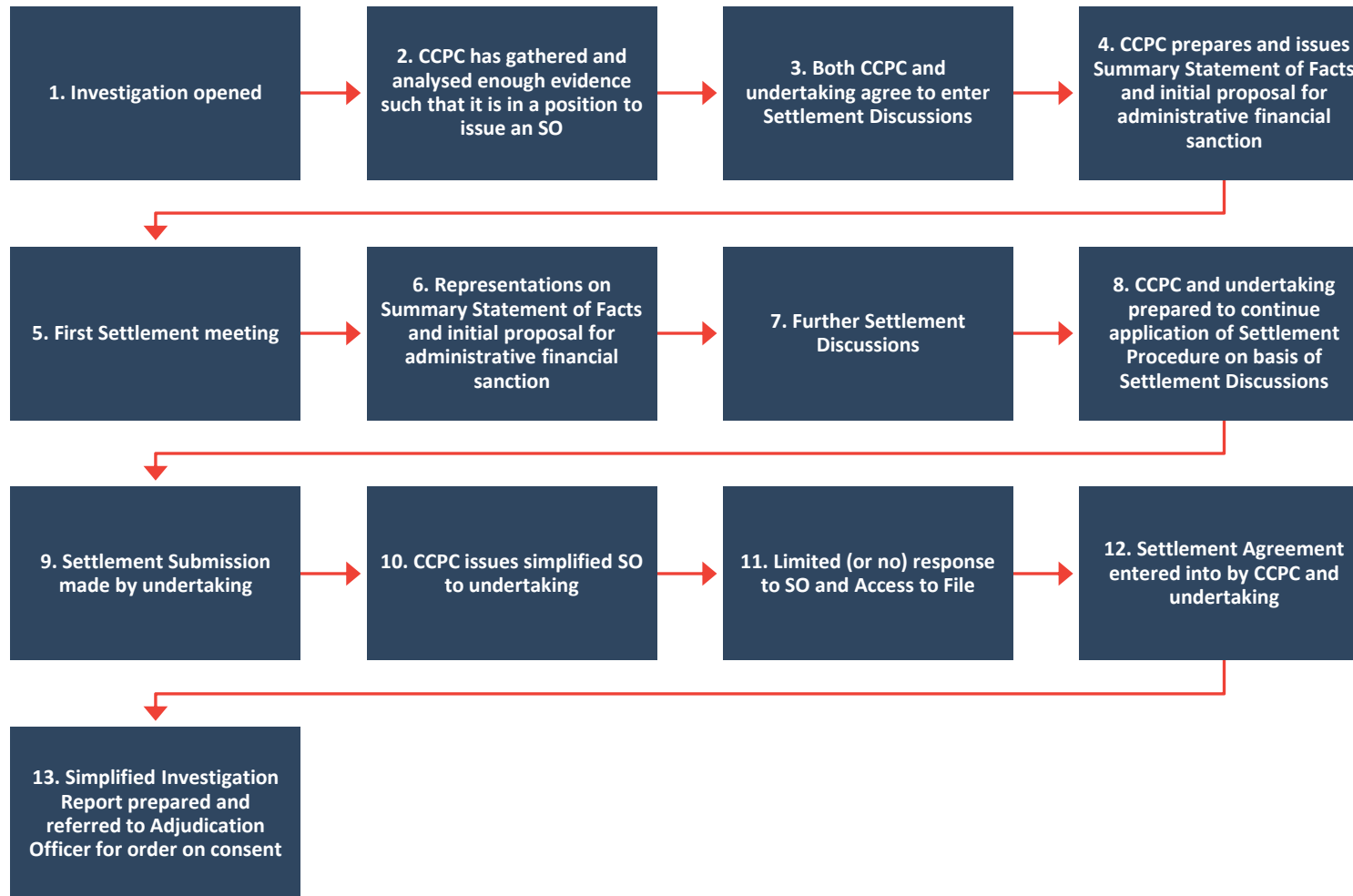
- 5.3 In accordance with section 15AV(7) of the 2002 Act, access to a Settlement Submission (including withdrawn Settlement Submissions) is granted to a Party solely for the purposes of defending itself in proceedings before the CCPC under Part 2D or 2E of the 2002 Act or in any subsequent proceeding under Part 2H of the 2002 Act. In these circumstances, such access is granted only at the premises of the CCPC and on a single occasion. Further, a Party that is given access to a Settlement Submission (including withdrawn Settlement Submissions), the Party is deemed to have given an undertaking that any such information to which it has been given access will only be used in proceedings that are directly related to those in which access has been granted, and will not be retained, stored or otherwise kept following the end of the said proceedings or any subsequent proceeding under Part 2H of the 2002 Act⁵⁵.
- 5.4 Settlement Submissions (including withdrawn Settlement Submissions) cannot be used in proceedings before a court prior to the CCPC or an Adjudication Officer, as the case may be, having closed such proceedings with respect to all parties under investigation, whether by making a decision under section 15X or 15AE of the 2002 Act.

⁵⁴ See paragraph 3.3(d) above.

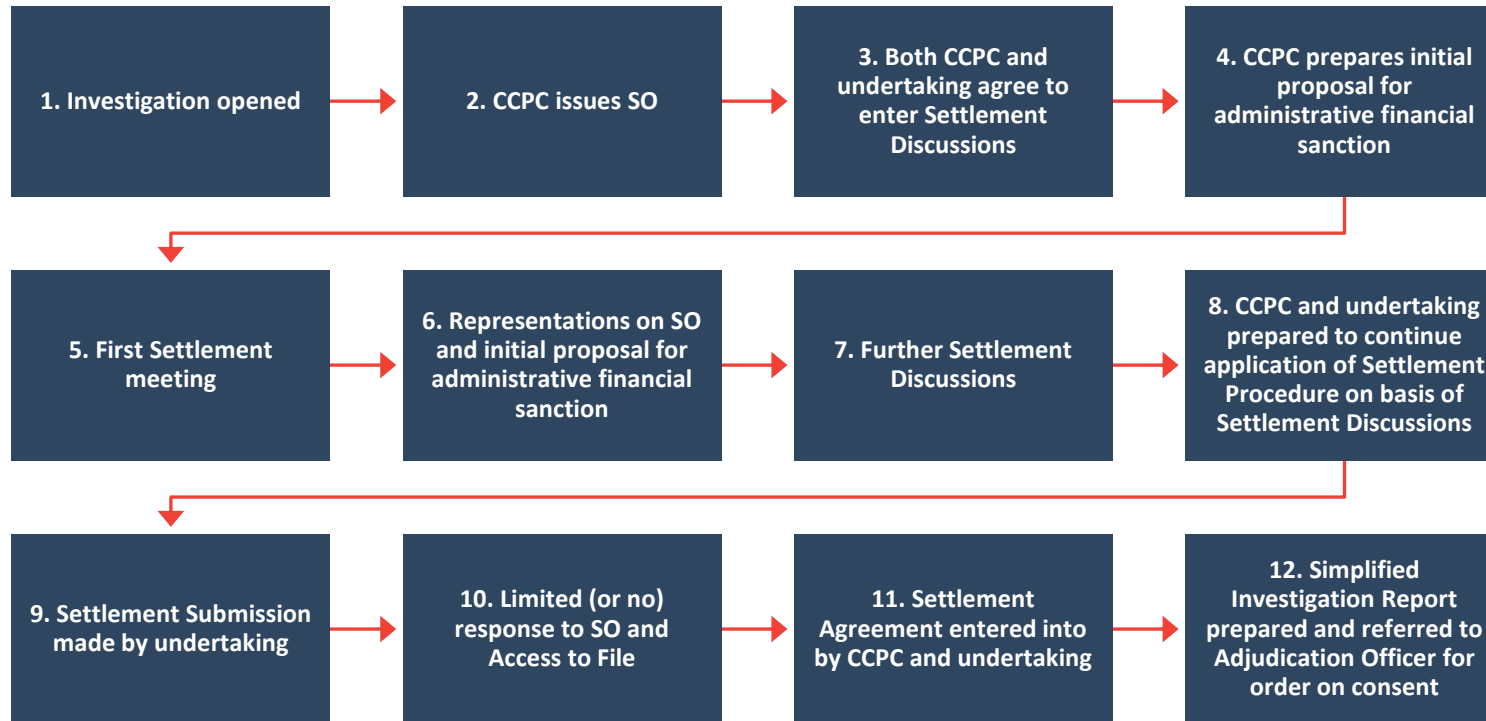
⁵⁵ Section 15AV(8) of the 2002 Act.

6. SETTLEMENT ROUTES

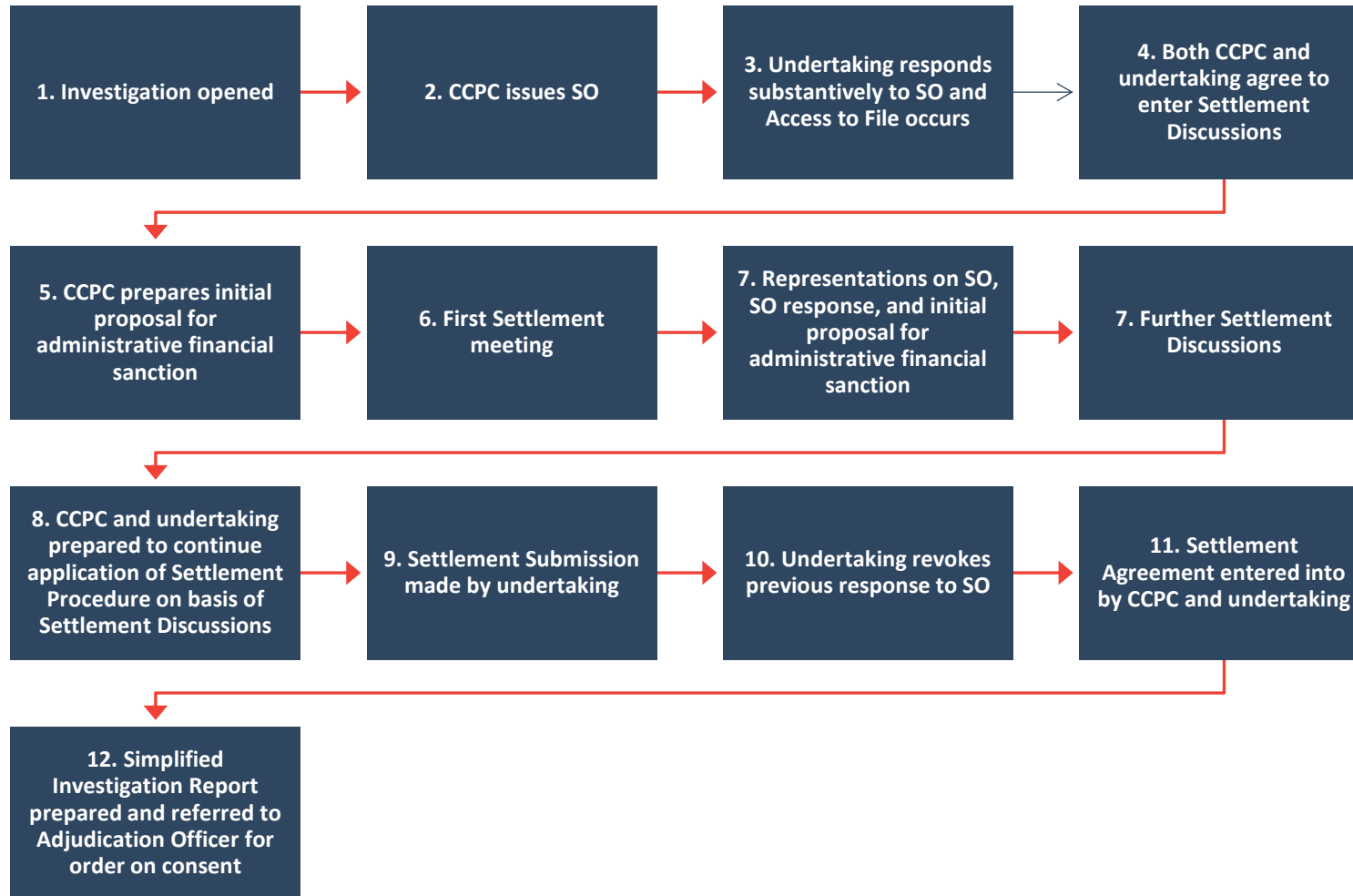
Route 1: Commencement of Settlement Discussions before SO issued



Route 2A: Commencement of Settlement Discussions after SO issued but before response by undertaking



Route 2B: Commencement of Settlement Discussions after SO issued and after response by undertaking



APPENDIX A. TEMPLATE ORDER ON CONSENT

IN THE MATTER OF A REFERRAL TO AN ADJUDICATION OFFICER UNDER SECTION 15M(1) OF THE
COMPETITION ACT 2002 FOR AN ORDER ON CONSENT PURSUANT TO SECTION 15X(8) OF THE
COMPETITION ACT 2002

BETWEEN/

COMPETITION AND CONSUMER PROTECTION COMMISSION

Applicant

and

[NAME]

Respondent

WHEREAS on [DATE] I received a referral from the Applicant under section 15M(1)(a) of the
Competition Act 2002 for an order on consent

AND WHEREAS the Applicant has furnished me with a copy of the simplified investigation report in
accordance with section 15M(1)(b) of the Competition Act 2002, a copy of which report is set out in
the Schedule hereto

AND WHEREAS I furnished the Respondent with a copy of section 15U of the said Act and a notice
under paragraph (c) of subsection (1) of that section

AND WHEREAS the Respondent acknowledges that it [is committing]/[has committed] an infringement
of relevant competition law within the meaning of the Competition Act 2002 [as set out at paragraphs
XX to YY of the simplified investigation report] and consents to the imposition of the [administrative
financial sanction]/[structural remedy]/[behavioural remedy] set out at paragraphs AA to BB of the
simplified investigation report

AND WHEREAS the Applicant consents in accordance with section 15X(8) of the Competition Act 2002

BY CONSENT IT IS ORDERED that the Respondent be subject to the [administrative financial sanction]/[structural remedy]/[behavioural remedy] set out at paragraphs AA to BB of the said simplified investigation report and such [sanction/remedy] is hereby imposed on the Respondent pursuant to section 15X(8) of the Competition Act 2002.

Notice of this Decision shall be provided to the Respondent pursuant to Section 15Y of the Competition Act 2002.

ADJUDICATION OFFICER

A decision on behalf of the Competition and Consumer Protection Commission pursuant to section 15O of the Competition Act 2002

SCHEDULE

APPENDIX B. SAMPLE INITIAL PROPOSAL FOR ADMINISTRATIVE FINANCIAL SANCTION

Background

The CCPC has opened an investigation under section 10(1)(c) of the 2014 Act and Part 2C of the 2002 Act into a suspected abuse of a dominant position by Alpha. The CCPC is prepared to issue an SO to Alpha. However, this SO has not yet been finalised and issued. While the draft SO is being prepared by the CCPC, Alpha writes to the CCPC and requests to enter Settlement Discussions on a without prejudice basis. The CCPC accepts and prepares the initial proposed administrative financial sanction based on the factors below (Table 1).

Table 1: Factors relevant to Alpha administrative financial sanction calculation

Factor	Details
Worldwide turnover of undertaking	€100,000,000
Value of sales to which infringement relates	€20,000,000
Duration of infringement	January 2023 – July 2024
Type of infringement	Refusal to supply
Aggravating factors	None
Mitigating factors	None
Leniency?	No (not applicable)

Calculation sent to Alpha

The initial proposed administrative financial sanction will be presented to Alpha in the form of Table 2 below for discussion. As can be seen, the consideration for each factor is very high level.⁵⁶

⁵⁶ The factors considered and weight applied in the below calculation are for illustrative purposes only and should not be taken as guidance on any factors/weights which may be applied in an actual case.

Table 2: Calculation of administrative financial sanction for Alpha

Factor	Consideration	Weight	Amount	Running subtotal
Step 1: Determination of basic amount of the fine				
Value of sales to which infringement relates (0-30%)	€20,000,000 sales. Infringement of moderate gravity.	18%	3,600,000	3,600,000
Duration of the infringement (to nearest half year)	18 months	x1.5	5,400,000	5,400,000
Entry fee? (for cartels and other infringements)	No	/	/	5,400,000
Basic amount of the fine				5,400,000
Step 2: Adjustment of the basic amount (determined as proportion of basic amount)				
Aggravating factors	None	/	/	5,400,000
Mitigating factors	None	/	/	5,400,000
Other factors				
Specific increase for deterrence?	No	/	/	5,400,000
Legal maximum	€10,000,000 Not exceeded	/	/	5,400,000
Leniency discount (as set out in ALP)	None	/	/	5,400,000
Application of settlement discount				
Settlement discount (0-30% for pre-SO initiation of Procedure)	Settlement Discussions began early in investigation. Full cooperation. Large efficiency gains to be realised.	25% discount	-1,350,000	4,050,000
Proposed administrative financial sanction				4,050,000



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

