



STATUTORY INSTRUMENTS.

S.I. No. 476 of 2023



COMPETITION ACT 2002 (ADJUDICATION OFFICERS) REGULATIONS
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I, SIMON COVENEY, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 15O(2) and section 15Q(1) (as inserted by section 13 of the Competition (Amendment) Act 2022 (No. 12 of 2022)) of the Competition Act 2002 (No. 14 of 2002), for the purposes of giving further effect to sections 15O and 15P of that Act, and having complied with section 52(3) (amended by section 22 of the Competition (Amendment) Act 2022) of that Act, hereby make the following regulations:

Part 1

Preliminary and General

Citation

1. These Regulations may be cited as the Competition Act 2002 (Adjudication Officers) Regulations 2023.

Interpretation

2. In these Regulations –

“Act of 2015” means the Legal Services Regulation Act 2015 (No. 65 of 2015);

“assessor” has the meaning given to it in Regulation 28;

“assessment”, in relation to an assessor, includes any assessment, investigation or other matter that the assessor is lawfully appointed to carry out under these Regulations;

“Principal Act” means the Competition Act 2002 (No. 14 of 2002);

“relevant Minister” means –

- (a) the Minister for Enterprise, Trade and Employment, in relation to –
 - (i) an adjudication officer or Chief Adjudication Officer appointed or nominated in respect of the Competition and Consumer Protection Commission, and
 - (ii) a power, function or activity relating to the Competition and Consumer Protection Commission,
- or
- (b) the Minister for the Environment, Climate and Communications, in relation to –

- (i) an adjudication officer or Chief Adjudication Officer appointed or nominated in respect of the Commission for Communications Regulation, or
- (ii) a power, function or activity relating to the Commission for Communications Regulation.

PART 2

Adjudication officers – appointment and service

Eligibility for nomination for appointment as adjudication officer

3. (1) A person shall be eligible to be nominated by the competent authority under section 15O of the Principal Act if –

- (a) the person is a fit and proper person to perform the functions of an adjudication officer,
- (b) the person satisfies at least one of the following criteria:
 - (i) subject to section 15P(3) of the Principal Act, the person is a member or employee of the Commission or of the Commission for Communications Regulation;
 - (ii) the person has, for a period of no less than 5 years –
 - (I) practiced in the State as a barrister or as a solicitor,
 - (II) been a registered lawyer, having the same right of audience as a practising barrister or a solicitor qualified to practise by virtue of Regulation 10 of the European Communities (Lawyers' Establishment) Regulations 2003 (S.I. No. 732 of 2003), or
 - (III) lawfully practiced as a lawyer, in a manner equivalent to a barrister or a solicitor, in a jurisdiction other than a Member State;
 - (iii) the person has, in the opinion of the competent authority, demonstrated sufficient expertise in matters of competition law, competition economics or both, to merit such appointment;
 - (iv) the person has, in the opinion of the competent authority, demonstrated expertise in one or more markets, sectors or industries that are, or are likely to be, relevant to the competent authority's investigations of relevant competition law, and
- (c) the person has not –
 - (i) been the subject of a finding of misconduct under section 81 of the Act of 2015,

- (ii) been disbarred by the Benchers of the Honorable Society of King's Inns (other than a person who has procured himself or herself to be disbarred with a view to being admitted as a solicitor),
- (iii) had their name struck off the roll of practising barristers or the roll of solicitors by the High Court by an order which, at the time of nomination, remains in effect,
- (iv) been the subject of disciplinary proceedings having a result comparable to any of clauses (i) to (iii) by a body with authority to make such decisions in any state other than the State,
- (v) been convicted on indictment of an offence,
- (vi) been convicted of an offence involving fraud or dishonesty, or
- (vii) been the subject of a declaration under section 819 of the Companies Act 2014 or been deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act.

(2) For the purposes of this Regulation, in considering whether a person is a fit and proper person to perform the functions of an adjudication officer—

- (a) the competent authority shall consider -
 - (i) where the person has previously carried out the functions of an adjudication officer, the extent to which the person carried out those functions competently and in accordance with the Principal Act and these Regulations,
 - (ii) where the person has previously carried out statutory functions similar to those performed by an adjudication officer, the extent to which the person carried out those functions competently and appropriately, and
 - (iii) whether the person has had an appointment as an adjudication officer or Chief Adjudication Officer revoked,

and

- (b) an assessor under Regulation 7 shall consider -
 - (i) where the person has previously carried out the functions of an adjudication officer, whether there is any record of the person having failed to carry out the functions of an adjudication officer competently and in accordance with the Principal Act and these Regulations,
 - (ii) where the person has previously carried out statutory functions similar to those performed by an adjudication officer, whether there is any record of the person having failed to carry out those functions competently and appropriately, and

- (iii) whether the person has had an appointment as an adjudication officer or Chief Adjudication Officer revoked.

Panels of adjudication officers

4. (1) The Minister for Enterprise, Trade and Employment shall form a panel of adjudication officers standing appointed under section 15O(1) of the Principal Act to exercise the functions of adjudication officers in respect of the Competition and Consumer Protection Commission.

(2) The Minister for the Environment, Climate and Communications shall form a panel of adjudication officers standing appointed under section 15O(1) of the Principal Act to exercise the functions of adjudication officers in respect of the Commission for Communications Regulation.

Independence of adjudication officers

5. A person shall not, while appointed as an adjudication officer or Chief Adjudication Officer –

- (a) participate in an investigation, by the competent authority in respect of which they are appointed, of a suspected infringement of relevant competition law, or
- (b) act as authorised officer under -
 - (i) section 15G of the Principal Act,
 - (ii) section 35 (insofar as it relates to investigations of suspected infringements of relevant competition law) of the Competition and Consumer Protection Act 2014, or
 - (iii) the Communications Regulation Act 2002 (No. 20 of 2002).

Term of appointment of adjudication officer

6. (1) The relevant Minister shall issue an instrument of appointment to a person appointed as an adjudication officer under section 15O of the Principal Act specifying –

- (a) the date on which the person's appointment as an adjudication officer is effective,
- (b) the date on which the person's appointment as an adjudication officer shall cease to be effective, which date shall be no more than 5 years from the date of appointment, and
- (c) whether the appointment will, on the date specified under subparagraph (b), be renewable under Regulation 7.

(2) The appointment of a person as an adjudication officer under this Regulation shall be effective from the date specified under paragraph (1)(a)

and shall, subject to Regulation 10, cease to be effective on the date the appointment is revoked in accordance with Regulation 11 or on the later of –

- (a) the date specified in the instrument of appointment as the date on which the appointment ceases to be effective, or
- (b) the date specified in an instrument of renewed appointment under Regulation 7.

Renewal of appointment of adjudication officer

7. (1) Where the instrument of appointment issued to an adjudication officer under Regulation 6 specifies that the adjudication officer's appointment is renewable under this Regulation, the Chief Adjudication Officer shall, where the adjudication officer consents to the Chief Adjudication Officer doing so, request the relevant Minister to renew the adjudication officer's appointment in accordance with this Regulation.

(2) The relevant Minister –

- (a) shall consider a request made under paragraph (1) where it is made more than 6 months before the relevant date, and
- (b) may consider a request made under paragraph (1) where –
 - (i) it is made less than 6 months before the relevant date, and
 - (ii) the relevant Minister considers it appropriate to do so.

(3) Where, having considered a request under paragraph (1), the relevant Minister is satisfied that the appointment of an adjudication officer may be renewed, the relevant Minister shall appoint an assessor to conduct an independent assessment in accordance with this Regulation, and shall direct the assessor to carry out an assessment of whether, in the assessor's opinion –

- (a) the person whose appointment is sought to be renewed will, on the relevant date, satisfy the criterion in Regulation 3(1)(a) and at least one of the criteria referred to in Regulation 3(1)(b),
- (b) none of clauses (i) to (vii) of Regulation 3(1)(c) will, on the relevant date, apply to the person whose appointment is sought to be renewed, and
- (c) the person whose appointment is sought to be renewed will be entitled, on the relevant date, to be appointed as an adjudication officer under these Regulations and the Principal Act.

(4) Upon completing the assessment referred to in paragraph (3), the assessor shall deliver a report of the assessor's conclusions to the relevant Minister and to the competent authority.

(5) Where, during an assessment under this Regulation, the assessor requests, in accordance with Regulation 31, information or documentation (other than information or documentation that was submitted to the competent authority as part of a leniency statement under Part 2E of the Principal Act) from the adjudication officer to whom the direction under paragraph (3) relates, and the assessor is of the view that the adjudication officer –

- (a) failed to provide sufficient information or documentation to enable the assessor to carry out an assessment under these Regulations properly, or
- (b) provides information or documentation, or makes a statement, that the assessor reasonably believes to be false in a material particular,

the assessor shall include a statement to that effect in the report under paragraph (4).

(6) Where the report under paragraph (4) states that the assessor is of the opinion that, on the relevant date –

- (a) the person whose appointment is sought to be renewed will satisfy the criterion in Regulation 3(1)(a) and at least one of the criteria referred to in Regulation 3(1)(b),
- (b) none of clauses (i) to (vii) of Regulation 3(1)(c) apply to the person whose appointment is sought to be renewed, and
- (c) the person whose appointment is sought to be renewed will be entitled, under these Regulations and the Principal Act, to be appointed as an adjudication officer,

the relevant Minister shall renew the person's appointment as an adjudication officer.

(7) Where a person's appointment as an adjudication officer is renewed under paragraph (6), the relevant Minister shall issue an instrument of renewed appointment to the person specifying the date on which the person's appointment as an adjudication officer shall cease to be effective, which date shall be no more than 5 years from the relevant date.

(8) Where the report under paragraph (4) contains a statement referred to in paragraph (5), or states that the assessor is of the opinion that –

- (a) the person whose appointment is sought to be renewed, on the relevant date, will not satisfy the criterion in Regulation 3(1)(a) and at least one of the criteria referred to in Regulation 3(1)(b),
- (b) any of clauses (i) to (vii) of Regulation 3(1)(c) will apply to the person whose appointment is sought to be renewed on the relevant date, or
- (c) the person whose appointment is sought to be renewed will not, on the relevant date, be entitled to be appointed as an adjudication officer under these Regulations or the Principal Act,

the relevant Minister shall not renew the appointment of the person.

(9) Subject to paragraph (10), a person shall not be appointed as an adjudication officer for periods the aggregate of which exceeds 10 years.

(10) Where an adjudication officer exercises functions in relation to a matter that is not concluded before the date on which the person's appointment as an adjudication officer ceases to be effective (other than where such

cessation is as a result of revocation of appointment under Regulation 11), or before the end of the period referred to in paragraph (9)-

- (a) the appointment of the person as an adjudication officer shall not cease to be effective before the conclusion of the matter, and
- (b) the adjudication officer may continue to exercise functions in relation to the matter until it is concluded.

(11) In this Regulation, “relevant date” means the date specified in relation to an adjudication officer under Regulation 6(1)(b).

Remuneration of adjudication officers

8. (1) An adjudication officer appointed in respect of the Commission shall be paid such remuneration, and such allowances for expenses, as the Minister for Enterprise, Trade and Employment may from time to time determine, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, and such remuneration –

- (a) shall not be reduced during the term of appointment of the adjudication officer, other than in accordance with law, or with procedures that apply generally to the remuneration of adjudication officers, and
- (b) may be paid per diem, per piece, or periodically as the Minister for Enterprise, Trade and Employment may specify, either generally or in relation to particular adjudication officers.

(2) An adjudication officer appointed in respect of the Commission for Communications Regulation shall be paid such remuneration, and such allowances for expenses, as the Minister for the Environment, Climate and Communications may from time to time determine, and such remuneration –

- (a) shall not be reduced during the term of appointment of the adjudication officer, other than in accordance with law, or with procedures that apply generally to the remuneration of adjudication officers, and
- (b) may be paid per diem, per piece, or periodically as the Minister for the Environment, Climate and Communications may specify, either generally or in relation to particular adjudication officers.

(3) In this Regulation, a reference to “adjudication officer” includes a reference to a Chief Adjudication Officer.

Declaration of certain remuneration by adjudication officers

9. (1) An adjudication officer who receives remuneration from a source other than the competent authority that gives rise to a conflict of interest shall declare the remuneration and the conflict to the relevant Minister –

- (a) upon being nominated for appointment under section 150(1) of the Principal Act,
- (b) upon renewal of appointment under Regulation 7 or 15, and

- (c) as soon as reasonably practicable after the adjudication officer knows of remuneration or conflict not otherwise disclosed under paragraph (a) or (b).

(2) Subject to paragraph (4), where (by virtue of a declaration under this Regulation or otherwise) the relevant Minister reasonably believes that an adjudication officer or Chief Adjudication Officer is in receipt of remuneration from a source other than the competent authority that gives rise to a conflict of interest, the relevant Minister shall-

- (a) in the case of an adjudication officer, after consulting with the Chief Adjudication Officer and in accordance with the Principal Act, and
- (b) in the case of a Chief Adjudication Officer, in accordance with the Principal Act,

take such steps or make such directions as the relevant Minister considers necessary in order to ensure that –

- (i) the functions of the adjudication officer or Chief Adjudication Officer, as the case may be, are carried out in a way that is not influenced by such remuneration or conflict, and
- (ii) the conflict does not adversely affect the functions of the adjudication officer or Chief Adjudication Officer (as the case may be), adjudication officers generally or the competent authority.

(3) Without prejudice to the generality of paragraph (2), the steps and directions that the relevant Minister may take under that paragraph include the following:

- (a) directing the Chief Adjudication Officer not to permit an adjudication officer to perform functions in relation to one or more undertakings, for a specified period or indefinitely;
- (b) directing the Chief Adjudication Officer not to permit an adjudication officer to perform functions in relation to one or more markets, sectors or industries, for a specified period or indefinitely;
- (c) where the relevant Minister believes that the conflict amounts to serious misconduct, or where the adjudication officer has notified the competent authority of recusal under section 15P(1)(c) of the Principal Act in more than one matter, following the procedure for revoking the appointment of the adjudication officer under Regulation 11.

(4) The relevant Minister shall not, under paragraph (2), take a step or make a direction that –

- (a) reduces the adjudication officer's remuneration in contravention of Regulation 8,

- (b) alters of the adjudication officer's entitlement to increments or other applicable terms of service or employment,
- (c) alters the adjudication officer's eligibility for promotion, or
- (d) alters the adjudication officer's terms of appointment or employment in a manner likely to compromise the independence of adjudication officers in the performance of their functions.

(5) In this Regulation, other than in paragraph (2) and subparagraph (a) and (b) of paragraph (3), a reference to "adjudication officer" includes a reference to a Chief Adjudication Officer.

Resignation and removal of adjudication officer

10. (1) A person may resign as an adjudication officer at any time during a period of appointment as an adjudication officer by giving notice in writing to the relevant Minister, and the resignation shall take effect on the later of –

- (a) the date (if any) specified in the notice, or
- (b) the date on which the notice is received by the relevant Minister.

(2) Where a person appointed as an adjudication officer –

- (a) was, at the time of appointment, an employee of the competent authority, and
- (b) ceases to be an employee of the competent authority while the appointment is in effect,

the person shall, upon that cessation, automatically cease to be an adjudication officer.

(3) In this Regulation, a reference to "adjudication officer" includes a reference to a Chief Adjudication Officer.

Revocation of appointment of adjudication officer

11. (1) Where the competent authority reasonably believes that clause (I), (II) or (III) of section 15Q(2)(b)(v) applies to an adjudication officer, it may request the relevant Minister to revoke the appointment of the adjudication officer in accordance with this Regulation.

(2) The relevant Minister may, on foot of a request under paragraph (1) or otherwise, propose to revoke the appointment of an adjudication officer in accordance with this Regulation where the relevant Minister reasonably believes that clause (I), (II) or (III) of section 15Q(2)(b)(v) applies to the adjudication officer.

(3) Where the relevant Minister proposes to revoke the appointment of an adjudication officer, the relevant Minister shall appoint an assessor to conduct an independent assessment in accordance with this Regulation, and shall direct the assessor to carry out an assessment of one or more of the following:

- (a) whether the adjudication officer has become incapable through ill-health of effectively performing functions under these Regulations or the Principal Act;
- (b) whether the adjudication officer has engaged in serious misconduct;
- (c) whether the adjudication officer has notified the competent authority of recusal under section 15P(1)(c) of the Principal Act in more than one matter, and whether the conflicts of interest referred to in the notification are likely to continue.

(4) The assessor shall, where directed to carry out an assessment of a matter referred to in paragraph (3)(a) –

- (a) seek the view of an appropriately qualified medical expert, and
- (b) have regard to the expert's views in delivering the report referred to in paragraph (5).

(5) Upon completing the assessment, the assessor shall deliver, to the Government and to the competent authority, a report on whether the adjudication officer to whom the direction under paragraph (3) relates, in the opinion of the assessor –

- (a) has become incapable through ill-health of effectively performing the functions of adjudication officer,
- (b) has engaged in serious misconduct, or
- (c) has notified the competent authority of recusal under section 15P(1)(c) of the Principal Act in more than one matter, and the conflicts of interest referred to in the notification are likely to continue.

(6) Where, during an assessment under this Regulation, the assessor requests, in accordance with Regulation 31, information or documentation (other than information or documentation that was submitted to the competent authority as part of a leniency statement under Part 2E of the Principal Act) from the adjudication officer to whom the direction under paragraph (3) relates, and the assessor is of the view that the adjudication officer –

- (a) failed to provide sufficient information or documentation to enable the assessor to properly carry out an assessment under these Regulations, or
- (b) provides information or documentation, or makes a statement, that the assessor reasonably believes to be false in a material particular,

the assessor shall include a statement to that effect in the report under paragraph (5).

(7) Where the report under paragraph (5) states that the assessor is of the opinion that subparagraph (a), (b) or (c) of that paragraph applies to the adjudication officer to whom the report relates, the Government may revoke the appointment of the adjudication officer.

(8) A revocation of appointment under this Regulation shall be effective from the later of the date of the Government decision or such other date as the Government may specify in its decision.

(9) In this Regulation, a reference to “adjudication officer” includes a reference to a Chief Adjudication Officer.

Rules concerning promotion and increments of competent authority employees who act as adjudication officers

12. The appointment of an employee of the competent authority as an adjudication officer or Chief Adjudication Officer shall not affect the employee’s –

- (a) entitlement to increments, or any other form of pay increase in accordance with the employee’s terms of employment, as an employee of the competent authority,
- (b) eligibility for promotion as an employee of the competent authority, or
- (c) terms of employment in a manner likely to compromise their independence in performing functions as an adjudication officer or Chief Adjudication Officer.

Part 3

Chief adjudication officers

Appointment of Chief Adjudication Officer

13. (1) Each competent authority shall nominate, for appointment by the relevant Minister, a person who meets the criterion in Regulation 14(1)(a) and at least one of the criteria in Regulation 14(1)(b) to perform the functions of Chief Adjudication Officer in respect of the competent authority.

(2) The relevant Minister shall, subject to section 15P(3) of the Principal Act, appoint the person nominated under paragraph (1) as Chief Adjudication Officer in respect of the nominating competent authority unless the relevant Minister –

- (a) is not satisfied that the person meets the criterion in Regulation 14(1)(a) and at least one of the criteria in Regulation 14(1)(b), or
- (b) considers that the nominated person does not have the independence necessary to be appointed as Chief Adjudication Officer.

(3) The relevant Minister shall issue an instrument of appointment to a person appointed as Chief Adjudication Officer under paragraph (2) specifying –

- (a) the date on which the person’s appointment as Chief Adjudication Officer is effective,

- (b) the date on which the person's appointment as Chief Adjudication Officer shall cease to be effective, which date shall be no more than 5 years from the date of appointment, and
- (c) whether the appointment will, on the date specified under subparagraph (b), be renewable under Regulation 15.

(4) The appointment of a person as Chief Adjudication Officer under this Regulation shall be effective from the date specified under paragraph (3)(a) and shall, subject to Regulation 10, cease to be effective on the date the appointment is revoked in accordance with Regulation 11 or on the later of –

- (a) the date specified in the instrument of appointment as the date on which the appointment ceases to be effective, or
- (b) the date specified in an instrument of renewed appointment under Regulation 15.

Criteria for appointment of Chief Adjudication Officer

14. (1) A person shall be eligible for nomination under Regulation 13 if –
- (a) the person is a fit and proper person to perform the functions of Chief Adjudication Officer,
 - (b) the person satisfies at least one of the following criteria:
 - (i) subject to section 15P(3) of the Principal Act, the person is a member or employee of the Commission or of the Commission for Communications Regulation;
 - (ii) the person has, for a period of no less than 5 years –
 - (I) practiced in the State as a barrister or as a solicitor,
 - (II) been a registered lawyer, having the same right of audience as a practising barrister or a solicitor qualified to practise by virtue of Regulation 10 of the European Communities (Lawyers' Establishment) Regulations 2003 (S.I. No. 732 of 2003), or
 - (III) lawfully practiced as a lawyer, in a manner equivalent to a barrister or a solicitor, in a jurisdiction other than a Member State;
 - (iii) the person has, in the opinion of the competent authority, demonstrated sufficient expertise in matters of competition law, competition economics or both, to merit such appointment;
 - (iv) the person has, in the opinion of the competent authority, demonstrated expertise in one or more markets, sectors or industries that are, or are likely to be, relevant to the competent authority's investigations of relevant competition law, and
 - (c) the person has not –

- (i) been the subject of a finding of misconduct under section 81 of the Act of 2015,
- (ii) been disbarred by the Benchers of the Honorable Society of King's Inns (other than a person who has procured himself or herself to be disbarred with a view to being admitted as a solicitor),
- (iii) had their name struck off the roll of practising barristers or the roll of solicitors by the High Court by an order which, at the time of nomination, remains in effect,
- (iv) been the subject of disciplinary proceedings having a result comparable to any of clauses (i) to (iii) by a body with authority to make such decisions in any state other than the State,
- (v) been convicted on indictment of an offence,
- (vi) been convicted of an offence involving fraud or dishonesty, or
- (vii) been the subject of a declaration under section 819 of the Companies Act 2014 or been deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act.

(2) For the purposes of this Regulation, in considering whether a person is a fit and proper person to perform the functions of Chief Adjudication Officer-

- (a) the competent authority shall consider -
 - (i) where the person has previously carried out the functions of an adjudication officer or Chief Adjudication Officer, the extent to which the person carried out those functions competently and in accordance with the Principal Act and these Regulations,
 - (ii) where the person has previously carried out statutory functions similar to those performed by an adjudication officer or Chief Adjudication Officer, the extent to which the person carried out those functions competently and appropriately, and
 - (iii) whether the person has had an appointment as an adjudication officer or Chief Adjudication Officer revoked,

and

- (b) an assessor under Regulation 15 shall consider -
 - (i) where the person has previously carried out the functions of an adjudication officer or Chief Adjudication Officer, whether there is any record of the person having failed to carry out those functions competently and in accordance with the Principal Act and these Regulations,
 - (ii) where the person has previously carried out statutory functions similar to those performed by an adjudication

officer or Chief Adjudication Officer, whether there is any record of the person having failed to carry out those functions competently and appropriately, and

- (iii) whether the person has had an appointment as an adjudication officer or Chief Adjudication Officer revoked.

Renewal of appointment of Chief Adjudication Officer

15. (1) Where the instrument of appointment issued to a Chief Adjudication Officer under Regulation 13 specifies that the Chief Adjudication Officer's appointment is renewable under this Regulation, the Chief Adjudication Officer may request the relevant Minister to renew the appointment in accordance with this Regulation.

(2) The relevant Minister –

- (a) shall consider a request made under paragraph (1) where it is made more than 6 months before the relevant date, and
- (b) may consider a request made under paragraph (1) where –
 - (i) it is made less than 6 months before the relevant date, and
 - (ii) the relevant Minister considers it appropriate to do so.

(3) Where, having considered a request under paragraph (1), the relevant Minister is satisfied that the appointment of the Chief Adjudication Officer may be renewed, the relevant Minister shall appoint an assessor to conduct an independent assessment in accordance with this Regulation, and shall direct the assessor to carry out an assessment of whether, in the assessor's opinion –

- (a) the person whose appointment is sought to be renewed will, on the relevant date, satisfy the criterion in Regulation 14(1)(a) and at least one of the criteria referred to in Regulation 14(1)(b),
- (b) none of clauses (i) to (vii) of Regulation 14(1)(c) will, on the relevant date, apply to the person whose appointment is sought to be renewed, and
- (c) the person whose appointment is sought to be renewed will be entitled, on the relevant date, to be appointed Chief Adjudication Officer under these Regulations and the Principal Act.

(4) Upon completing the assessment referred to in paragraph (3), the assessor shall deliver a report of the assessor's conclusions to the relevant Minister and to the competent authority.

(5) Where, during an assessment under this Regulation, the assessor requests, in accordance with Regulation 0, information or documentation (other than information that was submitted to the competent authority as part of a leniency statement under Part 2E of the Principal Act) from the Chief Adjudication Officer to whom the direction under paragraph (3) relates, and the assessor is of the view that the adjudication officer –

- (a) failed to provide sufficient information or documentation to enable the assessor to carry out an assessment under these Regulations properly, or
- (b) provides information or documentation, or makes a statement, that the assessor reasonably believes to be false in a material particular,

the assessor shall include a statement to that effect in the report referred to in paragraph (4).

(6) Where the report under paragraph (4) states that the assessor is of the opinion that, on the relevant date –

- (a) the person whose appointment is sought to be renewed will satisfy the criterion in Regulation 14(1)(a) and at least one of the criteria referred to in Regulation 14(1)(b),
- (b) none of clauses (i) to (vii) of Regulation 14(1)(c) apply to the person whose appointment is sought to be renewed, and
- (c) the person whose appointment is sought to be renewed will be entitled, under these Regulations and the Principal Act, to be appointed as Chief Adjudication Officer,

the relevant Minister shall renew the person's appointment as Chief Adjudication Officer.

(7) Where a person's appointment as Chief Adjudication Officer is renewed under paragraph (6), the relevant Minister shall issue an instrument of renewed appointment to the person specifying the date on which the person's appointment as Chief Adjudication Officer shall cease to be effective, which date shall be no more than 5 years from the relevant date.

(8) Where the report under paragraph (4) includes a statement under paragraph (5), or states that the assessor is of the opinion that –

- (a) the person whose appointment is sought to be renewed, on the relevant date, will not satisfy the criterion in Regulation 14(1)(a) and at least one of the criteria referred to in Regulation 14(1)(b),
- (b) any of clauses (i) to (vii) of Regulation 14(1)(c) will apply to the person whose appointment is sought to be renewed on the relevant date, or
- (c) the person whose appointment is sought to be renewed will not, on the relevant date, be entitled to be appointed as Chief Adjudication Officer under these Regulations or the Principal Act,

the relevant Minister shall not renew the appointment of the person.

(9) Subject to paragraph (10), a person shall not be appointed as Chief Adjudication Officer for periods the aggregate of which exceeds 10 years.

(10) Where a Chief Adjudication Officer exercises functions in relation to a matter that is not concluded before the date on which the person's appointment as Chief Adjudication Officer ceases to be effective (other than where such cessation is as a result of revocation of appointment under

Regulation 11), or before the end of the period of 10 years referred to in paragraph (9) -

- (a) the appointment of the person as Chief Adjudication Officer shall not cease to be effective before the conclusion of the matter, and
- (b) the Chief Adjudication Officer may continue to exercise functions in relation to the matter until it is concluded.

(11) In this Regulation, “relevant date” means the date specified in relation to a Chief Adjudication Officer under Regulation 13(3)(b).

Functions of Chief Adjudication Officer

16. (1) In addition to the functions of the Chief Adjudication Officer provided for in the Principal Act, the functions of Chief Adjudication Officer of each competent authority are:

- (a) where a competent authority refers a matter to an adjudication officer under section 15M of the Principal Act, to direct an adjudication officer or a division of adjudication officers to deal with the matter;
- (b) where the Chief Adjudication Officer considers that it is appropriate for a matter to be dealt with by an adjudication officer other than the adjudication officer dealing with the matter, to re-assign the matter to another adjudication officer or division of adjudication officers;
- (c) to re-assign matters under section 15L(14) of the Principal Act;
- (d) to give directions, in accordance with the Principal Act, to employees of the competent authority required under section 15R(1)(a) of that Act to assist with the performance of the Chief Adjudication Officer’s functions;
- (e) to give directions, in accordance with the Principal Act, to persons appointed by competent authority under section 15R(1)(a) of that Act to assist with the performance of the Chief Adjudication Officer’s functions;
- (f) to direct adjudication officers to sit in a division on such terms as the Chief Adjudication Officer shall specify subject to section 15T of the Principal Act;
- (g) to consider referrals under section 15AD(1)(b)(iii) of the Principal Act and make any reassignment under that subparagraph as the Chief Adjudication officer sees fit;
- (h) to consider and deal with matters of which the Chief Adjudication Officer is informed under section 15P(4)(b) of the Principal Act.

(2) The Chief Adjudication Officer shall have such powers as are necessary or expedient for the performance of the functions of Chief Adjudication Officer under the Principal Act and these Regulations.

(3) Subject to section 15P(1)(d)(ii) of the Principal Act, these Regulations shall not prevent a Chief Adjudication Officer from performing a function other than those provided for in Part 2C, 2D or 2E of the Principal Act on behalf or at the request of the competent authority, provided that –

- (a) the function is a function of the relevant competent authority,
- (b) performing the function does not compromise the independence of the Chief Adjudication Officer in the performance of a function provided for in Part 2C, 2D or 2E of the Principal Act, and
- (c) the function does not relate to the enforcement or investigation of a suspected infringement of relevant competition law.

Designation of adjudication officer to perform functions of Chief Adjudication Officer

17. (1) Where –

- (a) no Chief Adjudication Officer stands appointed for the time being, or
- (b) the Chief Adjudication Officer is for any reason unable to perform duties to the satisfaction of the competent authority,

the relevant Minister, after consulting the competent authority, may designate an adjudication officer to perform the functions of the Chief Adjudication Officer, until such time as a Chief Adjudication Officer is appointed, or (subject to paragraph (2)) for the duration of that inability, as the case may be.

(2) Where –

- (a) an adjudication officer is designated to perform the functions of the Chief Adjudication Officer under paragraph (1) due to the Chief Adjudication Officer becoming incapable through ill-health of effectively performing functions under the Principal Act or these Regulations, and
- (b) the designation continues for a continuous period of one year,

the competent authority shall request that the relevant Minister revoke the appointment of the Chief Adjudication Officer under Regulation 11(1).

Rules concerning designation by Chief Adjudication Officer of adjudication officers to divisions

18. (1) Where the Chief Adjudication Officer directs that adjudication officers shall sit as a division pursuant to section 15T of the Principal Act, each such division shall consist of –

- (a) 3 adjudication officers, or
- (b) where the Chief Adjudication Officer determines that a matter should be dealt with by more than 3 adjudication officers, an

odd number of adjudication officers as the Chief Adjudication Officer directs.

(2) A decision of a division of adjudication officers shall not be challenged on the ground that the division was not constituted in accordance with this Regulation.

(3) In exercising the discretion under section 15T(1) of the Principal Act, the Chief Adjudication Officer shall, in so far as reasonably practicable –

- (a) assign an adjudication officer sitting alone to deal with the following matters:
 - (i) a suspected breach of a procedural requirement;
 - (ii) a suspected failure to comply with commitments entered into under section 15AE of the Principal Act;
 - (iii) a suspected failure to comply with a structural or behavioural remedy;
 - (iv) a suspected failure to comply with a prohibition notice issued by a competent authority under section 15H of the Principal Act;
 - (v) orders on consent under section 15X(8) of the Principal Act, and
- (b) assign a division of adjudication officers to deal with matters referred by the competent authority under the Principal Act that relate to a suspected infringement of relevant competition law.

(4) Without prejudice to section 15T(2) of the Principal Act, a Chief Adjudication Officer shall have regard to the following factors when considering whether to designate specific adjudication officers to deal with particular matters, or to sit in particular divisions:

- (a) the anticipated complexity of the proceedings;
- (b) the skills of each adjudication officer with a view to achieving a balance of skills amongst adjudication officers;
- (c) the need for consistent decision making across similar matters;
- (d) the availability of adjudication officers;
- (e) the need for each adjudication officer to have a balanced workload;
- (f) any previously declared conflicts of interest of particular adjudication officers.

(5) If an adjudication officer sitting in a division is, for any reason, unable to exercise the functions of an adjudication officer, in relation to the matter being dealt with by that division or generally, the Chief Adjudication Officer may appoint another adjudication officer to replace that adjudication officer on that division.

Rules concerning appointment and functions of chairpersons and deputy chairpersons of divisions

19. (1) The Chief Adjudication Officer shall, where a division of adjudication officers is established pursuant to section 15T of the Principal Act, appoint –

- (a) one adjudication officer to act as chairperson of the division, and
- (b) one adjudication officer to act as deputy chairperson of the division.

(2) The decision of a division of adjudication officers shall –

- (a) be the decision of a majority of its members, and
- (b) be delivered in writing by the chairperson of the division without disclosing any view other than that of the division, whether assenting or dissenting.

(3) Where there are an equal number of votes in a matter to be decided by a division –

- (a) the chairperson of the division shall have a second or casting vote, and
- (b) where the chairperson is, unable, for any reason, to cast a vote, the deputy chairperson of the division shall have a second or casting vote.

(4) The functions of the chairperson of a division of adjudication officers shall be as follows:

- (a) dealing with case management or administrative matters arising in a matter assigned to the division;
- (b) delivering the decision of the division;
- (c) to deal with such matters as the Chief Adjudication Officer may direct, where the Chief Adjudication Officer considers it necessary to so direct for the fair disposal of any matter.

(5) If the chairperson is for any reason unable to exercise the functions under paragraph (3), the deputy chairperson shall exercise those functions for the duration of the inability.

Part 4

Structural arrangements relevant to independence of adjudication officers

Procedures for dealing with conflicts of interest

20. (1) Before requiring an employee of the competent authority, under section 15R(1) of the Principal Act, to assist adjudication officers, or an individual adjudication officer, in the performance of functions, the competent authority shall –

- (a) consider whether requiring the employee to so assist would, having regard to the role and function performed by the employee during their employment by the competent authority, give rise to a conflict of interest, and
- (b) consider whether there is any other reason why requiring the employee to so assist would give rise to a conflict of interest.

(2) Before appointing a person (including any consultant or adviser) under section 15R(1) of the Principal Act to assist adjudication officers, or an individual adjudication officer, in the performance of functions, the competent authority shall consider whether there is a reason why appointing the person to so assist would give rise to a conflict of interest.

(3) Where, having considered the matters referred to in paragraphs (1) and (2), the competent authority considers that requiring the employee, or appointing the person, as the case may be, would give rise to a conflict of interest, the competent authority shall not so require or so appoint.

(4) Where a person is appointed or required to assist an adjudication officer under section 15R of the Principal Act, the competent authority shall –

- (a) inform the person –
 - (i) of the matters, if any, in relation to which the competent authority considers the person will be solely responsible to the Chief Adjudication Officer, or to the adjudication officer or adjudication officers to which they have been individually assigned,
 - (ii) of the tasks, if any, that the competent authority considers the person may or may not, as the case may be, perform on behalf of the competent authority in accordance with section 15R(2) of the Principal Act, and
 - (iii) that they shall not provide such assistance in connection with any matter in which they have or may have a conflict of interest, in accordance with section 15R(1)(b) of the Principal Act,
- (b) in the case of an employee, inform the employee of the matters in relation to which the employee shall not be subject to direction in accordance with section 15R(3) of the Principal Act, and
- (c) reassign an employee in relation to whom the Chief Adjudication Officer has made a requirement under section 15R(1)(c), with regard to the need to avoid conflicts of interest and to ensure the independence of adjudication officers.

(5) In this Regulation, other than in clause (4)(a)(i), a reference to “adjudication officer” includes a reference to a Chief Adjudication Officer.

Prohibition on communication with competent authority in certain circumstances

21. (1) Adjudication officers, and employees of a competent authority required under section 15R of the Principal Act to assist an adjudication officer, shall not communicate with authorised officers, employees or members of the competent authority (other than authorised officers, employees or members acting in the capacity of adjudication officer) in respect of any proceedings before the competent authority relating to relevant competition law, unless –

- (a) where the communication relates to proceedings the subject of a referral under section 15M of the Principal Act, prior notice of the communication has been given to each undertaking concerned, or
- (b) the communication relates to an investigation in which the adjudication officer or the employee, as the case may be, has not been, and is not likely to be, involved in any related decision under section 15X of the Principal Act or in any related referral under section 15M of the Principal Act.

(2) In this Regulation, a reference to “adjudication officer” includes a reference to a Chief Adjudication Officer.

Documentation concerning certain investigations

22. Where documentation or other information concerning an investigation conducted under Part 2C of the Principal Act has been obtained by the competent authority in the exercise of its functions under the Principal Act, the Communications Regulation Act 2002 or the Competition and Consumer Protection Act 2014, such documentation or information shall not be disclosed to an adjudication officer (including a Chief Adjudication Officer) that has been directed to make a decision under section 15X of the Principal Act in relation to that investigation, or to persons tasked with assisting such adjudication officers (or Chief Adjudication Officer) under section 15R of the Principal Act, save in accordance with the Principal Act and upon notice to each undertaking concerned in any referral under section 15M of that Act.

Oversight of compliance with section 15P

23. (1) The competent authority shall appoint a member, commissioner or employee of the competent authority to be responsible for overseeing compliance by the competent authority with section 15P of the Principal Act and these Regulations.

(2) More than one member, commissioner or employee may be jointly appointed by the competent authority for the purposes of paragraph (1).

Treatment of Breaches of section 15P

24. (1) In this Regulation, “appropriate authority” means –

- (a) in relation to a breach or a suspected breach by the competent authority, the relevant Minister, and
- (b) in relation to a breach or suspected breach by an adjudication officer, the competent authority.

(2) Where –

- (a) a person appointed under Regulation 23(1), or
- (b) an adjudication officer,

reasonably suspects that there has been a breach of section 15P of the Principal Act or any regulation relevant to the independence of adjudication officers made under that Act, that person or adjudication officer shall report the suspected breach to the appropriate authority.

(3) Where a report is made to the appropriate authority under paragraph (2), the appropriate authority may request the person who made the report to provide the appropriate authority with additional information it considers to be relevant to the suspected breach.

(4) Where the competent authority, having considered a report under paragraph (2) and any additional information it receives in response to a request under paragraph (3) –

- (a) is satisfied that there has been a material breach of section 15P of the Principal Act or regulations relevant to the independence of adjudication officers made under that Act, it shall –
 - (i) where the appropriate authority is the relevant Minister, appoint an assessor to carry out an assessment in relation to the matter, or
 - (ii) where the appropriate authority is a competent authority, request that the relevant Minister appoint an assessor to carry out an assessment in relation to the matter,

or

- (b) is not satisfied that there has been a material breach of section 15P of the Principal Act or regulations relevant to the independence of adjudication officers made under that Act, it shall notify the person who made the report under paragraph (2) of its view and the reasons for it.

(5) When the assessor has completed an assessment of a matter, the assessor shall deliver a report to the relevant authority setting out –

- (a) the assessor's view on whether or not there has been a material breach of section 15P of the Principal Act or regulations relevant to the independence of adjudication officers made under that Act,
- (b) the reasons for that view, and
- (c) whether any person from whom information or documentation was requested under Regulation 30 or required under Regulation

31 failed, without lawful excuse, to provide the information or documentation requested.

(6) Where the report under paragraph (5) concludes that there has been a material breach of section 15P of the Principal Act or regulations relevant to the independence of adjudication officers made under that Act –

- (a) where the breach is by an adjudication officer, the relevant Minister may propose to revoke the appointment of the adjudication officer in accordance with Regulation 11, and
- (b) where the breach is by the competent authority, the competent authority shall –
 - (i) take such steps as it considers necessary (subject to the need to ensure the independence of adjudication officers in the performance of their functions) in order to remedy that breach, and
 - (ii) no later than 35 days from the date of the report under paragraph (5), deliver a report to the relevant Minister setting out the steps taken, or proposed to be taken, under clause (i), and the steps (if any) it will continue to take to avoid similar breaches.

(7) In this Regulation, a reference to “adjudication officer” includes a reference to a Chief Adjudication Officer.

Internal separation within competent authority

25. (1) The competent authority shall –

- (a) ensure effective internal separation between the functions of the competent authority and the functions of adjudication officers, and
- (b) ensure that the structure, policies, practices and functions of, and working arrangements within, the competent authority are consistent with the provisions of section 15P of the Principal Act.

(2) Effective internal separation and the structure and working arrangements within the competent authority referred to in subsection (1) shall address at least the following areas:

- (a) office space and facilities;
- (b) information technology arrangements.

(3) In this Regulation, a reference to “adjudication officer” includes a reference to a Chief Adjudication Officer.

Publication of policies and implementation of measures regarding conflicts of interest

26. The competent authority shall publish policies and implement measures sufficient to identify and manage conflicts of interest on the part of –

- (a) adjudication officers,
- (b) a Chief Adjudication Officer, and
- (c) any employee of the competent authority or other person (including any consultant or adviser) required under section 15R of the Principal Act to assist an adjudication officer or a Chief Adjudication Officer.

Reporting on compliance

27. The Chief Adjudication Officer and the competent authority shall, within one year from the date on which section 15Q(2)(e) of the Principal Act comes into operation and not less than once in every successive period of one year after that date, report to the relevant Minister on compliance by adjudication officers and the competent authority with the principle of independence under section 15P of the Principal Act, any regulations relevant to the independence of adjudication officers made under that Act, and the policies the adjudication officers or the competent authority have adopted in order to ensure compliance with that principle.

PART 5

Assessors

Interpretation (Part 5)

28. In this Part, “assessor” means a person appointed under Regulation 29.

Assessors

29. (1) Where an assessment is required under Regulation 7, 11 or 24, the relevant Minister shall, in writing, appoint a person (in this Regulation referred to as an “assessor”) to carry out such an assessment –

- (a) who satisfies at least one of the criteria referred to in Regulation 3(1)(b)(ii),
- (b) to whom none of the criteria referred to in Regulation 3(1)(c) apply,
- (c) who is not a Minister of the Government or a Minister of State (within the meaning of the Ministers and Secretaries (Amendment) (No. 2) Act 1977 (No. 28 of 1977)),
- (d) who is not an officer of the relevant Minister, and

- (e) who has never been an adjudication officer, a Chief Adjudication Officer or a member, commissioner or employee of the competent authority.

(2) An appointment under paragraph (1) shall specify that the person appointed to act as an assessor shall stand appointed for the duration of the specific assessment in respect of which they are appointed, and the assessor shall stand appointed from the date of the appointment for that period, or until the appointment is terminated under Regulation 32.

Request by assessor for documentation or information

30. (1) An assessor may request any information or documentation that is reasonably required to properly carry out an assessment from any of the following:

- (a) the competent authority;
- (b) a person tasked with assisting an adjudication officer, or Chief Adjudication Officer, under section 15R of the Principal Act;
- (c) an undertaking that was involved in a matter before an adjudication officer or a Chief Adjudication Officer.

(2) An assessor may request that information or documentation requested under paragraph (1) be provided in writing, orally, in electronic form or in any other form the assessor considers appropriate.

Power of assessor to require production of documents or information

31. (1) An assessor may, at any time before the expiry of the term of appointment referred to in Regulation 29(2), for the purposes of carrying out an assessment, issue a notice in writing to –

- (a) the person to whose renewal, revocation of appointment, or alleged breach (as the case may be) the assessment relates, or
- (b) the competent authority in respect of that person,

requiring the person or authority to provide the assessor, within such time as the assessor may reasonably specify, with information or documentation relevant to the assessment.

(2) Where a person or authority provides an assessor, in response to a requirement under paragraph (1), with information or documentation that is of a commercially sensitive nature, the person or authority may, by notice in writing to the assessor accompanying the documentation or information, state that the information or documentation is provided subject to paragraph (3).

(3) Without prejudice to the power of the assessor to refer to summarised, redacted, or anonymised information in the assessor's report, information or documentation provided subject to this paragraph shall not be viewed by, or shared with, any person other than one or more of the following:

- (a) the person or authority providing the information or documentation;

- (b) a legal adviser, or other professional adviser, of the person referred to in subparagraph (a);
- (c) the relevant Minister;
- (d) such other person as the Chief Adjudication Officer may direct.

Obligations of independence and impartiality on assessor

32. (1) An assessor shall perform functions under these regulations independently.

(2) Where an assessor, at appointment or at any time after beginning an assessment, is subject to a conflict of interest relevant to the assessment, the assessor shall declare the conflict of interest to the Minister who appoints, or proposes to appoint, the assessor.

(3) Where, by virtue of a declaration under this Regulation or otherwise, the Minister who appoints, or proposes to appoint, an assessor reasonably believes that an assessor is subject to a conflict of interest, that Minister shall –

- (a) terminate the appointment of the assessor from such date as the Minister may specify,
- (b) appoint a different assessor in respect of the assessment, and
- (c) direct the assessor whose appointment is terminated to provide the assessor appointed under subparagraph (b) with all information and documentation relevant to the assessment.

(4) An assessor whose appointment is terminated under paragraph (3) shall comply with a direction under subparagraph (c) of that paragraph as soon as reasonably practicable.

Terms of appointment of assessor

33. (1) An assessor appointed in respect of the Commission shall be paid such remuneration, and such allowances for expenses, as the Minister for Enterprise, Trade and Employment may from time to time determine, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform.

(2) An assessor appointed in respect of the Commission for Communications Regulation shall be paid such remuneration, and such allowances for expenses, as the Minister for the Environment, Climate and Communications may from time to time determine, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform.

(3) Without prejudice to paragraphs (1) and (2), the terms and conditions on which an assessor stands appointed shall, with regard to the need to secure the independence and impartiality of assessors, be such as the competent authority may determine from time to time.

(4) An assessor may at any time resign as an assessor by notice in writing to the relevant Minister.

(5) Neither the Public Service Management (Recruitment and Appointments) Act 2004 (No. 33 of 2004) nor the Civil Service Regulation Acts 1956 to 2005 shall apply to a person appointed as an assessor, save to the extent that such enactments apply to the person independently to their appointment as an assessor.



GIVEN under my Official Seal,
27 September, 2023.

SIMON COVENEY,
Minister for Enterprise, Trade and Employment.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations set out the requirements governing certain independence and employment terms relating to the adjudication officers who will carry out functions under the Competition (Amendment) Act 2022, (No. 12 of 2022).

The Act, at 15Q, provides that the Minister shall make regulations surrounding the terms governing the appointment and independence of adjudication officers. Section 15Q also gives the Minister the power to make regulations setting out how competent authorities and adjudication officers will implement sections 15O and 15P of the Act (concerning appointment of adjudication officers and independence of adjudication officers respectively).

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