

Dealing with consumer protection investigations from the Irish CCPC

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The Competition and Consumer Protection Commission (CCPC) is the main body enforcing competition and consumer protection laws in Ireland. It has wide ranging powers to investigate potential consumer and competition law breaches, including breaches of the Consumer Protection Act 2007 (the 2007 Act) and the Consumer Rights Act 2022, which amends the 2007 Act (the Pricing Regulations).

| The pricing regulations

There has been an observable trend of the CCPC investigating breaches of the pricing regulations. In particular, a number of traders were subject to CCPC investigations following 2023's "Black Friday" sales.

Under regulation 5A of the 2022 regulations, retailers, when making a price reduction announcement, whether online or instore, must:

- Display the "prior price" of the relevant good being reduced
- Ensure that any price announcement is:
 - a) unambiguous and easily identifiable as referring to that product
 - b) clearly visible and easy for consumers to read
- Base the amount of reduction on the "prior price"

The "prior price" is the "lowest selling price or unit price, as the case may be, applied by the trader to the product during a period of not less than 30 days before the application of the reduction." The lowest price, or unit price (where applicable), applied to a product no less than 30 calendar days before applying a price reduction. The day the price reduction is applied is not counted as

part of the 30-day period.

Retailers must therefore identify the lowest price applied to the relevant product during at least the last 30 days before applying the price reduction and it must indicate this price on the price reduction announcement. The discount must be based on this prior price only. Retailers are not required to say how long the prior price had been applied for. If a price reduction lasts longer than 30 days, the prior price is still the lowest price at least 30 days before the reduction was applied.

This provision is to prevent retailers from increasing the price of a product for a short period so they can drop the price shortly after and claim that the customer is benefiting from a significant price reduction. This is done to ensure any price reductions are genuine and not misleading a customer into thinking they are getting a better deal than they are.

The Competition and Consumer Protection Commission's powers

Following the completion of a preliminary assessment of suspected breaches, the CCPC may decide to open an investigation under Section 10 of the Competition and Consumer Protection Act 2014 (the 2014 Act). The CCPC has wide investigatory powers under the 2014 Act, which include but are not limited to:

- Requiring the production of specified documents or information by the retailer
- Carrying out interviews, which can be "interviews after caution", meaning that the interview will be carried out with the presence of a Garda and subject to a caution being administered i.e. "You are not obliged to say anything unless you wish to do so, but anything you say will be taken down in writing and may be given in evidence"
 - An interview is a retailer's opportunity to cooperate with the CCPC and to mitigate the penalty that may potentially be given by the CCPC
- The CCPC can also enter and search a premises with warrant

A retailers' approach to a CCPC interview

- While the approach of the interview is entirely in the control of the CCPC, a retailer can use the interview as an opportunity to co-operate with the CCPC and to limit any potential exposure it may have.
- The CCPC makes use of seconded members of An Garda Síochána to conduct investigations. It is important that retailers are aware that these offences could potentially attract criminal sanction. In this regard, no retailer should take an investigation or an invitation for an

interview under caution lightly. At the end of an interview under caution, the attendee will be invited to review and sign the notes of the interview. These notes and the audio recording of the interview will be sealed and retained by the CCPC as evidence.

- An interview under caution can be a daunting experience. It is recommended that retailers do not attend interviews with potential criminal implications without their solicitors.

In the first instance, the role of the Competition and Consumer Protection Commission is to encourage compliance with Consumer Law and it is not enforcement as a first step. Therefore, it is important that a retailer approaches any CCPC interview with a view to proactively engaging with the CCPC. For example, if the retailer is in a position to do so, it should demonstrate to the CCPC how the matter has been investigated internally, the actions that have been taken in relation to the alleged breaches, and any positive changes that have been made by the retailer to prevent a breach from occurring in future.

Steps such as these can help mitigate any alleged offence and potentially help the retailer achieve a more lenient penalty from the list below.

Possible penalties for breaches

Any breach of the 2007 Act or Pricing Regulations can be the subject of an enforcement action by the CCPC which can include criminal prosecution or the issuing of a fixed payment notice, which is an on the spot fine of €300 per breach.

The CCPC publishes a yearly Consumer Protection List, which recounts the enforcement actions taken by the CCPC each year and this list includes details of the companies and individuals who have been subject to an enforcement action. From a review of the Consumer Protection List it is clear that the CCPC frequently issue fixed payment notices in instances of breaches of the 2022 Regulations.

However, if the CCPC deems an alleged breach grave enough, it can proceed to prosecute a retailer. In such circumstance, a retailer can be exposed to a fine not exceeding €5,000 per breach. In its guidelines, the CCPC has confirmed that when determining the amount of the fine, the nature, the gravity and the duration of the breach will be considered.

If the CCPC, having investigated a potential breach, deems a breach to have occurred, under the Consumer Protection Act 2007, it may enforce powers ranging from engagement, to administrative action, to criminal prosecution. The following are the enforcement actions open to being applied by the CCPC:

A fixed payment notice being issued

As mentioned above, this is an on the spot fine of €300 per breach. The fine must be paid within 28

days and failure to pay will result in prosecution.

Issuing of a compliance notice

This is a written notice directing the retailer to remedy the relevant contravention of consumer protection legislation. This notice can be appealed to the District Court within 14 days of it being issued.

Business required to provide undertaking

The CCPC may require that the retailer provide a written undertaking that it will comply with the requirements of consumer protection legislation.

Prosecution, a fine, or other penalty being imposed by a court

This is the ultimate sanction available to the CCPC. The exposure is a fine not exceeding €5,000 per breach. When imposing a fine, the Court will consider the nature, the gravity and the duration of the breach.

A prohibition order being made

Under consumer protection legislation, the CCPC can apply to the Circuit or High Court seeking an order prohibiting a retailer from committing or engaging in a prohibited act or practice.

Apply to Court for an order requiring the trader to pay compensation in respect of any loss or damage to a consumer resulting from the offence

Under section 81 of the Consumer Protection Act 2007, the CCPC can apply to the Court for a compensation order.

As mentioned, if any of the above enforcement actions are taken by the Competition and Consumer Protection Commission, details of the retailer, the breach and the enforcement will be published in the CCPC's annual report and Consumer Protection List.

How Ogier can help

For more information on CCPC investigations and legal services related to this topic, please contact a member of our Dispute Resolution team via their contact details below.

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