

# THE HIGH COURT

[2025] IEHC 637

[2024 No. 1487 HP]

**Between:**

**RYANAIR DAC  
RYANAIR HOLDINGS PLC  
(each and both referred to hereafter as ‘Ryanair’)**

**Plaintiffs**

**- and -**

**THE COMPETITION AND CONSUMER PROTECTION COMMISSION  
(referred to hereafter as the ‘CCPC’)**

**Defendant**

**JUDGMENT of Mr Justice Max Barrett delivered on 19<sup>th</sup> November 2025.**

## **A. Introduction**

1. In these proceedings, the Plaintiffs have applied for, *inter alia*, the following. First, an order pursuant to O.50, r.6 RSC and/or s.28(8) of the Supreme Court of Judicature Act (Ireland) 1877 directing the CCPC to procure from Italy’s Autorità Garante Della Concorrenza e Del Mercato (AGCM) (i) the return of all documents seized pursuant to the search warrant executed at Ryanair’s registered office on 8<sup>th</sup> March 2024, and (ii) written confirmation that the said documents will not be used, relied upon, or referenced in any way in the AGCM’s ongoing investigation of Ryanair, or in any decisions, including any interim decisions, or any related

proceedings. Second, if necessary, an order pursuant to Art. 267 of the Treaty on the Functioning of the European Union (TFEU) seeking a preliminary ruling from the Court of Justice of the European Union (CJEU).

2. As to the first and second reliefs, two preliminary observations arise. First, it is unclear how seriously the procurement limb is pursued: the CCPC possesses no real power to procure anything from the AGCM. Second, it is essential that any mandatory order (and the injunctive relief being sought is mandatory in nature) be framed with sufficient precision so that the respondent knows exactly what is required and any breach may be readily identified. An imprecise order may properly be refused on that basis alone: *Bula Ltd v. Tara Mines Ltd* (No. 2) [1987] I.R. 95. After a full day of submissions, it remains unclear to me what precisely Ryanair seeks that the CCPC be enjoined to do beyond issuing a letter to the AGCM, the proposed content of which has not been fully detailed to me.

3. The grounding affidavit of Eoin Kealy appears to refer to further reliefs that are not included in the Notice of Motion. No application was made to amend the Notice of Motion, and I therefore decline to consider those additional reliefs. I merely observe that, had they been properly sought, I would have refused them, *mutatis mutandis*, for the reasons set out in this judgment in respect of the reliefs actually sought.

4. Ryanair contends that the present application arises in circumstances of extreme urgency. For the reasons set out in this judgment, I do not accept that characterisation, nor do I consider that the fundamental criteria for the grant of a mandatory injunction are satisfied.

## **B. Background**

5. In this section I outline the factual background to the proceedings.

6. On 14<sup>th</sup> September 2023, the AGCM commenced an inquiry into Ryanair's commercial practices following complaints alleging misuse of a dominant position in the Italian market. These allegations remain unproven at this time and may be untrue.

7. On 27<sup>th</sup> February 2024, the AGCM requested the assistance of the CCPC in connection with its investigation. The request was made pursuant to Art. 22(1) of Council Regulation (EC)

No. 1/2003 of 16<sup>th</sup> December 2002 on the implementation of the competition rules laid down in Arts. 81 and 82 of the Treaty (O.J. L12, 4.1.2003).

8. On 8<sup>th</sup> March 2024, the CCPC applied to the District Court for a search warrant, supported by an information sworn by a CCPC officer. Ryanair contends that the information omitted to mention important pertinent details.

9. The information was considered by the District Court, supplemented by additional evidence heard *in camera*. On 8<sup>th</sup> March 2024, District Judge Michelle Finan issued the search warrant sought and on the same day Ryanair's Dublin headquarters were searched. Ryanair contends that the CCPC acted unlawfully in agreeing to assist the AGCM, failed to discharge its obligation of candour to the District Court and did not make a full and fair presentation to that court.

10. In any event, the warrant issued on 8<sup>th</sup> March 2024 and was executed later that day. CCPC officials accompanied by AGCM personnel designated as CCPC officers for the purpose of the operation, attended at Ryanair's headquarters and conducted an extensive search and seizure.

11. Shortly after 11 p.m. on 8<sup>th</sup> March 2024, the AGCM officials departed Ryanair's premises, taking with them 222 documents. They subsequently travelled to Italy with those documents. This occurred without prior notice to Ryanair and, it is alleged, notwithstanding an arrangement with the CCPC that a further meeting would be held to address outstanding matters before the search concluded.

12. Ryanair contends that, as a consequence, it was denied an agreed opportunity to address outstanding issues with the CCPC's officers before the materials were removed from Ireland. In particular, it maintains that questions of legal privilege and relevance remained unresolved at the time the seized documents were taken from its premises.

13. Ryanair asserts that its internal legal team and its external advisers from Arthur Cox (i) understood, up to the conclusion of the inspection, that the CCPC intended only to seal the materials, and (ii) were unaware that the CCPC had already transferred the documents to the AGCM, who had then left the premises with them and removed them from Ireland. Those materials included documents over which Ryanair had asserted legal privilege.

14. The AGCM was released from these proceedings pursuant to a judgment I delivered on 21<sup>st</sup> May 2024. That decision was affirmed on appeal on 31<sup>st</sup> January 2025. During the course of these proceedings, the AGCM has furnished a number of undertakings, including the following:

- On 16<sup>th</sup> May 2024, the AGCM’s counsel represented before me that:  
*“[I]f the Court determines...that the warrant was invalidly obtained we will return the documents.”*
- On 7<sup>th</sup> November 2024, the AGCM’s counsel informed the Court of Appeal that:  
*“We always made it clear that...we would abide by the decision of the Irish courts”.*
- On 12<sup>th</sup> December 2024, the AGCM’s solicitors confirmed in writing that:  
*“Should the High Court rule that the warrant issued to the CCPC was invalid, our client will remove the documents obtained during the inspection and refrain from using them in any way”.*

15. Ryanair’s evidence is that it understood the AGCM’s assurances to mean that no decision arising from the investigation would be taken in reliance on the disputed documents until the Irish courts had ruled on the validity or lawfulness of the warrant. Ryanair contends that the assurances cannot reasonably be read as permitting the AGCM to reach or publish binding decisions based on the disputed materials before the warrant challenge is determined, and that an undertaking merely to return the documents would in such circumstances be of limited practical value. I do not consider it necessary to reach any concluded view on this issue; the undertakings say what they say, and no more.

16. Notwithstanding the AGCM’s release from the proceedings, the CCPC subsequently secured the return from Italy of material over which privilege had been claimed. This occurred, I understand, pursuant to an arrangement reached in correspondence between the CCPC and Ryanair’s solicitors.

17. Proceedings were thereafter initiated in Italy, while the Irish proceedings continued with the CCPC as the sole defendant. The Italian courts initially directed the AGCM to refrain from using the disputed documents; however, that order was later set aside by the Council of State,

which permitted the AGCM to make use of the materials. Among the reasons identified was that the lawfulness of the inspection measures falls to be determined by the Irish courts. The Italian courts also emphasised that any request to inspect the request for assistance (RFA) is a matter for the Irish courts, which bear responsibility for adjudicating upon the validity of the warrant.

**18.** In July 2025, the CCPC applied for a stay of these proceedings pending the outcome of the Italian proceedings. For the reasons set out in a written judgment, I refused that application on 31<sup>st</sup> July 2025.

**19.** On 8<sup>th</sup> October 2025, the AGCM issued a Notice of Investigative Findings in which it reached the provisional view that Ryanair has engaged in anti-competitive conduct in Italy. That Notice relies extensively on the disputed documents. It also records that the preliminary investigation phase is scheduled to conclude on 25<sup>th</sup> November 2025, with a final decision to issue by 31<sup>st</sup> December 2025.

**20.** It is against this factual background that the present application has been brought.

### ***C. Legitimus Contradictor***

**21.** Before addressing the substance of the injunction application, it is necessary to consider matters through the lens of the doctrine of *legitimus contradictor*. That doctrine identifies the category of persons who are entitled to participate as formal opponents in proceedings. Its function is to maintain procedural coherence, to ensure that the Court is confronted only by parties with a legitimate stake in the outcome, and to avoid unnecessary complication or disruption of the proceedings.

**22.** The history of the AGCM's undertakings to the Irish courts has already been outlined. The AGCM has confirmed that, should the inspection be invalidated in Ireland, it will not rely on the seized materials in making any findings against Ryanair and will destroy them immediately. Ryanair has criticised the AGCM's prior perusal of the documents, contending that such conduct undermines the undertakings given and poses a risk of real prejudice.

23. I note that the CCPC has made clear that it (i) has no power or control over the AGCM, and (ii) has had no involvement in either (a) the substance of the undertakings furnished by the AGCM, or (b) the conduct or progress of the Italian investigation. (The unsurprising centrality of Italy to an investigation conducted by an Italian authority into alleged anti-competitive conduct in Italy is reflected in the fact that on the day the present application for injunctive relief was heard in Ireland, Ryanair was simultaneously seeking in Italy a stay of the AGCM's investigation and/or its progression towards findings.)

24. The CCPC is concerned, in light of the matters identified at items (i) and (ii) in the preceding paragraph, about the prospect of an injunction of the type sought by Ryanair issuing against it. Had the warrant been obtained by the CCPC in the course of its own investigation, it would plainly be a *legitimus contradictor* to the present application. However, its sole role here has been to facilitate the Italian investigation pursuant to Regulation 1/2003.

25. This application is, in substance, directed towards securing the return of documents held by the AGCM, an Italian authority, in Italy. Yet it is brought in Ireland against the CCPC, an Irish authority which (i) has no power or control over the AGCM, (ii) has had no involvement in either the undertakings furnished by the AGCM or the progress of the Italian investigation, and (iii) has acted solely to facilitate that investigation pursuant to Regulation 1/2003. It follows that, in seeking the return of the documents, Ryanair, in bringing the within interlocutory application, appears to have sued the wrong body in the wrong jurisdiction. The fact that the present application has been brought in this jurisdiction reflects, in my view, a fundamental misunderstanding on Ryanair's part as to the relationship between the two competition authorities and the limits of their respective capacities to involve themselves in each other's activities.

#### **D. Remedies in Italy**

26. When it comes to the alleged finality of any impending decision by the AGCM, Ryanair accepts that any adverse finding may be reversed on administrative review. Even so, Ryanair argues that an AGCM decision against it could have severe commercial consequences, potentially requiring it to unwind an operating model long in place (and potentially to reinstate it should an appeal thereafter succeed). If the AGCM finds against Ryanair and that decision is upheld on review, such an unwinding is one possible outcome; other outcomes may also arise.

I believe that I can take judicial notice that Italy is a liberal democracy and a member state of the European Union, possessing a sophisticated court system committed to upholding the rule of law. There is nothing before me to suggest that Ryanair would be without the ability to seek adequate remedy in whatever circumstances come to pass in Italy.

### **E. The Test for a Mandatory Injunction**

27. This application is, in substance and effect, one for a mandatory injunction. The relief sought would require me to direct the CCPC to take a positive step (to issue correspondence to the AGCM, with the prospect of further consequential actions depending on the AGCM's response). It is difficult to see how such relief could be characterised as prohibitory unless I were to engage in a double negative by directing the CCPC not to decline to write a letter, which in practical terms would still compel affirmative action (thus revealing the true mandatory character of the relief sought).

28. Ryanair relies on *Glenkerrin v Dún Laoghaire* [2011] 1 IR 417; [2006] IEHC 413 for the proposition that the nature of an injunction is determined by its substance rather than its form. Applying that principle, I am satisfied that the relief sought in this application is properly characterised as mandatory.

29. Ryanair advances several arguments as to why the relief should be treated as prohibitory rather than mandatory. I do not accept those submissions for the following reasons:

- (i) *Ryanair contends that the injunction is prohibitory in substance because its objective is to preserve the disputed documents and prevent their use in the Italian investigation.*

*However*, even if the ultimate purpose is so framed, the mechanism by which it is to be realised is the imposition of a positive obligation on the CCPC. The substance of the relief therefore remains mandatory notwithstanding any prohibitory objective.

- (ii) *Ryanair argues that the relief is intended to maintain the status quo pending trial.*

*However, invoking the status quo does not convert an order requiring affirmative steps into a prohibitory measure. Here, the status quo is not maintained by inaction; it is altered by compelling the CCPC to act, which is quintessentially mandatory.*

- (iii) *Ryanair submits that the order is only mandatory in form because the AGCM is no longer a party, with the result that the CCPC must be directed to take, or to use reasonable endeavours to take, the necessary steps.*

*However, the AGCM's absence cannot alter the essential character of the relief. A mandatory order does not become prohibitory because it must be routed through a non-wrongdoing party.*

- (iv) *Ryanair contends that any mandatory elements are merely ancillary to an otherwise prohibitory or preservative injunction.*

*However, mandatory components cannot be redescribed as ancillary where they constitute the operative core of the relief. That the order may operate to restrain the AGCM does not detract from the fact that it obliges the CCPC to take positive action, which is determinative of its proper classification.*

**30.** Ryanair argues that, even if the relief is properly characterised as mandatory, this does not automatically entail application of the 'strong case likely to succeed at trial' standard which, following the Supreme Court's decision in *Lingam v Health Service Executive* [2005] 10 JIC 0403; [2005] IESC 89, is generally applied to mandatory interlocutory relief. Respectfully, however, I am bound by *Lingam*, which holds that mandatory relief attracts that higher standard. Ryanair cannot avoid that consequence by asserting that the test is not mechanically mandated, and I cannot depart from binding precedent.

**31.** Ryanair submits that mandatory injunctions are not a monolithic category and that, although such orders may in some cases carry a heightened risk of irremediable prejudice, it does not follow that a mandatory injunction must always be refused unless the applicant can meet the strong-case threshold. However, the fact that mandatory injunctions vary in character

does not diminish the binding force of *Lingam*, which expressly requires a strong case for the grant of mandatory interlocutory relief. Whatever the range within the category, that variability does not empower the High Court to disapply a standard fixed by the Supreme Court.

**32.** Ryanair observes that mandatory orders vary considerably in nature and impact, contrasting, for example, orders requiring the demolition of a building or the continuation of an employment relationship with what it says is the more limited relief sought here (namely, an order requiring the CCPC to write seeking the return of the disputed documents pending trial). On that basis, it argues that the relief is properly viewed as preservatory. However, characterising the order as modest or limited overlooks that the operative requirement (directing the CCPC to take steps to secure the return of documents) would constitute a significant intrusion by me into the functions of an independent statutory body.

**33.** Somewhat surprisingly, Ryanair submits that I may apply the conventional *Campus Oil* test – whether there is a fair or serious issue to be tried – when it comes to deciding the application at hand. It relies in this regard on the observation of Geoghegan J. in *Ó Murchú t/a Talknology v Eircell Ltd* [2001] 2 JIC 2101; [2001] IESC 15, §6:

*“There are different kinds of mandatory injunctions. ... Although the injunctions sought in this case may arguably be classified as “mandatory” they are not of that type. They are directed simply towards retaining the status quo pending the outcome of the action, which is the normal purpose of a prohibitive injunction. I see no reason therefore why the traditional principles would not be relevant to this case.”*

**34.** That passage, however, does not assist Ryanair. It was directed to an order whose operative effect was preservatory. Here, by contrast, the relief sought would require the CCPC to take affirmative steps, and thereby amounts to a mandatory order engaging the *Lingam* threshold.

**35.** Ryanair further relies on the proposition that the Court should focus on the practical consequences of the relief sought rather than on rigid categorisation. That approach is reflected in the judgment of Hoffmann J. in *Rover International v Cannon Film Sales* [1987] 1 W.L.R. 670, where he articulated the following principle, applicable to both mandatory and prohibitory relief, 680-681:

*“A fundamental principle is therefore that the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been ‘wrong’ in the sense I have described. The guidelines for the grant of both kinds of interlocutory injunctions are derived from this principle....[S]emantic arguments over whether the injunction as formulated can properly be described as mandatory or prohibitory are barren. The question of substance is whether the granting of the injunction would carry that higher risk of injustice which is normally associated with the grant of a mandatory injunction ... If it appears to the court that, exceptionally, the case is one in which withholding a mandatory injunction would in fact carry a greater risk of injustice than granting it even though the Court does not feel a ‘high degree of assurance’ about the plaintiff’s chances of establishing his right, there cannot be any rational basis for withholding the injunction.”*

**36.** I would simply observe that the ‘least risk of injustice’ principle does not displace the mandatory/prohibitory distinction but operates within it. Where the relief sought is mandatory, the enhanced threshold is itself the means by which the courts have identified the lower-risk course.

**37.** The reasoning of Hoffmann J. in *Rover* was endorsed by the High Court in *Shelbourne Holdings Limited v Torriam Hotel Operating Company Limited* [2010] 2 I.R. 52; [2008] IEHC 376. In addressing an apparent divergence in earlier Irish authority as to whether a mandatory injunction requires a strong and clear case, or whether a fair issue to be tried may suffice, Kelly J. stated, at 79:

*“[P]ending a final determination of the issue by the Supreme Court I am much attracted by the approach of Hoffmann J in [Rover] where he took the view that the fundamental principle on interlocutory applications for both prohibitory and mandatory injunctions is that the court should adopt whatever course would carry the lower risk of injustice if it turns out to have been the ‘wrong’ decision.”*

**38.** *Shelbourne* was expressly decided without resolving the divergence in authority. The fact that a High Court judge expressed approval of Hoffmann J.’s approach in *Rover* cannot override the Supreme Court’s definitive articulation of the strong-case standard in *Lingam*. Any flexibility suggested in *Shelbourne* must yield to that binding precedent.

39. Ryanair observes that the trial judge's comments in *Shelbourne* were, strictly speaking, *obiter*, as the applicant in that case was found to meet either formulation of the test and had established a strong case on the merits. The fact that those observations were *obiter* only emphasises that they cannot displace *Lingam*, the binding authority which I must follow unless and until (if at all) *Lingam* is reconsidered by the Supreme Court.

40. Ryanair accepts that in *Lingam v Health Service Executive* [2005] 10 JIC 0403; [2005] IESC 89 the Supreme Court endorsed the requirement that an applicant for mandatory interlocutory relief establish a strong case likely to succeed at trial. In truth, that concession is determinative: the applicable threshold is fixed by the Supreme Court and cannot be reformulated by reference to perceived flexibility in lower-court decisions. Even so, Ryanair advances three points regarding *Lingam*. Leaving aside that *Lingam* remains binding as is, I would observe as follows:

- First, Ryanair notes that *Lingam* concerned an application to require the defendant to continue the plaintiff's employment notwithstanding his dismissal, and submits that it is unsurprising the Court required a strong case in that context. *However*, the fact that the case arose in an employment setting does not confine its principle to that field; the judgment articulates a general rule governing mandatory interlocutory relief, not a context-specific exception.
- Second, Ryanair argues that the two lines of authority discussed in *Shelbourne* (one favouring a strong-case threshold and the other a fair-issue/least-risk-of-injustice approach) were not addressed in the judgment of Fennelly J., suggesting that the distinction was neither debated nor the subject of submissions. But the Supreme Court's silence on earlier divergences cannot limit the scope of its express ruling. And its express endorsement of the strong-case standard necessarily supersedes any prior inconsistency in the authorities.
- Third, Ryanair submits that post-*Lingam* case law preserves a role for the 'least risk of injustice' test, relying particularly on *Fitzpatrick v Minister for Agriculture* [2018] 1 JIC 1107; [2018] IEHC 77, where the trial judge accepted that the starting point is the strong-case requirement but stated at

para. 65 that “[T]his onus of proof would not be fatal if the withholding of the interlocutory injunction would carry with it a greater risk of injustice than granting it.” *Fitzpatrick*, however, does not advance Ryanair’s position. It reaffirms that the strong-case standard is the starting point and default rule for mandatory interlocutory relief, with exceptional departure permitted only in circumstances that do not arise here.

**41.** Ryanair has also referred me to *Dunnes Stores v McCann* 2017 No. 5675P [2017] 11 JIC 2302; [2017] IEHC 700, where I held that I was bound by precedent to maintain the distinction between mandatory and prohibitory injunctions and to grant the former only where a strong case had been demonstrated. That acknowledgment confirms the position that the High Court has no discretion to revert to the lower standard where the relief sought is properly classified as mandatory.

**42.** Ryanair submits that the jurisprudence contains two recognised strands of authority and that the Court retains a discretion to adopt, in the circumstances of a particular case, the approach that best avoids the greater risk of injustice pending trial. However, even if such divergent strands exist at High Court level (and I do not see or say that they do), they do not confer any discretion on a High Court judge to disregard Supreme Court authority. Once the order sought is substantively mandatory, the High Court is bound to apply the stricter test prescribed by the Supreme Court.

**43.** Ryanair also relies on the decision of the Supreme Court in *Charleton v Scriven* [2019] 5 JIC 0802; [2019] IESC 28, where Clarke C.J. observed at §4.2 that the Court’s overarching task on an interlocutory application is to minimise the risk of injustice, and at §4.3 referred back to his judgment in *Okunade v Minister for Justice* [2013] 1 ILRM 1; [2012] IESC 49, noting that the more demanding strong-case standard applicable to mandatory injunctions is itself an expression of the least-risk-of-injustice principle. I do not see that this assists Ryanair. *Charleton v Scriven* does not support any relaxation of the strong-case standard; rather, it confirms that the requirement is a manifestation of the least-risk-of-injustice analysis and therefore reinforces, rather than weakens, the strong-case standard in mandatory injunction applications.

44. Ryanair further relies on the judgment of O’Donnell J. in *Merck Sharpe & Dohme v Clonmel Healthcare* [2020] 2 IR 1; [2019] IESC 65, contending that it supports a more flexible approach. It notes that O’Donnell J. emphasised that interlocutory applications should not be governed by rigid or mechanistic tests. However, *Merck* emphasises flexibility in the organisation and sequencing of the interlocutory inquiry, not in lowering the substantive threshold applicable to mandatory orders. Nothing in O’Donnell J.’s analysis displaces the strong-case requirement where the relief sought compels positive action.

45. Ryanair also submits that, because the rights it seeks to protect arise in part under EU law, I must ensure that national procedural principles comply with the EU-law principle of effectiveness. Ryanair relies in this regard on Case C-432/05 *Unibet (London) Ltd v Justitiekanslern* (ECLI:EU:C:2007:163), in which the Court of Justice held that national rules must not render the exercise of EU rights impossible in practice or excessively difficult. Ryanair argues that the *Shelbourne Holdings* approach aligns more closely with that requirement than a strict application of the *Lingam* test. However, EU principles of effectiveness do not entitle me to depart from the procedural standards mandated by the Supreme Court. The strong-case requirement does not render the exercise of EU rights impossible or excessively difficult; Ryanair retains full access to substantive relief at trial.

46. Finally, Ryanair relies on the undertakings and representations made by the AGCM to the High Court, the Court of Appeal and Ryanair itself (as described elsewhere above). While this is not an application to enforce those undertakings, Ryanair submits that there having been given substantially reduces any risk of injustice to the AGCM were I to grant relief that, on its case, merely reflects the objective meaning of what the AGCM communicated to the Irish courts. It argues that this is a relevant consideration in assessing the balance of convenience. However, assurances furnished by the AGCM cannot alter the essential character of the relief sought, nor diminish the significant intrusion inherent in compelling the CCPC to act. They therefore cannot obviate the need for Ryanair to meet the strong-case standard before such relief may issue.

47. Ryanair’s submissions on the applicable test can be distilled into several strands, which I address in turn.

**48.** First, Ryanair contends that the relief sought is, in substance, prohibitory. For the reasons already given, I do not agree. The order is mandatory because it obliges the CCPC to take affirmative steps; reframing its objective does not convert compelled action into prohibitory restraint.

**49.** Second, Ryanair submits that, even if the order is mandatory, its purpose is nevertheless to preserve the status quo, such that the test applicable to prohibitory injunctions should apply in accordance with *Eircell*. However, *Eircell* concerned orders maintaining the status quo through non-interference. Preserving an asserted status quo through compelled action does not fall within that line of authority and cannot justify application of the prohibitory-injunction test.

**50.** Third, Ryanair argues that if, contrary to its submissions, the relief is mandatory and the prohibitory standard does not apply, the absence of a strong case is not determinative, as my overarching duty is to select the course carrying the lower risk of injustice. I cannot accept that view. Where the relief is mandatory, the absence of a strong case is determinative because the Supreme Court has prescribed that threshold as the precondition for the grant of such relief.

**51.** Fourth, Ryanair submits that its contended-for approach is consistent with the EU-law principle of effectiveness, as articulated in *Unibet*. However, that principle does not entitle a party to a relaxation of national procedural thresholds, and nothing in *Unibet* suggests that mandatory interlocutory relief may issue absent satisfaction of the strong-case standard.

**52.** Fifth, Ryanair contends that, in any event, the relief sought represents the course carrying the least risk of injustice and that it has a strong case with a real prospect of success at trial. That assertion is premised on the very characterisation of the relief that I have rejected. Compelling intervention by an independent statutory body entails heightened risks that justify the strong-case requirement and cannot be re-described as the lower-risk option.

**53.** In general, the *Campus Oil* principles, as identified in *Campus Oil Ltd v Minister for Industry and Energy (No.2)* [1983] I.R. 88; [1983] IESC 19, continue to govern applications for interlocutory injunctive relief, namely: (i) whether there is a fair case to be tried; (ii) whether damages would be an adequate remedy at trial; and (iii) where the balance of convenience lies. However, as already noted, where (as here) the relief sought is mandatory in substance, a higher standard applies.

54. The *Campus Oil* principles were refined by the Supreme Court in *Merck*. There, the Supreme Court held that, while the ordinary fair case threshold applies to prohibitory injunctions, a mandatory injunction attracts an augmented standard. At para. 64 of his judgment, O'Donnell J. summarised the applicable principles in the following terms:

- “(1) First, the court should consider whether, if the Plaintiff succeeded at the trial, a permanent injunction might be granted. If not, then it is extremely unlikely that an interlocutory injunction seeking the same relief upon ending the trial could be granted;*
- (2) The court should then consider if it has been established that there is a fair question to be tried, which may also involve a consideration of whether the case will probably go to trial. In many cases, the straightforward application of the American Cyanamid and Campus Oil approach will yield the correct outcome. However, the qualification of that approach should be kept in mind. Even then, if the claim is of a nature that could be tried, the court, in considering the balance of convenience or balance of justice, should do so with an awareness that cases may not go to trial, and that the presence or absence of an injunction may be a significant tactical benefit;*
- (3) If there is a fair issue to be tried (and it probably will be tried), the court should consider how best the matter should be arranged pending the trial, which involves a consideration of the balance of convenience and the balance of justice;*
- (4) The most important element in that balance is, in most cases, the question of adequacy of damages;*
- (5) In commercial cases where breach of contract is claimed, courts should be robustly sceptical of a claim that damages are not an adequate remedy;*
- (6) Nevertheless, difficulty in assessing damages may be a factor which can be taken account of and lead to the grant of an interlocutory injunction, particularly where the difficulty in calculation and assessment makes it more likely that any damages awarded will not be a precise and perfect remedy. In such cases, it may be just and convenient to grant an interlocutory injunction, even though damages are an available remedy at trial;*

- (7) *While the adequacy of damages is the most important component of any assessment of the balance of convenience or balance of justice, a number of other factors may come into play and may properly be considered and weighed in the balance in considering how matters are to be held most fairly pending a trial, and recognising the possibility that there may be no trial;*
- (8) *While a structured approach facilitates analysis and, if necessary, review, any application should be approached with a recognition of the essential flexibility of the remedy and the fundamental objective in seeking to minimise injustice, in circumstances where the legal rights of the parties have yet to be determined.”*

**55.** The higher standard in mandatory injunctions was the subject of comment by Fennelly J. in *Lingam*:

*“[I]n substance what the plaintiff/appellant is seeking is a mandatory interlocutory injunction and it is well established that the ordinary test of a fair case to be tried is not sufficient to meet the first leg of the test for the grant of an interlocutory injunction where the injunction sought is in fact mandatory. In such a case it is necessary for the applicant to show at least that he has a strong case that he is likely to succeed at the hearing of the action.”*

**56.** This passage was endorsed by Clarke C.J. in *Charleton v Scriven*. More recently, in *Clare County Council v McDonagh* [2022] 2 IR 122; [2022] IESC 2, the Supreme Court has described the applicable threshold as requiring the applicant to demonstrate a “*particularly strong and powerful*” case. There is therefore no doubt that Ryanair must establish a strong case in respect of its substantive claim. *Okunade* requires an applicant to present, in a clear and direct manner, a case capable of meeting that elevated threshold. Ryanair cannot do so here. In short, when the requisite principles are applied to the facts, Ryanair cannot demonstrate a strong case that its substantive application will succeed at trial, and no aspect of the balance of convenience favours granting the relief sought.

**57.** In passing, I accept Ryanair’s submission that the defining feature of the Court’s injunctive jurisdiction is its inherent adaptability. (That jurisdiction is grounded in s.28(8) of the Supreme Court of Judicature Act (Ireland) 1877). I further accept that, as Ryanair contends, the

development of the *Mareva* injunction demonstrates the capacity of the courts to refine their injunctive powers in response to evolving legal and societal needs. However, the flexibility of the injunctive jurisdiction is not a warrant for judicial improvisation where established principle already provides a clear framework, as it does here. Adaptability does not equate to unbounded discretion, still less to judicial *carte blanche*. The *Mareva* jurisdiction itself developed through incremental refinement within principled limits, not through ad hoc departures from settled doctrine. The law governing interlocutory relief in Ireland has been extensively litigated and is now relatively well settled. There is no basis for a judicial ‘free-for-all’ or for unwarranted expansion of that law. The existing framework supplies the principles necessary to resolve the present application, and it is to that framework that I should, and do, adhere.

#### **F. Strength of the Case**

**58.** Ryanair emphasises the seriousness of the issues raised and identifies five overarching considerations. I address each in turn.

**59.** First, Ryanair submits that the search in this matter constituted an interference with its rights under Art.7 of the Charter of Fundamental Rights of the European Union, under the Constitution, and under Art.8 of the European Court of Human Rights. It has referred, by way of illustration of the care required in this area, to Case T-451/20 *Meta Platforms Ireland v European Commission* (ECLI:EU:T:2020:515), the judgments of the European Court of Human Rights in *Niemietz v Germany* (1993) 16 E.H.R.R. 97, *Vinci Construction and GTM Génie Civil et Services v France* (Application 60567/10), *Janssen-Cilag SAS v France* (Application 33931/12), *Sérvulo & Associados - Sociedade de Advogados, RL, and Others v Portugal* (Application 27013/10), and also to domestic authority such as *CRH Plc, Irish Cement Ltd v Competition and Consumer Protection Commission* [2017] I.R. 521; [2017] IESC 34.

**60.** While the search of Ryanair’s Dublin premises unquestionably engaged important privacy rights, that fact alone does not convert the present application into one warranting a mandatory interlocutory injunction. The existence of interference does not necessarily demonstrate unlawfulness, nor does it elevate the matter beyond the established framework governing interim relief. The authorities cited highlight the need for care and proportionality,

considerations that are already fully accommodated within existing legal tests, which are not supportive of my now issuing the mandatory form of relief now sought.

**61.** Ryanair's second overarching point concerns the right to an effective remedy. It notes that this right is firmly recognised in domestic law (see, for example, *Efe and Others v Minister for Justice, Equality and Law Reform and Others* [2011] 2 I.R. 798; [2011] IEHC 214 and that it has long been central to EU law. It relies in this regard on *Case 294/83 Les Verts v European Parliament* (EU:C:1986:166), judgments of the European Court of Human Rights in *UAB Kesko Senukai Lithuania v Lithuania* (Application 19162/19) and *Lindstrand Partners Advokatbyrå AB v Sweden* (Application 18700/09), and on academic commentary. Ryanair submits that an effective remedy requires not merely the theoretical ability to bring proceedings but a remedy capable of preventing or addressing the harm in question, supported by appropriate procedural safeguards.

**62.** I note that the right to an effective remedy, whether under domestic or EU law, does not guarantee the specific interlocutory relief sought here, still less a right to pre-emptively restrain a separate national authority acting within its own jurisdiction. The authorities relied upon focus on the availability of meaningful *ex post* remedies; they do not require courts to expand interim jurisdiction beyond established limits. The existing legal order already provides Ryanair with robust mechanisms to challenge any alleged unlawfulness, thereby satisfying the requirement of effectiveness.

**63.** Ryanair's third overarching point is that its position accords with the purpose and structure of Regulation 1/2003, the instrument under which assistance was provided. It emphasises the need to interpret EU legislation in light of its wording, context and objectives: *X Internet Unlimited Company v Coimisiún na Meán* [2025] IEHC 442, §31. It relies on several recitals ((1), (6), (15) and (28)) as demonstrating that the Regulation establishes a cooperative enforcement framework. Ryanair submits that these Recitals, read together, confirm that Regulation 1/2003 is intended to ensure coordinated and mutually supportive enforcement across the EU. Similar reliance is placed on Articles 11(1), 12 and 16, which, Ryanair says, embody principles of cooperation, trust and non-contradiction within the European Competition Network. On this basis, Ryanair argues that its position is fully consistent with the co-operative enforcement architecture of the Regulation.

64. *However*, the cooperative framework established by Regulation 1/2003 does not expand the interlocutory jurisdiction of national courts, nor does it imply a power to restrain the conduct of another national authority during an ongoing investigation. The Regulation presupposes that each authority acts within its own legal system, governed by its own procedural rules. Nothing in the text or scheme of the Regulation displaces domestic principles governing interim relief, nor does it support judicial intervention in the enforcement process of another Member State.

65. Ryanair's fourth overarching point is that enforcement powers under the Regulation are expressly balanced against protections for fundamental rights, as reflected in Recitals (5), (32) and (37). It submits that these provisions impose obligations on all actors applying the Regulation, including national courts, to ensure that rights of defence and the right to an effective remedy are fully respected.

66. *However*, while the Regulation unquestionably requires that fundamental rights be respected, it does so principally through the architecture of the enforcement process itself and through the availability of subsequent judicial review. It does not create freestanding rights to interlocutory restraint, nor does it require national courts to extend their interim jurisdiction beyond established boundaries. The protection of fundamental rights remains fully achievable within the ordinary operation of domestic law.

67. In its fifth overarching point, Ryanair suggests that these principles together generate an entitlement to the interlocutory relief now sought. *However*, interim restraints of this nature do not arise automatically from the invocation of fundamental rights or cooperation principles. They remain subject to well-established doctrinal criteria.

Ryanair additionally contends that its right to an effective remedy would not be vindicated by a later finding that the warrant was unlawful or by the annulment of any final AGCM decision. It maintains that such outcomes would not address the alleged irreversible harm associated with the AGCM issuing an infringement decision in the interim. *However*, such harms as are asserted by Ryanair, even if taken at a high level of abstraction, are speculative, remediable, or mischaracterise the nature of the enforcement process. A later finding of unlawfulness or an annulment of a final decision can constitute a fully effective remedy. The scenario advanced

does not satisfy the threshold for establishing irreparable harm and does not justify the granting of the mandatory interlocutory injunctive relief now sought.

**68.** Ryanair identifies a series of substantive complaints underlying its challenge to the warrant, the first of which concerns proportionality. It contends that its constitutional rights, as well as its rights under Art.8 ECHR, were engaged when the CCPC decided to seek the warrant and when the District Court granted it. Proportionality featured centrally in the Supreme Court’s decision in *CRH*. There, Laffoy J. confirmed that the proper approach is to apply the Art.8 proportionality analysis articulated by the ECHR in *Vinci Construction and GTM Génie Civil et Services v France* (Application 60567/10), At §188, Laffoy J. cited the following passage from an article by Goffinet and Bontinck:

*“Although it does not directly impede the seizure of complete email accounts it can be argued that [Vinci Construction] imposes indirectly an obligation on the European national competition authorities to be precise, circumscribed and proportionate in the volume and subject matter of their seizures. Indeed, the ECtHR requires that the reviewing judge must carry out a tangible ([i.e.] concrete and factual) examination of the seizures to determine whether the documents fall outside the scope of the investigation [or under legal professional privilege]. In other words, if the seizures are not precise, circumscribed and proportionate in their volume and subject matter, the reviewing judge will not be able to carry out a tangible examination of the seizures and there will accordingly be a violation of Article 8 of the [Convention].”*

**69.** Ryanair relies on this analysis to contend that the warrant and its execution were disproportionate, arguing that the District Court was not placed in a position to carry out the tangible examination required by Art.8 ECHR. Although the commentary in question concerned post-search review of seized material (as in *Vinci Construction*), Ryanair submits that the same obligation informs the initial judicial decision to grant a warrant.

**70.** Ryanair maintains that both the CCPC’s decision to seek the warrant and the District Judge’s decision to grant it amounted to a disproportionate interference with its privacy and property rights. While it accepts that the warrant pursued a legitimate aim and satisfied the “*in accordance with the law*” requirement of Art. 8(2) ECHR, it argues that the intrusion was

nonetheless extremely grave. As a publicly listed entity, the execution of a search warrant at its headquarters was bound to attract national and international media interest, thereby posing a significant risk to its commercial reputation and constituting a substantial interference with the privacy of its business affairs.

**71.** Ryanair further submits that, had the CCPC been apprised of previous Italian judgments and of Ryanair's previous co-operation with the AGCM, it would have seen it was disproportionate to invoke extensive search powers. Ryanair similarly argues that, had the Italian judgments and the extent of its co-operation with the AGCM been disclosed to the District Judge, she could not properly have concluded that the search was necessary or proportionate. Ryanair also questions why the CCPC did not put the Request for Assistance (RFA) before the District Court.

**72.** While Ryanair relies heavily on proportionality principles, the authorities cited do not establish that it has a strong case warranting mandatory interlocutory relief restraining the operation of a lawfully issued warrant. *Vinci Construction* concerns the post-search judicial review of seized material, not the *ex-ante* decision to grant a warrant. The proportionality framework identified in *CRH* is already embedded in the statutory regime governing the issue and supervision of warrants, and Ryanair has not demonstrated, at this interim stage of these proceedings, that those safeguards were disregarded or that the proportionality analysis was incapable of being undertaken.

**73.** That the search interfered with Ryanair's privacy rights or attracted widespread media attention does not, without more, transform its claim into one of exceptional strength; such consequences are inherent in the lawful exercise of search powers pursuing legitimate objectives. Nor can I treat, at interlocutory stage, Ryanair's assertions about the Italian judgments or its co-operation with the AGCM as established. The suggestion that the District Judge lacked adequate material to assess proportionality is similarly disputed and falls far short of the clarity required to support the mandatory interlocutory relief now sought.

**74.** In short, while Ryanair's proportionality arguments raise issues fit for examination at trial, they do not demonstrate a case of the strength necessary to justify the mandatory interlocutory relief now sought.

**75. Reputation and Other Damage.** Ryanair submits that it would suffer reputational prejudice were an adverse finding to issue, particularly in the eyes of shareholders and investors. However, stakeholders in a company of Ryanair's size and profile can be taken to understand that a first-instance decision is not final and that appellate courts frequently reach different conclusions.

**76.** Ryanair also points to the risk of structural or behavioural remedies affecting its business model. Yet such remedies have been expressly excluded by the AGCM. The concerns now advanced by Mr Rizza do not alter that central fact. As set out in Mr Polito's affidavit, any adverse decision would, at most, entail a cease-and-desist order. Such orders do not prescribe specific compliance steps; they leave it to the undertaking to determine how best to remedy the infringement. (This contrasts with structural or behavioural remedies, which are prescriptive: structural remedies alter the organisation of an undertaking, often involving divestiture, while behavioural remedies impose specific obligations that constrain business freedom.) Mr Polito further indicates that any fine feared by the plaintiffs may thereafter be suspended for a time; no explanation has been offered as to why suspension would not adequately address any prejudice pending determination of the challenge to the search.

**77.** As to reputational damage more broadly, Ryanair argues that a decision in the AGCM investigation would cause it significant embarrassment. Yet the RFI decision has already been published, and the Notice has been placed before me. The underlying facts are therefore already in the public domain. It is difficult to understand why publication of findings in this investigation is said to require urgent restraint when publication of closely related matters attracted no such application. I also note that Ryanair itself made the Notice public by exhibiting it to its grounding affidavit, without seeking reporting restrictions, thereby substantially weakening any claim of prejudice. The AGCM, I understand, did not publish the Notice; they transmitted it to Ryanair alone.

**78.** In summary, Ryanair places considerable emphasis on alleged reputational, commercial and structural harms. However, these do not, at this interim stage, amount to the kind of prejudice that would justify mandatory injunctive relief at this time. As regards reputation, I proceed on the basis that shareholders, investors and market participants can distinguish between investigatory steps, provisional findings and final determinations.

**79.** Any reputational impact from the continuation of the Italian process is speculative and falls well short of irreparable harm. Much of the information said to be damaging is already public. Nor does the prospect of future sanctions materially assist: structural and behavioural remedies have been expressly excluded, and any cease-and-desist order would afford Ryanair discretion in terms of its compliance. A fine capable of suspension does not constitute irreparable harm. Ultimately, the harms asserted rely either on disputed factual premises or on speculative and remediable outcomes. None establish the level of prejudice required to support the far-reaching interlocutory restraint sought.

**80.** *Duty of Candour.* Ryanair next submits that the CCPC failed to comply with its duty of candour when seeking the warrant *ex parte*. In such circumstances, the CCPC was obliged to present all material facts and legal considerations, favourable or adverse, to the District Judge. Ryanair contends that this duty was breached.

**81.** The scope of the applicable duty is well settled. In *Redknapp v. Commissioner of the City of London Police* [16/06/2008] TLR 1; [2008] EWHC 1177 (Admin), Latham LJ observed at §13:

*“The obtaining of a search warrant is never to be treated as a formality. It authorises the invasion of a person’s home. All the material necessary to justify the grant of a warrant should be contained in the information provided on the form. If the magistrate... requires any further information... a note should be made... so that there is a proper record of the full basis upon which the warrant has been granted.”*

**82.** The duty’s lineage was emphasised by Charleton J. in *DPP v Quirke* [2024] 2 IR 1; [2023] IESC 5, where he noted, at §84 *“the ancient principle of common law... the need for candour... in putting before the judge... such highlights of material as will enable a proper analysis of the reasons for and extent of the invasion.”* At §64, Charleton J. reiterated that investigators must provide *“a fair summary of the facts.”*

**83.** Ryanair submits that the CCPC fell materially short of these obligations. It identifies several alleged omissions said to undermine the validity of the warrant:

- *Italian judgments*: that the Milan Court of Appeal, in *Viaggiare* and *LMNext*, having appointed its own expert, found Ryanair's distribution model lawful.
- *Co-operation with the AGCM*: that Ryanair answered three RFIs and received no indication that its responses were deficient.
- *Proportionality*: that the District Judge was required to conduct a proportionality assessment and could not properly do so without the foregoing information.

**84.** Ryanair maintains that any one of these omissions satisfies the strong-case threshold and indicates a significant likelihood of success at trial. It also relies on further grounds in its substantive challenge, including alleged breach of the agreed final-meeting procedure, alleged improper handling of privileged material under s.33 of the Act of 2011, and the seizure and transfer of irrelevant material.

**85.** Ryanair's reliance on the duty of candour correctly highlights the seriousness of the obligations arising on *ex parte* applications, but it does not, in my respectful view, demonstrate a sufficiently strong case at this interlocutory stage. *Redknapp* and *Quirke* reaffirm that investigators must provide a fair and balanced account. However, they do not mean that (i) every omission, or every disagreement as to emphasis, vitiates a warrant, (ii) I, on an interim application, can definitively adjudicate on whether the duty was breached. The matters identified by Ryanair are contested, fact-sensitive, and require full exploration at trial. Ryanair's attempt to elevate each asserted omission into a determinative defect overstates the legal consequences of the duty and overlooks that these are matters properly for the substantive hearing. The additional grounds relied upon likewise raise factual and legal questions unsuitable for resolution at this stage and fall well short of the stringent standard governing the issuance of mandatory interlocutory relief.

**86.** *Unlawful Transfer of Seized Materials.* Section 37(2) empowers the CCPC to seize and retain documents. Ryanair argues that the CCPC's transfer of the seized materials to the AGCM was unlawful and in breach of Art. 12 of Regulation 1/2003 and s. 37(2) of the Act of 2014. Article 12 governs information exchange between national competition authorities and permits the use of shared material only for the purpose for which it was collected, and only within the subject-matter of the transmitting authority's investigation. In *CRH*, Charleton J. noted, at §27,

that the power to seize and retain documents necessarily implies scrutiny: retention is an active process.

**87.** Ryanair submits that, when s. 37(2) is read together with Art. 12, several consequences follow. First, the CCPC is required to take possession of the seized material before transferring it. Second, Art. 12 presupposes that irrelevant or privileged documents would be removed before transmission. Third, because the CCPC transferred the material immediately, during the inspection itself, it did not retain the documents within the meaning of s. 37(2) and therefore could not discharge its statutory and EU-law obligations. Fourth, by handing over the material without first reviewing it or segregating privileged or irrelevant items, the CCPC (a) deprived Ryanair of its post-inspection rights, (b) truncated its own statutory duties, (c) acted *ultra vires* the warrant, and (d) effected an unlawful transfer rendering the material unlawfully obtained. Ryanair further submits that this alleged unlawfulness has resulted in the AGCM retaining the material with no effective remedy available to Ryanair. It also relies on *CRH*, where Laffoy J. at §87 emphasised that it is for the competition authority, not the courts, to rectify difficulties arising from the handling of seized documents.

**88.** Ryanair's submissions on the transfer raise issues that are, at this stage, factually contested and legally intricate. They do not, in my view, meet the high threshold of establishing a strong case for the mandatory interlocutory relief now sought. The interaction between s. 37(2) and Art. 12, particularly in the context of an Art. 22(1) request, is neither straightforward nor resolved on the materials presently before me. Ryanair's position depends on several unproven propositions: that the CCPC was legally obliged to conduct a full post-inspection review before any transfer; that Art. 12 requires pre-transfer removal of irrelevant or privileged material rather than relying on post-transfer safeguards; and that immediate transfer necessarily deprived Ryanair of statutory or EU-law rights. These propositions are disputed by the CCPC and cannot be resolved on an interlocutory basis. Similarly, Ryanair's proposed legal consequences (*ultra vires* conduct, unlawfully obtained evidence, and a lack of effective remedy) cannot be determined at this stage, particularly where the AGCM's handling of the material and the remedies available to Ryanair before the Italian authorities or the EU courts remain live matters for trial. In short, while the transfer issue is plainly significant for the substantive proceedings, it does not disclose the compelling strength required to justify my now granting mandatory interlocutory relief.

## **|G. Futility**

**89.** Ryanair submits that I should proceed on the basis that any injunction granted will be complied with, relying on Lord Bingham’s statement in *South Bucks v Porter* [2003] 2 A.C. 558, §32, that “*When granting an injunction, the court does not contemplate the possibility that it will be disobeyed.*” It then advances a series of points said to demonstrate that any such order would not be futile. For the reasons that follow, I do not accept that these points overcome the fundamental difficulty that the CCPC has no power to secure the outcome sought.

**90.** *First, while Ryanair accepts that the CCPC cannot be required to achieve the impossible, it contends that I should proceed on the basis of good faith and reasonable endeavours.* However, although the Court ordinarily assumes compliance by those properly subject to its orders, the CCPC has no legal power to compel the AGCM to return or cease using the documents. A mandatory injunction cannot require a party to achieve what is, in substance, factually and legally impossible. As noted above, the order proposed would place the CCPC in an intolerable position: liable for breach despite its best endeavours, and through no fault of its own.

**91.** *Second, Ryanair submits that I should view with scepticism the suggestion that the AGCM would refuse a request for return or non-use of the documents.* However, the practical willingness of the AGCM (even if assumed) does not cure the jurisdictional defect. The CCPC has no control over the AGCM and cannot answer for the conduct of an Italian authority operating within an Italian investigation.

**92.** *Third, Ryanair relies on the fact that the CCPC previously secured the return of privileged documents from the AGCM following correspondence in June 2024.* However, that return, I understand, occurred voluntarily, as a matter of comity and pragmatism, not because the CCPC had any enforceable entitlement. The fact that cooperation was achieved on a narrow point of privilege does not establish any capacity on the part of the CCPC to compel the return of the full corpus of seized material.

**93.** *Fourth, Ryanair refers to the AGCM’s having sworn an affidavit in these proceedings as a courtesy to the Court, and argues that similar courtesy may be expected in response to an interlocutory order.* However, voluntary cooperation or politeness on the part of a foreign

authority cannot alter the nature of the relief sought. The question is whether the CCPC can lawfully be compelled to act; the presence or absence of Italian courtesy is beside the point.

**94.** *Fifth, Ryanair invokes the EU-law principle of sincere cooperation, arguing that the AGCM could not lawfully refuse to comply with a request prompted by an Irish injunction.* However, the duty of sincere cooperation does not enlarge the jurisdiction of the Irish High Court to compel, indirectly or otherwise, an Italian authority. No EU-law obligation creates a justiciable duty on the CCPC to secure a particular course of action by the AGCM.

**95.** *Sixth, Ryanair submits that any refusal by the AGCM to comply with such a request would undermine the Regulation 1/2003 cooperation framework.* However, I do not see any lacuna in that framework: if Ryanair takes issue with AGCM conduct, it has a remedy in Italy (just as it may seek remedy in Ireland regarding the issuance of the warrant here).

**96.** *Seventh, Ryanair contends that the duty of sincere cooperation requires this Court to intervene to prevent imminent breaches of Charter rights.* However, I cannot dispense with the strong-case requirement for mandatory relief, nor can EU law be used to relax such domestic procedural standards. No such relaxation is permitted or required here.

**97.** *Eighth, Ryanair argues that if authorities from other Member States could obtain documents through Irish warrants and then decline to return them pending judicial review, parties would be incentivised to seek urgent injunctions before materials left the jurisdiction, thereby distorting ECN practice.* However, to my mind the opposite is true: granting the injunction sought would intrude into the conduct of a foreign investigation and risk disrupting the functioning of the European Competition Network.

**98.** *Ninth, Ryanair contends that refusing an injunction would undermine trust between national authorities.* However, compelling the CCPC to do something it has no power to do would itself compromise institutional integrity. Imposing unenforceable obligations exposes both the CCPC and the Court to risk, and would be inimical to the mutual-trust framework Ryanair seeks to invoke.

**99.** *Tenth, Ryanair argues that refusal of relief would run counter to the rule-of-law principles articulated in *Les Verts* and *Case C-156/21 Hungary v Parliament and Council**

(EU:C:2022:97). However, Ryanair seeks interlocutory relief against the wrong body in the wrong jurisdiction. The rule of law requires that challenges to CCPC conduct be brought in Ireland, and challenges to AGCM conduct be brought in Italy. Refusing to grant an injunction against an entity with no control over the relevant conduct is not a breach of the rule of law; it is a vindication of it.

## **H. Balance of Convenience/Adequacy of Damages**

**100.** The first task in assessing this application is to consider the strength of the substantive case. For the reasons set out previously above, I am satisfied that Ryanair has not demonstrated a strong case of the kind required for mandatory interlocutory relief to issue now. On that basis alone, its present application must fail. Nonetheless, for completeness, I will address the remaining *Campus Oil* factors, including the balance of convenience and the adequacy of damages, and I will also consider Ryanair's submission that it will suffer irreparable harm if the AGCM continues to have regard to the documents copied during the March 2024 search.

**101.** Ryanair submits that, if interlocutory relief is refused, it faces prejudice falling into three broad categories. First, it points to the possibility of a fine of up to 10% of its global turnover, which it estimates at €1.4 billion. Second, it argues that there remains a real risk of structural or behavioural remedies requiring alteration of its business model. However, as noted earlier, the evidence before me indicates that the AGCM has expressly excluded structural and behavioural remedies; the only remaining potential outcome is a cease-and-desist order, which affords an undertaking considerable discretion as to the manner of compliance. While a fine remains possible, it may be suspended pending challenge. Ryanair nonetheless submits that any infringement finding touching on its business model would, as a practical matter, necessitate modification of that model, failing which ongoing and escalating penalties might arise. Third, Ryanair contends that both it – and, it says, its shareholders (although the precise mechanism of shareholder prejudice was not clearly explained) – face significant reputational harm arising from the stigma associated with a competition-law infringement, which would be especially acute for Ryanair Holdings as a NASDAQ-listed entity.

**102.** Ryanair accepts that any financial penalty ultimately imposed could, in principle, be remedied by restitution. It contends, however, that the second and third categories of alleged harm (purported business-model disruption and reputational damage) are not compensable in

damages. It also expresses concern that it would have no recourse against the AGCM for reputational harm even if the warrant were quashed and any ensuing Italian decision annulled, absent proof of bad faith on the part of the AGCM.

**103.** Ryanair also relies on a series of additional considerations which it says tilt the balance of convenience decisively in its favour. These include: that any prejudice to the AGCM would be minimal; that the AGCM can, under Italian law, extend its investigation deadlines and continue its work by relying on material other than the disputed documents; that the prejudice to Ryanair (financial and otherwise) would be enormous and irreversible; that the injunction now sought would reinforce the principles of mutual assistance and sincere cooperation; that the injunction now sought would protect Ryanair's rights under Art. 7 CFEU and Art. 8 ECHR; that the injunction now sought would vindicate the Court's concern that representations made to it, even by parties since released, be respected in substance; that there is no evidential basis for the suggestion that delay would harm competition or consumers; and that, absent the injunction now sought, Ryanair's right to an effective remedy and its ability to meaningfully challenge the seizure and use of the documents would be extinguished, in breach of its constitutional and Convention rights.

**104.** To my mind, these factors do not outweigh the decisive considerations already identified. Most are premised on the assumption (incorrect in law) that the CCPC can be compelled to achieve outcomes over which it has no control. Others rest on speculative assertions of prejudice that are either contestable, remediable through existing procedures, or insufficiently proximate to constitute irreparable harm at this interim stage. The rights relied upon are fully vindicable within the ordinary course of the substantive proceedings. None of these points therefore alters the conclusion that the balance of convenience does not favour granting the mandatory relief sought.

**105.** Ryanair's essential position is that damages would be wholly inadequate were interlocutory relief refused, and the warrant later quashed. It therefore submits that the balance of convenience weighs decisively in favour of granting an injunction. Ryanair also emphasises what it describes as the contemporary approach to interlocutory relief, namely that the adequacy of damages is now understood as one component of the broader balance-of-convenience analysis. In this regard, it relies on O'Donnell J.'s observation in *Merck*, §35, that “[T]he interests that the law protects often extend beyond the purely financial.”

**106.** However, this principle cannot displace the established requirement that mandatory interlocutory relief issues only where a strong case is shown. Nor does it transform speculative or contingent harms into irreparable prejudice. The interests identified by O’Donnell J. are fully vindicable within the substantive proceedings; they do not alter the balance of convenience in circumstances where the injunction sought would compel a statutory body to pursue outcomes it is legally incapable of achieving.

**107.** The CCPC submits, in essence, that the balance of convenience weighs firmly against granting the relief sought. It makes the following points.

**108.** First, it maintains that serious and irremediable prejudice would arise were an order made in the terms requested, because the CCPC would be subjected to an obligation it has no legal or practical capacity to fulfil. No undertaking as to damages could cure this fundamental impossibility. The prospect of a State entity being exposed to breach of a High Court order despite its best endeavours is, the CCPC (rightly) argues, wholly unacceptable.

**109.** Second, the CCPC contends that the relief sought would in any event be futile, given the AGCM’s undertakings that it will not maintain findings against Ryanair by reference to the disputed material if the search is ultimately held to be invalid.

**110.** Third, the CCPC submits that the AGCM is both entitled and obliged to continue its abuse-of-dominance investigation unless restrained by a competent court in Italy, and that Ryanair has identified no legal basis on which an Irish court could interfere with that process.

**111.** Fourth, the CCPC emphasises that the courts must exercise particular caution before granting interlocutory relief with extraterritorial effect, citing the decision in *Ryanair DAC v. Skyscanner Ltd & ors* [2022] 3 JIC 1605; [2022] IECA 64.

**112.** Fifth, the CCPC argues that the orders sought have the potential to disrupt the functioning of the European Competition Network as a whole.

**113.** Sixth, the CCPC submits that the relief sought would require ongoing supervision by the Court, a factor which has long weighed heavily against the grant of such relief, in line with *Co-*

*operative Insurance Society v Argyll Stores (Holdings)* [1998] 1 AC 1. (In this regard, I note that the inherent vagueness of the mandatory relief proposed, coupled with the absence of any clear framework governing what the CCPC is to do in response to the range of possible replies it might receive from the AGCM, serves only to heighten the risk of continual judicial monitoring. Paradoxically, that risk is amplified by the difficulty of identifying what, in practical terms, the court would even be expected to supervise. The architecture of the relief appears, with respect, insufficiently thought through by Ryanair.)

**114.** Finally, the CCPC maintains that Ryanair has not satisfied the basic proofs required for injunctive relief in this jurisdiction, and that any delays in the Italian proceedings do not alter that position.

**115.** Even if Ryanair had established a strong case, and it has not, the balance of convenience and the adequacy-of-damages analysis point clearly against granting the mandatory interlocutory relief now sought. Any financial penalty imposed by the AGCM is, by Ryanair's own acknowledgment, capable of restitution and may be suspended pending challenge; this possibility does not justify the exceptional relief sought. The more serious harms posited (structural or behavioural remedies) are, on the evidence before me, not in contemplation by the AGCM. The only potential outcome presently identified is a cease-and-desist order, which affords the undertaking considerable autonomy as to how compliance is achieved. As to reputational harm, the material said to generate such stigma is already substantially in the public domain, including by reason of Ryanair's own actions. Any incremental reputational impact arising from the continuation of the AGCM's investigation is, at best, speculative and cannot ground the granting of mandatory interlocutory injunctive relief at this time.

**116.** Against these asserted harms, the prejudice that would flow from granting the relief sought would be immediate and substantial. The CCPC does not possess the documents that Ryanair seeks and has no legal capacity to compel their return. Imposing an obligation on the CCPC to achieve what it cannot do, as a matter of fact or law, would expose a statutory body to the risk of being in breach of a High Court order notwithstanding its best endeavours. No undertaking as to damages can meaningfully address such a situation. Moreover, the relief sought would intrude upon the ongoing investigation of a foreign authority and risk disrupting the functioning of the European Competition Network. The courts have consistently exercised particular

caution in granting interlocutory relief that carries extraterritorial or supervisory effects of this nature.

**117.** By contrast, if Ryanair ultimately succeeds in its substantive challenge, both domestic and EU law provide established mechanisms for addressing any wrongful seizure or use of material, and the AGCM has undertaken not to maintain findings against Ryanair by reference to the disputed documents should the search be invalidated. In these circumstances, any prejudice to Ryanair is either remediable or conjectural, whereas the prejudice to the CCPC and the broader implications for the proper functioning of the EU competition-law enforcement framework are concrete and significant. The balance of convenience lies decisively against the grant of the mandatory interlocutory relief sought.

### **I. Delay**

**118.** Ryanair relies on the Notice of Investigative Findings issued on 8<sup>th</sup> October 2025 as creating the requisite urgency for the mandatory interlocutory relief now sought. The Notice records the AGCM's provisional view that Ryanair has engaged in anti-competitive conduct contrary to Art.102 TFEU and Italian law, and it identifies 25<sup>th</sup> November 2025 as the close of the evidence-gathering phase, with a Board hearing on that date and a final decision scheduled for 31<sup>st</sup> December 2025. However, the AGCM routinely extends its investigative deadlines, sometimes on multiple occasions. More importantly, the overall timeline of the Italian investigation has been known to Ryanair since December 2024, as has the AGCM's ongoing access to the seized documents. In these circumstances, I do not see how the Notice can be characterised as a fundamental escalation giving rise to an emergency.

**119.** It is not sufficient for Ryanair to assert that it did not believe the AGCM would adhere to its published timeline. Ryanair took no steps in Italy to interrupt or modify that timetable and cannot now reasonably expect me to intervene indirectly through an order directed at the CCPC. If Ryanair had genuine concerns regarding the AGCM's progress, the appropriate course was to seek relief in Italy, including an order staying the investigation or extending the relevant deadlines. Such steps were open to Ryanair at all stages. Yet, despite extensive correspondence with the AGCM over many months, Ryanair did not request that the investigation be paused or extended until after issuing the present application. No explanation has been offered for this omission.

**120.** In these circumstances, the chronology weighs heavily against Ryanair. The alleged harm said to generate urgency was both foreseeable and foreseen, and the procedural milestones of the Italian investigation were well known long before this application was brought. Ryanair's failure to take timely steps in Italy (whether by seeking extensions, requesting a suspension, or invoking available remedies) militates strongly against the grant of mandatory relief by an Irish court. The High Court cannot be asked to fill a vacuum created by a party's own inaction, still less to impose intrusive obligations on a statutory body that has no control over a foreign authority whose conduct is of the true focus of complaint. The delay here is inconsistent with the assertion of exceptional urgency and provides a further, independent basis on which the mandatory injunctive relief sought must be refused.

### **J. Collateral Attack**

**121.** If Ryanair takes issue with the manner in which the AGCM's investigation is progressing, the proper forum for raising such concerns is within the Italian legal system. The CCPC cannot answer for, influence, or control what occurs in Italy. Its role in this matter, which was limited to executing a request for assistance, does not, and cannot, extend to supervising the AGCM's review of evidence or its ongoing investigative decision-making.

**122.** In substance, the relief now sought amounts to an impermissible collateral attack on the conduct of the AGCM's investigation. The CCPC cannot be used as a proxy through which Ryanair may indirectly challenge the scope, pace, or evidential foundations of a foreign authority's investigative process. These are matters that fall exclusively for determination in Italy. To proceed as Ryanair urges would invert the structure of Regulation 1/2003, undermine the mutual trust essential to the functioning of the European Competition Network, and, most fundamentally, require me to intrude upon a process over which I have neither supervisory jurisdiction nor remedial authority. Any grievance Ryanair may have with the AGCM's conduct must be pursued through the avenues available in Italy; these proceedings cannot be repurposed as a backdoor means of obtaining relief that is, in substance, sought against an absent and unamenable foreign regulator.

### **K. Potential Reference to the CJEU**

**123.** Ryanair submits that an Art. 267 TFEU reference would be appropriate in three scenarios. First, if I am uncertain whether I possess jurisdiction to grant the injunction sought without guidance from the CJEU. Second, if I refuse the injunction on the basis that the Irish courts lack jurisdiction over the AGCM, or on the basis that the AGCM would be free to disregard a request from the CCPC to return or refrain from using the disputed documents, and that such an outcome properly reflects the operation of the Regulation. Third, if I were to grant the injunction but the AGCM nevertheless declined to comply with a request from the CCPC to return the documents or suspend their use.

**124.** Ryanair argues that any of these scenarios would reveal a lacuna in the legal protection available to undertakings subjected to inspections carried out pursuant to Art. 22 of Regulation 1/2003. On its case, such a lacuna would arise because there would be no effective remedy available either in the Member State in which the search was executed under domestic law or in the Member State conducting the investigation and using the seized materials.

**125.** I do not accept that any such lacuna exists. If Ryanair considers that the AGCM has acted, or is acting, unlawfully or disproportionately towards it, remedies exist in Italy. Indeed, as the affidavit of Mr Polito makes clear, Ryanair has available to it a comprehensive suite of remedies under Italian law. Equally, if Ryanair considers that the CCPC has acted, or is acting, unlawfully in the execution of the request for assistance, it may sue the CCPC in this jurisdiction. What it cannot do, for the reasons set out in this judgment and based on the authorities to which I have referred, is obtain the form of mandatory interlocutory relief now sought against the CCPC as a means of indirectly affecting the conduct of the AGCM.

**126.** Article 267 TFEU provides that where a question concerning the interpretation of the Treaties or the validity or interpretation of acts of the institutions, bodies, offices or agencies of the Union is raised before a national court, that court may, “*if it considers that a decision on the question is necessary to enable it to give judgment*”, request a preliminary ruling from the CJEU. In my view, no issue of EU law arises that is capable of engaging Art. 267 TFEU in the present application. What is in issue here is, in essence, a request that one national competition authority be obliged to undertake a particular course of action at the behest of another party. No rule or principle of EU law is engaged by that question. On that basis alone, any request for a reference would almost certainly be declined by the CJEU. In any event, I am satisfied that

no decision on any question of EU law is necessary to enable me to determine this application for interlocutory relief. Accordingly, I decline to make a reference under Art. 267 TFEU.

## **L. Conclusion**

**127.** For the various reasons stated in this judgment, I respectfully decline to grant the reliefs now sought by Ryanair.

**128.** I remain satisfied to facilitate a speedy hearing of the substantive proceedings and to issue a prompt decision in respect of any issue requiring urgent adjudication in these proceedings.

**129.** Nothing in this judgment should be read or construed as indicating any view as to how the substantive proceedings in this matter will be decided should they proceed to hearing in due course.

**130.** I will hear the parties as to costs.