

# THE HIGH COURT

[2025] IEHC 639

[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 20<sup>th</sup> November 2025.**

1. By notice of motion dated 26<sup>th</sup> September 2024, the CCPC seeks, *inter alia*, an order pursuant to O.24, r.28 of the Rules of the Superior Courts and/or the inherent jurisdiction of this Court, directing that paragraphs 20–27 (and/or the relevant portions thereof) of the statement of claim delivered on 24<sup>th</sup> September 2024 be struck out. It appears from the oral submissions advanced on behalf of the CCPC that the relief initially sought in respect of paragraph 43 is no longer pursued. For the reasons set out in this judgment, the impugned paragraphs 20-27 will be struck out in their entirety; those paragraphs are reproduced in Appendix A.

2. The fact that this motion has been brought can have come as no surprise to Ryanair, as the issue forming the subject matter of the present application is expressly raised in the CCPC's defence.
3. This application is one of three heard over the course of a three-day hearing. Judgment in the first of those applications issued on 18 November, and the background facts set out therein constitute the factual backdrop to the present application as well.
4. The pleas remaining for determination comprise: (i) a challenge to a decision of the CCPC, and (ii) allegations of wrongdoing on the part of the AGCM.
5. I propose to address item (ii) first. The AGCM is not a party to these proceedings, and its acts cannot be impugned in this forum. That position is all the more compelling where, as here, the criticisms directed at the AGCM amount, in substance, to a collateral attack upon the CCPC, Ryanair contending in effect that an alleged impropriety on the part of the AGCM has tainted the actions of the CCPC.
6. Turning to item (i), the issue that arises is that Ryanair seeks, by way of plenary summons, an order of *certiorari* in respect of the CCPC's decision to provide assistance to the AGCM at or about the time of the search of Ryanair's corporate offices in Dublin.
7. The statutory position is unequivocal. Section 15AAA(2) of the Competition Act 2002 provides as follows:

*“The validity of a decision made or an act done by a competent authority (including an authorised officer and an adjudication officer) in the performance of a function under Parts 2C to 2G...shall not be questioned other than – (a) by way of an application for judicial review under Order 84 of the Rules of the Superior Courts...and in accordance with this section, or (b) in accordance with a process provided for in this Act...the Act of 2002 or the Act of 2014 by which the validity of such decision or act may be questioned.”*

8. Parts 2C to 2G of the Act include Part 2F, entitled “*Mutual Assistance*”. Part 2F contains s.15AQ, the provision pursuant to which the CCPC determined to accede to the AGCM’s request for assistance. Section 15AQ(1) provides that “*A competent authority may request a competition authority of another Member State to carry out an inspection, interview or other fact-finding measure on its behalf,*” and makes further provision for cooperation between competition authorities. The CCPC’s decision to comply with the AGCM’s request is the subject of the challenge advanced in paragraphs 20-27 of the statement of claim.

9. Later in the Act of 2002, as amended, s.15AAA(5) provides that:

*“Subject to subsection (6), an application for leave to apply for judicial review under Order 84 in respect of a decision or other act to which subsection (2) applies shall be made – (a) in respect of decisions or other acts under Parts 2C, 2D and 2G, not later than 28 working days, or (b) in respect of decisions or other acts under Parts 2E and 2F, not later than 8 weeks, from the date on which the notice of the decision or act was first sent or published as the case may be or, if notice of the decision or act was not sent or published, from the date on which the undertaking or person became aware of the decision or act.”*

10. It is to be noted that Ryanair became aware of the CCPC’s decision to apply for a warrant on 8 March 2024, being the date on which the warrant was executed.

11. Section 15AAA was inserted into the Act of 2002 by s.13 of the Competition (Amendment) Act 2022.

12. The plain meaning of s.15AAA(2) of the Act of 2002 is reinforced by the High Court’s analysis of an analogous provision in the planning and development code in *Malone v. Laois County Council* [2025] 6 JIC 2301; [2025] IEHC 345. I do not consider it necessary to examine that decision in any detail for present purposes.

13. In their written submissions, Ryanair contend that the CCPC’s literal interpretation of s.15AAA(2) of the Act of 2002 is “*overly simplistic*” and fails to engage with what is

said to be a substantial body of case law recognising that public law challenges may be pursued by plenary proceedings, particularly where (as is asserted here) the time limits applicable to judicial review have been complied with in the plenary process.

14. In truth, Ryanair does not enjoy any form of *de facto* compliance with O.84 RSC, as the leave required under that Order has never been sought or obtained.
15. The authorities relied upon by Ryanair include *O'Donnell v. Dun Laoghaire Corporation* [1991] ILRM 301; 1990 WJSC-HC 2108, *Ryanair v. Bravofly & Travelfusion Ltd* [2009] 7 JIC 300 ;[2009] IEHC 41, *Donatex Ltd v. Dublin Docklands Development Authority* [2012] 7 JIC 3104; [2012] IEHC 318, and *Shell E&P Ireland Ltd v. McGrath* [2013] 1 IR 247; [2013] IESC 1. I am not persuaded that it would be appropriate to depart from the plain and unambiguous wording of a statutory provision enacted in 2022 by reliance on case law which does not concern that provision and much of which predates its enactment by many years.
16. Ryanair advances what is, in effect, a further counter-chronological argument by submitting, again in its written submissions, that “*It is also relevant for the Court to note that the challenge in CRH Plc, Irish Cement Ltd v. Competition and Consumer Protection Commission* [2018] 1 IR 521; [2017] IESC 34 *was brought by way of plenary action, with no objection of form apparently being raised.*” The difficulty with this submission is self-evident: there would have been no basis for any such objection at that time, given the then-existing state of the law and the fact that the relevant provisions of the Competition (Amendment) Act 2022 would not be enacted for a further five years.
17. Ryanair further submits as follows:

*“It is also...relevant for the Court to consider the practical consequences of the CCPC’s argument. It would, to put it at its lowest, be unusual and artificial for the Court to be called upon at the substantive hearing to adjudicate upon the legality of the Warrant, while being prohibited from considering the legality of the CCPC’s decision to accede to the request and apply for the Warrant. That scenario is so unlikely to have been intended that the Court*

*should be very slow to accept the CCPC's argument regarding the preclusive effect of Section 15AAA.”*

18. In my view, there is a clear rationale underpinning the enactment of s.15AAA(2), namely the promotion of finality in litigation. Furthermore, I do not accept that I should depart from the plain wording of statute in order to afford a party who is in clear breach of statutory requirements the opportunity to pursue a form of action which statute expressly excludes, and to do so outside the prescribed timeframe. Nor do I accept that it is in any sense “*unusual and artificial*” that a party should be precluded from commencing proceedings in a form and at a time that contravenes the express terms of the legislation. On the contrary, such preclusion is entirely consistent with both the language and the purpose of the statutory scheme.
19. Ryanair contends that it has, in substance, complied with the steps that would have been required had it initiated judicial review proceedings, and queries why, in those circumstances, it should now be precluded from pursuing the plenary action it wishes to advance. This reasoning is flawed in two respects. First, s.15AAA(2) clearly prescribes the manner in which a challenge the subject of that provision must be brought, and Ryanair has not proceeded accordingly. As already noted, Ryanair does not enjoy any form of *de facto* compliance with O.84 RSC: the leave required under that Order was never sought or obtained. Second, Ryanair has not complied with the requirements applicable to a judicial review application; but even if it had, the failure to proceed in the manner expressly mandated by statute would, of itself, constitute a sufficient basis for striking out the impugned pleas.
20. For the reasons set out above, I will accede to the CCPC's application and direct that paragraphs 20–27 of the statement of claim be struck out.
21. I will hear the parties as to costs.

## Appendix A

### The Paragraphs Now to be Deleted from the Statement of Claim

- “20. In the premises, no justification existed for the AGCM to request assistance, and for the CCPC to agree to provide assistance, and to apply to the District Court for a warrant.
21. In making the said Assistance Request, the AGCM was, in accordance with the duty of sincere co-operation imposed by Art.4(3) TFEU, under a duty to inform the CCPC:
- 21.1 That since the Italian investigation opened, the AGCM had raised, and Ryanair had responded to, three RFIs raised by the AGCM.
  - 21.2 That the AGCM has not raised any issues as regards the Plaintiffs’ responses.
  - 21.3. That Ryanair had expressed a willingness to participate in the Italian Investigation by requesting to be heard.
  - 21.4 That the Italian Judgments had reviewed Ryanair’s business model, and complaints which were materially the same to those the subject of the Italian Investigation, and found no breach of Italian or European competition law.
22. The AGCM fundamentally failed in its duty to inform the CCPC of the foregoing matters, as a consequence of which the District Judge was not informed of those matters, which were centrally relevant to the exercise by the District Judge of her discretion whether to accede to the warrant application.
23. In receiving and considering the Assistance Request, and before deciding whether to accept the request, the CCPC was under a public-law duty in deciding whether to exercise its discretion under Art.22 of Regulation 2003/1, s.15AQ of the Competition Act 2002, and/or s.37 of the 2014 Act, to make

reasonable inquiries and elicit relevant information regarding the purpose, necessity and /or proportionality of the Assistance Request.

24. The CCPC was further under a duty to consider whether there were available to the AGCM and/or the CCPC a less intrusive means of obtaining the information in the circumstances.
25. Had the CCPC made the necessary inquiries, and elicited the relevant information, it would have been bound, as a matter of public law, to refuse the Assistance Request.
26. Specifically, the acceptance by the CCPC of the Assistance Request, and the decision to apply to the District Court for a search warrant, in the knowledge of the factual premises outlined, or alternatively, without making inquiries and without seeking information sufficient to establish the above factual matters, and without considering any less intrusive means of obtaining the information:

- 26.1. Represented an unnecessary, disproportionate and unjustifiable interference with the Plaintiffs' constitutional rights, including its rights to a good name, to privacy (as protected by Article 40.3 of the Constitution) and its property rights (as protected by Articles 40 and 43 of the Constitution).

- 26.2 Represented an unnecessary, disproportionate and unjustifiable interference with the Plaintiffs' rights under the European Convention on Human Rights, including Article 8 – right of privacy – and Article 1 of the First Protocol – rights to property.

- 26.3 Represented an unnecessary, disproportionate and unjustifiable interference with the Plaintiffs' rights under the EU Charter of Fundamental Rights, including Article 7 thereof.

27. As such, the decision of the CCPC to accept the Assistance Request, and to apply to the District Court for warrant, falls to be quashed. As a consequence, any steps taken in reliance upon the said decision, including the Warrant (as

described immediately below), should also be quashed by order of certiorari and expunged.”