Matheson

# Matheson Irish Merger Control Guide

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Matheson LLP

## Q1. What is the key Irish merger control legislation and who enforces it?

Ireland's merger control regime has its legal basis in Part 3 of the Competition Act as amended (the "**Act**"). The Competition and Consumer Protection Commission ("**CCPC**") is primarily responsible for the enforcement of the Irish merger control regime. The Irish courts have jurisdiction to adjudicate on any allegation of breaches of the Act and on any appeal against a merger decision.

## Q2. What kinds of mergers are caught?

The Irish merger control regime applies to 'any merger or acquisition', which is defined by section 16(1) of the Act as including transactions where:

- two or more undertakings, previously independent of one another, merge;
- one or more individuals who already control one or more undertakings, or one or more undertakings, acquire direct or indirect control of the whole or part of one or more other undertakings; or
- the acquisition of part of an undertaking, although not involving the acquisition of a corporate legal entity, involves the acquisition of assets that constitute a business to which a turnover can be attributed, and for the purposes of this paragraph, 'assets' includes goodwill.

The concept of 'undertakings involved in the merger or acquisition' is broadly equivalent to the concept of 'undertakings concerned' under EU Regulation 139/2004 ("**EUMR**").

Mergers and acquisitions ("**mergers**") that meet the turnover thresholds set out in section 18(1) of the Act are subject to mandatory notification to the CCPC. Where these requirements are not met, mergers may still be notified to the CCPC on a voluntary basis under section 18(3) of the Act (see further the response to question 5 below).

There are different thresholds that apply to "media mergers" under the Act.

## Q3. What types of joint ventures are caught?

Only full-function joint ventures (ie, those that perform, on a lasting basis, all the functions of an autonomous economic entity) constitute a merger for the purposes of the Irish merger control regime. The relevant definition is included in section 16(4) of the Act.

The CCPC adopts an approach mostly consistent with the European Commission (the "**Commission**") in identifying whether joint ventures are subject to Irish merger control law. Where a joint venture does not qualify as full-function, the CCPC may assess it under section 4 of the Act, which is based on article 101 of the Treaty on the Functioning of the European Union. Typically, the CCPC will have regard to the Commission's Guidelines on Horizontal Cooperation Agreements and the Guidelines on Vertical Restraints when undertaking such an assessment.

## Q4. Is there a definition of 'control'?

The Irish merger control regime does not regulate the acquisition of interests other than those conferring 'control' over an undertaking or part of an undertaking.

The definition of control that applies under the Act is based on the concept of 'decisive influence', derived from the EUMR.

The following non-exhaustive list of the circumstances that can give rise to control is included in section 16(2) of the Act:

- ownership of, or the right to use all or part of, the assets of an undertaking; and
- rights or contracts that enable decisive influence to be exercised with regard to the composition, voting or decisions of the organs of an undertaking.

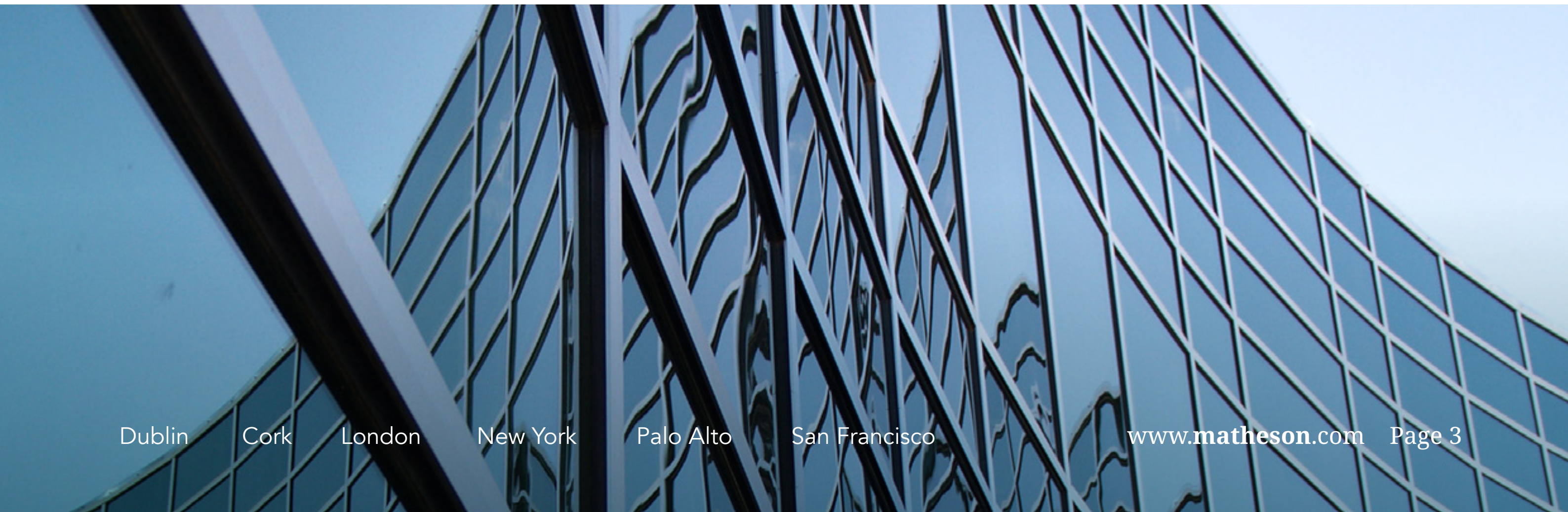
## Q5. What are the jurisdictional thresholds for notification and are there circumstances in which transactions falling below these thresholds may be investigated?

The Irish merger control regime is mandatory where, for the most recent financial year:

- the aggregate turnover in the state of the undertakings involved is not less than €100 million (up from €60 million); and
- the turnover in the state of each of two or more of the undertakings involved is not less than €15 million (up from €10 million).

These revised thresholds came into effect on 1 July 2026. References to 'the State' are references to Ireland, excluding Northern Ireland.

- The CCPC can also require notification to it (and thereby impose a standstill obligation or 'hold separate' undertakings pending CCPC clearance) of mergers falling below the turnover thresholds under sections 18A and 18B of the Act. This is known as the CCPC's 'call-in' power. In practice, the CCPC will contact parties to a merger falling below the turnover thresholds, where that merger raises potential competition concerns, and request information with a view to deciding whether the merger ought to be reviewed by the CCPC. The CCPC may do so within 60 working days of one of a number of specified events and shall specify a period within which the notification is to be made.
- Where a below-threshold merger raising competition concerns has been implemented prior to a CCPC investigation, the CCPC has the power to ultimately unwind the merger but such an eventuality has not occurred to date.
- On 20 March 2026, the CCPC called in for its merger review the acquisition of TouchStore Limited, a Limerick-based developer and provider of dispensing and retail software to the pharmacy sector, by the Irish healthcare services provider, Uniphar plc, which fell below the turnover thresholds for a mandatory merger control notification to the CCPC.



- This marks the CCPC's first use of its 'call-in' power since it was introduced in 2022 and commenced in 2023. Notwithstanding this is the first transaction to be formally called in, it is not surprising. The CCPC has been actively monitoring the market for transactions, including issuing informal and formal correspondence in relation to identified transactions in the context of potentially exercising its call-in power.

The CCPC has not issued detailed guidance on its approach to the calculation of turnover but tends to follow the principles set out in the Commission Consolidated Jurisdictional Notice under the EUMR on the Control of Concentrations between Undertakings, 2008 ("**the Commission Jurisdictional Notice**"). One exception is the CCPC's approach to geographic allocation of turnover. A guidance note by the CCPC provides that 'turnover in the state' means sales made or services supplied to customers within the state. The CCPC follows this approach even in cases involving financial institutions where the Commission Jurisdictional Notice would suggest that turnover should instead be allocated on a 'branch basis'.

## Q6. Is the filing mandatory or voluntary? If mandatory, do any exceptions exist?

Filing is mandatory. No exceptions exist.

The Act also provides for voluntary notification of a merger.

## Q7. Do foreign-to-foreign mergers have to be notified?

Yes, any merger that involves undertakings meeting the turnover thresholds in the State as set out in the Act must be notified to the CCPC.

## Q8. Are there special merger control rules under the Act for certain sectors?

Yes, for 'media mergers'.

Where a merger qualifies as a media merger, undertakings involved are required to make two notifications of a media merger under the Act. One notification is sent to the CCPC, which determines whether the merger is likely to give rise to a substantial lessening of competition ("**SLC**"). A separate notification is sent to the media plurality regulator.

On 26 February 2026, the Minister for Culture, Communications and Sport (the "**Minister**") published the Media Regulation Bill (the "**Bill**"). The Bill is intended to modernise Ireland's existing framework for the assessment of media mergers and introduce new rules regarding state expenditure on advertising.

The Bill implements the main provisions of EU Regulation 2024/1083, the European Media Freedom Act ("**EMFA**") by amending Part 3 of the Act. EMFA puts new rules in place to protect media pluralism and editorial independence, promote media transparency and increase co-operation between media regulators in the EU.

Among the changes proposed is the transfer of full responsibility for the assessment of media mergers from the Minister to the independent media regulator, the Coimisiún na Meán (the "**CnaM**"). The CnaM will also be given the power to call-in transactions which would not otherwise be classified as media mergers, if the CnaM considers that the transaction may have a significant impact on media plurality and editorial independence within Ireland.

To date, there has been only one Phase II examination of a media merger, the acquisition of seven regional newspapers (part of Celtic Media Group) by Independent News & Media ("**INM**"), on which Matheson advised. This merger was terminated by mutual consent of the parties.

## Q9. What are the deadlines for filing? Are there sanctions for not filing and are they applied in practice?

A filing must be submitted to the CCPC prior to the implementation of the merger, and may be made so long as the undertakings involved demonstrate a good faith intention to conclude an agreement. This approach is in line with the Commission's practice under the EUMR.

Under sections 18(9) and 18(10) of the Act, failure to notify a merger that meets the turnover thresholds is a criminal offence punishable by fines of up to €250,000, plus €25,000 per day for a continued breach. The CCPC cannot impose administrative fines but must refer the matter to the Director for Public Prosecutions to initiate either summary prosecution or prosecution on indictment.

Liability attaches to the undertaking required to make the notification, or the person in control of that undertaking. Section 18(11) of the Act provides that the 'person in control' of an undertaking is:

- in the case of a body corporate, any officer of the body corporate who knowingly and wilfully authorises or permits the contravention;
- in the case of a partnership, each partner who knowingly and wilfully authorises or permits the contravention; or
- in the case of any other form of undertaking, any individual in control of that undertaking who knowingly and wilfully authorises or permits the contravention.

Following a CCPC investigation, on 8 April 2019, Armalou Holdings Limited ("**Armalou**") pleaded guilty in the Dublin Metropolitan District Court to a breach of section 18. Armalou pleaded guilty to six charges arising from its failure to notify the CCPC of its acquisition of Lillis-O'Donnell Motor Company Limited in December 2015. Subsequently, on 10 May 2019, Airfield Villas Limited (formerly known as Lillis-O'Donnell Holdings Limited), also pleaded guilty to six charges arising out of its failure to notify the CCPC of the same transaction. This was Ireland's first criminal prosecution involving 'gun-jumping'. In both cases, the District Court decided to apply the Probation Act 1907 on condition that each company made a charitable donation of €2,000 and paid a contribution

## Q10. Which parties are responsible for filing and are filing fees required?

Each 'undertaking involved' in the merger must submit a merger filing. In practice, joint filings are submitted and the purchaser tends to lead on drafting the filing. A filing fee of €8,000 (for each filing) currently applies.

However, in the case of a public bid, the transaction may be notified to the CCPC by the purchaser alone (see further the response to question 13 below).

## Q11. What is the meaning of the term "undertakings involved"?

The CCPC has clarified that, for the purposes of calculating turnover and assessing whether business is carried on in any part of the island of Ireland, the term "undertakings involved" means the entire group of undertakings to which an undertaking belongs. The term "undertakings involved" excludes however the vendor of the business being sold.

## Q12. What happens if only one party notifies or parties make separate notifications?

Each party to a proposed transaction is under an obligation to notify the CCPC of the proposed transaction. The CCPC encourages parties to make joint notifications. Where separate notifications are made, the time limit within which the CCPC must make a decision on the transaction starts on the date of receipt of the last notification.

In the case of a public bid, the transaction may be notified to the CCPC by the purchaser (see further the response to question 13 below).

**Q13. What impact, if any, do rules governing a public offer for a listed business have on the merger control clearance process in such cases?**

An announcement to make a public bid by one of the undertakings involved, or the making of a public bid that has yet to be accepted, is a trigger for making a notification to the CCPC. In the case of a public bid, the transaction may also be notified by the purchaser alone. However, there are otherwise no special rules applicable to public offers for listed businesses.

**Q14. What are the waiting periods and does implementation of the transaction have to be suspended prior to clearance?**

A Phase I clearance determination must be issued by the CCPC within 30 working days of the 'appropriate date', which means the date on which a full and complete filing by the merging parties is made, unless either the CCPC has used its power to 'stop and restart the clock' by issuing a formal requirement for information ("**RFI**"), which has the effect of resetting the clock and it only restarts when the RFI is complied with, or where the parties and the CCPC are negotiating remedies, in which case the Phase I period is extended to 45 working days. The CCPC also issues 'informal' requests for information that do not stop and restart the clock.

A Phase II clearance determination must be issued by the CCPC within 120 working days of the appropriate date. If the CCPC issues a formal RFI in the first 30 working days of the Phase II period, this has the effect of stopping and restarting the clock in the same way as at Phase I. If the parties and the CCPC are negotiating remedies, the Phase II period is extended to 135 working days.

A suspensory obligation is included in the Act. Section 19(1) of the Act imposes a prohibition on the merging parties putting a merger that has been notified (both mandatory and voluntary) into effect prior to the issue of a clearance determination.

**Q15. Once a clearance has been received from the Authority, how long do the parties have to put the transaction into effect?**

The transaction must be put into effect within twelve months of a clearance determination from the CCPC.

**Q16. What is published?**

The notification itself is confidential and will not be published by the CCPC. However, the CCPC will publish a notice that a transaction has been notified within seven days of receipt of the notification. This notice will provide basic details about the transaction, namely the parties, the industry sector involved, the details of the case officer assigned to the review and an invitation for third parties to comment (typically within 10 working days).

The CCPC will publish the text of a determination on its website at the earliest possible date (and in any event, within two months of the date of the determination) after allowing the undertakings involved an opportunity to indicate any information that the parties consider to be confidential and should be redacted.

**Q17. What are the possible sanctions involved in closing or integrating before clearance?**

Section 19(1) prohibits the putting into effect of a notifiable merger until the CCPC has reached a determination that it may be put into effect.

In *M/16/013 INM/Greer, INM* completed the acquisition of assets of Greer Publications prior to notification in breach of section 19(1) of the Act. The CCPC accepted the notification on the basis that INM would not, prior to receiving CCPC clearance, combine or change the structure of the target assets, integrate any retailing or advertising functions of the target assets into INM, cross-sell advertising space between INM and the target assets or share commercially sensitive information between INM and the target assets. The CCPC subsequently cleared the merger.

Section 19(2) of the Act provides that a notifiable merger that is notified to the CCPC, but put into effect prior to a clearance determination, is void. The Act does not state whether a merger that is completed prior to clearance is rendered void for all time, or merely until such time as the CCPC issues a clearance determination.

The CCPC has previously expressed the view that a notifiable merger completed without notification remains void until the date of a clearance determination (*M/04/003 Radio 2000/Newstalk 106*).

While the CCPC has permitted the parties to submit a late notification of a completed merger, it has released statements that parties have breached the Act by closing before clearance. For example, in *M/10/043 Stena/DFDS*, the merging parties completed the merger prior to notification and the CCPC issued a press release stating that the parties had infringed section 19(1) of the Act, and therefore that the implementation of the acquisition was void under section 19(2). To date, the CCPC has not pursued a prosecution for submitting a late notification of a merger which ought to have been notified before its completion.

## Q18. Are sanctions applied in cases involving closing before clearance in foreign-to-foreign mergers?

The same legal rules apply to all cases involving closing before clearance, regardless of whether or not the transaction is a foreign-to-foreign merger.

## Q19. Are there any solutions to permit closing before clearance in a foreign-to-foreign merger?

No formal guidance has been published by the CCPC on whether structures such as 'hold-separate' undertakings might enable parties to avoid a legal breach of the suspensory obligation under section 19(1) of the Act. In general, we would expect the CCPC to follow the same approach as the Commission with regard to its approach to carve-outs or close-arounds.

Where such mechanisms have been used in Ireland, the CCPC has publicly criticised the merging parties for doing so. In *M/12/031 Top Snacks/KP Snacks*, the CCPC stated in its determination that the Act does not permit partial implementation of a merger or acquisition even where a 'framework agreement' or other kind of hold-separate arrangement is put in place with regard to certain parts of the business within the state. The CCPC might be less likely to initiate court proceedings for breach of section 19(1) or section 19(2) in cases where the Irish businesses of the merging parties were being held separate pending the grant of clearance by the CCPC. In *M/16/013 INM/Greer*, the CCPC accepted the notification of the merger after completion on assurances from INM that it would not, prior to receiving the CCPC's determination, integrate the relevant target assets into its business. Parties should seek legal advice on a case-by-case basis and consider engaging with the CCPC in pre-notification discussions.

## Q20. What is the level of detail required in the preparation of a filing, and are there sanctions for supplying incorrect or missing information?

There is a standard form for notifying the CCPC. All parts of the notification form must be completed, unless the so-called 'Simplified Merger Procedure' and the related exemptions from completing certain parts of the standard form are available.

## Q21. What are the typical steps and different phases of the investigation?

### Pre-notification (Optional)

- Meeting or conference call to discuss the proposed merger, in particular where the relevant market and / or overlaps are complicated.

### Phase I

- Submit filing to the CCPC (one hard copy only is required plus an electronic copy of the merger notification form in Word format);
- Publication of notice on the CCPC's website within seven days recording fact of filing and parties' names with a call for submissions or comments from third parties (generally a 10-day period);
- Possibility of a formal requirement for information that stops and, when complied with to CCPC's satisfaction, restarts the Phase I timetable;
- Possibility of an informal request for information that does not impact on the Phase I timetable;
- Discussion of remedy proposals from the parties (if applicable), which extends the Phase I period to 45 working days;
- Notice to parties of determination (clearance, conditional clearance or Phase II; with press release for noteworthy mergers);
- Parties may request redactions from the public version of the determination; and
- Publication of Phase I determination within 60 working days of date of adoption.

### Phase II (if applicable)

- Communication from the CCPC setting out its decision to move to Phase II giving limited details;
- Call for submissions or comments from third parties;
- Possibility of a formal requirement or informal request for information;
- Early determination approving the merger can be issued within 40 working days of the beginning of Phase II (rather than 120 working days from notification; this is the usual Phase II outcome) or if the investigation is to progress, the CCPC sends the parties an assessment setting out its concerns about the merger;
- Oral hearing (if requested within five working days of receipt of CCPC's assessment);
- Access to the CCPC's file;
- Discussion of remedy proposals from the parties (no later than 15 working days after receipt of the CCPC's assessment);
- Market testing of remedy proposals of parties (depending on circumstances and at the discretion of the CCPC);
- Notice to parties of determination (clearance, conditional clearance or prohibition) and press release;
- Parties may request redactions from the public version of the determination; and
- Publication of Phase II determination within 60 working days of date of adoption.

## Q22. What information gathering powers (and sanctions) does the merger authority enjoy in relation to the scrutiny?

The CCPC obtains information from a number of sources during the merger investigation:

- The primary source of information is the merger notification form, which requires the parties to provide substantial amounts of information about their activities, the transaction, the relevant markets and the effect on competition of the merger or acquisition. The parties are also required to provide relevant internal papers analysing the transaction and contact details of potentially affected parties (customers, competitors and suppliers) with the notification form;
- The CCPC may also obtain information from third parties. This can be done in response to the invitation to comment following publication of the notice of the notification, through informal information requests including a survey (using lists of competitors and customers etc provided in a merger notification form), and/or through statutory information requests.

Where the statutory information request power is exercised under section 20(2) of the Act, the CCPC is under an obligation to either confirm compliance or request additional information within 10 working days of the submission of an RFI response. Failure to comply with an RFI within the time period specified by the CCPC is a criminal offence under sections 18(9) and 18(10) of the Act.

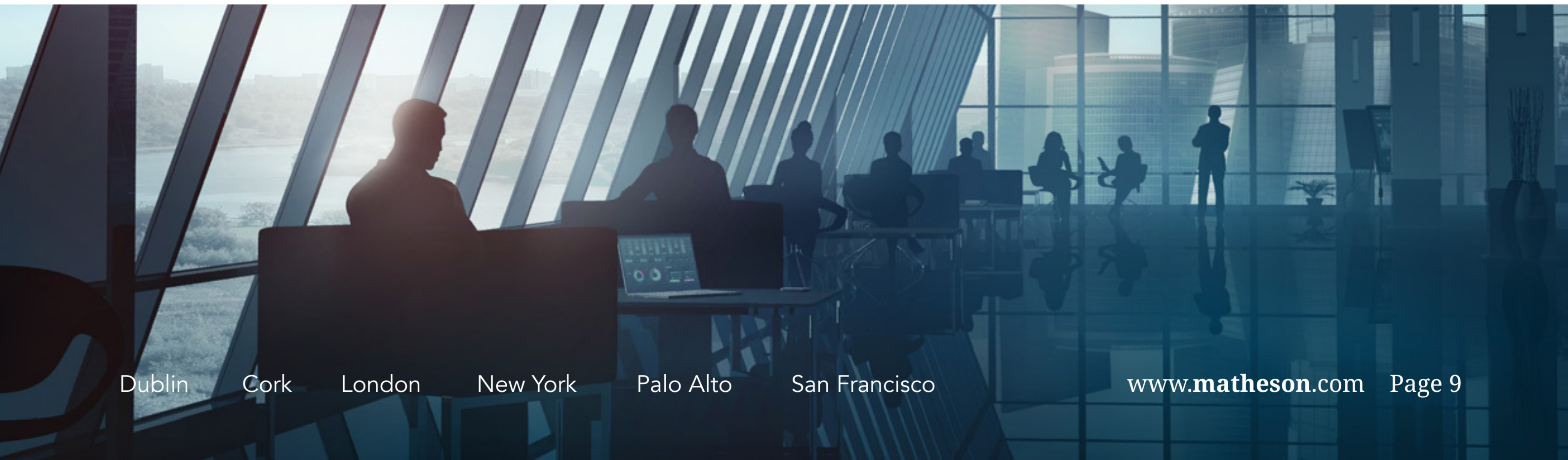
Under section 18 of the Competition and Consumer Protection Act 2014 (the "**2014 Act**"), the CCPC can summons witnesses, examine witnesses under oath and require any further information or relevant material. Under section 37 of the 2014 Act, the CCPC can search premises, inspect and retain relevant material and require information from persons engaged in the business of the undertaking.

## Q23. What is the statutory timetable for clearance?

The CCPC has a period of 30 working days in which to decide whether to grant a Phase I clearance, and a period of 120 working days in which to decide whether to grant a Phase II clearance.

The Act does not provide for an accelerated investigation and there is no guidance issued by the CCPC on this point. However, in practice, merging parties can request an accelerated investigation and the CCPC has issued expedited clearance decisions in cases not raising competition concerns. For example, *M/12/029 Endless/VION* was cleared in 11 days, and in cases that involved strict insolvency procedure timetables, such as *M/09/002 HMV Ireland/Zavvi*, the clearance determination was issued in nine days. More recently, in *M/16/053 Anchorage Capital/ Eircom*, the CCPC cleared that 'no issues' merger in 11 days.

The CCPC can reduce the normal period of 10 days allowed for public comment after publication of notice of a merger notification on its website in individual cases, if circumstances so require. For example, in *M/12/048 Endless/Imtech Suir*, the notification period was reduced from 10 days to five days where Imtech Suir's parent company had been declared insolvent and consequently Imtech Suir was in financial jeopardy and unlikely to operate as a going concern. In that case, the CCPC issued a clearance determination in six days.



## Q24. May the Authority issue a Statement of Objections?

The CCPC has issued procedural guidelines outlining the review process for notified transactions. These guidelines deal in particular with Phase II investigations. Within six weeks of entering into a Phase II, the CCPC will normally either clear the transaction or issue an "Assessment" to the notifying parties. The Assessment is similar to a Statement of Objections but the CCPC has stated that the document should not be seen as a Statement of Objections. Such an Assessment will set out the CCPC's concerns regarding the effect of the proposed transaction on competition in the relevant markets. Following issue of the Assessment, the notifying parties usually have three weeks within which to reply to the Assessment.

## Q25. Will the notifying parties be granted access to the file?

Access to the file is granted only in Phase II after the Assessment has been issued. Access to the file involves giving the notifying parties access to comments or complaints received from third parties. However, access to internal working documents of the CCPC will not be granted to the notifying parties, as well as confidential matters or commercial secrets and documents more conveniently obtainable from other sources. Practice has varied somewhat regarding the level of access to the file and it has not been as extensive as might be imagined by those outside the Irish regime

## Q26. Will the Authority conduct an oral hearing?

The CCPC will generally offer to hold an oral hearing within 10 weeks of entering into a Phase II. The purpose of the hearing is to receive submissions from the notifying parties as well as any proposal for commitments.

However, the parties may expressly waive their right to such a hearing. Third parties who have made submissions to the CCPC may also be invited to attend an oral hearing. In practice, the notifying parties and the CCPC are likely to meet several times, or be in regular contact, prior to such an oral hearing in an attempt to resolve any concern which the CCPC may have.

## Q27. May the Authority compel any person to provide evidence?

Yes. The CCPC may summon witnesses to attend before it, examine them on oath and require any such witness to produce to the CCPC any document in his or her power or control.

The CCPC has issued a number of summonses in merger investigations as we understand it. Failure to comply with such requests can lead to fines of up to €3,000 and / or imprisonment of up to 6 months.

## Q28. What is the substantive test for clearance?

Section 20(1)(c) of the Act provides that the substantive test for assessment of competition issues is 'whether the result of the merger or acquisition would be to substantially lessen competition in markets for goods or services in the state' (the SLC test). The CCPC interprets the SLC test in terms of consumer welfare, which depends on a range of variables. In particular the CCPC will assess whether a merger would be likely to result in a reduction in choice or a price rise for consumers.

A merger that would otherwise give rise to an SLC may nonetheless be cleared by the CCPC where the failing firm or failing division test is met (as set out in Chapter 9 of the CCPC's Guidelines for Merger Analysis) and therefore the relevant counterfactual is not the prevailing conditions of competition. For example, in *M/15/026 Baxter Healthcare/ Fannin Compounding*, the CCPC identified competition concerns related to the reduction in competition for the commercial supply of compounded chemotherapy medicines to hospitals in the state. However, the parties submitted that Fannin Compounding was a 'failing division' of Fannin Limited and that the assets involved would exit the market if the merger was prohibited.

The CCPC investigated this argument and engaged Grant Thornton to independently examine financial information pertaining to Fannin Compounding. The CCPC ultimately cleared the merger. It found that the most likely outcome absent the merger would be that Fannin Compounding would close and its assets would exit the market. Thus, the competitive structure of the relevant market would deteriorate to at least the same extent in the absence of the proposed acquisition.

### Q29. Is there a special substantive test for joint ventures?

No. Joint ventures that are notifiable under section 16(4) of the Act must satisfy the same SLC test.

### Q30. What does the Authority's assessment involve?

The CCPC will analyse transactions by taking into account elements such as:

(i) The relevant product and geographic markets;

(ii) For each relevant market identified, the measurement of the effect of the proposed transaction on market structure. This involves calculating the level of concentration between the merging parties and their competitors. This is done by using the Herfindahl-Hirschmann Index of concentration;

(iii) An assessment as to whether the proposed transaction has an effect on the level of rivalry among existing competitors in the market. This will involve an analysis of the likelihood of an exercise of market power by the merged entity (unilateral effects) and whether increased collusive behaviour between competing undertakings would restrict the market (co-ordinated effects);

(iv) An analysis as to whether entry into the market by a new competitor is sufficiently easy to prevent the merged entity exercising any market power;

(v) An analysis as to any likely pro-competitive benefit to the market of such a transaction (i.e., any potential efficiency gains); and

(vi) An analysis as to whether, in all the circumstances, the transaction would substantially lessen competition in Ireland.

### Q31. What are the 'theories of harm' that the authorities will investigate?

The CCPC's Guidelines on Merger Analysis states that the CCPC will examine unilateral, coordinated, conglomerate and vertical effects (including the loss of actual 'or potential' competition). Like the Commission, the CCPC in practice tends to focus on the risk of horizontal unilateral effects, although coordinated effects and vertical mergers are occasionally examined.

For example, in *M/17/005 Vhi Investments/Vhi Swiftcare Clinics*, the CCPC investigated potential vertical concerns arising from the acquisition by VHI Healthcare (the state's largest health insurer) of the remaining 50 per cent interest in each of two 'Swiftcare' clinics offering primary care services in Dublin and one clinic in Cork. Specifically, the CCPC investigated an input foreclosure theory of harm whereby VHI could potentially exclude other competing insurers from offering their policyholders access to these clinics.

However, the CCPC determined that the clinics formed a small part of the overall primary care market (which included GP clinics and hospitals in those areas) and therefore the merger would not lead to input foreclosure.

Separately, in *M/17/035 Dawn Meats/Dunbia* the CCPC investigated whether the merger could give rise to an increased risk of coordinated effects and undertook econometric analysis to test this point, though it ultimately did not identify any concerns.

## Q32. To what extent are non-competition issues relevant in the review process?

Aside from media mergers, non-competition issues are not relevant under the Act. However, the CCPC does sometimes consider wider welfare factors. For example, in *M/17/035 Dawn Meats/Dunbia*, the CCPC investigated whether the merger would give Dawn Meats the ability and incentive to lower the prices it pays to farmers for live cattle for slaughter in the state. The CCPC did not find evidence to support this potential concern.

## Q33. To what extent does the Authority take into account economic efficiencies in the review process?

The CCPC's Guidelines on Merger Analysis state that it will consider efficiency arguments, but the burden of proof is on the parties to demonstrate that the claimed efficiency gains are as a direct result of the merger.

## Q34. What powers do the authorities have to prohibit or otherwise interfere with a transaction?

Upon the completion of a Phase II investigation, the CCPC may clear a merger subject to conditions or block a merger outright if the CCPC forms the opinion that the merger would lead to a substantial lessening of competition in markets for goods or services in the state.

## Q35. Is it possible to remedy competition issues, for example by giving divestment undertakings or behavioural remedies?

Section 20(1)(b) of the Act provides that the CCPC may enter into discussions with the merging parties with a view to identifying measures that would ameliorate any negative competitive effects of the merger. These discussions can have as their outcome divestment undertakings or behavioural remedies. Section 20(3) of the Act provides that the negotiation of remedies or commitments may be commenced at any stage of a Phase I or Phase II investigation.

The CCPC has previously accepted both divestment undertakings and behavioural remedies as conditions to clearance determinations.

For example, in *M/16/008 PandaGreen/GreenStar*, CCPC clearance was obtained where PandaGreen made divestment undertakings in relation to Greenstar's domestic waste collection businesses in Fingal and Dun Laoghaire-Rathdown. In *M/14/026 Valeo/Wardell/Robert Roberts*, the acquirer undertook to divest the YR brand of brown sauce to address the CCPC's concern that the acquirer's large post-merger market share in the market for the supply of brown sauce to the retail sector would incentivise it to increase prices to retailers, with insufficient competitive constraint from competitors or countervailing buyer power. Divestment undertakings were also accepted in *M/15/020 Topaz/Esso*, where Phase II clearance was subject to divestment commitments relating to Esso's interest in a fuel terminal at Dublin Port and certain fuel retail sites.

This interest was subsequently divested to Applegreen during the course of 2017, with a binding commitment that Applegreen would import and supply refined fuel products, including aviation fuel (Jet A1), through the JFT.

In *M/17/012 Kantar Media/Newsaccess*, Kantar agreed to divest fixed assets and release a number of contracted customers from their fixed-term contracts. Finally, in *M/17/027 Dalata/Clarion Liffey Valley/ Clayton Cardiff Lane*, the CCPC took the somewhat unusual step of requiring Dalata to commit to voluntarily notify the CCPC any time it begins operating a hotel in the state on behalf of a third party, where this would not otherwise be notifiable to the CCPC or Commission or give rise to potential competition concerns.

In *M/18/36 Enva/Rilta*, Enva agreed to divest property and fixed assets to ameliorate concerns identified by the CCPC in the waste-processing market as a result of its Phase II investigation. Enva also agreed to certain access proposals relating to the processing of waste lubricant oil and hazardous contaminated soil.

**Q36.** What are the basic conditions and timing issues applicable to a divestment or other remedy?

There is a 45-working-day statutory period for the issue of a conditional clearance at Phase I.

In practice, the Phase I deadlines tend not to allow merging parties sufficient time to design and obtain approval for any 'complex' remedies.

The Phase II timetable allows the merging parties more time to satisfy the CCPC that their remedies proposal effectively resolves any identified 'theories of harm' or competition law concern. As noted above, the CCPC may 'market test' a remedies proposal during both Phase I and Phase II investigations.

**Q37.** In what circumstances will the clearance decision cover related arrangements (ancillary restrictions)?

A merger clearance determination by the CCPC covers not only the notified merger but any arrangements constituting restrictions that are directly related and necessary to the implementation of the merger, and that have been described by the merging parties to the CCPC in the notification form.

In practice, the CCPC tends to follow the principles included in the Commission's Notice on Ancillary Restraints in this regard.

**Q38.** Are customers and competitors involved in the review process and what rights do complainants have?

Section 20(1)(a) of the Act provides that, within seven days of receipt of a merger notification, the CCPC must publish a request for comments from third parties (including customers and competitors). Generally, a 10-working-day period is allowed for the submission of third-party comments during Phase I, and a 15-working-day period is allowed for the submission of third-party comments during Phase II (this 10-working-day period may be reduced depending on the facts of the merger).

In practice, the CCPC will often proactively seek submissions from competitors and customers during both Phase I and Phase II investigations.

Section 20(1)(b) of the Act provides that the CCPC may enter into discussions with third parties (including customers and competitors), with a view to identifying remedies.

The CCPC will consider all third-party submissions and, at its discretion, may meet with interested competitors and customers during the review process.

## Q39. What publicity is given to the process and how do you protect commercial information, including business secrets, from disclosure?

The CCPC publishes on its website notices of all mergers notified to it, written determinations and any press releases by the CCPC on particular cases.

Notifying parties can identify commercially sensitive information that they believe should remain confidential when submitting a notification. Notifying parties are also afforded the opportunity to submit comments on the deletion of confidential information from the public version of the CCPC's determination.

In the event that the CCPC seeks to include information provided by a third party in its determination, that third party will also be offered the opportunity to protect confidential information. Similar provisions apply in access to the file in Phase II.

The CCPC tends to accept all reasonable requests to maintain confidentiality in its written determinations.

## Q40. Is it possible to keep confidential a transaction which has been notified to the Authority?

No. The fact that the transaction is notified to the CCPC must be published on its website within seven days of the receipt of the notification. This notice invites third parties to make submissions within ten days of the publication of the notice on the CCPC's website. The notification itself is not published or made available to third parties. Only the names of the parties, the sector involved and the date by which third party submissions must be received are published.

The decision of the CCPC in Phase I to clear a merger or to institute a Phase II investigation must be published within two months. The determination following a Phase I investigation tends to be short. At the end of Phase II, the CCPC must publish its determination in relation to the transaction within one month. When publishing its determination, the CCPC will redact any genuinely confidential information identified by the notifying parties, (though, for example, market share ranges may replace the specific market share figures.)

## Q41. Do the authorities cooperate with antitrust authorities in other jurisdictions?

Section 23 of the 2014 Act permits the CCPC to enter into arrangements with other competition authorities in other countries for the exchange of information and the mutual provision of assistance.

The CCPC maintains regular contact with competition authorities in other jurisdictions, including in particular the UK CMA and the Commission regarding, respectively, cases that are subject to parallel reviews in the United Kingdom and Ireland and EU cases that may impact on Ireland. For example, in 2018, the CCPC closely followed the Commission's investigations into a number of proposed mergers that it considered to be of significant interest to Ireland, including the following:

- M.8306 Qualcomm/NXP Semiconductors;
- M.8677 Siemens/Alstom;
- M.8736 Toohil Telecom/Eircom;
- M.8792 T Mobile NL/Tele2 NL;
- M.8084 Bayer/Monsanto;
- M.8882 Kennedy Wilson/AXA JV; and
- M.8900 Wieland Werke/Aurubis & Schwermetall.

Finally, the CCPC is an active member of the European Competition Network, the International Competition Network and the OECD Competition Committee.

## Q42. What are the opportunities for appeal or judicial review?

Merging parties may appeal a determination of the CCPC prohibiting a merger or imposing conditions on a point of fact or law to the Irish High Court. There is a possibility for merging parties or the CCPC to make a subsequent appeal of a High Court decision, but only on a point of law. The Act provides no right of appeal in respect of a determination to clear a merger and third parties are not given a right of appeal.

## Q43. What is the usual time frame for appeal or judicial review?

An appeal to the High Court must be lodged within 40 working days of the CCPC's published determination, or, in the case of a media merger, within 40 working days of the Minister (under the current regime, or the CnaM under the proposed new regime – see the response to question 8 above) informing the relevant party of his or her determination. The High Court will issue a decision within two months, if this is practicable.

To date, the only successful appeal to the High Court from a determination of the CCPC blocking a merger was in September 2008, when Kerry Group successfully appealed the determination of the CCPC blocking its proposed acquisition of Breeo. The CCPC lodged an appeal to the Supreme Court in respect of the High Court judgment but decided in April 2016 not to proceed with the appeal.

## Q44. May the Authority enforce compliance with its decisions?

Yes. The CCPC may apply to the High Court for an injunction to enforce compliance with a commitment, determination or order. The Act provides for penalties of up to €10,000 and / or two years' imprisonment where there is non-compliance with a commitment, determination or order.

## Q45. Is there a Simplified Procedure for no-issues mergers?

Yes. Following its introduction in July 2020, the CCPC's simplified procedure for transactions presenting no substantive issues was fully embraced by parties and the CCPC alike and has allowed the CCPC to consistently achieve quick clearance times in straightforward cases (ie, average of less than 14 days in recent years).

## Quick Reference Guide

### 1. Voluntary or mandatory system?

- Filing is mandatory for mergers that meet the turnover thresholds. No exceptions exist.

### 2. Notification trigger/ filing deadline

- A filing must be submitted to the CCPC prior to the implementation of the merger, and may be made so long as the undertakings involved demonstrate a good faith intention to conclude an agreement.

### 3. Clearance deadlines

- The CCPC has a period of 30 working days in which to decide whether to grant a Phase I clearance, and a period of 120 working days in which to decide whether to grant a Phase II clearance.

### 4. Substantive test for clearance

- 'Whether the result of the merger or acquisition would be to substantially lessen competition in markets for goods or services in the state' (the SLC test).

### 5. Penalties

- Under sections 18(9) and 18(10) of the Act, failure to notify a merger that meets the turnover thresholds is a criminal offence punishable by fines of up to €250,000, plus €25,000 per day for a continued breach.
- Section 19(1) prohibits the putting into effect of a notifiable merger until the CCPC has reached a determination that it may be put into effect and breach is a criminal offence.
- Providing information that is false, misleading or incomplete is also punishable.

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