

Brief Guide to Ireland's Merger Control Rules.

Introduction.

Legislation regulating the control of mergers in Ireland is contained in Part III of the Competition Act, 2002. These provisions came into force on 1 January 2003, replacing the old Mergers, Takeovers and Monopolies (Control) Act, 1978, as amended. As in many other jurisdictions the legislation provides that mergers involving firms above a certain size must be notified for official approval before they can be implemented. The 2002 Act also contains special provisions in respect of "media mergers", i.e. mergers involving newspapers, radio and TV stations. National law does not apply where a merger is subject to the EU Merger Regulation.

Main Features of Irish Merger Legislation.

New thresholds for notifying mergers came into force on 1 January 2019. These provide that a merger or acquisition must be notified to the Competition and Consumer Protection Commission (CCPC) where:

1. The aggregate turnover in the State of the undertakings concerned is not less than €60m; and
2. The turnover in the State of each of two or more of the undertakings involved is not less than €10m.

Previously the thresholds were €50m and €3m respectively.

The Minister may also specify that certain types of merger must be notified to the Authority and has availed of this provision to require that all media mergers must be notified. Failure to notify a merger constitutes an offence and the persons in control of the undertakings concerned may be liable to a fine of up to €3,000 on summary conviction or €250,000 on conviction on indictment.

Under Section 19 a merger that has been notified may not be put into effect until:

The CCPC has determined that it may be put into effect; or

The CCPC has made a conditional determination regarding the merger.

Within 30 working days of the date of notification the CCPC must make a determination that:

1. In its opinion, the merger will not substantially lessen competition in the State and may therefore be put into effect; or
2. it intends to carry out a more detailed investigation under Section 22 of the Act.

The CCPC must complete a full investigation under Section 22 within 120 days of the date of notification.

1. May be put into effect;
2. May not be put into effect; or
3. May be put into effect subject to certain conditions, i.e. a conditional determination.

The CCPC may request further information from the notifying parties and when it issues a formal request for additional information the time limits for decisions under sections 19 and 22 commence from the date on which the parties have supplied the information sought rather than the notification date.

In deciding whether or not to approve a merger the CCPC is required to decide whether or not it will substantially lessen competition in any markets for goods or services in the State. The

legislation includes provisions which allow the merging parties to propose adjustments to the transaction to address concerns of the CCPC.

The Act provides that the CCPC must publish the fact that a merger has been notified and invite third parties to submit comments. It also requires the CCPC to publish its determinations.

Appeals.

Where the Authority blocks a merger, the parties can appeal its decision to the High Court. Such an appeal must be made within one month of the Authority's decision. The Court may consider points of fact as well as points of law where it considers that the Authority's findings on a matter of fact were unreasonable. The Court is required "in so far as it is practicable" to hear and determine an appeal within two months of the appeal being made. Since the 2002 Act came into force there has only been one such appeal. In that case the High Court overturned the CCPC's decision to prohibit the merger. Compecon advised the merging parties in that case. There is no appeal in the event that the Authority fails to block a merger that would reduce competition.

Special Rules for Media Mergers.

The Act contains special provisions in respect of "media mergers", i.e. mergers involving newspapers, radio and TV stations. Such mergers must also be notified to the Minister for Communications, Climate Change and the Environment ("the Minister") within ten working days of a final decision by the CCPC. The CCPC is responsible for assessing the impact of a proposed media merger on competition. The Minister is responsible for examining the impact of a proposed media merger on media plurality in Ireland. The Department for Communications, Climate Action & Environment (the Department) carries out this examination function on behalf of the Minister. The Minister makes his determinations on the basis of such examinations by the Department. The important role played by the media in allowing for a diversity of views in a democratic society is the main reason for having special rules for media mergers. There is a risk, however, that politicians may be reluctant to stand up to powerful media groups.

Mergers and the Competition Acts.

It would appear that under the Competition Act, 2002, mergers that fall below the notification thresholds are subject to the provisions of Sections 4 and 5, i.e. the sections that prohibit anti-competitive agreements and abuses of a dominant position. The Act provides for a voluntary notification procedure for such mergers. Mergers below the thresholds which are not notified voluntarily can only be prohibited if the CCPC or a third party brings court proceedings, although the parties may decide not to proceed if the CCPC announces its intention to do so.

Overview.

The Irish regime is broadly similar to EU Merger Control procedures under which the EU Commission has sole jurisdiction in respect of large EU wide mergers. Under Irish legislation the CCCPC, like the Commission at EU level, is responsible both for investigating and deciding on mergers. This creates obvious concerns about the fairness of the process. Requiring the

CCPC to publish details of all mergers notified and to publish its decisions allows for an assessment of the quality of merger decisions.

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