

Introduction.

Legislation regulating the control of mergers in Ireland is contained in Part III of the Competition Act, 2002, as amended. These provisions came into force on 1st January 2003, replacing the old Mergers, Takeovers and Monopolies (Control) Act, 1978, as amended. As a result of changes introduced by the Competition (Amend) Act, 2022, Ireland's merger control regime combines both an *ex-ante* and an *ex-post* approach. Mergers involving firms above a certain size must be notified and approved by the Competition and Consumer Protection Commission (CCPC) before they can be implemented. However, the 2022 Act enables the CCPC to "call-in" mergers that fall below the notification thresholds and to order the unwinding of such mergers where they have already been implemented. There are 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.

A merger or acquisition must be notified to the CCPC where:

- (i) The aggregate turnover in the State of the undertakings concerned is not less than €60m; and
- (ii) 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. All media mergers must be notified regardless of the turnover of the merging parties.

A merger that has been notified may not be put into effect until:

- (i) The CCPC has determined that it may be put into effect; or
- (ii) The CCPC has made a conditional determination that it may be put into effect.

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

- (i) in its opinion, the merger will not substantially lessen competition in the State and may therefore be put into effect; or
- (ii) it intends to carry out a more detailed investigation under § 22 of the Act.

The CCPC must complete a full investigation under §22 within 120 days of the date of notification following which it is required to publish a Determination that the merger

- (i) May be put into effect;
- (ii) May not be put into effect; or

- (iii) 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 §§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.

Mergers Below the Notification Thresholds.

The 2002 Act provided that merging parties could voluntarily notify mergers or acquisitions which fell below the notification thresholds. The 2022 Act, however, gives the CCPC power to require merging parties to notify mergers that fall below the notification thresholds, if, in its opinion, the merger may have an effect on competition within the State. The 2022 Act further provides that, if the merger has already been implemented and the CCPC subsequently determines that it would result in an SLC, the CCPC may order that the merger be unwound.

Appeals.

Where the CCPC blocks a merger, the parties can appeal its decision to the High Court. Such an appeal must be made within one month of the CCPC's decision. The Court may consider points of fact as well as points of law where it considers that the CCPC'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 prohibition decision. Comecon advised the merging parties in that case. There is no appeal in the event that the CCPC fails to block a merger that would reduce competition.

Media Mergers.

There are special provisions in respect of "media mergers", i.e. mergers involving newspapers, radio, and TV stations. Such mergers must be notified to both the CCPC and the Minister for

Tourism, Culture, Arts, Gaeltacht, Sport and Media (“the Minister”). The notification to the Minister must be made 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 key 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.

Overview.

The CCPC, like the EU Commission, is responsible both for investigating and deciding on mergers. This creates obvious concerns. 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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