



EU, COMPETITION AND REGULATED MARKETS

CCPC Publishes 2018 Mergers & Acquisitions Report

by **Marco Hickey**

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The Competition and Consumer Protection Commission (CCPC) published its Mergers and Acquisitions Report for 2018 on 4 January 2019. The CCPC is the national competition authority responsible for merger review in Ireland. The report provides an insight into how the CCPC conducted its merger reviews during 2018, and its areas of focus for 2019.

Irish merger control regime

One of the CCPC's statutory functions under Part 3 of the Competition Act 2002 (as amended), is to review mergers that meet certain thresholds and to ensure that proposed transactions do not negatively impact consumers through a substantial lessening of competition in any market for goods and services in the State. The report outlines the CCPC's activity in this area in 2018.

Merger notifications and determinations

The report sets out the following key statistics:

- 98 mergers were notified in 2018, which is a 36% increase on 2017 notifications;
- 95 determinations were issued, 5 of which required commitments to secure approval;
- 14 notifications required an extended Phase 1 review, 3 of which required a Phase 2 investigation. In 2017 there were zero Phase 2 reviews;
- Real estate was the most prominent sector; in 2017, motor fuel was the most prominent sector; and
- For non-extended Phase 1 investigations, the CCPC took an average of 24 working days to issue a determination – the same average length as in 2017.

Focus on gun jumping

The report states that during the course of 2018, the CCPC continued to monitor compliance with merger notification requirements, with a particular focus on the examination of potential "gun-jumping" (i.e., failure to notify a notifiable merger). Under Irish competition law, it is a criminal offence to implement a notifiable merger without first securing clearance from the CCPC. As such, businesses are reminded that failing to notify a transaction can mean that the transaction is deemed void.

CCPC's focus for 2019

Speaking about the year ahead, Brian McHugh, Member of the Commission, with overall responsibility for mergers, said: "2019 is set to be a challenging year for Government, businesses and regulatory bodies including the CCPC. The continued uncertainty arising from Brexit means that a number of scenarios need to be considered and planned for. In the context of the merger regime, it is likely that Brexit will lead to the notification of more complex mergers and we have been working internally to prepare for this. The CCPC continues to input into the Government's wider preparations for Brexit. There needs to be certainty for both the CCPC and businesses as to the impact of Brexit on merger notifications. As soon as we have that

clarity we will communicate it to businesses and legal representatives.”

New thresholds for merger notification and introduction of a simplified notification process

A new set of thresholds for merger notification came into effect on 1 January 2019. Under the new increased thresholds, a proposed transaction must be notified to the CCPC if, in their respective most recent financial years:

1. the undertakings involved had a combined turnover in the State of at least EUR 60 million; and
2. at least two undertakings involved had individual turnover in the State of at least EUR 10 million.

In 2018, the CCPC also conducted a public consultation to introduce a simplified merger notification process, in line with that used by the European Commission.

In this regard, Brian McHugh said: “In the immediate term, the new higher financial thresholds, which took effect on January 1st, and the potential introduction of a simplified notification process will improve the efficiency of Ireland’s merger regime. And they will help ensure that the CCPC’s efforts are focused on those transactions which present a significant risk to competition and may negatively impact on consumers and businesses.”

The full report is available [here](#).

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