



EU, COMPETITION AND REGULATED MARKETS

Fundamental Changes to Competition Law in Ireland Come into Force

by **Marco Hickey, Heather Mahon**

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The Competition (Amendment) Act 2022 largely came into force on 27 September 2023. This will significantly alter the competition landscape in Ireland. And for our competition authorities, it means new powers, new procedures and new penalties.

Act Implements the ECN+ Directive

The main purpose of the Competition (Amendment) Act 2022 is to implement the ECN+ Directive into Irish law. Notably, the Irish Act goes beyond what is required by the Directive in certain areas.

The aim of the Directive is to ensure that there is more effective enforcement of competition law in the EU by providing that more powers be given to the competition authorities across the Member States. This in turn will contribute to the proper functioning of the internal market throughout the EU.

The Directive seeks to ensure that the national competition authorities are independent, adequately resourced and have effective enforcement and fining powers. It also sets out requirements around mutual assistance between the Member States.

We have already written extensively on the new Act. See our related articles [here](#) and [here](#). The Competition and Consumer Protection Commission (CCPC) has issued a number of guidelines in preparation for the entry into force of the new legislation.

Enforcement

One of the most significant changes associated with the implementation of the Directive in Ireland has been the introduction of procedures leading to the imposition of civil administrative fines for breaches of competition law.

In Ireland, the CCPC has to date been unable to independently impose civil fines for such breaches. The new Act has changed this. Procedures are now in place for the imposition of potentially very significant civil fines by independent adjudication officers on a balance of probabilities test, rather than the more stringent test that applies in criminal matters. These fines can also include periodic penalty payments. However, to comply with Irish constitutional requirements, sanctions will need to be confirmed by the High Court.

While these changes in the civil arena are very significant, there are also notable changes to the criminal law. For example, a specific bid-rigging offence has been introduced. Criminal fines have significantly increased. The element of intention around certain current offences has changed.

In addition, a new cartel leniency programme has been introduced which will be in addition to the existing cartel immunity programme.

Other changes here include new surveillance powers for the CCPC.

Mergers and Acquisitions

The new Act also sees enhanced powers around merger control including a power to call in sub-threshold transactions where they may have an effect on competition. The CCPC will also be able to impose interim measures such as requiring the parties to refrain from taking steps towards implementing a transaction. Failure to comply will be a criminal offence. It will also be able to require parties to unwind an anti-competitive transaction or to otherwise restore the status quo as far as practicable. There is a new power to require further information from third parties in relation to a particular transaction. The Act introduces a new gun-jumping offence for failure to comply with the standstill obligation not to implement a transaction prior to the grant of CCPC approval.

These changes are being made at a time when the CCPC has in practice made greater use of its power to reject merger notifications that do not provide the “full details” requested by the notification form.

Comment

This new Act, which largely came into force on 27 September 2023, should be on the radar of businesses and be accompanied by heightened levels of caution in and around competition-related issues. The new legislation introduces some of the most significant changes to Irish competition law since the advent of the current domestic competition regime established by the Competition Act 2002. It remains to be seen how the new administrative enforcement regime will operate in practice - this will unfold in the coming months and years. The one certainty at this stage is that there will be a much greater focus on the enforcement of competition law.

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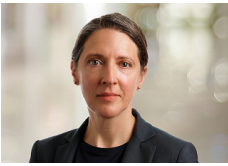
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