

EU, Competition & Regulated Markets Group

Competition & Consumer Protection Act, 2014

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The Competition & Consumer Protection Act, 2014 makes a number of changes to Irish competition law and in particular the Competition Act, 2002. The most significant changes to the merger control regime are outlined below.

New Merger Thresholds

The new thresholds provide that a merger requires pre-notification to (and clearance by) the Competition and Consumer Protection Commission (“CCPC”) where, in the most recent financial year:

- (a) the combined turnover in the State of all of the undertakings involved is €50 million or more; and
- (b) the turnover in the State of each of 2 or more of the undertakings involved is not less than €3 million.

This change, which came into effect on Friday, 31 October 2014, has the overall effect of lowering the combined size of the parties in transactions that trigger a mandatory notification requirement. Previously, the requirement was that two entities would have over €40 million turnover worldwide. The new thresholds will mean that smaller companies will trigger a mandatory notification requirement where only one of the companies involved in a transaction has significant sales in the State.

Companies who have turnover close to, or in excess of, €50 million in the State will trigger a merger notification requirement relatively easily as, where they acquire an entity with as little as €3 million in Irish sales, a merger notification will be required (previously, a second entity with €40 million sales was required).

It is worth noting that the €3 million sales need only be by way of online sales without the smaller entity even having a physical presence in the State.

In terms of transactions involving international companies, it is envisaged that fewer notifications will be required from companies who genuinely do not have a presence in the State. The rules for assessing which entities are “undertakings involved” and for calculating the turnover associated with such entities remain unchanged.

Timing of notifications

The timing of merger notifications has also changed as a result of the Act, allowing parties to notify earlier in negotiations, particularly before a binding agreement is signed. The new provision allows a notification once “the undertakings demonstrate to the CCPC a good faith intention to conclude an agreement”. This should be of significant assistance, allowing a notification on foot of, for example, a non-binding letter of intent, and allowing the merger review process to run in parallel with the negotiation of a Sales & Purchase Agreement. This also brings the Irish regime into line with the European Commission’s merger control policy.

Extension of timelines for review

The other significant change in merger control is that the timelines for assessment have been extended – in most cases by around 50%. Where the Competition Authority previously assessed phase I mergers “within 1 month” of notification (if the time was not extended by way of an information request), under the new legislation the CCPC has “30 working days” to conduct its initial assessment, i.e. about 6 weeks from the date of notification. As with under the old regime, a formal request for information stops the clock, which starts again when the CCPC has received all the information it requested. The time period for Phase II investigations has been extended to 120 working days (effectively 6 months) as opposed to the previous “4 month” period.

The impact of these extensions should be somewhat improved by the possibility of notifying earlier in the negotiation process.

Additional significant changes in the Act

In addition to the merger control changes outlined above, the Act:

- (i) merges the Competition Authority with the National Consumer Authority into a new entity the Competition and Consumer Protection Commission (“CCPC”);
- (ii) reforms the assessment of media mergers, including a requirement that they should be notified to both the CCPC and the DCENR (Department of Communications, Energy and Natural Resources). An amendment to the 2014 Act is currently under consideration, which would require the two notifications to be considered consecutively rather than concurrently, which would unfortunately further delay completion of media mergers; and
- (iii) provides additional powers in the area of cartel enforcement, and includes the cartel offences as one of the relevant offences in the whistleblowing provisions of the Criminal Justice Act, 2011.

In light of these changes, our EU, Competition & Regulated Markets Group is offering in-house briefings for senior management on Competition Law obligations, with a particular focus on the changes implemented in this Act. Should you wish to avail of such a briefing, please contact:

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