

Simplified Merger Notification Procedure Announced by CCPC

The Competition and Consumer Protection Commission ("CCPC") has announced today that a simplified merger notification procedure regime ("Simplified Procedure") will officially commence on 1 July 2020. The guidelines to the new procedure are available at <https://www.ccpc.ie/business/simplified-merger-notification-procedure-regime-to-commence-on-1-july-2020/>

The Simplified Procedure will potentially halve the time for a Phase I clearance and also reduce the time and resources required of businesses as notifying parties will be exempt from providing certain information when filing mergers or acquisitions which do not raise significant competition concerns.

A standard merger notification procedure ("Standard Procedure") allows the CCPC 30 working days to give a Phase I clearance to a notified deal.

The Simplified Procedure provides that the CCPC will endeavour to give a Phase I clearance within approximately three weeks which is half the time provided by the Standard Procedure.

The downsides to the Simplified Procedure appear to be:

- the tests which must be satisfied before allowing the simplified procedure are complex and subjective;
- the CCPC has given itself very wide discretion enabling it to decide that a notification is not suitable for the Simplified

Procedure even where it does satisfy these tests; and

- should the CCPC decide to disallow the Simplified Procedure and revert to the Standard Procedure, the clock starts again on the 30 working day statutory period allowed for a Phase I clearance, and so the process will, in fact, be lengthened.

However, the CCPC has helpfully suggested that pre-notification discussions will be accommodated within two working days of contact, and they encourage such discussions when deciding whether to apply the Simplified Procedure. This should mitigate the risk of embarking on the Simplified Procedure, only to find that the CCPC does not agree that it is appropriate and sends the applicant back to the start of the Standard Procedure again.

The tests to be satisfied in order to qualify for the Simplified Procedure are:

- none of the undertakings involved in the merger or acquisition are active or potentially active in the same product and geographic markets, or in any market(s) which is upstream or downstream to a market(s) in which another undertaking involved is active or potentially active;
- two or more of the undertakings involved in the merger or acquisition are active in the same product and geographic market, but their combined market share is less than 15%. Or, where one or more undertakings involved in the merger or acquisition are active in any market(s) which is upstream or

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downstream to a market(s) in which another undertaking involved is active, but the market share of each of the undertakings involved in each market is less than 25%; or

- an undertaking involved, which already has joint control over a company, is to acquire sole control over that company.

These tests involve quite a detailed analysis of difficult and subjective concepts such as product and geographic markets and market share. Whilst there are sectors where market definitions have been clearly established in previous cases, this is often not the case and there can be several permutations and combinations. Market share statistics can also range from being anecdotal to entirely reliable. Therefore, the basis of the tests means that it is open to the CCPC to disagree with what can be a legitimate analysis and to revert to the Standard Procedure.

Furthermore, the CCPC has given a long list of criteria that it would regard as being indicative of the Simplified Procedure being unsuitable.

Examples include:

- where the identification of product or geographic markets is difficult to discern;
- deals which involve firms that have potentially important pipeline products which will require detailed analysis such as the pharma or digital sectors;
- where the market in question is particularly concentrated;
- where market share information is not readily available or is not reliable; and
- where concerns are raised by third parties during the 10 working day consultation phase applicable in all merger notification procedures.

If the CCPC decides for any reason that it does not agree that the Simplified Procedure should continue, it can ask for further information.

By requiring the undertakings involved to submit further information pursuant to section 20(2) of the Competition Act, the CCPC's review period under section 21(2) of the Act is reset and begins only when the required information is received by the CCPC. Alternatively, the CCPC can require the undertakings involved to submit a new notification under section 21(2) of the Act and the 30 working day time period only starts only when the new notification has been submitted to the CCPC.

Therefore while this innovation is welcomed, it is advisable to take the CCPC up on their offer of pre-notification discussions so that rather than shortening the procedure, an applicant avoids being sent back to the start of the Standard Procedure and possibly losing valuable weeks.

Further Information

If you would like further information, please liaise with your usual Maples Group contact or:

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