

Ireland Update: New Merger Control Rules May Delay Transactions

What You Need to Know

- (a) Significant changes to Merger Control Rules have been in operation since September 2023.
- (b) The Competition and Consumer Protection Commission ("CCPC") has received substantial additional powers.
- (c) These powers have the potential to delay transactions and introduce market uncertainty.

What You Need to Do

- (a) Parties entering into transactions which do not meet the Merger Notification Thresholds should exercise greater caution.
- (b) Consider whether the proposed deal impacts competition in the markets of the parties.
- (c) Consider pre-notification communication with the CCPC as guidance will be provided in advance of closing.

Background

The Competition (Amendment) Act 2022 ("Amendment Act") amending the Competition Act 2002 ("Principal Act") came into operation on 27 September 2023 and brought with it significant changes to Merger Control Rules in Ireland which are summarised below.

'Call In' of Below-Threshold Deals

As was the case under the Principal Act, a notification to the CCPC continues to be required in respect of a merger or acquisition where:

- (a) The aggregate turnover of the parties / undertakings to the transaction in Ireland is not less than €60 million; and
- (b) The turnover in Ireland of at least two of parties / undertakings involved is not less than €10 million each¹,

("Merger Notification Thresholds").

Parties to below-threshold deals also continue to be able to voluntarily notify the CCPC if there is a concern that the deal raises material competition issues in Ireland.

The Amendment Act has however, given the CCPC the power to require parties to a merger or acquisition to make a notification even if the Merger Notification Thresholds have not been met.

The CCPC can do this where it believes that the merger or acquisition in question "may have an effect on competition in markets for goods or services" in Ireland.

It is required to exercise this power within 60 working days after the earliest of the following dates:

- (a) The date on which one of the undertakings involved in the merger or acquisition publicly

¹ These thresholds don't apply to "media mergers" under the Competition Act.

announces an intention to make a public bid or a public bid is made but not yet accepted;

- (b) The date the CCPC becomes aware that the undertakings involved in the merger or acquisition have entered into an agreement, the result of which will, if the agreement is implemented, be that the merger or acquisition occurs; or
- (c) The date on which the merger or acquisition is put into effect.

Imposition of Interim Measures

Whether the CCPC 'calls in' a below-threshold deal or it is mandatorily notified, it now has the ability to impose a non-exhaustive list of interim measures "where it considers it appropriate to do so due to the risk that the merger may have an effect on competition in any markets for goods or services" in Ireland.

The type of interim measures which the CCPC can impose include refraining the parties from implementing or further implementing a merger or acquisition or measures to mitigate the effects of any steps already taken to implement the deal.

Failing to comply with any interim measure is an offence and is subject to fines of up to €250,000.

Power to Unwind / Dissolve Deals

Where, on the completion of a full investigation, the CCPC finds that a deal would substantially lessen competition in markets in Ireland, it now has the power to have such deal unwound or dissolved.

In situations where unwinding or dissolution of a deal is not possible, the CCPC may require steps to be taken to achieve restoration, as far as practicable, of pre-merger market conditions.

Expansion of 'Gun-Jumping' Offence

It is now an offence to put a notified deal into effect before CCPC approval. This is in addition to the 'gun-jumping' offence of failing to notify prior to completion which was already in existence pursuant to the Principal Act².

Parties may be liable to fines of up to €250,000 where they are found to be in breach of these provisions.

The Amendment Act confirms that a transaction that is completed in breach of a failure to notify obligation is void until the CCPC approves the transaction.

Requirements for Information from Third Parties

The CCPC now have the power to require third parties to provide information to assist its review and consideration of a transaction.

Previously, it only had the authority to issue such requirements for information to the 'undertakings involved' in a transaction.

Conclusion

These additional powers are substantial and have the potential to add time delays to transactions in addition to introducing uncertainty into the market.

The CCPC's ability (at an arguably low "effect on competition" bar) to 'call-in' below-threshold deals means that parties entering into transactions which do not meet the Merger Notification Thresholds will need to exercise greater caution.

It may be the case that detailed competition analysis will need to be carried out to consider whether the proposed merger or acquisition will have an impact on competition in the relevant markets of the parties and, as a result, whether a voluntary notification is required.

² Note that failure to notify now extends to failure to notify a 'below-threshold' transaction that the CCPC has required the parties to notify.

We understand that pre-notification communication with the CCPC is welcomed and also that the CCPC will give some case-by-case guidance in advance of completion as to whether or not notification is required. While this will need to be factored into the transaction timeline, it will provide more certainty to the overall picture and less risk for the parties moving forward.

How the Maples Group Can Help

If you require assistance or for further information, please reach out to your usual Maples Group contact or any of the persons listed below.

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