OVERVIEW OF IRISH MERGER CONTROL IN 2019

The Competition and Consumer Protection Commission (**CCPC**) has published its Mergers and Acquisitions Report for 2019 (**Report**). The Report provides an overview of merger control activity in Ireland during 2019. We have distilled the main takeaways from this Report below.

The Irish merger control regime is a mandatory regime modelled on the EU system. On 1 January 2019, new financial thresholds came into effect. As a result, mergers or acquisitions which exceed the following financial thresholds must be notified to the CCPC for review:

1. the aggregate turnover in Ireland of the undertakings involved in the most recent financial year is not less than €60 million and
2. the turnover in Ireland of each of two or more of the undertakings involved in the most recent financial year is not less than €10 million

The parties must suspend completion of the transaction until clearance from the CCPC has been obtained (or the timeframes for the CCPC's review have expired). Failure to notify a proposed transaction to the CCPC is a criminal offence.

The CCPC must complete its review within statutory time frames. The ordinary time frame for a review at the initial Phase 1 is 30 working days while the CCPC has an additional 90 working days to undertake a more detailed, Phase 2, investigation. Both time limits can be extended in certain circumstances.

ISSUES TO NOTE

While the CCPC did not prohibit any transactions during 2019, a number of clearances were subject to structural and behavioural commitments by the parties being entered into.

In **M/18/053 – Pandagreen/Knockharley Landfill and Natureford**, the CCPC investigated the acquisition of Knockharley landfill by Pandagreen. During its extended Phase 1 investigation, the CCPC identified competition concerns in relation to competitors' access to the Knockharley and Ballynagran landfills. The CCPC accepted commitments which addressed these concerns, namely that a fixed percentage of recovery and disposal capacity at Knockharley landfill would be made available for third party use and that an annual usage cap would be imposed on Panda's use of the existing disposal and recovery capacity at the Ballynagran landfill. The parties also undertook not to acquire Ballynagran landfill within a fixed period without first making a merger notification to the CCPC.

KEY STATISTICS

52%
DECREASE IN NOTIFICATIONS

47 transactions were notified to the CCPC, a decrease of 52% by comparison to 2018

The most prominent sectors were healthcare, real estate and information & communications

49 determinations were issued, 4 of them with commitments (compared to 5 in 2018)

9 transactions required an extended Phase 1 investigation, compared to 14 in 2018

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The CCPC undertook a full Phase 2 review in relation to **M/18/063 – Berendsen (Elis)/Kings Laundry**. This was the acquisition of Kings Laundry by Berendsen Ireland, two of the three main providers of outsourced flat linen rental and maintenance services to healthcare customers in Ireland. The CCPC investigated a number of competition concerns and concluded that the transaction was likely to result in significant unilateral effects in the healthcare market as the merged entity would have the ability and incentive to increase prices and reduce service quality.

In order to address these concerns, Berendsen offered to sell certain contracts with healthcare customers to a third party purchaser approved by the CCPC and not to actively solicit healthcare flat linen business from these healthcare customers for a specified period. The transaction was cleared subject to these commitments and the appointment of an independent monitoring trustee approved by the CCPC to monitor compliance with the commitments. An unusual aspect of this case was the fact that the investigation included oral submissions from parties. While this is common practice in many other European jurisdictions, this is the first time in over 10 years that the CCPC has facilitated this.

The other Phase 2 investigation involved the acquisition of **MCD Productions by LN-Gaiety Holdings (M/18/067 – LN Gaiety/MCD Productions)**. LN-Gaiety is a joint venture between Live Nation and Gaiety Investments which owns and operates live music festivals and venues, including Electric Picnic. MCD owns and promotes live music events in Ireland. Live Nation owns Ticketmaster, which provides primary ticketing services for live events and owns/operates a number of venues in Ireland.

The CCPC's competition concerns centred around the overlapping activities of Live Nation and MCD in relation to primary ticketing services, the promotion of live events and the operation of live event venues in Ireland. The behavioural commitments in this case were comprehensive and require the parties:

- to inform the CCPC in advance of any proposal to acquire a live music festival or festival operator in Ireland, regardless of whether the merger control thresholds are met
- to ensure that the identity of artists which independent promoters propose to promote in Ireland is not shared between Live Nation and MCD
- not (threaten to) to refuse to provide live events to an independent live event venue if the venue does not use Ticketmaster as its primary ticketing services provider
- to conduct negotiations relating to the supply of primary ticketing services by Ticketmaster to MCD on an arm's length basis

KEY STATISTICS

In 2 of the extended Phase 1 investigations, the CCPC accepted commitments from the parties to alleviate competition concerns

There were 2 Phase 2 investigation compared to 3 in 2018, both of which were cleared with commitments

The CCPC did not prohibit any mergers (same as 2018)

The average time to issue a non-extended Phase 1 determination was 24.7 working days, similar to 2018

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The determination on the acquisition of **certain business assets of Midland Tribune by Formpress (M/19/010 – Formpress Publishing (Iconic)/assets of Midland Tribune)** is also of interest. Formpress owns newspapers in Ireland while Mediaforce (which owns Formpress) channels advertising to local and regional newspapers in Ireland. During the extended Phase 1 investigation, the CCPC was concerned that Mediaforce could potentially discriminate in favour of its own newspapers and digital titles in relation to advertising and that there was potential for the exchange of commercially sensitive information. As a result, the parties provided the following behavioural commitments which will be monitored by an independent monitoring trustee:

- Mediaforce committed to directing the advertising business to newspaper titles on a strictly fair, reasonable and non-discriminatory basis and to apply equivalent conditions in equivalent circumstances to all titles;
- The parties committed to a separation of management and non-disclosure of information.

PROGNOSIS FOR 2020

During 2019, the CCPC consulted on simplified merger notification procedure guidelines. It has announced that it will publish the final guidelines, and implement the new regime, in 2020. While there is no formal short form notification process at present, the CCPC has in the past provided notifying parties with waivers in respect of some of the information required in cases where no material overlaps or competition issues arise. The proposed new regime formalises this existing procedure.

The simplified merger notification procedure will apply if one or more of the following conditions is met:

- there is no (potential) overlap in the activities of the undertakings involved, including in upstream or downstream markets;
- two or more of the undertakings involved are active in the same product or geographic market but their combined market share is less than 15%;
- one or more undertakings involved are active in a product market which is upstream or downstream to a product market in which another undertaking involved is active but the market share of each undertaking in each market is less than 25%;
- an undertaking involved, which already has joint control over a company, acquires sole control over that company.

If these conditions are met, and the CCPC has decided that the merger or acquisition can be dealt with through the simplified merger notification procedure, the parties can submit a short form merger notification. The CCPC states that it will then issue its determination as soon as possible

MEDIA MERGERS

Media mergers must be notified regardless of the turnover of the parties involved. A media merger is one where at least one of the parties carries on a media business in Ireland.

3 media mergers were notified to the CCPC, a decrease of 2 compared to 2018

1 of these media mergers involved an extended Phase 1 investigation and was cleared subject to commitments

Unconditional determinations were issued in relation to the other 2 media mergers

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following the expiry of the third party submission deadline (ie after 10 working days). The CCPC retains the right not to apply the simplified regime, or to revert to the standard notification regime, in several cases, eg where the notifying parties are active in novel markets, where novel issues arise or where a third party submission has been received.

The intention of the new simplified regime is to shorten review periods for mergers which do not raise competition concerns and to make the process less burdensome for notifying parties. This is clearly a welcome development but it remains to be seen whether the new regime will achieve this aim.

Ultimately, the success of the new regime will depend on how quickly the CCPC will confirm in each case that the simplified merger regime will apply, the extent to which the regime is considered applicable, how often the CCPC will use its power to revert to the standard procedure and how quickly the determination is issued.

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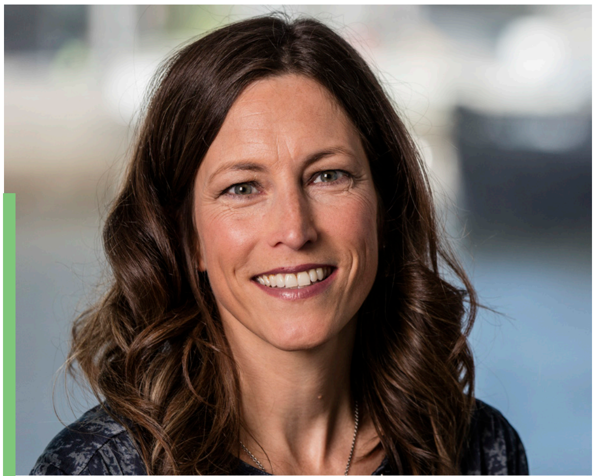

Dorit McCann - Partner

T +353 (0) 1 418 0900
E d.mccann@beauchamps.ie