OVERVIEW OF IRISH MERGER CONTROL IN 2017

The Competition and Consumer Protection Commission (CCPC) has released its Mergers and Acquisitions Report for 2017 (Report). The Report provides an overview of merger control activity in Ireland during 2017. We have distilled the main takeaways from this Report below.

The Irish merger control regime is a mandatory regime modelled on the EU system. 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 €50 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 €3 million.

The parties must suspend completion of the transaction until clearance from the CCPC has been obtained (or the time frames 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.

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. In 2017:

- 4 media merger were notified to the CCPC, a decrease of 2 compared to 2016 - these were M/17/009 – The Color Company TM/Certain assets of Irish TV, M/17/017 – Landmark Digital/BenchWarmers, M/17/056 – Bay Broadcasting/Classic Rock Broadcasting t/a Radio Nova and M/17/068 – Irish Times/Irish Examiner
- 2 of these media mergers remain under investigation, 1 with an extended Phase 1
- unconditional determinations were issued in relation to the other 2 media mergers

KEY STATISTICS

7.5%
INCREASE IN NOTIFICATIONS

72 transactions were notified to the CCPC, an increase of 7.5% by comparison to 2016

The most prominent sectors were motor fuel (retail/wholesale), information and communications, real estate and financial and insurance services

68 determinations were issued, 4 of them with commitments

INCREASE IN EXTENDED PHASE 1 INVESTIGATIONS

9 transactions required an extended Phase 1 investigation compared to 2 in 2016. 2 of these investigations have been carried over into 2018

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ISSUES TO NOTE

While the CCPC did not prohibit any transactions during 2016, a number of clearances were subject to significant commitments by the parties being entered into. The Report highlights that the CCPC undertakes its own market surveillance and that it may investigate a transaction that does not meet the thresholds if there is a risk that it may substantially lessen competition in a particular sector. Through this surveillance, the CCPC became aware of a proposed transaction whereby Kantar Media was intending to purchase Newsaccess Limited in February 2017. Although the proposed transaction fell below the financial thresholds, the CCPC was concerned that Kantar Media would essentially be removing its closest and most substantial competitor in the market. Following discussions with the CCPC, the parties made a voluntary notification and an extended Phase 1 investigation ensued (**M/17/012 – Kantar Media/Newsaccess**). The proposed transaction was ultimately cleared subject to commitments, including the sale of fixed assets and the release of a number of contracted customers from their contracts to enable a new competitor to enter the market.

In **M/17/027 – Dalata/Clarion Liffey Valley/Clayton Cardiff Lane**, the CCPC investigated the acquisition of the Clarion Liffey Valley and Clayton Cardiff Lane hotels by Dalata. The CCPC was concerned that Dalata (and the hotels it owns, controls and leases) would gain access to competitively sensitive information (including room rates) through its management of hotels on behalf of third parties and that Dalata would be able to exercise control over the hotels it manages. In order to address these concerns, Dalata submitted two commitments: (i) a confidentiality commitment intended to prevent the exchange of competitively sensitive information between any hotel which Dalata manages and any hotel it owns, controls, leases or operates in Ireland which competes with such hotel; and (ii) a merger notification commitment which requires Dalata to inform the CCPC of any proposal to operate a hotel in Ireland on behalf of a third party where this would not otherwise be notifiable to the CCPC.

The determination on the acquisition of **Crinkle Fine Foods by Sean Loughnane (Galway) Limited (M/17/036 – Sean Loughnane/Crinkle Fine Foods)** is also of interest. Here, the CCPC identified a potential anti-competitive clause in the asset purchase agreement which would prevent Sean Loughnane from engaging in business activities which compete with a third company for 24 months from completion of the proposed transaction. The transaction was cleared following a commitment from the parties to delete the relevant clause from the agreement and not to put into effect any arrangements that would have the same or similar effect.

KEY STATISTICS

In 4 of the extended Phase 1 investigations, the CCPC accepted commitments from the parties to alleviate competition concerns, compared to 2 in 2016. These were M/17/012 – Kantar Media/Newsaccess, M/17/021 – Applegreen/50% of Joint Fuels Terminal, M/17/027 – Dalata/ Clarion Liffey Valley/Clayton Cardiff Lane and M/17/036 – Sean Loughnane/ Crinkle Fine Foods

No Phase 2 investigation compared to 1 in 2016

The CCPC did not prohibit any mergers (same as 2016)

The average time to issue a Phase 1 determination was 24 working days, 2 days less than in 2016

2

Two voluntary notifications were made to the CCPC

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PROGNOSIS FOR 2018

At the end of 2017, the Department of Business, Enterprise and Innovation conducted a public consultation on the review of some merger control provisions, including a review of the current financial thresholds.

The results of the consultation have not yet been published but it is expected that the current financial thresholds which trigger a mandatory notification will be increased.

This is likely to lead to less transactions being caught by the mandatory notification requirement going forward, particularly acquisitions of small Irish businesses.

GET IN TOUCH

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