



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

**Competition and
Consumer Protection
Commission**

MERGER

NOTIFICATION FORM

Competition Act 2002

Form for the notification of mergers and acquisitions pursuant to sections 18(1) and 18(3) of the Competition Act 2002, as amended (“the 2002 Act”)

Effective from 31 October 2014



Contents

INTRODUCTION	3
The purpose of the Merger Notification Form	3
The need for a correct and complete notification	3
Who should notify?	4
Public bids	4
Notifying parties	4
Requests for further information	5
Confidentiality	5
Completion of the Notification Form	5
NOTIFICATION FORM	7

INTRODUCTION

The purpose of the Merger Notification Form

The Merger Notification Form (“Notification Form”) provides a framework for supplying the Competition and Consumer Protection Commission (“Commission”) with the information required to review a proposed merger, acquisition or joint venture (“proposed transaction”) as notified under Part 3 of the 2002 Act by the undertakings which have agreed to or are involved in the proposed transaction.

The Commission permits all the undertakings involved in a proposed transaction to make a joint notification, although they are not legally obliged to do so. Where separate notifications are made, the date of commencement of the review period of the proposed transaction (the “appropriate date” as defined in section 19(6)¹ of the 2002 Act) shall be the date of receipt of the later or latest notification, as provided for in section 19(8) of the 2002 Act.

In addition to Part 3 of the 2002 Act, the attention of notifying parties is drawn to the Commission’s guidance documents, including the Commission’s “Procedures for the Review of Mergers and Acquisitions” and the Commission’s “Guidelines for Merger Analysis”.

The need for a correct and complete notification

The Commission requires a duly signed hard copy of the Notification Form. Where it is not possible to submit original signatures on the Notification Form, a faxed copy of the signatures is acceptable when followed up in the next five working days with the original signature page.

All information supplied must be accurate and complete. By virtue of sections 18(1)² and 18(3)³ of the 2002 Act, “full details” of the proposed merger or acquisition must be provided. The Commission understands “full details” as requiring that the Notification Form be completed fully.

By virtue of section 18(12) of the 2002 Act, a notification shall not be valid where any information provided or statement made is false or misleading in a material respect, or where the Commission is of the opinion that the full details required under section 18(1) or section 18(3) have not been provided, and any determination made by the Commission on foot of such a notification is void. Where any documents which the notifying parties are required to submit with their notification are in a language other than English or Irish, the notifying parties must make available translations to the Commission.

Notifications should be submitted between the hours of 09.15 and 17.30, Monday – Thursday and between the hours of 09.15 and 17.15 on Friday (excluding public holidays) to the following address:

Competition Enforcement and Mergers Division
Competition and Consumer Protection Commission
Bloom House
Railway Street
Dublin 1

¹ Section 19(6) of the Competition Act 2002, as amended by section 56(c) of the Competition and Consumer Protection Act 2014.

² Section 18(1) of the Competition Act 2002, as substituted by section 55(a) of the Competition and Consumer Protection Act 2014.

³ Section 18(3) of the Competition Act 2002, as substituted by section 55(c) of the Competition and Consumer Protection Act 2014.

In addition to the hard copy, the Notification Form and as many of the other notification documents as are capable of being supplied electronically should be so supplied. The appropriate address for such e-documents is mergers@ccpc.ie.

Who should notify?

In accordance with section 18(1) of the 2002 Act, each of the undertakings involved in a proposed merger or acquisition must notify the Commission in writing of the proposal to put into effect a merger or acquisition that satisfies the conditions set out in section 18(1)(a) or section 18(1)(b) of the 2002 Act. The Act does not define what are the “undertakings involved”. However, the Commission’s Notice in respect of certain terms used in Part 3 of the Competition Act 2002 sets out the Commission’s understanding of this term for the purposes of section 18(1).

In relation to acquisitions within the meaning of section 16(1)(c)⁴ of the 2002 Act (“asset acquisitions”), whilst the vendor is not required to notify, by virtue of section 18(2)(c)(ii) of the 2002 Act the target business itself is an undertaking involved for the purposes of the competition analysis. Therefore information on the target business as an “undertaking involved” should be included in the Notification Form in relation to these types of acquisitions.

Public bids

Section 18(1A)⁵ of the 2002 Act allows for a notification to be made to the Commission prior to a public bid being accepted. For example a notification can be made to the Commission after one of the undertakings involved has publicly announced an intention to make a public bid, or a public bid has been made but not yet accepted. In addition, as regards a scheme of arrangement, section 18(1A) allows for a notification to be made to the Commission once a scheme document has been posted to shareholders.

If a bid is notified before it has been accepted, there is at that stage only one undertaking involved in the merger, namely, the purchaser. Therefore, only the purchaser is required to notify. Insofar as the purchaser is able, it should provide as much detail as is in its possession in relation to the activities of the target business.

Notifying parties

Section 1 of the Notification Form seeks information in respect of the notifying parties whereas the remainder of the Notification Form refers to the “undertakings involved”. The notifying party is usually the entity which is most directly involved with the transaction. For example in an acquisition, the notifying party on the buyer’s side is the purchasing company and the notifying party on the target’s side is the target company. The exception to this is the instance of an acquisition of the type provided for in section 16(1)(c) of the 2002 Act, in which case there is no notifying party on the target’s side by virtue of section 18(2)(c)(ii) of the 2002 Act. Contact details for the target business, including the name of an authorised representative, should nevertheless be provided in the cover letter or elsewhere.

⁴ Section 16(1)(c) of the Competition Act 2002, as substituted by section 53(a)(ii) of the Competition and Consumer Protection Act 2014.

⁵ Section 18(1A) of the Competition Act 2002, as inserted by section 55(a) of the Competition and Consumer Protection Act 2014.

Requests for further information

At all times in the review of the proposed transaction, the Commission retains its power to require any undertaking involved to supply to it, within a specified period, specified information, in accordance with section 20(2)⁶ of the 2002 Act (“a formal request”). The Commission may also make a request for information, which does not involve exercising its powers under section 20(2) of the 2002 Act (“an informal request”). The Commission has ultimate discretion in whether to make a formal request or an informal request.

Confidentiality

Where an undertaking involved believes that information furnished on foot of a notification is commercially sensitive and should remain confidential, such information should be clearly marked, and clear reason given as to why the information should be classed as confidential. The Commission will decide whether to accede to the request and that decision will be final. In the case of a joint notification, such confidential information may be furnished under separate cover by the respective undertakings involved.

Completion of the Notification Form

Most of the questions in the Notification Form concern the “undertakings involved” in the transaction and not just the notifying party (if different). For instance, the questions contained in Section 3, Section 4, Section 5, Section 7.2 and Section 7.3 usually concern the “undertakings involved” and should be answered with respect to the undertakings involved.

It is not necessary to complete Section 4 of the Notification Form (“Overlapping Products and/or Services and Other Relationships”) where there is neither a horizontal overlap nor a vertical relationship between the activities of the undertakings involved on the island of Ireland. Horizontal overlap occurs where a good or service produced, supplied or distributed by one undertaking involved may be considered as the same, similar to or broadly substitutable with a good or service produced, supplied or distributed by one or more other undertakings involved. A vertical relationship occurs where one or more undertakings involved produces, supplies or distributes a good or service in relation to which another undertaking involved carries on a business upstream or downstream. There can be a vertical relationship even if the parties do not do business with each other. For instance, if a manufacturer and a supplier of a key input used in the manufacturing process decide to merge there would be a vertical relationship, and this would be true whether or not the manufacturer happened currently to source that input from the other merging party or, rather, from one of the latter’s rivals. The description of overlap or relationship is a separate issue from the description of what the undertakings involved consider to be the relevant product market(s). If there is any issue as to whether or not horizontal overlap or a vertical relationship exists, this should be raised in pre-notification discussions with the Commission. If, during the course of its investigation the Commission considers that there is a horizontal overlap or a vertical relationship which the notifying parties have not disclosed, the Commission may seek further information from the parties. This could delay consideration of the matter. Where the overlap or relationship is de minimis or obviously of no competitive significance, the undertakings involved may discuss with the Commission, in pre-notification discussions, whether they may be exempted from completing some or all of Section 4 or Section 7.3.

⁶ Section 20(2) of the Competition Act 2002, as amended by section 57(a) of the Competition and Consumer Protection Act 2014.



It may be the case that an undertaking involved is a potential competitor of one or more of the other undertakings involved, or that it holds important intellectual property rights relating to a market in which another undertaking involved operates, or that it provides goods or services which are closely related to the goods or services of another undertaking involved. In such situations, the undertakings involved should bring this to the Commission's attention in pre-notification discussions and the Commission may require the undertakings involved to complete some or all of Section 4.

NOTIFICATION FORM

1. General Information

- 1.1. Provide an executive summary of the proposed transaction, specifying the undertakings involved in the proposed transaction, their areas of activity and the nature of transaction (e.g., merger, acquisition or joint venture).
- 1.2. Provide the legal name, business address, telephone number, fax number and web site of each notifying party and state the jurisdiction in which it is incorporated or otherwise legally based.
- 1.3. Provide the name, position, telephone number, fax number and e-mail address of a contact person for each notifying party.
- 1.4. Pay the merger notification fee of €8,000 by way of Electronic Funds Transfer (EFT) into the bank account of the Commission and submit proof of payment. Bank account details for EFT payment:

IBAN: IE56AIBK93105502617256

BIC: AIBKIE2D

- 1.5. Provide the name and contact details of the authorised legal representative, for each notifying party and an address for service of correspondence. Indicate to whom acknowledgement of receipt of the notification fee of €8,000 should be sent.
- 1.6. Indicate whether the notification is made under section 18(1)(a), section 18(1)(b) or section 18(3) of the 2002 Act.
- 1.7. Indicate whether the notifying parties are making a joint notification.

2. Description of the Proposed Transaction

- 2.1. Describe whether the transaction is a merger, an acquisition of sole or joint control, an acquisition of assets or a joint venture within the meaning of section 16(4) of the 2002 Act.
- 2.2. Describe whether the whole or parts of the undertakings involved are subject to the proposed transaction.
- 2.3. Describe the structure of ownership and control of the undertakings involved both before and after the proposed transaction.
- 2.4. State the industry sector or sectors involved.
- 2.5. In the context of section 18(1A) of the 2002 Act, provide the date on which the relevant agreement or public bid (if any) was made, the date of the public announcement of an intention to make a public bid (if any), or the date of posting of the relevant scheme document (if any).

Alternatively, where relevant, provide evidence demonstrating a good faith intention to conclude an agreement.

- 2.6. Provide details of the consideration exchanged in relation to the proposed transaction.
- 2.7. Provide details of the commercial objectives sought to be achieved by the proposed transaction.
- 2.8. List the competition authorities in other jurisdictions to which the proposed transaction has been or will be notified and the proposed timing of such notifications. Where the proposed transaction has a wider context (e.g., world-wide/European wide), describe this.

3. Details on the Undertakings Involved

- 3.1. With respect to each undertaking involved, list the undertakings in the group(s) and the person or persons controlling these directly or indirectly. This information shall be illustrated by the use of organisation charts or diagrams to show the structure of ownership and control of the undertakings pre and post the proposed transaction.
- 3.2. Provide the turnover of each undertaking involved, both worldwide and in the State for the last financial year for which such information is available and for any available interim period in the current year.
- 3.3. Describe the goods or services supplied by each undertaking involved, both worldwide and in the State.

4. Overlapping Products and/or Services and Other Relationships

- 4.1. Horizontal area(s) of overlap: With respect to the island of Ireland, specify each good or service produced, supplied or distributed by each undertaking involved, which may be considered as the same, similar to or broadly substitutable with a good or service produced, supplied or distributed by one or more other undertakings involved.
- 4.2. Vertical relationships: With respect to the island of Ireland, specify each good or service produced, supplied or distributed by each undertaking involved, in relation to which one or more other undertakings involved carries on a business upstream or downstream, whether or not the two undertakings involved happen to do business with each other as opposed to with rival firm(s). (Again, if the relationship is de minimis or obviously of no competitive significance, notifying parties may request exemption from completing some or all of Section 4.)
- 4.3. For each area of overlap or relationship, specify the geographic regions within the island of Ireland where these occur and state the whereabouts of all major production, supply or distribution facilities of each undertaking involved.
- 4.4. For each area of overlap/relationship, provide details of the following:

- the extent to which each undertaking involved is vertically integrated;
 - the characteristics of the industry sector in which the proposed transaction occurs (e.g., whether mature or innovative) and the typical distribution and supply systems prevailing in the sector;
 - the nature of the products or services concerned. Indicate whether they are homogenous, characterised by brand loyalty and close substitutes with each other. Indicate the distribution methods and sources and methods of supply of the undertakings involved;
 - the extent of switching costs for customers changing from one supplier to another;
 - the importance and extent of customer preferences and the types and general location of customers; and,
 - the manner in which the undertakings involved price and sell their goods and/or services.
- 4.5.** For each area of overlap/relationship, identify any important agreements or categories of agreement relating to distribution, supply, purchasing, joint development, research and development (R&D) or any other co-operative arrangements or alliances, whether horizontal or vertical, in which each undertaking involved has entered into or is involved. Provide details of the type of the agreement(s), the subject matter, the other parties and the duration.
- 4.6.** For each area of overlap/relationship, identify any shareholdings of more than 10% held by each undertaking involved in a competitor or potential competitor. A potential competitor can be regarded as an undertaking operating upstream or downstream in an area of overlap or an undertaking which has plans to enter the area of overlap, or has developed or pursued such plans in the past two years.
- 4.7.** For each area of overlap/relationship, identify any trade association(s), regardless of whether one or more of the undertakings involved is a member of the association(s). Provide the names, descriptions and telephone number of contact persons within such associations.
- 4.8.** For each area of overlap/relationship, list the five customers worldwide with the largest account and the five customers in the State with the largest account for each undertaking involved. Provide a contact name, description of position within the organisation and telephone number for each customer mentioned.
- 4.9.** For each area of overlap/relationship list the five suppliers worldwide receiving the highest payment and the five suppliers in the State receiving the highest payment from each undertaking involved. Provide a contact name, description of position within the organisation and telephone number for each supplier mentioned.
- 4.10.** For each area of overlap/relationship list the five largest worldwide competitors and the five largest competitors in the State of each undertaking involved. Provide a contact name, description of position within the organisation and telephone number for each competitor mentioned.
- 4.11.** For each area of overlap/relationship provide the turnover in the State of each undertaking involved. Provide also estimates of competitors' turnover in the State for each area of overlap.

5. Views of the Undertakings Involved

- 5.1.** Provide a description of what you consider to be the relevant product and geographic market or markets relating to the proposed transaction and reasons for your assessment. Provide a description of broader and/or narrower product and geographic markets.
- 5.2.** Provide estimates of the shares of each undertaking involved on the market or markets described by you above. Provide also estimates of the shares of competitors in these markets and explain the origins of these estimates.
- 5.3.** Provide your views as to why you consider that the proposed transaction will not lead to a substantial lessening of competition in markets for goods or services in the State.

6. Ancillary Restraints

- 6.1.** Provide details of any arrangements constituting restrictions which you believe are directly related and necessary to the implementation of the proposed transaction.

7. Further Information and Supporting Documentation

- 7.1.** Provide a copy or copies of the agreement (if any), the relevant scheme document (if any), evidence of the public announcement of the intention to make a public bid or, where a public bid has been made, a copy of the offer document relating to the proposed transaction. List all other agreements relating to the proposed transaction.
- 7.2.** Provide a copy of the most recent annual report for each undertaking involved.
- 7.3.** Where there is overlap/relationship in the activities of the undertakings, provide copies of all surveys, reports, analyses, studies, presentations and comparable documents, whether or not in electronic format, assessing or analysing the proposed transaction with respect to market shares, competition, competitors (actual and/or potential), markets, potential for sales growth or geographic or product expansion and state the name and title of each individual who prepared each such document.
- 7.4.** List all documents withheld on the basis of a claim of legal privilege, which would otherwise be supplied pursuant to the Notification Form.
- 7.5.** Furnish details of any Internet websites or other sources of which you are aware, which may contain information relevant to the assessment of the proposed transaction.
- 7.6.** Provide any other information which you consider relevant.

8. Declaration, Signature and Power of Attorney

- 8.1.** Provide the following signed declaration in respect of each undertaking involved:



The undersigned declare that the information given herein and in the appendices and attachments hereto is, to the best of their knowledge and belief, accurate and complete, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

Each of the undersigned persons declares that he or she is duly authorised to submit this notification for and on behalf of the relevant undertaking(s) involved.

First notifying party

Second notifying party

Signed:

Signed:

Name:

Name:

(Print)

(Print)

Position:

Position:

Date:

Date:

Any other notifying parties

Signed:

Name:

(Print)

Position:

Date:

8.2. In circumstances where an authorised representative has been appointed by the notifying party to sign the Notification Form on its behalf, provide a Power of Attorney identifying the authorised representative and confirming the authorisation of same to sign the Notification Form.