



Coimisiún um  
Iomaíocht agus  
Cosaint Tomhaltóirí

Competition and  
Consumer Protection  
Commission

# Notice in respect of the review of non- notifiable mergers and acquisitions

31 October 2014

## **Article 1 - Introduction**

- 1.1 The purpose of this notice is to give guidance to businesses and legal practitioners on the Competition and Consumer Protection Commission (“Commission”) policies and procedures in relation to the review of mergers and acquisitions that do not meet the statutory reporting thresholds (“non-notifiable mergers”) but that may nevertheless raise competition issues.

## **Article 2 - Statutory Background**

- 1.2 Section 18 of the 2002 Act as amended by section 55 of the 2014 Act requires undertakings to notify mergers and acquisitions that exceed certain thresholds. Section 18 as amended also allows mergers and acquisitions below these thresholds to notify voluntarily. Sections 4(8) and 5(3) of the 2002 Act as amended by the 2014 Act exempt mergers notified to and cleared by the Commission from prohibition under Sections 4 or 5, respectively. Where a merger or acquisition has not been notified, Sections 4 and 5 of the 2002 Act as amended by the 2014 Act still apply.

## **Article 3 - Voluntary Notification**

- 1.3 Section 18(3) of the 2002 Act as amended by section 55 (c) of the 2014 Act allows undertakings that do not meet the thresholds for mandatory merger notifications to voluntarily notify proposed mergers and acquisitions, thus giving the undertakings concerned clarity and legal certainty. Parties to any proposed non-notifiable merger that could raise competition concerns are urged to consider carefully the benefits to the parties of notifying it to the Commission:
- The comfort of legal certainty. A notified merger that has been cleared by the Commission is statutorily excluded from the prohibitions in section 4 and section 5 of the 2002 Act as amended by the 2012 Act.
  - A decision within a fixed time limit. In contrast, a proceeding involving section 4 and/or section 5, whether brought before or after a merger is implemented, could continue for a much longer period of time.

#### **Article 4 - The Commission's Policy**

- 1.4 Most mergers do not give rise to any competition concerns. However, a small number, including some that do not meet the notification thresholds, may have the potential to substantially lessen competition.
- 1.5 It is the Commission's policy to seek to prevent implementation of any unnotified merger that would substantially lessen competition in any market in the State. Where such a merger has already been implemented, the Commission may seek to have it reversed.
- 1.6 Where the Commission learns of a proposed merger which in the Commission's view raises competition-related questions and which has not been notified, it may contact the parties to enquire whether they intend to notify voluntarily. If the parties intend to notify the Commission will ask for confirmation in writing. The matter will then rest in abeyance until the transaction has been notified. The parties may avail themselves of the Commission's pre-notification service to assist them in preparing their notification.

#### **Article 5 - Section 4 and Section 5 Investigations**

- 1.7 If, having been contacted by the Commission, the parties to a non-notifiable merger which raises competition concerns inform the Commission that they do not intend to notify, the Commission may carry out a preliminary inquiry to ascertain whether the opening of an investigation, under section 4 or 5 of the 2002 Act, amended by the 2014 Act, ("the investigation") is warranted, followed, where appropriate, by the investigation itself. At any stage during either the preliminary inquiry or the investigation, the Commission may seek a commitment to give advance notice of any intention to implement the merger, or an undertaking not to implement it for a certain period. Where necessary, the Commission may issue proceedings seeking an injunction to restrain implementation of the merger. The parties, for their part, may opt to notify the transaction, or undertake that they will notify, at any time during this process. Such a notification will cause the investigation to cease, and the transaction will be analysed from that point

onwards in accordance with the provisions of Part 3 of the 2002 Act as amended by the 2014 Act.

#### **Article 6 - Implemented Mergers**

- 1.8 Where in the Commission's opinion a non-notifiable merger that has already been implemented raises competition concerns, it will conduct an investigation and in appropriate cases invoke the courts' equitable jurisdiction in order to restore the status quo ante. This may result in the merger being reversed.

For the Commission

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Chairperson

31 October 2014