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Competition and  
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Commission

# Mergers and Acquisitions - A Regulatory Perspective

Irish Management Consultants Association

14 July 2015

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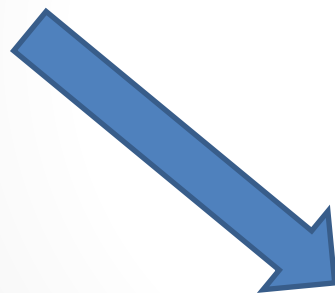


The Competition Authority

An tÚdarás Iomaíochta



national consumer agency



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# Merger Regulation in Ireland



- Competition Act 2002 (as amended)
  - Competition Authority 2003 - 2014
  - Competition and Consumer Protection Commission from 2014 to present



Competition and  
Consumer Protection  
Commission

- Mergers Division
  - Member,
    - Manager,
      - Case Officers (Economists, Lawyers)

# Undertakings

## Section 3 (1)

“...‘undertaking’ means a person being an individual, a body corporate or an unincorporated body of persons engaged for gain in the production, supply or distribution of goods or the provision of a service.”

# Corporate Control

Full Takeover e.g.,

- Pallas / Crossgar
- Glanbia / Wexford Creamery



# Corporate Control



## Partial Takeover

- Business Unit e.g.,
  - Irish Wind/SWS
- Certain Assets e.g.,
  - Dalata / White's Hotel

# Why Do Firms Merge?

## Acquirer

- Grow business
- Enter new market – e.g.
  - Same Country, Different product or service
  - Different Country, Same product or service.
- Improve shareholder value
- Other Reasons

## Target

- Viable Future for Business
- Exiting Market e.g., to focus on core business
- Restructuring
- Realise Investment



# Merger Review - Why

*“Mergers are a mechanism used by businesses to restructure in order to compete and prosper.*

*However, some mergers can have a negative effect on consumer welfare by, for example, leading to an increase in price or a reduction in output.*

*That is, they substantially lessen competition and consumers (including businesses) suffer.”*

See <<http://www.tca.ie/EN/Mergers--Acquisitions.aspx>>

# Mandatory Notification - Section 18(1)(a)

Financial Threshold “(47 + 3 = 50)”

- a) the aggregate turnover in the State of the undertakings involved is not less than €50 million
- b) the turnover in the State of each of two or more of the undertakings involved is not less than €3 million

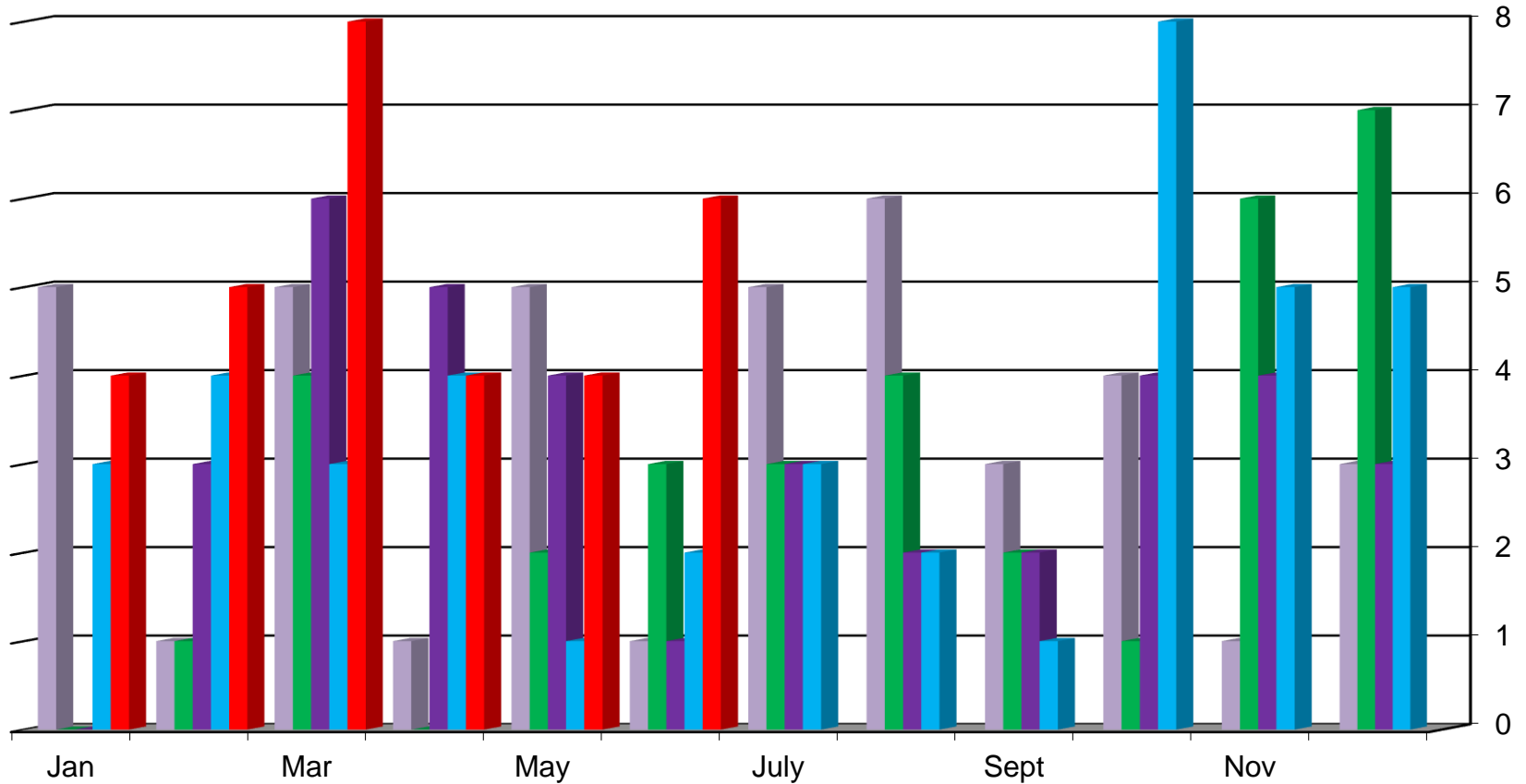
## Section 16(1)(c)

- “...assets that constitute a business to which turnover can be attributed ...”

## Media Mergers - no threshold

## Voluntary Notification

# How Many Mergers?



■ 2011

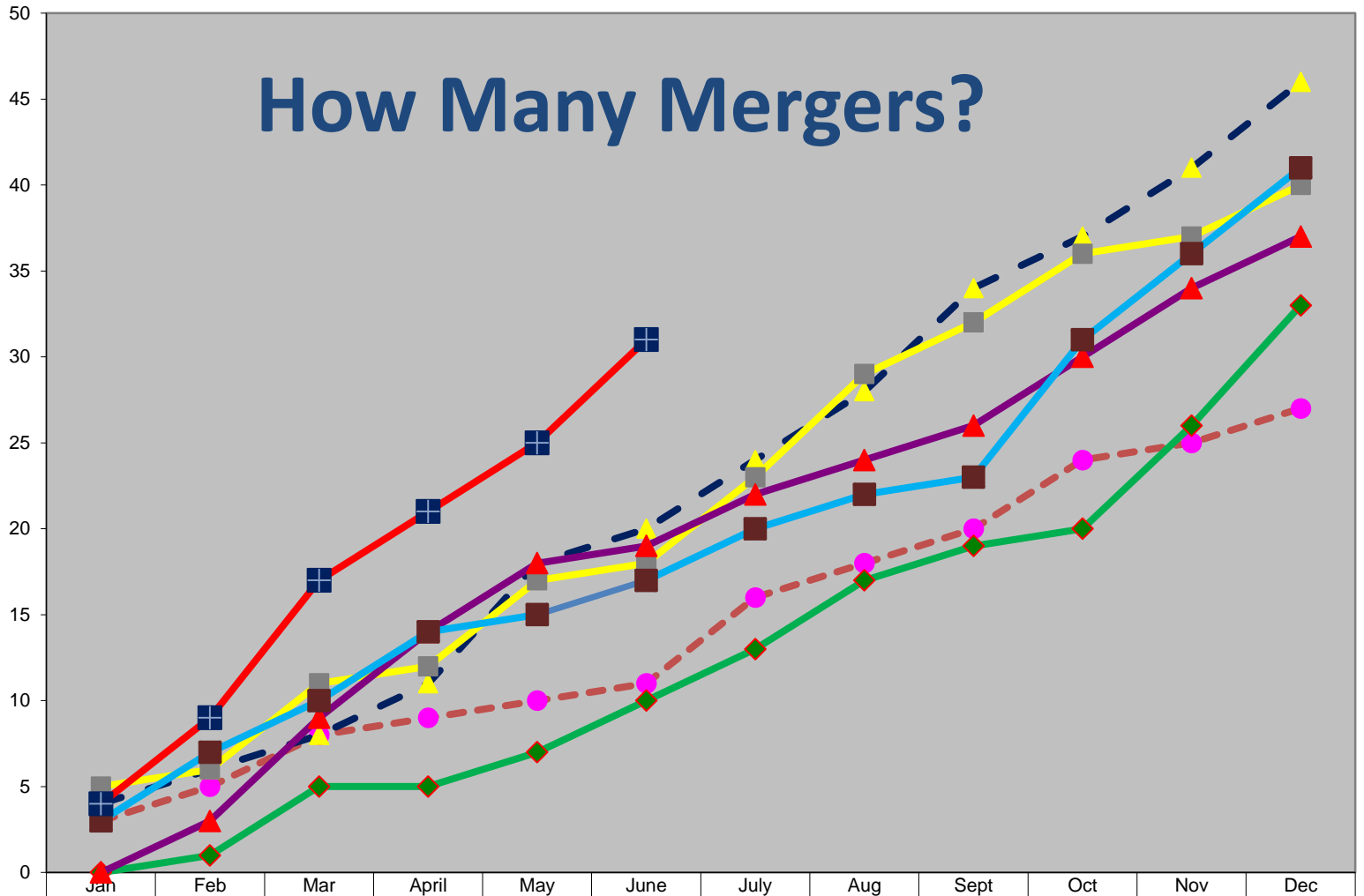
■ 2012

■ 2013

■ 2014

■ 2015

# How Many Mergers?



2009	3	5	8	9	10	11	16	18	20	24	25	27
2010	4	6	8	11	18	20	24	28	34	37	41	46
2011	5	6	11	12	17	18	23	29	32	36	37	40
2012	0	1	5	5	7	10	13	17	19	20	26	33
2013	0	3	9	14	18	19	22	24	26	30	34	37
2014	3	7	10	14	15	17	20	22	23	31	36	41
2015	4	9	17	21	25	31						

# European Dimension

- Review by European Commission. E.g.,
  - combined worldwide turnover of all the merging firms over €5,000 million, and
  - EU-wide turnover for each of at least two of the firms over €250 million.



## Examples

- Ryanair / Aer Lingus
- 3/O2
- IAG / Aer Lingus

# CCPC Merger Review - Process



- Phase 1
- 30 Working Days
  - Clear
  - Clear with Conditions
  - Move to Phase 2
- Phase 2
- 120 Working Days
  - Clear
  - Clear with Conditions
  - Prohibit

# Communications



## Parties

- Ongoing Contacts
- Formal Requirement for Information (“RFI”)

## Third Parties

- Submissions
- Market Enquiries
- External Assistance

## Public

- Website
  - Notice of Notification
  - Announcement of Determination
  - Publication of Determination

# Merger Review - Framework

- Analysis of Competitive Effects
- Two Key Points
  - Merger-Specific Effects
  - Substantial lessening of Competition (SLC) Test



# Competitive Effects

**Unilateral**



**Coordinated**





# Competitive Effects

- **Horizontal Effects**
  - Same sector/market
  - E.g., Effects in prices, quality, innovation in relation to competing products



- **Vertical Effects**
  - Upstream or Downstream
  - Foreclosure E.g.
    - Refusal to Buy
    - Refusal to Supply



# Substantial Lessening of Competition (SLC)

*“While certain quantitative measures can be used to assist in analysing whether a merger is likely to result in an SLC, there are no standard measures of competitive effects that can determine definitively, on their own, whether a given merger is likely to have such an effect. Each proposed merger needs to be assessed on its merits and in its own particular circumstances.”*

See

<http://www.tca.ie/images/uploaded/documents/CCPC%20Merger%20Guidelines.pdf>.

# Merger Review – Key Elements 1

- Counter Factual
  - point of comparison “what if there is no merger?”
  - not always *status quo ante*
- Market Definition
  - Product
  - Geographic
- Market Concentration
- Theories of Harm

# Merger Review – Key Elements 2

- Entry
- Countervailing Buyer Power
- Efficiencies

# Special Case – Failing Firm

- Failing Firm / Exiting Assets
- Counter Factual - market output reduction
- “Short Cut?”
- Failing Firm Test
  - I. unable to meet financial obligations
  - II. no viable prospect of reorganising through the process of receivership, examinership or otherwise.
  - III. assets would exit the relevant market
  - IV. No credible less anti-competitive alternative to the merger in question.



# Evidence

*“The Commission’s review of a notified merger or acquisition is evidence-based. This means that the Commission requires sufficient reliable evidence from the merging parties regarding the likely competitive effects of the merger.*

*This is particularly important when the parties wish to present merger defence arguments (i.e., arguments to counter competition concerns). The most common of such arguments include ease of entry, countervailing buyer power, efficiencies and the failing firm.”*



See  
<<http://www.tca.ie/images/uploaded/documents/CCPC%20Merger%20Guidelines.pdf>>.

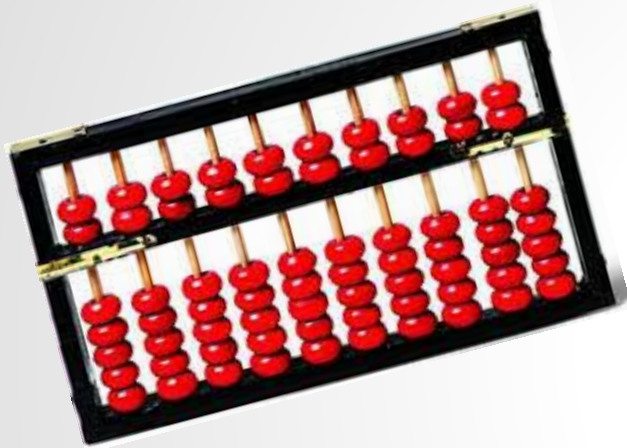
# Qualitative

*“Qualitative evidence relevant to merger analysis includes documents prepared by the merging parties in the ordinary course of business and information provided by third parties including competitors, customers, and independent bodies (regulators, industry experts, representative bodies, etc.).”*

See <<http://www.tca.ie/images/uploaded/documents/CCPC%20Merger%20Guidelines.pdf>>.



# Quantitative



*“Quantitative analysis relevant to merger analysis includes, but is not limited to, calculation and review of concentration measures, diversion ratios, critical loss measures, measures of elasticities, and upward pricing pressure measures.”*

See

<http://www.tca.ie/images/uploaded/documents/CCPC%20Merger%20Guidelines.pdf>.

# Oasis Dental / Smiles (2014)

- Global overlap – dental services
- No Overlap in State
  - Oasis Dental
    - Active in GB & NI
    - Not Active in State
  - Smiles
    - Active in GB & NI
    - Active in State
- No SLC
- Cleared



# Fitzwilliam / Wittington Canada / Arnotts (2014)

- Owners of Brown Thomas acquired 50% of Arnotts
- Apollo has the other 50%
- Overlap – Dublin Department Stores
- Intensive Investigation
  - RFI
  - Market Enquiries
  - Customer Survey





MARKS &  
SPENCER

- **Competition Remains from Other Stores**
- **BT and Arnotts not close competitors**
- **No SLC**
- **Cleared**



HOUSE OF FRASER



# Glanbia / Wexford Creamery (2013)

  
**glanbia**

- Large dairy processor
- Wide range of products
- Widely available in Ireland

**Wexford**  
CREAMERY

- Small dairy processor
- Mainly milk and cheese
- Available mainly in County Wexford



# Investigation

- Phase 2
- RFIs
- Submissions
- Market Enquiries
- Site Visit
- External Expert Advice



# Three Theories of Harm

- Local Retail Effects for Milk
- Processor Entry Barriers
- Procurement Monopsony

- **Ultimately Not Evidence of SLC**
- **Cleared**



# Dalata / Moran / Bewley's (2014)



- Dalata – Largest Hotel Operator in State e.g., “Maldron” brand
- Moran / Bewley’s Hotels in Dublin Cork and UK



- **Market Enquiries**
- **Not Evidence of SLC**
- **Cleared**



- Dublin Market?  
Inner City Market?
- 3 Star/4 Star/ 3&4 Star Hotels?
- Citywest
- Buyer Power

# Atlantic Troy / Charleville Park Hotel (2015)



- Ultimate Acquirer – Supermac's Holdings
  - Food – Supermac's & Papa Johns
  - Hotels - Casteltroy and Loughrea
  - Motorway (M7) Rest Stop



- Local Markets?
- Product Market / Overlaps
  - Hotel Accommodation?
  - Food Service Sector?





# M.6992 Whampoa 3 - Telefonica Ireland O2 (2013)



- **European Case**
  - **Authority - Member State**
  - **Comreg - Third Party**
- **SLC - Reduction from 4 to 3 Mobile Network Operators (MNOs)**

- **Remedies**
- **Proposals include 2 new Virtual Mobile Network Operators (MVNOs)**
- **Do Remedies Remove SLC?**



# Summary

- Statutory Function
  - Competition Act (as amended)
  - Deadlines
  - Financial Thresholds
- Substantial Lessening of Competition / Consumer Harm
- Merger Specific Effects
- Evidence
- Public Accountability



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# Thank You

