



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

**Competition and
Consumer Protection
Commission**

MERGERS AND ACQUISITIONS PROCEDURES

Competition Act 2002, as amended (the “2002 Act”)

Procedures for the Review of Mergers and Acquisitions

31 October 2014

This document outlines the procedures for dealing with mergers and acquisitions notified to the Competition and Consumer Protection Commission (“Commission”). It replaces the previous Competition Authority Procedures for the Review of Mergers and Acquisitions of August 2014.

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1. NOTIFYING THE COMPETITION AND CONSUMER PROTECTION COMMISSION

- 1.1 In accordance with section 18(1)¹ of the Competition Act 2002, as amended (“the Act”), each of the undertakings involved in a proposed merger or acquisition shall notify the Competition and Consumer Protection Commission (“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 Act. Notifications are made on the Commission’s Merger Notification Form (“Notification Form”). In most cases, undertakings are encouraged to make a joint notification, though they are not obliged to do so. In accordance with section 19(8) of the Act, where undertakings do make separate notifications, the “appropriate date” from which the merger review period commences, as defined in section 19(6)² of the Act, shall be the date of receipt by the Commission of the later or latest notification.
- 1.2 For the purposes of establishing the “appropriate date” referred to in paragraph 1.1 above, a notification shall be deemed to have been received by the Commission when a complete copy of same, in hard copy format, is delivered to the Commission’s address 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). Where a notification is received after any of these time limits it shall be deemed to have been received on the next working day. 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.

All notifications should be addressed to:

Competition Enforcement and Mergers Division
Competition and Consumer Protection Commission
Bloom House
Railway Street
Dublin 1
Email: mergers@ccpc.ie

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

² Section 19(6) of the Competition Act 2002, as amended by section 56(c) of the Competition and Consumer Protection Act 2014.



1.3 In accordance with section 18(8) of the Act, a notification shall be accompanied by the prescribed fee³. The filing fee is payable by way of Electronic Funds Transfer (EFT) into the bank account of the Commission, as set out in the Notification Form. As stated in section 18(8) of the Act, any notification unaccompanied by the prescribed fee will be invalid. In such cases, the notifying parties will be so informed by the Commission as soon as possible. Where the notification fee is subsequently paid, and subject to section 18(12)⁴ of the Act, the furnishing of the fee will render the notification valid and the “appropriate date” will be the date of receipt of the fee.

³ Currently the notification fee is €8,000 as prescribed by the Competition Act 2002 (Notification Fee) Regulations 2002 ([S.I. No. 623 of 2002](#)).

⁴ Section 18(12) of the Competition Act 2002, as amended by section 55(g) of the Competition and Consumer Protection Act 2014.



2. PHASE ONE⁵

(a) Preliminary assessment

2.1 Upon its receipt by the Commission, the notification will be assessed (i) to ensure that it is a merger or acquisition within the meaning of section 16⁶ of the Act, (ii) to consider, where appropriate, whether it is a media merger within the meaning of section 28A(1)⁷ of the Act and (iii) to confirm that all requisite information has been furnished.

2.2 Where the Commission considers that the notified transaction is not a merger or acquisition within the meaning of the Act, it will so inform the notifying parties as soon as possible. Where a notified transaction does not amount to a merger or acquisition, then the notification and all other filed documents and the filing fee will be returned to the undertakings involved.

2.3 In addition to the requirement to notify the Commission in writing, section 18(1) and (3) of the Act require the undertakings involved to provide “full details” of the proposed merger or acquisition. The Commission understands “full details” as requiring that the Notification Form be completed fully. As soon as practicable after receiving a notification, the Commission will examine it to verify if full details have been provided. Where full details are not provided, the Commission – in accordance with section 18(12) of the Act – will inform the undertakings involved that it is of the opinion that the full details required under section 18(1) or section 18(3) of the Act have not been provided. In such circumstances, the relevant notification will not be valid. The appropriate date shall be the date that the undertakings involved submit full details to the Commission.

⁵ In this document, “Phase One” means the period of review of a notified merger by the Commission between the date of receipt by the Commission of a valid notification and the date on which a determination is made pursuant to section 21(2) of the Act.

⁶ Section 16 of the Competition Act 2002, as amended by section 53 of the Competition and Consumer Protection Act 2014.

⁷ Section 28A(1) of the Competition Act 2002, as inserted by section 74 of the Competition and Consumer Protection Act 2014.

(b) Publication

2.4 Within 7 calendar days from the date of receipt of the notification (accompanied by the prescribed fee), the Commission will publish notice of it on its website, except in the case of those transactions in respect of which:-

- (i) the notification submitted to the Commission is invalid pursuant to section 18(8) of the Act;
- (ii) the Commission, after a preliminary examination, has concluded that the transaction is not notifiable;
- (iii) the Commission – in accordance with section 18(12) of the Act – is of the opinion that the full details required under section 18(1) or section 18(3) of the Act have not been provided; or,
- (iv) the Commission, in accordance with section 20(1)(a) of the Act, considers that it may not be in the public interest to publish notice of the notification.

2.5 Notice of notifications will give the following information:

- (i) The name(s) of the undertakings which are stated to be involved in the merger or acquisition;
- (ii) The reference number of the transaction;
- (iii) The name and contact details of the case officer assigned to the transaction;
- (iv) The business activities of the undertakings involved in the merger or acquisition; and
- (v) Notice to third parties wishing to make submissions about the merger that they must do so within 10 working days of publication of the notice. The Commission may however change this time limit by notice on its website in individual cases, if circumstances so require.

2.6 Publication of the said notice on the Commission's website will not of itself constitute confirmation that the Commission is of the opinion that the full details required under section 18(1) or section 18(3) of the Act have been provided. The Commission reserves the right at any stage in its review of a notified merger or acquisition to express the opinion – pursuant to section



18(12) of the Act – that the full details required under section 18(1) or section 18(3) of the Act have not been provided.

2.7 If following publication of the notice, the Commission concludes that:

- (i) the transaction is not notifiable;
- (ii) in accordance with section 18(12) of the Act, the full details required under section 18(1) or section 18(3) of the Act have not been provided;
or
- (iii) in accordance with section 20(1)(a) of the Act, it is not in the public interest to publish notice of the notification

the Commission will remove the notice of the notification from its website.

(c) Submissions

2.8 Submissions from third parties should clearly indicate any information which should be treated as confidential. Further guidance on the treatment of confidential information by the Commission is considered in the Commission's Procedures for Access to the File in Merger Cases.

(d) Requirement to provide further information

2.9 The Commission may issue a written requirement, under section 20(2)⁸ of the Act, to any one or more of the undertakings involved to provide further specified information within a specified time period (which period may be extended pursuant to section 20(2A)⁹ and/or section 20(2B)¹⁰ of the Act). An officer (where the undertaking is a body corporate), partner (where the undertaking is a partnership) or any individual in control (in the case of any other form of undertaking) shall certify in writing that to the best of his or her knowledge and belief, the undertaking has complied with a written requirement issued by the Commission under section 20(2). It is an offence under section 18(9)¹¹ and

⁸ Section 20(2) of the Competition Act 2002, as amended by section 57(a) of the Competition and Consumer Protection Act 2014.

⁹ Section 20(2A) of the Competition Act 2002, as inserted by section 57(b) of the Competition and Consumer Protection Act 2014.

¹⁰ Section 20(2B) of the Competition Act 2002, as inserted by section 57(b) of the Competition and Consumer Protection Act 2014.

¹¹ Section 18(9) of the Competition Act 2002, as amended by section 55(e) of the Competition and Consumer Protection Act 2014.

section 18(10)¹² of the Act for an undertaking, or the person in control of an undertaking, to fail to comply with a section 20(2) requirement. Failure to comply may also result in the Commission exercising the powers conferred on it under section 18 or 37 of the Competition and Consumer Protection Act 2014 to obtain the information.

(e) Proposals

2.10 Before the expiry of 30 working days after the appropriate date (as defined in section 19(6)¹³ of the Act), the Commission may enter into discussions and the undertakings involved may make proposals to the Commission with regard to the manner in which the merger or acquisition may be put into effect or to the taking, in relation to the merger or acquisition, of any other measures which would ameliorate any effects of the merger or acquisition on competition.

(f) Determination that the merger or acquisition may be put into effect

2.11 Having considered the information provided and all submissions received, the Commission, if it forms the opinion that the result of the merger or acquisition will not be to substantially lessen competition in markets for goods or services in the State, will determine that it may be put into effect. The Commission will then, within 30 working days after the appropriate date (as defined in section 19(6)¹⁴ of the Act), or within 45 working days, if proposals of the kind referred to at paragraph 2.10 above have been made) inform the undertakings involved and any other undertakings or third parties who have made submissions, that it has so determined. On the date of the determination, the Commission, in addition to informing the undertakings involved, will publish notice of the making of the determination on its website. The Commission will publish the text of its determination on its website, with due regard for commercial confidentiality, at the earliest possible date thereafter (and in any event, no later than 60 working days after the making of its determination). In advance of publication of the determination, the Commission will allow the undertakings involved a number

¹² Section 18(10) of the Competition Act 2002, as amended by section 55(f) of the Competition and Consumer Protection Act 2014.

¹³ Section 19(6) of the Competition Act 2002, as amended by section 56(c) of the Competition and Consumer Protection Act 2014.

¹⁴ Section 19(6) of the Competition Act 2002, as amended by section 56(c) of the Competition and Consumer Protection Act 2014.



of days to indicate whether certain information in the determination should be redacted on the grounds of commercial confidentiality.

(g) Special provision regarding media mergers

2.12 Under section 18(1)(b)¹⁵ of the Act, and pursuant to Statutory Instrument No. 122 of 2007, a merger or acquisition must be notified to the Commission, irrespective of the turnover of the undertakings involved, if:

- (a) two or more of the undertakings involved carry on a media business in the State, or
- (b) one or more of the undertakings involved carries on a media business in the State and one or more of the undertakings involved carries on a media business elsewhere.

2.13 Section 28B(1)¹⁶ of the Act requires that a “media merger” notified either to the Commission or to the European Commission must also be notified to the Minister for Communications, Energy and Natural Resources. The statutory regime relating to the notification of media mergers to the Minister for Communications, Energy and Natural Resources is set out in Part 3A¹⁷ of the Act.

2.14 Where, in respect of a media merger, the Commission makes a determination at Phase One that the merger may be put into effect, or where it decides to carry out a full investigation (i.e. proceed to Phase Two), it will, immediately after doing so, inform the Minister for Communications, Energy and Natural Resources of that fact.¹⁸

¹⁵ Section 18(1)(b) of the Competition Act 2002, as substituted by section 55(a) of the Competition and Consumer Protection Act 2014.

¹⁶ Section 28B(1) of the Competition Act 2002, as inserted by section 74 of the Competition and Consumer Protection Act 2014.

¹⁷ Part 3A of the Competition Act 2002, as inserted by section 74 of the Competition and Consumer Protection Act 2014.

¹⁸ See section 28B(5) of the Competition Act 2002, as inserted by section 74 of the Competition and Consumer Protection Act 2014.



3. PHASE TWO¹⁹

(a) Determination to carry out a full investigation

3.1 Where, having considered the information provided and all submissions received, the Commission is unable on the basis of the information before it to form the view that the result of the merger or acquisition will not be to substantially lessen competition in markets for goods or services in the State, the Commission will make a determination to carry out a full investigation, i.e. proceed to Phase Two. The Commission, within 30 working days after the appropriate date (as defined in the Act) or within 45 working days where proposals of the kind referred to at paragraph 2.10 above have been made, will inform the undertakings involved and any other undertakings or third parties who have made submissions that it intends to carry out a full investigation.

(b) Publication of the determination to carry out a full investigation

i. To the notifying undertakings

3.2 The determination to conduct a full investigation will be furnished forthwith to the undertakings involved.

ii. To third parties who have made submissions

3.3 The Commission will inform such third parties that it has determined to carry out a full investigation.

iii. To the general public

3.4 On the date of the determination, the Commission will publish notice of the making of the determination on its website and inviting submissions from third parties.

(c) Submissions

3.5 Either the undertakings involved or any individual or other undertaking is entitled to make submissions, whether in writing or orally, and the Commission

¹⁹ In this document, “Phase Two” means the period of review of a notified merger by the Commission between the date of a determination made pursuant to section 21(2)(b) of the Act and the date on which a determination is made pursuant to section 22(3) of the Act.

shall consider all submissions made (section 20(1)(a)(ii) of the Act). Submissions from third parties must be received in writing within 15 working days of the date of the determination to carry out a full investigation. The Commission may however change this time limit by notice on its website in individual cases, if circumstances so require. Submissions from the undertakings involved must be received in writing within 20 working days of the date of the determination to carry out a full investigation (or within such other period as may be specified by the Commission in writing to the undertakings involved).

- 3.6 Submissions should clearly indicate any information which should be treated as confidential. Further guidance on the treatment of confidential information by the Commission is considered in the Commission’s Procedures for Access to the File in Merger Cases.

(d) Early determination of a full investigation

- 3.7 If, within 40 working days of the date of the determination to conduct a full investigation (or such longer period as may result, in a particular case, from the suspension of time provided for in section 22(4A)²⁰ of the Act), the Commission is satisfied that the result of the merger will not be to substantially lessen competition, it will, without proceeding to make an assessment of the proposed merger or acquisition (“the Assessment”), determine that the merger may be put into effect, or may be put into effect subject to conditions. The Commission will inform the undertakings involved, on the same date, of its determination.

(e) Assessment

- 3.8 If, having considered all submissions, the Commission is not satisfied that the result of the merger will not be to substantially lessen competition, it will, within 40 working days of the date of the determination to conduct a full investigation (or such longer period as may result, in a particular case, from the suspension of time provided for in section 22(4A) of the Act), furnish its Assessment to the undertakings involved. This time period may be adjusted following consultation and agreement between the undertakings involved and the Commission. The

²⁰ Section 22(4A) of the Competition Act 2002, as inserted by section 59(b) of the Competition and Consumer Protection Act 2014.

Assessment will set out clearly the Commission's concerns regarding the effect of the proposed merger on competition in the relevant markets.

(f) Access to file

3.9 After the Assessment has issued, the undertakings involved will be afforded the opportunity to access the file in accordance with the criteria set out in the Commission's Procedures for Access to the File in Merger Cases.

(g) Response to Assessment

3.10 Within 15 working days of the delivery of the Assessment, the undertakings involved may respond in writing thereto. The Commission shall not be obliged to take account of submissions received from the undertakings involved after the expiry of that time limit.

(h) Consequence of failure to respond

3.11 Failure by any one of the notifying parties to respond within the time provided may be deemed to constitute a waiver of that party's right to contest the issues set out in the Assessment. Failure of all notifying parties to so respond may authorise the Commission, without further notice, to find the facts to be as set out in the Assessment and to adopt a final determination on the basis of such findings.

(i) Oral Submissions

3.12 Within five working days of the furnishing of the Assessment, any party to the merger who wishes to make oral submissions shall notify the Commission in writing that it intends to do so, and the Commission will fix a date to hear the submissions.

3.13 Third parties who have furnished submissions may also be invited to make oral submissions, at the sole discretion of the Commission.

(j) Discussions and Proposals

3.14 During the Phase Two review period, but no later than 15 working days after the furnishing of the Assessment, the Commission may enter into discussions and

the undertakings involved may make proposals to the Commission with regard to the manner in which the merger or acquisition may be put into effect or to the taking, in relation to the merger or acquisition, of any other measures which would ameliorate any effects of the merger or acquisition on competition. In exceptional circumstances, the Commission may accept such proposals from the undertakings involved after the expiry of the time limit for their submission set out above in this paragraph 3.14.



4. FINAL DETERMINATIONS

(a) Phase Two determination

4.1 On completion of the Phase Two review period, the Commission shall make one of the following determinations:-

- (i) that the merger or acquisition may be put into effect,
- (ii) that the merger or acquisition may not be put into effect,
- (iii) that the merger or acquisition may be put into effect subject to conditions specified by the Commission being complied with, including a condition requiring the merger or acquisition to be put into effect within 12 months after the making of the determination.

and will furnish to the notifying parties the written determination within 120 working days²¹ after the appropriate date (as defined in the Act) or within 135 working days²² if proposals have been made to which section 20(3) of the Act applies.

(b) Contents of Commission's written determination

4.2 In every case, the Commission's final determination in regard to the proposed merger or acquisition will include a statement of the facts, a summary of the information, evidence and submissions considered by the Commission and the reasons grounding the determination.

²¹ It should be noted that, in accordance with section 22(4A) of the Act (as inserted by section 59(b) of the Competition and Consumer Protection Act 2014), if the Commission has, under section 20(2), made, not later than 30 working days from the date of its determination to proceed to a Phase Two investigation, a requirement or requirements of one or more of the undertakings concerned, the period of 120 working days shall stand suspended on the date that the first requirement is made and shall resume on the relevant date provided for in section 22(4A) of the Act.

²² See section 22(4A) of the Competition Act 2002, as inserted by section 59(b) of the Competition and Consumer Protection Act 2014. It should be noted that, in accordance with sections 22(4A) and 22(4B) of the Act (as inserted by section 59(b) of the Competition and Consumer Protection Act 2014), if the Commission has, under section 20(2), made, not later than 30 working days from the date of its determination to proceed to a Phase 2 investigation, a requirement or requirements of one or more of the undertakings concerned, the period of 135 working days shall stand suspended on the date that the first requirement is made and shall resume on the relevant date provided for in section 22(4A) of the Act.

(c) Publication of the Commission’s determination

4.3 The Commission will publish notice of its determination on its website on the same day as the determination is made. The Commission will publish the written determination on its website, with due regard for commercial confidentiality, within 60 working days after the making of the determination. In advance of publication of the determination, the Commission will allow the undertakings involved an appropriate period to indicate whether certain information in the written determination should be redacted on the grounds of commercial confidentiality.

(d) Special provision regarding media mergers

4.4 Where, in respect of a media merger, the Commission makes a determination at Phase Two of the kind referred to in paragraph 4.1(i), (ii) or (iii) above, it will immediately after doing so inform the Minister for Communications, Energy and Natural Resources of that fact.²³

²³ See section 28B(5) of the Competition Act 2002, as inserted by section 74 of the Competition and Consumer Protection Act 2014.