

# Mergers: Pre-Notification Discussions

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- 1.1 This note provides useful information on pre-notification discussions between the Competition and Consumer Protection Commission (CCPC) and the parties to a proposed merger or acquisition (including joint ventures).

## Contact persons

- 1.2 Parties may request pre-notification discussions by contacting the Director of Competition Enforcement and Mergers at +353 (0)1 402 5500 and by e-mail at [mergers@ccpc.ie](mailto:mergers@ccpc.ie).

## Purpose

- 1.3 The CCPC welcomes the opportunity to have pre-notification discussions with parties who have expressed a good faith intention to proceed with a merger or acquisition. This may take place either in the form of a meeting or a teleconference call.
- 1.4 The purpose of pre-notification discussions is to:
- (a) assist parties to a proposed merger or acquisition in the preparation of the Merger Notification Form; and,
  - (b) give such parties the opportunity to provide an explanation to the CCPC's staff about the nature of competition and any potential competition issues in the market(s), industry(ies) or sector(s) concerned.

## Documentation requested in advance

- 1.5 In order to facilitate a meaningful discussion with the CCPC, a written submission from the parties or their representatives briefly describing the proposed transaction, the market(s) involved and the potential effects of the proposed merger or acquisition, together with a list of attendees, should be sent to Competition Enforcement and Mergers. This should arrive at least 2 working days

before the first meeting/teleconference call. Drafts of any relevant agreements would be required.

## **Content**

- 1.6 In the course of pre-notification discussions, CCPC staff will endeavour to point out any immediately evident potential competition issues arising from the proposed merger and areas where further information would be useful for the CCPC's analysis. The CCPC may also waive completion of parts of the Merger Notification Form. Please note however that further competition concerns may be identified during the course of the CCPC's formal merger investigation and the CCPC reserves the right to request additional information at any stage. Therefore, no indication of whether the merger is likely to require a full (Phase 2) investigation will be provided during the course of pre-notification discussions.
- 1.7 Parties should note that any comments made by CCPC staff during the course of pre-notification discussions can only be preliminary and non-binding, in light of the fact that the CCPC does not have all the information to hand. For example, third parties have not had a chance to present their views and no investigation has yet been conducted.

## **Attendance at pre-notification meetings**

- 1.8 It will be essential to have at least one director or employee of the parties to the proposed merger or acquisition present during the pre-notification discussions. Although both parties may attend the same meeting, this is not a desirable practice. In particular, in a horizontal merger situation that involves competitors, the CCPC would prefer to meet the parties separately. In this regard the CCPC will encourage parties to schedule separate meetings where necessary to avoid the risk of unlawful information sharing.

## **Non-binding and confidential nature**

- 1.9 It is important to note that the CCPC will not be bound by any comments made by its staff in the course of pre-notification discussions. Any views expressed reflect the preliminary views of staff based on the information provided, and not those of the CCPC.
- 1.10 Pre-notification discussions are held in the strictest confidence. The discussions are a voluntary part of the process and remain without prejudice to the handling and investigation of the case following formal notification. The CCPC considers both the fact that pre-notification discussions have taken place and any information provided to the CCPC by the parties to be highly confidential. Similarly, any comments made by CCPC staff should be treated by the parties and their representatives as strictly confidential.

#### **Validity of merger notification**

- 1.11 Please note that there is a risk that the CCPC may regard a notification to be invalid pursuant to section 18(12) of the Competition Act, 2002, as amended, where parties opt not to fill in parts of the Merger Notification Form without having contacted the CCPC first and gotten approval to do so.

15 August 2018