



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

Re: Transitional arrangements applicable to mergers under Part 3 of the Competition Act 2002

10 December 2018

Dear Sirs,

The Competition and Consumer Protection Commission (“CCPC”) would like to inform legal practitioners of its views on certain specific aspects of the transitional arrangements applicable to mergers in the context of the coming into operation on 1 January 2019 of the Competition Act 2002 (Section 27) Order 2018 (S.I. No. 388 of 2018) (the “2018 Order”). This letter is being circulated for information purposes and a copy has been posted on the CCPC’s website.

In accordance with section 18(1) of the Competition Act 2002, as amended (the “2002 Act”), mergers or acquisitions that meet certain jurisdictional thresholds are subject to mandatory notification to the CCPC. The thresholds currently set out in section 18(1)(a) of the 2002 Act will be substituted with effect from 1 January 2019 by revised thresholds introduced by the 2018 Order.

The CCPC has received a number of queries from legal practitioners regarding the regime applicable to a merger or acquisition in circumstances where the transaction agreement is signed on or before 31 December 2018 but where the merger or acquisition will not be put into effect (i.e. completed) until on or after 1 January 2019.

Section 18(1A)(a) of 2002 Act provides that a notification may be made at any time prior to the transaction being put into effect (i.e. completed). The CCPC’s view is that the regime applicable to a given transaction is determined by the date on which the relevant transaction is completed.

The CCPC is of the view that, in circumstances where a transaction meets the thresholds currently set out in the 2002 Act but would not meet the thresholds introduced by the 2018 Order and the transaction agreement is signed/agreed on or before 31 December 2018 (but not completed until 1 January 2019 or later) the new regime will be applicable to the transaction. Therefore, the transaction will not be subject to mandatory notification to the CCPC.

In circumstances where such transactions are notified to the CCPC on or before 31 December 2018, the CCPC will proceed to make a determination in relation to the notified transaction. However, provided the transaction is not completed until on or after 1 January 2019, there is no mandatory requirement for the parties to obtain clearance from the CCPC in such a case given that the new thresholds introduced by the 2018 Order will be applicable to the



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transaction. Parties are in all cases free to make a voluntary notification under section 18(3) of the 2002 Act in respect of any transaction which is not subject to mandatory notification.

This letter is not and does not purport to be legal advice. It should be noted that the applicability of the 2002 Act to a particular transaction is a matter for the undertakings themselves to decide in conjunction with their respective legal advisors.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Brian McHugh'. The signature is stylized with several loops and a long horizontal stroke.

Brian McHugh

Member

Competition and Consumer Protection Commission