



CCPC Mergers & Acquisitions Report 2018

Details of the mergers and
acquisitions in Ireland examined by
the CCPC

Table of Contents

Introduction	1
1. 2018 Merger Notifications & Determinations	3
➤ Notifications.....	3
➤ Determinations	4
➤ Timeframes	6
2. Summary of Selected Extended Phase 1 and Phase 2 Investigations.....	7
➤ M/17/068 – Irish Times/Sappho(Irish Examiner)	7
➤ M/18/009 – BWG Foods/4 Aces	8
➤ M/18/016 – Trinity Mirror/Northern & Shell	8
➤ M/18/031 – Uniphar/SISK Healthcare	9
➤ M/18/042 – Oaktree/Alanis/Lioncor (JV)	10
➤ M/18/036 – Enva/Rilta	11
3. Media & International Mergers	13
➤ Media Mergers.....	13
➤ International Mergers.....	14
4. Merger Review Policy Developments - 2018	15
➤ Financial Thresholds Changes	15
➤ Simplified Merger Procedure.....	16



Introduction

I am delighted to introduce the Competition and Consumer Protection Commission (CCPC) Mergers & Acquisitions Report for 2018. Last year, was the most active year on record for merger and acquisition activity notified to the CCPC, and the former Competition Authority. This report evidences the breath and scale of the merger review work undertaken in the last 12 months.

While the number of transactions determined by the CCPC has significantly increased in recent years, including a particularly dramatic increase of 40% in 2018, we continue to be committed to ensuring that we complete our merger review process in an efficient and effective manner. We are acutely aware of commercial deadlines and realities and throughout the year, we have worked with businesses and their legal representatives to ensure as efficient a process as possible. Non-extended Phase 1 investigations were completed in an average length of 24 working days. This is the same as the average in 2017, which given the increased volume of transactions, was not an easy task.

As well as an increased number of transactions, 2018 also saw an increase in the number of complex mergers. Last year there were 14 extended Phase 1 investigations, which was an increase on 2017 when there were nine. In addition three of the extended Phase 1 reviews required a Phase 2 investigation and determination (compared to none in 2017).

Last year we had to use our formal powers more often to obtain required information about transactions. Merging parties should be aware that notifications must contain all required information by the CCPC. If they do not we will ask for it, including using our formal powers. This increases the amount of time it takes for us to analyse, and ultimately make a determination on, a transaction. We will continue to engage with parties to underline that the early production of full information will lead to a more efficient merger process.

Gun jumping conduct (failure to notify a notifiable merger) is a concern for competition regulators around the world, including the CCPC and the European Commission. During

the course of 2018, we continued to monitor compliance with merger notification requirements. In doing so we undertook extensive work in the examination of potential gun-jumping cases. Under Irish competition law it is a criminal offence to implement a notifiable merger without first securing clearance from the CCPC and penalties for failing to notify a transaction could be significant, including the transaction may be deemed void.

In recent years, there has been a focus at European level on whether existing regimes are able to assess the competitive impacts of acquisitions of businesses active in the digital economy. This includes where tech companies, with relatively small financial turnovers, are purchased for very large sums. We continue to work with the Commission to keep abreast of developments and input from Ireland's perspective.

The future ahead

As of 1 January 2019, new financial thresholds took effect for the mandatory notification of a transaction to the CCPC. Following a public consultation and an assessment of the current thresholds, the Department of Business, Enterprise and Innovation (DBEI) made the decision to increase the financial thresholds at which the mandatory notification of a merger is required. We are also currently working on a simplified merger review process; last year we issued a public consultation to seek views and we will be progressing with this work this year. The purpose of this is to streamline the review process for certain mergers and acquisitions on the basis that they clearly do not raise competition concerns.

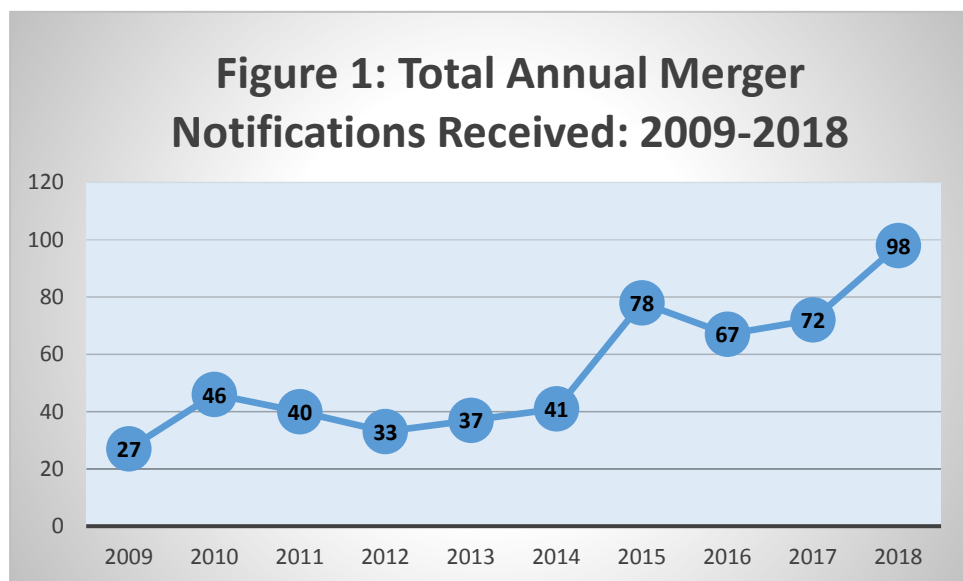
The continued uncertainty arising from Brexit means that a number of scenarios need to be considered and planned for. In the context of the merger regime, it is likely that Brexit will lead to the notification to the CCPC of more complex mergers and we have been working internally to prepare for this. It is important for all those involved in mergers and acquisitions, including the CCPC, that there is certainty and as soon as we have that clarity we will communicate it to businesses and legal representatives.

Looking forward, we believe that the new higher financial thresholds and the potential introduction of a simplified notification process will improve the efficiency of Ireland's merger regime. They will also help ensure that the CCPC's efforts are focused on those transactions which present a significant risk to competition and may negatively impact on consumers and businesses.

1. 2018 Merger Notifications & Determinations

Notifications

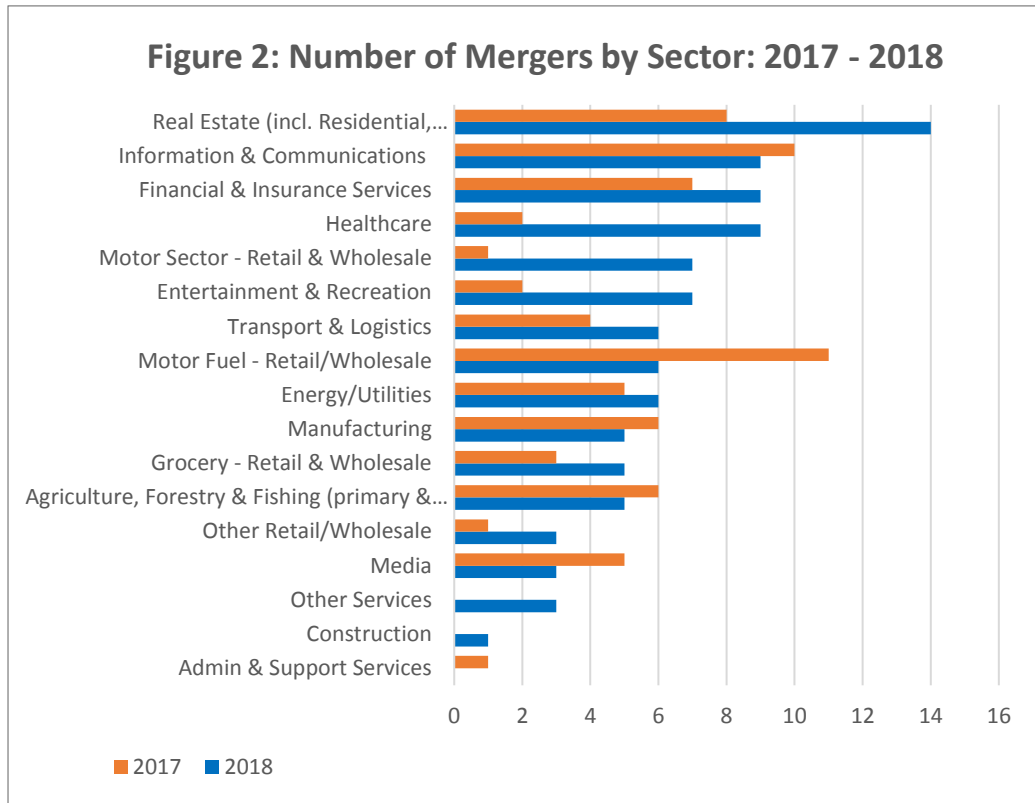
1.1 For the 2018 calendar year, the CCPC received 98 merger notifications, which represents an increase of approximately 36% on the number of mergers notified in 2017. Figure 1 presents the trend in the number of merger notifications to the CCPC and formerly, the Competition Authority, for the years 2009 through to 2018.



Sectoral Breakdown of Notified Mergers

1.2 The sectoral¹ breakdown of mergers received in 2017 and 2018 are presented in Figure 2 below. In 2018, real estate was the most prominent sector with information & communications, healthcare and financial & insurance services also prominent. There was also increased merger activity in the motor sector and in entertainment and recreation. In 2017, the most prominent sector was motor fuel (retail/wholesale) followed by information & communications and the real estate sector.

¹ Sector description adapted from the CSO based on NACE classifications



Determinations

- 1.3 During the course of 2018, the CCPC issued 95 Determinations which represents a 40% increase compared to 2017. 85 of the determinations were issued in respect of proposed transactions notified during 2018 and the remaining ten were in respect of proposed transactions notified towards the end of 2017 which were carried over to 2018.
- 1.4 In 2018, 14 investigations involved an extended Phase 1 review, three of which were carried forward from 2017. Phase 1 determinations were made in respect of eight out of the 14 extended Phase 1 investigations and the remaining six were still under consideration at the end of 2018. Table 1 below presents a list of the mergers which required an extended Phase 1 investigation.
- 1.5 As at the end of 2018, three of the extended Phase 1 reviews required a Phase 2 investigation (compared to none in 2017) and determinations were made in respect of all three.

Table 1: - Extended Phase 1 and Phase 2 Investigations

M/17/056 – Bay Broadcasting/ Classic Rock Broadcasting
M/17/064 – Tetrarch/Citywest
M/17/068 – Irish Times/Sappho(Irish Examiner) (Phase 2 determination)
M/18/009 – BWG Foods/4 Aces
M/18/016 – Trinity Mirror/Northern & Shell (Phase 2 determination)
M/18/031 – Uniphar/SISK Healthcare
M/18/042 – Oaktree/Alanis/Lioncor (JV)
M/18/036 – Enva/Rilta (Phase 2 determination)
*M/18/053 – Pandagreen/Knockharley Landfill and Natureford
*M/18/063 – Berendsen (Elis)/Kings Laundry
*M/18/067 – LN Gaiety/MCD Productions
*M/18/075 – Irving/Tedcastles
*M/18/082 – Goldreed Holdings/Greene Farm
*M/18/089 – Lakeland/LacPatrick

*Ongoing investigations carried over to 2019

- 1.6 In 2018, formal commitments to alleviate competition concerns were required and obtained from parties in respect of five cases presented in Table 2 below. The types of commitments obtained from the parties range from requirements to divest significant business facilities to restrictions on access to confidential information amongst parties. More detail is provided in section two.

Table 2: - Mergers Cleared with Commitments - 2018

M/18/009 – BWG Foods/4 Aces
M/18/031 – Uniphar / SISK Healthcare
M/18/042 – Oaktree/Alanis/Lioncor (JV)
M/18/016 – Trinity Mirror/Northern & Shell (Phase 2 determination)
M/18/036 – Enva/Rilta (Phase 2 determination)

Timeframes

- 1.7 The CCPC aims at all times to make sure that it completes its merger review process in an efficient and effective manner so that mergers which do not raise competition concerns are not unduly delayed.
- 1.8 In spite of the significant increase in merger notifications, between 1 January 2018 and 31 December 2018, the CCPC took an average of 24 working days to issue a Phase 1 decision which is consistent with the figure for 2017.² The timelines in individual cases that did not raise serious concerns varied from 13 to 29 working days depending, for example, on the complexity of the structure of the transaction and the nature of the competition issues involved.
- 1.9 Since our role is to actively protect the interests of consumers and businesses, there are some notified transactions which may need more intensive scrutiny and thus an extended review period was required to enable the CCPC to issue a robust Determination in Phase 1 or Phase 2 as appropriate.

² This excludes those merger reviews which required an extended Phase 1 Investigation.

2. Summary of Selected Extended Phase 1 and Phase 2 Investigations

M/17/068 – Irish Times/Sappho (Irish Examiner)

- 2.1 On 14 December 2017, the CCPC received a notification of a proposed transaction whereby, The Irish Times Designated Activity Company (“ITD”), through its wholly-owned subsidiary Palariva Limited, would acquire sole control of Sappho Limited (Irish Examiner) from Landmark Media Investments Limited (“LMI”). Given that each of ITD and LMI carry on a “media business” within the State (as defined in section 28A(1) of the Act), this transaction constituted a “media merger” for the purposes of Part 3A of the Act
- 2.2 The CCPC, on 24 April 2018, following a Phase 2 investigation, cleared the proposed transaction. In the course of the two-phase investigation, the CCPC consulted with a number of third parties, including competitors, advertising customers and industry representative bodies. As part of its assessment of the likely competitive impact of the proposed transaction, the CCPC distinguished between a potential market for readers and a potential market for advertisers given the two-sided nature of the newspaper industry. In reaching its determination that the proposed transaction will not lead to a substantial lessening of competition, the CCPC analysed the likely competitive impact of the proposed transaction in the following three potential markets:
- The publication and sale of daily national newspapers in the State;
 - The sale of daily national newspaper advertising in the State; and
 - The sale of online advertising in the State.
- 2.3 Following the detailed assessment, the CCPC formed the view that the proposed transaction will not substantially lessen competition in any market for goods or services in the State and issued an unconditional clearance Determination to the parties.

M/18/009 – BWG Foods/4 Aces

- 2.4 On 31 January 2018, the CCPC received a notification of a proposed transaction whereby BWG Foods Unlimited Company (“BWG”), a wholly owned subsidiary of TIL JV Limited, would acquire the entire issued share capital and thereby sole control of 4 Aces Wholesale Limited (“4 Aces”). 4 Aces is a member of Stonehouse Marketing Limited (“Stonehouse”), a wholesaler-owned Irish marketing and buying group, and Gala Retail Services Limited (“GRSL”), a wholesaler-owned buyer group which also effectively operates as a wholesaler-franchisor.
- 2.5 Following an extended preliminary (Phase 1) investigation, which included Requirements for Information from the parties, the CCPC on 2 May 2018, cleared the proposed transaction with binding commitments.
- 2.6 During the course of the investigation, the CCPC identified potential competition concerns in relation to the potential for the exchange of competitively sensitive information arising from the proposed merger. To address this concern, the CCPC required proposals from BWG which included a divestment commitment and firewall and confidentiality commitments. The proposals are intended to prevent the exchange of competitively sensitive information between BWG and GRSL or between BWG and Stonehouse.
- 2.7 The CCPC formed the view that the proposals obtained from BWG, which the CCPC took into account and formed part of the basis of its determination, and therefore pursuant to section 20(3) of the Act became binding commitments, were appropriate and effective in addressing the competition concerns.

M/18/016 – Trinity Mirror/Northern & Shell

- 2.8 On 9 February 2018, the CCPC received a notification of a proposed transaction whereby, Reach Plc (formerly Trinity Mirror Plc) (“Reach”) would acquire sole control of Northern & Shell Network Limited (“N&S”) and International Distribution 2018 Limited (“IDL”) and joint control of Independent Star Limited (“ISL”). Given that each of Reach, N&S and ISL carry on a “media business” within the State (as defined in section 28A(1) of the Act), this transaction constitutes a “media merger” for the purposes of Part 3A of the Act.

- 2.9 The CCPC, on 12 September 2018, following a Phase 2 investigation, cleared the proposed transaction subject to binding commitments. An in-depth investigation was undertaken to establish whether the proposed transaction would result in a substantial lessening of competition in any market for goods or services in the State. In the course of the investigation, the CCPC identified a potential competition concern in relation to the exchange of competitively sensitive information between Reach, IN&M and ISL, following Reach's acquisition of 50% of the issued share capital of ISL, which could constitute a breach of competition law.
- 2.10 To address this concern, the CCPC required Reach to submit proposals to prevent the direct or indirect exchange of competitively sensitive information between: (i) Reach and IN&M and (ii) Reach and ISL following completion of the proposed transaction. The CCPC has concluded that these commitments, which were taken into account as part of its determination, are appropriate and effective in addressing its competition concerns.

M/18/031 – Uniphar/SISK Healthcare

- 2.11 On 17 August 2018, following an extensive investigation, the CCPC cleared the proposed acquisition of sole control of SISK Healthcare by Uniphar Public Limited Company (Uniphar), subject to a number of binding commitments. SISK Healthcare, the group name for ROI Healthco IOM 2 Limited and all of its subsidiaries, is involved in healthcare distribution primarily as a distributor of medical supplies to hospitals.
- 2.12 Following notification on 26 April 2018, the CCPC undertook an in-depth investigation, including issuing requirements for further information to the parties and market enquiries involving a number of suppliers, customers and competitors of the parties.
- 2.13 Uniphar, as an agent, issues invoices on behalf of certain manufacturers/wholesalers of medical supplies giving it access to third parties' prices and trading conditions for specific products. SISK Healthcare has the distribution rights for certain competing brands/products. In the course of the investigation, the CCPC became concerned that following the implementation of

the proposed transaction, Uniphar could use its access to third parties' commercially sensitive information to influence the trading decisions of SISK Healthcare

- 2.14 To address these concerns, the CCPC required proposals from Uniphar, which included firewall and confidentiality commitments, specifically relating to orthopaedic products, diagnostic imaging products and custom procedure packs. The commitments were intended to prevent the exchange of competitively sensitive information between Uniphar's pre-wholesale/logistics provision division and SISK Healthcare's wholesale business units following completion of the proposed transaction.
- 2.15 The CCPC formed the view that the proposals obtained from Uniphar, which the CCPC took into account and formed part of the basis of its determination, and therefore pursuant to section 20(3) of the Act became binding commitments, were appropriate and effective in addressing the competition concerns.

M/18/042 – Oaktree/Alanis/Lioncor (JV)

- 2.16 On 12 September 2018, the CCPC cleared - subject to binding commitments - the acquisition by Oaktree Capital Group LLC ("Oaktree"), of 50% of the issued share capital of Lioncor Developments Limited ("Lioncor") from Alanis Capital Limited ("Alanis") which ultimately conferred joint control of Lioncor on Oaktree and Alanis.
- 2.17 The relevant parties included: Oaktree; Alanis; and Lioncor. Oaktree is a global alternative and non-traditional investment management firm. Its investments in the State include operational retail assets, office developments assets, sites for residential development as well as other distressed assets. Alanis is involved in property asset and development management in the State. Lioncor Developments Limited is a residential property development management company which provides development management services to companies that own residential development sites.
- 2.18 During the course of the investigation, the CCPC identified potential competition concerns in relation to potential anti-competitive vertical information sharing

arising from the proposed merger. To address this concern, the CCPC required proposals from Oaktree and Alanis which included confidentiality commitments. The proposals are intended to strengthen existing measures to prevent the exchange between Lioncor and each of Oaktree and Alanis of confidential information of third-party customers of Lioncor.

- 2.19 The CCPC formed the view that the proposals obtained from Oaktree and Alanis, which the CCPC took into account and formed part of the basis of its determination, and therefore pursuant to section 20(3) of the Act became binding commitments, were appropriate and effective in addressing the competition concerns.

M/18/036 – Enva/Rilta

- 2.20 On 4 May 2018, the CCPC received a notification of a proposed transaction whereby Enva (Exponent Private Equity LLP, through Enva Irish Opco Limited) would acquire sole control of the Rilta Group (consisting of Richardstown Investments Limited, Grangerath Investments Limited, Noah Investments Limited and their subsidiaries).
- 2.21 The CCPC, on 20 December 2018, following a Phase 2 investigation, cleared the proposed transaction subject to binding divestment and access commitments. A significant two-phase investigation was undertaken to establish whether the proposed transaction would result in a substantial lessening of competition in any market for goods or services in the State.
- 2.22 Both Enva and the Rilta Group supply non-hazardous and hazardous waste management services. As a result, the CCPC analysed the likely competitive impact of the proposed transaction across multiple waste management markets. This detailed investigation included surveys of a considerable number of third parties, such as competitors, customers and regulatory bodies.
- 2.23 The CCPC identified competition concerns arising from the proposed transaction affecting three markets in State involved in the supply of: (i) hazardous oily tank and interceptor waste collection and treatment services, (ii) hazardous waste

lubricant oil collection and treatment services and (iii) hazardous contaminated soil collection services.

- 2.24 To address the CCPC's concerns, the CCPC required the parties to submit proposals providing both a structural and behavioral remedy. Under the structural remedy, Enva must sell its entire EPA-licensed facility at John F. Kennedy Industrial Estate, John F. Kennedy Road, Naas Road, Dublin 12. Under the behavioural remedy, Enva must also accept hazardous waste, lubricant oil and hazardous contaminated soil from any party subject to certain provisions.
- 2.25 Following detailed consideration and further analysis, including market testing, the CCPC concluded that these commitments were sufficient to address the identified competition concerns.

3. Media & International Mergers

Media Mergers³

4.1 Under section 18(1)(b) of the Act (as amended by section 55(a) of the 2014 Act) and 18(5) of the Act, where a proposed merger or acquisition falls within a class of merger or acquisition specified in an order made by the Minister for Business, Enterprise and Innovation, it must be notified to the CCPC irrespective of the turnover of the undertakings involved. One such class of mergers that has been specified relates to media mergers.⁴

4.2 In 2018, the CCPC reviewed five media mergers as presented in Table 3 below; three were received in 2018 and two carried over from 2017.

Table 3: - Media mergers reviewed - 2018

M/17/056	Bay Broadcasting/Classic Rock Broadcasting
M/17/068	Irish Times/ Sappho (Irish Examiner)
M/18/001	CMNL/North Dublin Publications
M/18/016	Trinity Mirror/Northern & Shell
M/18/092	FormPress Publishing (Iconic)/assets of River Media

4.3 In 2018, the CCPC issued five media merger determinations, two of which involved Phase 2 investigations, M/17/068 - Irish Times/Sappho (Irish Examiner) and M/18/16 - Trinity Mirror/Northern & Shell.

³ Part 3A of the Competition Act 2002, as amended, introduced substantial changes to the review of media mergers in the State. In addition to the mandatory requirement to the CCPC, media mergers are also required to be notified to the Minister for Communications, Climate Action and Environment in order for the assessment the impact of the merger on the plurality of the media in the State.

⁴ A media merger is a merger or acquisition where (i) two or more of the undertakings involved carry on a media business in the State; 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.

International Mergers

4.4 The CCPC is required to monitor EU merger activity and, when it considers there is a significant interest to Ireland the CCPC can attend and participate in EU merger advisory committees. Over the period 1 January 2018 to 31 December 2018, the CCPC closely followed the European Commission's investigations into a number of proposed mergers including the following:

- M.8306 Qualcomm, NXP Semiconductors
- M.8677 Siemens, Alstom
- M.8736 Toohil Telecom, Eircom
- M.8792 T-Mobile NL, Tele2 NL
- M.8084 Bayer, Monsanto
- M.8882 Kennedy Wilson, AXA JV
- M.8900 Wieland Werke, Aurubis & Schwermetall

4. Merger Review Policy Developments - 2018

Financial Thresholds Changes

5.1 Following the introduction of the new financial thresholds in October 2014, the Department of Business, Enterprise and Innovation (DBEI) consulted with the CCPC on the operation of the thresholds. In July 2017, the CCPC concluded a study on the analysis of mergers notified for the two year period (Jan 2015 to Dec 2016). This analysis provided a good data set which allowed a real-life experiment of the likely effect of recommended changes to the financial thresholds. Based on the findings of the study the CCPC recommended changes to the financial thresholds to the DBEI. The CCPC recommended for the financial thresholds to be set at: (i) an individual threshold of €10 million and (ii) €60 million for the aggregate threshold.

5.2 The recommended new thresholds would ensure that firms which fall between microenterprises and small enterprises are not required to mandatorily notify unnecessary mergers and acquisitions. These recommendations would also bring Ireland's financial thresholds closer to international norms. The analysis estimated that the new thresholds, all things being equal, would reduce the number of notifiable mergers by approximately 35-40%.

5.3 On the basis of the CCPC's analysis the DBEI issued a public consultation in late 2017 on whether the financial thresholds for mandatory notification of mergers should be adjusted upwards. Following the public consultation by the DBEI the Minister of Business, Enterprise and Innovation, on 2 October 2018, signed an order to increase the financial thresholds at which the notification of a merger to the CCPC is required.

5.4 The increased thresholds took effect from 1 January 2019 and are as follows; undertakings will be obliged to notify the CCPC when: (i) the aggregate turnover in the State of the undertakings involved is not less than €60,000,000 and (ii) the turnover in the State of each of 2 or more of the undertakings involved is not less than €10,000,000.

Simplified Merger Procedure

5.5 In November 2018, the CCPC issued a public consultation seeking views on a simplified merger procedure for the review of certain mergers and acquisitions on the basis that they clearly do not raise competition concerns in any markets within the State. The CCPC's simplified merger procedure proposal envisages a streamlined notification form, as well as, a shortened determination.

5.6 The CCPC's consultation will consider if introducing a simplified merger review procedure could streamline the review process for certain notifications, and how this might impact on the merger control regime in Ireland. Introducing such a process would bring Ireland in line with both the EU Commission and a majority of EU Member States, who operate a form of simplified procedure for certain types of merger review.

5.7 The proposal to introduce a simplified merger procedure is part of the CCPC's overall strategy to make merger control in the State more effects based and focused on outcomes. This is also demonstrated in the recent amendment to the revenue thresholds for the mandatory notification of mergers and acquisitions in the State.

5.8 The CCPC considers that the introduction of a simplified procedure in Ireland could significantly reduce the time and resources needed to review mandatorily notified transactions. This may have a positive impact on the economy, as merger review periods would be shorter and the Irish merger control regime would be less burdensome for the notifying parties.

5.9 The CCPC is proposing to introduce the following simplified procedure criteria:

- Where none of the parties to the merger are active in the same product or geographic markets, or in any upstream or downstream product markets from one-another. The CCPC notes that, generally speaking, transactions where the parties involved are not active in any overlapping business activities to one-another are less likely to raise competition concerns in the State.
- Where two or more of the parties involved in the merger or acquisition are active in the same product or geographic market, but their combined market

share is less than 15%. Or, where one or more parties involved in the merger or acquisition are active in a market which is upstream or downstream to a market in which another party is active, but the market share of each of the parties involved in each market is less than 25%.⁵ The CCPC considers that these transactions, in general, are less likely to raise competition concerns in un-concentrated markets in the State. However, the CCPC will reserve the right to request more detailed information from the notifying parties (e.g., by issuing a request for information under section 20(2) of Act at any time), in the event that factors come to light which require further investigation (for example, if all other competitors in the affected markets are relatively small, and the merging parties exert a significant competitive constraint on one another). In this instance, the CCPC will also issue a full determination.

- Where a party, which already has joint control over a company, is to acquire sole control over that company. The CCPC considers that such transactions are, in general, less likely to raise competition concerns in the State.

5.10 Provided a merger or acquisition meets the criteria outlined above and will clearly not raise any concerns from a competition perspective it will qualify for assessment under a simplified merger procedure. However, the CCPC will reserve the right to revert to a standard merger procedure if during the course of our initial assessment we identify competition concerns that warrant further investigations.

5.11 The CCPC's consultation has now closed. The CCPC will review the submissions received and make a decision on the introduction of a simplified procedure in 2019.

⁵ Note, the EU Commission's criteria is 20% for parties active in the same product market and 30% for parties active in upstream or downstream markets. The CCPC is suggesting conservative market share thresholds.

