

Mr Geoffrey Gray
Competition and Consumer Protection
Commission
geoffreygray@ccpc.ie

OUR REF: MWH.6005.423.5341148v1A

YOUR REF:

DATE: 6 December 2018

CCPC Consultation – Simplified Procedure

Dear Geoffrey,

We write in response to the Public Consultation published by the Competition and Consumer Protection Commission ("**CCPC**") entitled "A Simplified Merger Procedure for the Review of Certain Mergers & Acquisitions" dated 7 November 2018 ("**Consultation**").

In general, we welcome the efforts of the CCPC to reduce information requirements and to enhance the efficiency of the notification process, and agree that most of the proposed changes as contained in the Consultation document ("**Consultation Document**") would contribute to this aim. However, we would also like to note that some aspects of the simplified procedure as proposed by the CCPC could result in uncertainties and inefficiencies, if the process were not properly managed, which could potentially negate the anticipated benefits of the simplified procedure.

Our comments and observations below are based on our substantial experience on advising on and preparing notifications under the Irish Competition Act 2002 (as amended) ("**2002 Act**"). However, please note that this response does not necessarily represent the views of every LK Shields lawyer, nor does it purport to represent the views of our clients.

Below we set out our responses to some of the queries raised in the Consultation Document:

1 INTRODUCTION OF A SIMPLIFIED PROCEDURE

- (a) **On the basis of your experience of the Irish merger control regime, and considering the analysis presented in the Background section of this document, do you consider that there is currently scope for simplification of the Irish merger control procedure without impairing the merger regime's objective of preventing harmful effects on competition? Please explain your answer.**

Response to question (a):

Yes, we do think that there is scope for simplification of the Irish merger control procedure without impairing the merger regime's objective of preventing harmful effects on competition. Many of the transactions we encounter involve minor overlaps (either vertical or horizontal or both). These cases do not pose any SLC concerns, but are still subject to the requirement for filling out the

Partners					Consultants	Locations
Emmet Scully	Richard Curran	Ciaran Markey	Amy Bradley	Joanne Griffin	Jennifer O'Neill	Dublin
Gerry Halpenny	Aoife Bradley	Clair Cassidy	Andrew Power	Eamon Jones	Edmund Butler	London
Michael Kavanagh	Jennifer Clarke	Susan Batty	Peter Bolger	Patrick Ryan	Seanna Mulrean	Galway
David Williams	Jill Callanan	Trevor Dolan	Ciara O'Kennedy			
Philip Daly	Neil O'Keeffe	Damien Barnaville	Jeanne Kelly			
Marco Hickey	Ruairi Mulrean	Shane Neville	David Brangam			
	Jennifer McGuire	John Campbell	Ian Lavelle			

complete CCPC notification form ("**Form**") (including Section 4 of the Form). Transactions such as these could benefit from a properly-managed simplified procedure.

(b) In your view, what are the potential benefits and risks associated with the introduction of a simplified procedure? Please explain your answer.

Response to question (b)

We agree in general with the CCPC's initial views on the potential benefits and risks associated with the introduction of a simplified procedure. The Consultation Document at paragraph 2.7 states that "the CCPC notes ... that mergers or acquisitions which would qualify for the simplified procedure are not likely to require such extensive analysis as those notified under the standard procedure". Since these transactions would not require such extensive analysis, it would also be helpful if there were shorter periods prescribed for the review of such notifications.

Under the standard merger review process, the CCPC has 30 working days to clear a proposed transaction in Phase 1, which is already higher than the timeline prescribed by the EU Merger Control Regulation No. 139/2004 on the control of concentrations between undertakings ("**EU Merger Control Regulation**"), under which the European Commission has only 25 working days to clear a proposed transaction in Phase 1. Under the simplified merger review procedure at the European level, the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 ("**EU Merger Control Notice**") states that "The Commission will endeavour to issue a short-form decision as soon as practicable following expiry of the 15 working day period during which Member States may request referral of a notified concentration pursuant to Article 9 of the Merger Regulation." As such, under the EU Merger Control Notice, an even shorter timeline is envisaged for the review of notifications under the simplified procedure. At the Irish level, a regime with a prescribed abbreviated timeline would be welcome.

Paragraph 2.9 of the Consultation Document states that "Pre-notification consultations between the CCPC and the notifying parties will assist notifying parties in identifying whether a transaction is an appropriate candidate for assessment under a simplified procedure." While pre-notification consultations can indeed be helpful to identify a candidate for a simplified procedure, a point of concern is where the pre-notification consultation stage becomes more drawn out in an effort to identify and sift through the competition issues. This could in turn result in a substantive competition analysis by the CCPC akin to a standard procedure. As such, unless the process is managed efficiently by the CCPC at the pre-notification stage, the benefits it aims to attain through the adoption of the simplified procedure – i.e., lesser administrative burden, shorter review periods, etc. – risk being frustrated. In such a case, the work involved by the parties and the CCPC would simply be front-loaded rather than being reduced.

A similar concern could be expressed regarding the right of the CCPC to revert to the standard procedure at any point or the issuance of a request for further information ("**RFI**") as set out in paragraph 2.6 of the Consultation Document. If the process is not properly managed, it could give rise to a scenario whereby the CCPC could, at a late stage in the simplified procedure, elect to revert to the standard procedure, and require the parties to submit a fresh notification. Similarly, the benefits of a simplified procedure, particularly in relation to the requirement for the provision of lesser information and completing a more abridged notification form, could be frustrated where the issuance of RFIs becomes more prevalent, or where the RFIs issued become longer and more onerous for the parties, such that a simplified procedure, in essence, evolves into a procedure that is no different to the standard procedure.

2 SIMPLIFIED PROCEDURE CRITERIA

(a) In your opinion, what criteria should be applied to select a merger or acquisition for assessment under a simplified procedure? Please make specific reference to the CCPC's proposed approach, outlined above. Please explain your answer.

Response to question (a):

In general, we commend, and agree with, the CCPC's efforts to align the criteria for simplified procedure with that of the European Commission.

However, please see our comment to question (b) under the heading "Introduction of a simplified procedure" above regarding the right of the CCPC to request more detailed information from the notifying parties by way of an RFI.

(b) What type of screening tools/procedures do you think the CCPC should consider to ensure that the correct transactions are selected for review under a simplified procedure? Please explain your answer.

Response to question (b):

Please see our response to question (a) above.

Please do not hesitate to contact us if you have any queries in relation to the above.

Yours faithfully,

Sent by email and, accordingly, bears no signature.

LK Shields Solicitors