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Date:
21 December 2018

Consultation on a Simplified Merger Procedure for the Review of Certain Mergers & Acquisitions (the
"Consultation")



Dear Mr Gray



welcomes the opportunity to respond to the Consultation and the CCPC's initiative to simplify the Irish merger control regime and to reduce the administrative and financial burden for Notifying Parties.


Our comments are based on our significant experience submitting merger notifications on behalf of our clients to the CCPC and in merger control law and practice in the State. We appreciate that a significant amount of time and resources are required by the CCPC for the standard merger review procedure and a simplified procedure would lessen this burden. In addition, our clients experience significant frustration with the level of information required in transactions where no verifiable possibility of a Substantial Lessening of Competition exists, and yet detailed documentation is required by the CCPC.

Accordingly, please find below our responses to the questions raised in the Consultation.

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 [the Consultation 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.*

Our view is that there is substantial scope for simplification of the Irish merger control procedure without impairing the merger regime's objective. Under the current regime, a significant number of transactions which do not raise competition concerns are undergoing a standard review.



This is illustrated by our experience with certain clients who are required to individually notify multiple acquisitions of single retail premises which result in only marginal incremental increases in market share, even in the narrowest possible markets. Notwithstanding that the forthcoming revised merger thresholds will significantly reduce the number of notifications of single retail premises, the introduction of a simplified procedure in the case of small market shares and / or incremental increases while still protecting consumers would be most welcome.

On the other hand, a mechanism for the CCPC to revert to the standard review procedure is also necessary to capture mergers notified under a simplified procedure where the CCPC discovers information during the course of its review which, in the CCPC's view, would result in a Substantial Lessening of Competition.

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

A simplified procedure involving a shorter notification form would reduce the administrative and financial burden on the Notifying Parties, facilitating commercial transactions. It would also reduce the workload of the CCPC and speed up the CCPC's average review timeline, which would be welcome given the commercial timing imperatives that drive corporate transactions and decision-making.

However, any proposal (for example) to frontload pre-notification discussions as part of a simplified procedure could result in a protracted timeline and ultimately frustrate one of the intended objectives of speeding up review timelines. Additionally, a mechanism to move from a simplified to a standard procedure could also lead to a longer process than if a standard notification had originally been made. However due to the presence of similar simplified procedures in other jurisdictions, we consider that this risk is minimal.

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 [...]. Please explain your answer.*

We would recommend that the Irish regime adopts a similar approach to the simplified procedure used under the EU merger control regime. As the CCPC is aware, the following guidelines are used by DG COMP and we suggest that they be the key selection criteria for the CCPC:

- (i) The merging parties do not operate in the same upstream or downstream market(s).
- (ii) The merging parties operate in the same market(s), but their market shares do not reach specified thresholds. In this regard, we agree with the CCPC's proposed thresholds of a combined 15% for merging parties active in the same market, and 25% each in the case of merging parties active in markets upstream or downstream of one another.

(b) *What type of screening tools/procedures do you think the CCPC should consider to ensure that the correct transactions are selected?*

Parties to a merger could be required to self-assess whether their Proposed Transaction should be notified under a simplified procedure based on market shares and additional guidelines provided by the CCPC. Parties would outline the basis for their views in an up-front communication outlining the position being taken to the CCPC and this could be submitted to the CCPC with the short form notification.

