

Simplified Merger Notification Procedure Guidelines

Draft for Consultation

**The Competition and Consumer
Protection Commission**

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Coimisiún um
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1. Introduction

- 1.1 These guidelines set out the Competition and Consumer Protection Commission's ("CCPC's") simplified procedure for certain notifiable¹ mergers or acquisitions that clearly do not raise competition concerns in Ireland ("Simplified Merger Notification Procedure") (the "Guidelines"). The CCPC will review the Guidelines periodically.
- 1.2 The CCPC considers that the introduction of a Simplified Merger Notification Procedure in Ireland will reduce the time and resources needed to review applicable notifiable transactions. This will have a positive impact on businesses, as review periods for mergers or acquisitions which do not raise significant competition concerns will be shorter and the Irish merger control regime will be less burdensome for notifying parties.
- 1.3 The Guidelines provide a detailed overview of the conditions that must be satisfied for a merger or acquisition to fall within the scope of the Simplified Merger Notification Procedure. Simplified Merger Notification Procedure mergers or acquisitions will be notified on a shortened version of the Merger Notification Form² ("Short-Form Notification")³, subject to the CCPC deciding that the merger or acquisition can be appropriately dealt with through the Simplified Merger Notification Procedure. Following receipt of a Short-Form Notification, the CCPC will endeavour to make a determination as soon as practically possible following the expiration of the third party submission deadline.⁴
- 1.4 Notwithstanding its initial acceptance that a merger or acquisition can be appropriately dealt with through the Simplified Merger Notification Procedure, the CCPC may at any point revert to a standard procedure for merger

¹ Notifiable mergers and acquisitions are those which satisfy the conditions set out in section 18(1)(a) or section 18(1)(b) of the Competition Act 2002, as amended (the "Act").

² See [CCPC Merger Notification Form](#).

³ See paragraph 3.3 for details.

⁴ Third party submissions to the CCPC must be made within 10 working days of the publication of the CCPC's notice of a notification (see the CCPC's [Mergers and Acquisitions Procedures](#), para 2.5(v)). The CCPC may, however, change this deadline for third party submissions by notice on its website in individual cases, if circumstances so require.

notifications⁵ (“Standard Merger Notification Procedure”). This may occur, for example, if new information comes to light which suggests that the Simplified Merger Notification Procedure would be inappropriate (see paragraphs 2.8-2.15 below for further details).

- 1.5 The Guidelines are intended to be accessible to specialists and non-specialists alike so wherever possible everyday language is used.

⁵ See [CCPC Mergers and Acquisitions Procedures](#).

2. Mergers or Acquisitions Subject to Simplified Merger Notification Procedure

Simplified Merger Notification Procedure Criteria

2.1 Apart from the examples described in paragraphs 2.8-2.15 below, the CCPC will, in principle, apply the Simplified Merger Notification Procedure in each of the following circumstances⁶:

- (a) none of the undertakings involved ⁷in the merger or acquisition are active or potentially active in the same product or geographic markets, or in any product market(s) which is upstream or downstream to a product market(s) in which another undertaking involved is active or potentially active;
- (b) two or more of the undertakings 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 undertakings involved in the merger or acquisition are active in any product market(s) which is upstream or downstream to a product market(s) in which another undertaking involved is active, but the market share of each of the undertakings involved in each market is less than 25%; or,
- (c) an undertaking involved, which already has joint control over a company, is to acquire sole control over that company (see paragraph 2.12 for details).

⁶ These criteria apply separately rather than cumulatively. Fulfilling any of the criteria outlined in 2.1 (a), 2.1(b) or 2.1(c) will in principle qualify a notifiable merger or acquisition for review under the Simplified Merger Notification Procedure.

⁷See Article 2 of the CCPC [Notice in Respect of Certain Terms Used in Part 3](#).

2.2 However, as set out below in paragraphs 2.8-2.15, there are certain situations where mergers or acquisitions which, notwithstanding that they fulfil the criteria in paragraph 2.1, may require the more detailed approach that the Standard Merger Notification Procedure entails.

Safeguards and Exclusions

2.3 In appropriate cases, the CCPC may revert to the Standard Merger Notification Procedure, at any point – specifically, by:

(a) Invoking the provisions of section 18(12) of the Act, i.e., by declaring the notification submitted under the Simplified Merger Notification Procedure to be invalid in accordance with section 18(12) of the Act and thereby requiring the undertakings involved to submit a fresh notification using the Standard Merger Notification Procedure⁸; or,

(b) Issuing a requirement for further information under section 20(2) of the Act requiring the undertakings involved to submit more detailed information in relation to the merger or acquisition⁹.

2.4 The CCPC will decide, based on the facts of the specific case, whether either 2.3 (a) or 2.3 (b) would be the most appropriate way in which to revert to a Standard Merger Notification Procedure.

2.5 To estimate the market shares specified in 2.1 (b), the undertakings involved will be required to identify all potential product and geographic markets which are likely to be impacted by the merger or acquisition. This is consistent with the approach in the Standard Merger Notification Procedure. In this regard, undertakings involved are strongly encouraged to engage with the CCPC in pre-notification discussions to explore all potential relevant market(s). In situations where it is difficult to identify the relevant market(s) during pre-notification

⁸ By requiring the undertakings involved to submit a new notification, the CCPC's review period under section 21(2) of the Act starts only when the new notification, duly completed on the Merger Notification Form, has been submitted to the CCPC.

⁹ By requiring the undertakings involved to submit further information pursuant to section 20(2) of the Act, the CCPC's review period under section 21(2) of the Act is reset and begins only when the required information is received by the CCPC.

discussions, the CCPC is unlikely to apply the Simplified Merger Notification Procedure.

2.6 While mergers or acquisitions which meet the criteria set out in 2.1 (a), (b), or (c) are unlikely to raise competition concerns, as noted above, there are situations when such mergers or acquisitions may require the more detailed approach that the Standard Merger Notification Procedure entails.

2.7 Outlined below are indicative examples of the types of cases where a merger or acquisition which would, in principle, qualify for assessment under the Simplified Merger Notification Procedure, could nonetheless be reviewed under the Standard Merger Notification Procedure.

Concentrated Markets

2.8 Mergers or acquisitions which take place in markets which are already concentrated may raise competition concerns. Market share thresholds may be less indicative of the intensity of competition in the relevant markets.¹⁰ Consequently, the CCPC is unlikely to apply the Simplified Merger Notification Procedure in such cases, except where the criteria outlined in par 2.1(a) is met.

Maverick Firms

2.9 So-called maverick firms compete more vigorously (e.g., in terms of price, quality, innovation, etc.) relative to other firms.¹¹ Maverick firms can provide an important competitive constraint on other firms in the market even if their market share is not significant. The CCPC is unlikely to apply the Simplified Merger Notification Procedure to mergers or acquisitions that involve maverick firm(s).

Pipeline Products

2.10 Mergers or acquisitions which involve firms that have potentially important pipeline products¹² will require detailed analysis. This may be particularly relevant in digital and pharmaceutical sectors. In these markets new and

¹⁰ For more details on concentrated markets, see section 3 of [CCPC's Guidelines for Merger Analysis](#).

¹¹ For more details on maverick firms, see paragraph 4.22 of [CCPC's Guidelines for Merger Analysis](#).

¹² Products includes both goods and services.

innovative firms with important pipeline products are often acquired before they have time to establish a significant market position. An assessment of the relevant counterfactual¹³ will be particularly important for these mergers or acquisitions. The CCPC is unlikely to apply the Simplified Merger Notification Procedure to mergers or acquisitions where one or more of the undertakings involved have important pipeline products.

Neighbouring Markets

2.11 Mergers or acquisitions which concern the combination of firms active in related or neighbouring markets¹⁴ may increase market power by combining technological, financial, or other resources of the undertakings involved. In these situations, the CCPC is unlikely to apply the Simplified Merger Notification Procedure where:¹⁵

- (a) one or more of the undertakings involved holds a market share of 20% or more in any product market(s); and,
- (b) there is potential for the merged entity to leverage its position in the market referred to in (a) above into a neighbouring market where another undertaking involved is active.

Joint to Sole Control

2.12 For mergers or acquisitions which involve a change from joint to sole control the CCPC may revert to the Standard Merger Notification Procedure where:

- (a) pre-merger, the controlling shareholders of the joint venture imposed a constraint on one another and consequently on the conduct of the jointly controlled undertaking which was in, or was soon to be in, competition with the acquiring shareholder. For example, if undertaking A and undertaking B jointly control a joint venture C, which is a direct competitor of A, and A acquires sole control of C, this could raise competition

¹³ For more details on the counterfactual, see section 1 of [CCPC's Guidelines for Merger Analysis](#).

¹⁴ See footnote 19 of the [European Commission Notice on a Simplified Merger Notification Procedure for treatment of certain concentrations under Council Regulation \(EC\) No139/2004](#). Product markets are closely related neighbouring markets when the products are complementary to each other or when they belong to a range of products that are generally purchased by the same set of consumers for the same end use.

¹⁵ These criteria apply cumulatively.

concerns. This could be particularly the case if C and A hold a substantial combined market share, and in circumstances where the acquisition would remove some of the independence of C which resulted from the joint control of the exiting undertaking B; or

(b) Where neither the CCPC nor the European Commission had approved the initial acquisition of joint control of the joint venture by the undertakings involved.

Difficult to determine market shares of undertakings involved

2.13 The CCPC will in general apply the Standard Merger Notification Procedure where it is difficult to determine the market shares of the undertakings involved except in cases where the merger or acquisition meets the criteria outlined in par 2.1(a).

Third party submission

2.14 Where a third party submission(s) is/are received by the CCPC, and competition concerns are raised, the Simplified Merger Notification Procedure will not be applied. The CCPC will revert to the Standard Merger Notification Procedure to fully assess the third party submission(s).

New or novel markets or legal issues

2.15 The CCPC is unlikely to apply the Simplified Merger Notification Procedure to mergers or acquisitions which take place in new or novel markets. The Simplified Merger Notification Procedure will also not be applied to mergers or acquisitions which raise new or novel legal issues.

3. Procedural Provisions

Pre-Notification Discussions

3.1 Pre-notification discussions can be beneficial for undertakings involved in clarifying how much information should be included in the Merger Notification Form, and can lead to a reduction in phase one review times. The CCPC currently facilitates pre-notification discussions for all mergers or acquisitions.¹⁶ However, the CCPC considers that pre-notification discussions could be particularly beneficial where parties intend on notifying under the Simplified Merger Notification Procedure. Important issues such as market definition could be discussed at the pre-notification discussions (as outlined in paragraph 2.5), including whether the merger or acquisition seems appropriate for review under the Simplified Merger Notification Procedure. Comments made by the CCPC at this stage will not be binding as the CCPC would not have complete information to hand.

3.2 Pre-notification discussions may be less useful for mergers or acquisitions which meet the criteria outlined in par 2.1 (a), i.e., where there is no overlap at all in the activities of undertakings involved. However, undertakings involved should be mindful as outlined in paragraph 2.5 above, if the market definition is unclear, and the merger or acquisition has the potential to give rise to an overlap in the activities of the undertakings involved, then the CCPC is likely to proceed on the basis of the Standard Merger Notification Procedure.

Notification & Publication

3.3 Simplified Merger Notification Procedure mergers or acquisitions are to be notified on the Merger Notification Form,¹⁷ however, undertakings involved are not required to answer questions 4.5-4.10, and question 7.3.

¹⁶ See [CCPC Mergers Pre-Notification Discussions](#).

¹⁷ See [CCPC Merger Notification Form](#).

3.4 In the ordinary course, the CCPC will publish a notice, which contains the following, within 7 days of the receipt of notification (accompanied by the prescribed fee):

- (a) The name(s) of the undertakings involved which are stated to be parties to the merger or acquisition;
- (b) The reference number of the transaction;
- (c) The name and contact details of the case officer assigned to the transaction;
- (d) The business activities of the undertakings involved in the merger or acquisition;
- (e) Notice to third parties wishing to make submissions about the merger or acquisition that they must do so within 10 working days of publication of the notice; and,
- (f) An initial indication that the merger or acquisition is suitable for review under the Simplified Merger Notification Procedure. The CCPC may change this at any time during the phase one review and revert to the Standard Merger Notification Procedure.

Determination Process under Simplified Merger Notification Procedure

3.5 If a merger or acquisition has the potential to lead to a substantial lessening of competition then it will be reviewed under the Standard Merger Notification Procedure.¹⁸

3.6 Following receipt of a notification form under the Simplified Merger Notification Procedure, the CCPC will decide and inform the undertakings involved, as soon as practically possible following the expiration of the third party submission deadline, whether it is appropriate to apply the Simplified Merger Notification Procedure or to revert to the Standard Merger Notification Procedure. Where the CCPC has decided to proceed under the Simplified Merger Notification Procedure, it will endeavour to make a determination

¹⁸ For more details on reverting to the Standard Merger Notification Procedure, please see paragraph 2.3 above.

pursuant to section 21(2) of the Act as soon as practically possible following the expiration of the third party submission deadline.¹⁹

- 3.7 The determination will contain a summary of the merger or acquisition, a description of the undertakings involved, the economic sectors concerned, and a statement that the merger or acquisition was reviewed under the Simplified Merger Notification Procedure and will not in the CCPC's opinion lead to a substantial lessening of competition in any markets for goods or services in the State.
- 3.8 Given that a determination made following a review pursuant to the Simplified Merger Notification Procedure will be shorter in nature than a determination made following the Standard Merger Notification Procedure, it is envisaged that there will be less need for redaction requests from undertakings involved.

¹⁹ Notwithstanding that the CCPC will endeavour to make a determination pursuant to section 21(2) of the Act as soon as practically possible following the expiration of the 10 working days third party submission deadline, the statutory deadline within which the CCPC must make such a determination remains 30 working days from the appropriate date (as defined in section 19(6) of the Act).



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