CCPC Mergers & Acquisitions Report 2019

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

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Introduction

2019 saw significant changes within the merger regime in Ireland. Following on from the most active year on record in 2018 for the Competition and Consumer Protection Commission (CCPC), the implementation of the new higher merger financial thresholds in 2019 resulted in a significant reduction in the number of mergers notified. The year also saw a number of complex merger investigations including the CCPC hosting its first oral submissions on a merger notification (M/18/063) in over 10 years. The CCPC has also begun the detailed implementation phase on introducing a new simplified merger procedure (SMP) to deliver an improved merger process for Irish consumers and businesses.

The total number of notified mergers in 2019 was 47, representing a 52% reduction from the 2018 level. This reflected the impact of the new financial thresholds for the mandatory notification of a transaction to the CCPC. These changes were made by the Department of Business, Enterprise and Innovation after a period of consultation. The reduced number of notifications reflect the goal of removing transactions which are unlikely to raise competition concerns from mandatory notification. This reduces the regulatory burden on Irish businesses and allows the CCPC to focus resources on transactions which are more likely to raise competition issues. The level of reduction in transactions is in line with that anticipated at the time of the changes to the financial thresholds.

One key element of a merger regime is the need to ensure efficiency. It is important that businesses have the confidence that notifications will be dealt with in a timely manner, in particular where no significant competition issues arise. We are pleased to record that in 2019 non-extended Phase 1 investigations were completed in an average length of 24.7 working days, in line with 2018 timelines.

Furthermore, we have now announced our intention to introduce a simplified merger procedure (SMP) and have completed our consultation on the detailed implementation. We plan to roll out the SMP regime by the end of Q1 2020 and expect that this change will deliver further efficiency benefits for businesses through a reduced notification burden and speedier decision timelines.

There were nine extended Phase 1 investigations in 2019, two of which required a Phase 2 investigation. The Phase 2 process included an Oral Submission during the year. This process is incorporated into the merger legislation and allows the notifying parties to make submissions to the CCPC in person. It reflects the complex nature of some of the transactions which are notified to the CCPC. The outcome of our work on more complex mergers included four mergers cleared with commitments in 2019. This allows the transactions to proceed once actions to address competition concerns are taken and follows significant scrutiny from the CCPC. The type of commitments required range from divestments to restrictions on information sharing and underline that the decisions are made dependent on the individual circumstances of each case.

Compliance with the merger regime is an important aspect of the work of the CCPC. It ensures consumers are protected from mergers that have considerable potential to harm the market and consumers. As part of this role the CCPC welcomes the first prosecution and guilty pleas for gun jumping conduct in Ireland. This followed an extensive investigation by the CCPC which resulted in the file being passed to the Director of Public Prosecutions.

The CCPC continued to engage with our European colleagues on developments within the European merger regime. These discussions have focused on dealing with mergers in the fast moving digital sector and what additional tools and powers could be useful to address these issues. In addition there have been a number of proposals made for changes to deal with European mergers in the context of international competition. The CCPC will continue to work at a European level and will review any changes to the merger regime which may be proposed by the new European Commission to ensure the merger review regime continues to deliver a competitive market where consumers are protected from outcomes that could lead to higher prices or lower quality goods and services.

As well as the roll out of the SMP regime we will continue to review and update our procedures. We have engaged with the OECD on Procedures for Access to the File in merger cases and plan to update our procedures in 2020.

We have worked closely with DBEI in 2019 to ensure we are prepared for the potential increase in complex mergers which Brexit may bring and we will continue to monitor developments and make preparations as the impact from Brexit becomes clearer.

Finally I would like to thank all the CCPC staff and the co-operation of businesses and their legal representatives for contributing to this successful year.

1. 2019 Merger Notifications & Determinations

Notifications

1.1 On 1 January 2019, new financial thresholds for the mandatory notification of proposed mergers or acquisitions to the CCPC came into effect. The new thresholds are as follows: (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[1].

1.2 Analysis by the CCPC prior to to the introduction of the new financial thresholds estimated that the new thresholds, all things being equal, would reduce the number of notifiable mergers to between 40 to 50 notifications. Table 1 below presents the number of non media merger notifications received for the year 2015 to 2018 and also the number if the new thresholds applied.

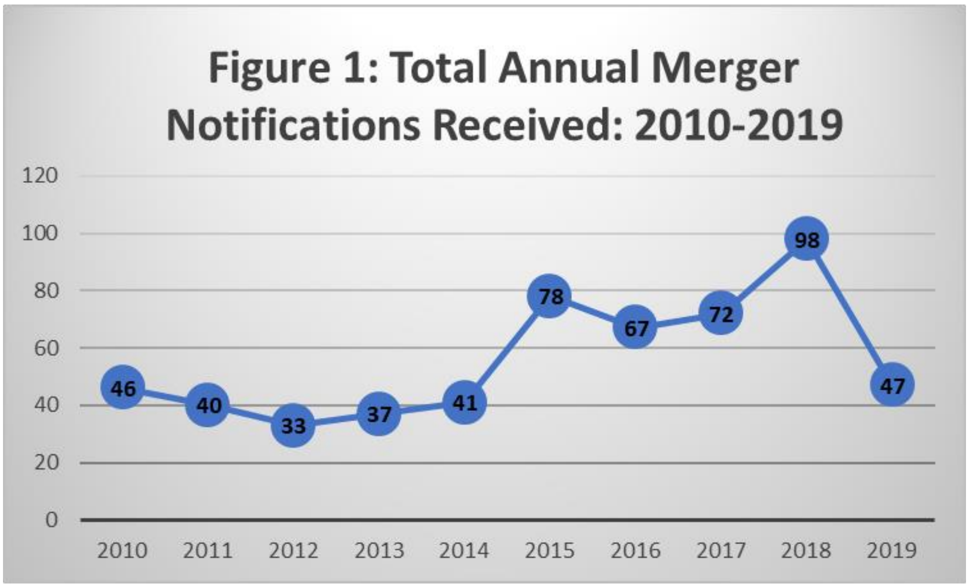
Table 1: Actual number of non-media merger notifications and number if new Thresholds applied for years 2015-2018

Year	2015	2016	2017	2018
Number of Non Media Mergers[2]	71	62	68	95
Number if New Thresholds applied	43	39	40	50

1.3 For the 2019 calendar year, the CCPC received 47 merger notifications. This represents a decrease of approximately 52% on the number of mergers notified

[1] Previous Financial Thresholds to 31 December 2018 were (i) the aggregate turnover in the State of the undertakings involved is not less than €50 million and (ii) the turnover in the State of each of two or more of the undertakings involved is not less than €3 million.
[2] Financial thresholds do not apply to media mergers.

in 2018, which, as discussed above, would be in the expected range following the change in financial thresholds introduced on 1 January 2019. Figure 1 presents the trend in the number of merger notifications to the CCPC and formerly, the Competition Authority, for the years 2010 through to 2019.

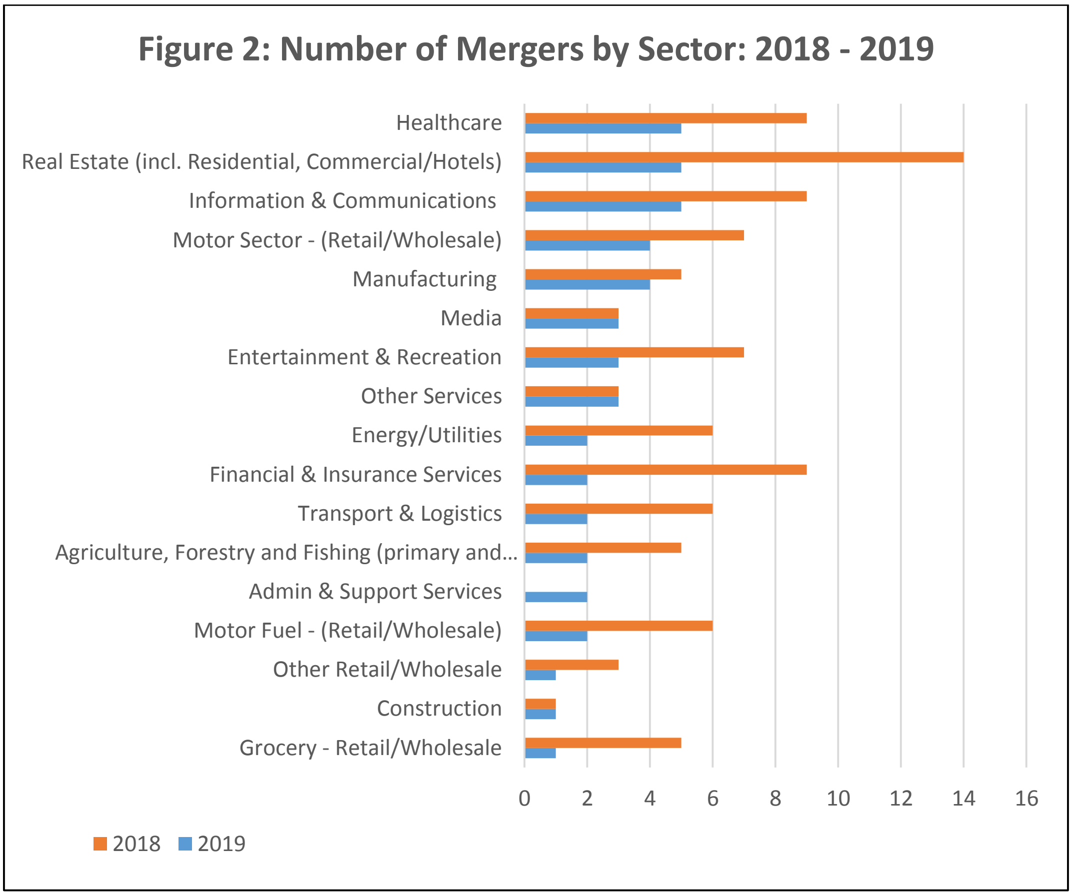


Sectoral Breakdown of Notified Mergers

1.4 The sectoral[3] breakdown of mergers received in 2018 and 2019 are presented in Figure 2 below. In 2019, healthcare, real estate and information & communications were the most prominent sectors with the motor sector and manufacturing also prominent. In 2018, the most prominent sector was real estate followed by information & communications, healthcare and financial & insurance services.

1.5 The CCPC notes that the change in financial thresholds have had positive impact by reducing notifications in sectors such as Motor Fuel – (Retail/Wholesale) and Grocery – (Retail/Wholesale) which previously involved relatively smaller sized transactions which raised no competition concerns.

[3] Sector description adapted from the CSO based on NACE classifications



Determinations

1.6 During the course of 2019, the CCPC issued 49 Determinations. 36 of the determinations were issued in respect of proposed transactions notified during 2019 and the remaining 13 were in respect of proposed transactions notified towards the end of 2018 which were carried over to 2019.

1.7 In 2019, nine investigations involved an extended Phase 1 review, six of which were carried forward from 2018. Determinations have been made in respect of all investigations carried over from 2018. Of the nine investigations, Phase 1 determinations were made in respect of five; two of the extended Phase 1 reviews required a Phase 2 investigation; and the remaining two extended phase 1 investigations are still under consideration at the end of 2019. Table 2 below presents a list of the mergers which required an extended Phase 1 investigation.

Table 2: - Extended Phase 1 and Phase 2 Investigations

M/18/053 – Pandagreen/Knockharley Landfill and Natureford
M/18/063 – Berendsen (Elis)/Kings Laundry (Phase 2 determination)
M/18/067 – LN Gaiety/MCD Productions (Phase 2 determination)
M/18/075 – Irving/Tedcastles
M/18/082 – Goldreed Holdings/Greene Farm
M/18/089 – Lakeland/LacPatrick
M/19/010 – Formpress Publishing (Iconic)/assets of Midland Tribune
***M/19/032 – BoyleSports/GT Retail (Bruce Betting)**
***M/19/034 – CVC Funds/Celtic Rugby DAC**

*Ongoing investigations carried over to 2020

1.8 In 2019, formal commitments to alleviate competition concerns were required and obtained from notifying parties in respect of four cases presented in Table 3 below. The types of commitments obtained from the parties range from requirements to divest significant business facilities/contracts to restrictions on access to confidential information amongst parties. More detail is provided in section two.

Table 3: - Mergers Cleared with Commitments - 2019

M/18/053 – Pandagreen/Knockharley Landfill and Natureford
M/18/063 – Berendsen (Elis)/Kings Laundry (Phase 2 determination)
M/18/067 – LN Gaiety/MCD Productions (Phase 2 determination)
M/19/010 – Formpress Publishing (Iconic)/assets of Midland Tribune

Timeframes

1.9 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.

1.10 Between 1 January 2019 and 31 December 2019, the CCPC took an average of 24.7

working days to issue a Phase 1 decision which is similar with the figure for 2018.[4] The timelines in individual cases that did not raise serious concerns varied from 11 to 29 working days depending, for example, on the complexity of the structure of the transaction and the nature of the competition issues involved.

1.11 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.

[4] This excludes those merger reviews which required an extended Phase 1 Investigation.

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

M/18/053 – Pandagreen/Knockharley Landfill and Natureford

2.1 On 9 July 2018, the CCPC received a notification of a proposed transaction whereby, (i) Sretaw 2 Limited ("Sretaw 2"), through its wholly owned subsidiary Pandagreen, would acquire the entire issued share capital of Knockharley Landfill Limited, and (ii) subject to the completion of that transaction, Sretaw Unlimited Company ("Sretaw"), through its wholly owned subsidiary ST Cloud would acquire the entire issued share capital of Natureford Limited.

2.2 Following an extended preliminary (Phase 1) investigation, which included Requirements for Information from the parties and engagement with a number of third parties, including waste collectors and processors, downstream disposal and recovery outlets, regulatory bodies, and commercial collection customers, the CCPC on 6 February 2019, cleared the proposed transaction with binding commitments.

2.3 In the course of the investigation, the CCPC identified competition concerns arising from the proposed transaction, specifically in relation to competitors' access to the Knockharley and Ballynagran landfills. The restriction or elimination of access to these landfills had the potential to reduce Panda's competitors' ability to operate or compete. To address these concerns, the parties submitted proposals to the CCPC. These included commitments that capacity at the Knockharley Landfill would be made available for both disposal and recovery uses by third party operators, and that a cap would apply to Panda's use of the existing capacity at the Ballynagran Landfill site.

2.4 Following the detailed assessment, CCPC formed the view that the proposals obtained from the parties, 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/18/063 – Berendsen (Elis)/Kings Laundry (Phase 2 determination)

2.5 On 7 August 2018, the CCPC received a notification of a proposed transaction whereby Berendsen Ireland Limited ("Berendsen") would acquire sole control of Kings Laundry Limited ("Kings Laundry"). Berendsen is ultimately controlled by Elis S.A.

2.6 Following an extensive full (Phase 2) investigation, which included Requirements for Information from the parties, written and oral submissions from the parties, engagement with a number of third parties, including customers, competitiors and hotels and hospitals which operate their own on-premise laundries, the CCPC on 8 July 2019, cleared the proposed transaction with binding commitments.

2.7 During the course of the investigation, the CCPC identified competition concerns arising from the proposed transaction, specifically in relation to the likely impact on prices and quality of services due to the reduction in the number of suppliers available to current and future customers in the healthcare market. To address these concerns, the CCPC required proposals from Berendsen which included that a set of contracts with healthcare customers that were serviced by Berendsen prior to the proposed transaction would be sold to another supplier, approved by the CCPC, to ensure sufficient competition remains in the healthcare market. Berendsen has committed not to implement the proposed transaction until after they have sold the contracts.

2.8 Following detailed consideration and analysis, including market testing, the CCPC formed the view that the proposals obtained from Berendsen, 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/18/067 – LN Gaiety/MCD Productions (Phase 2 determination)

2.9 On 14 August 2018, the CCPC received a notification of a proposed transaction whereby, LN-Gaiety Holdings Limited via LN-Gaiety Holdings Ireland

Limited (collectively "LN-Gaiety") would acquire sole control of MCD Productions Unlimited Company ("MCD").

2.10 The CCPC, on 5 July 2019, following a full (Phase 2) investigation, which included Requirements for Information from the parties, engagement with a number of third parties, including customers and competitiors cleared the proposed transaction subject to binding commitments.

2.11 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. The CCPC identified a number of potential competition concerns arising from the overlapping activities of Live Nation and MCD in the provision of primary ticketing services, the promotion of live events and the operation of live event venues in the State. These concerns included the likely impact on competition of future acquisitions of festivals or festival operators, the potential for anti-competitive information sharing, and the potential for retaliatory action against independent live event venues because they choose an alternative ticketing services provider. To address these concerns, the parties submitted proposals to the CCPC which included the following

- To inform the CCPC in advance of any proposal to acquire control of a live music festival or a live music festival operator in the State, even if the proposed transaction would not meet the thresholds to be notifiable on a mandatory basis to the CCPC.
- To take steps to ensure that the identity of artists that independent promoters propose to promote in the State, which is disclosed to a venue owned, operated or managed by Live Nation during the booking process for a live event is not directly or indirectly shared between Live Nation and MCD.
- Not to refuse or threaten to refuse to provide live events to an independent live event venue as a result of that venue choosing to contract with a primary ticketing services provider other than Ticketmaster.
- To conduct any contract or other negotiations relating to the supply of primary ticketing services by Ticketmaster to MCD on an "arm's length" basis. This means MCD and Ticketmaster must each act independently and in its own interest.

2.12 Following detailed consideration and analysis the CCPC formed the view that the proposals obtained from the parties, 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/19/010 – Formpress Publishing (Iconic)/assets of Midland Tribune

2.13 On 9 May 2019, the CCPC received a notification of a proposed transaction whereby, Mediaforce (Holdings) Limited ("Mediaforce") through Formpress Publishing Limited ("Formpress") would acquire certain business assets of Midland Tribune Limited ("Midland Tribune") from Alpha Publications Limited. Given that each of Formpress and Midland Tribune 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.

2.14 Following an extended preliminary (Phase 1) investigation, which included Requirements for Information from the parties and engagement with a number of third parties, including customers and competitors, the CCPC on 9 October 2019, cleared the proposed transaction with binding commitments.

2.15 In the course of the investigation, the CCPC identified competition concerns arising from the proposed transaction, specifically due to the fact that Mediaforce, which owns Formpress, also owns Mediaforce Ireland Limited (Mediaforce Ireland) which acts as a conduit for the channelling of national advertising to local and regional newspapers in the State. In particular, the CCPC identified potential competition concerns that:

- Mediaforce Ireland could potentially discriminate in favour of its own group of newspapers and digital titles by channelling national advertiser's budgets allocated to local and regional newspapers and digital newspaper titles to its own group titles, to the detriment of competing titles; and
- Post transaction, should there be any overlap in management, employees or roles/functions between Mediaforce Ireland and Formpress, there would be the potential for the exchange of commercially sensitive information about competitor newspapers and digital newspaper titles.

2.16 To address these concerns, the Formpress and Mediaforce submitted proposals to the CCPC. These included non-discrimination commitments and separation of management and non-disclosure of information commitments. Following detailed assessment, CCPC formed the view that the proposals obtained from the parties, 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.

3. Media & International Mergers

Media Mergers[5]

3.1 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.[6]

3.2 In 2019, the CCPC reviewed four media mergers as presented in Table 4 below; three were received in 2019 and one carried over from 2018.

Table 4: - Media mergers reviewed - 2019

M/18/092 - FormPress Publishing (Iconic)/assets of River Media

M/19/009 - Mediahuis/IN&M

M/19/010 - FormPress Publishing (Iconic)/assets of Midland Tribune

***M/19/040 - DMG/JPIMedia**

* Ongoing investigations carried over to 2020

3.3 In 2019, the CCPC issued three media merger determinations, one of which involved an extended Phase 1 investigations, M/19/010 - FormPress Publishing (Iconic)/assets of Midland Tribune and was cleared subject to formal commitments.

International Mergers

3.4 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

[5] 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.

[6] 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.

advisory committees. Over the period 1 January 2019 to 31 December 2019, the CCPC closely followed the European Commission's investigations into a number of proposed mergers including the following:

- M.8179 Canon / Toshiba Medical Systems Corporation
- M.8677 Siemens / Alstom
- M.8713 Tata Steel / Thyssenkrupp/JV
- M.8864 Vodafone / Certain Liberty Global Assets
- M.8870 E.ON / Innogy
- M.8900 Wieland / Aurubis Rolled Products / Schwermetall
- M.9547 Johnson & Johnson / Tachosil
- M.9097 Boeing / Embraer.

4. Merger Review Policy Developments - 2019

Simplified Merger Procedure

4.1 In October 2019, the CCPC issued a public consultation seeking views on Simplified Merger Notification Procedure Guidelines which set out the CCPC's simplified merger notification procedure for certain notifiable mergers or acquisitions that clearly do not raise competition concern in the State (the "Draft Guidelines").

4.2 The CCPC considers that the introduction of a simplified merger notification procedure in the State could significantly reduce the time and resources needed to review certain mandatorily notified transactions. A simplified merger notification procedure is part of the CCPC's overall strategy to make merger control in the State more effects based and focused on outcomes. 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.

4.3 The Draft Guidelines provide a detailed overview of the conditions that must be satisfied for mergers or acquisitions to fall within the scope of the simplified merger notification procedure. The CCPC will, in principle, apply the simplified merger notification procedure in each of the following circumstances[7]:

(a) none of the undertakings involved[8] in 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

[7] These criteria apply separately rather than cumulatively. Fulfilling any of the criteria outlined in 4.3 (a), 4.3 (b) or 4.3 (c) will in principle qualify a notifiable merger or acquisition for review under the simplified merger notification procedure.
[8] See Article 2 of the CCPC Notice in Respect of Certain Terms Used in Part 3.

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.

4.4 The Draft Guidelines also describe certain situations where mergers or acquisitions which, notwithstanding that they fulfil the above criteria, may not be examined under the simplified merger notification procedure and the most appropriate way in which to revert mergers or acquisitions notified under simplified merger notification procedure to the standard merger notification procedure.

4.5 The CCPC's consultation has now closed. The CCPC is currently reviewing the submissions received. The CCPC will publish its guidelines on simplified merger notification procedure and implement this new regime in 2020.

CCPC

Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí

Competition and Consumer Protection Commission