



# Mergers and Acquisitions Procedures

Procedures for the Review of Mergers and  
Acquisitions under the Competition Act  
2002, as amended

1 August 2023



Coimisiún um  
Iomaíocht agus  
Cosaint Tomhaltóirí

Competition and  
Consumer Protection  
Commission

## Contents

---

<b>Preface.....</b>	<b>4</b>
<b>1. Notifying the Competition and Consumer Protection Commission .....</b>	<b>5</b>
Statutory background.....	5
Mandatory notification of Above Threshold Mergers .....	6
Voluntary Notifications of Below Threshold Mergers.....	6
Voluntary Notifications prior to implementation.....	6
Voluntary Notifications after implementation .....	6
Call-in Notifications of Below Threshold Mergers.....	7
Simplified Merger Notification Procedure .....	8
Receipt of the Merger Notification Form .....	8
Submission of Merger Notification Form .....	8
Payment of fee.....	9
Consequences of an invalid notification.....	9
Interim measures .....	10
Interaction between Part 3 and Sections 4 and 5 of the Act .....	11
<b>2. Phase One.....</b>	<b>12</b>
Preliminary assessment of notification .....	12
Publication of receipt of notification.....	13
Submissions.....	14
Requirement to provide further information.....	15
Proposals .....	16
Determination that the merger or acquisition may be put into effect .....	17
Special provision regarding media mergers .....	17
<b>3. Phase Two .....</b>	<b>19</b>
Determination to carry out a full investigation.....	19
Publication of the determination to carry out a full investigation.....	19
To the notifying undertakings.....	19
To third parties who have made submissions .....	19
To the general public .....	19
Submissions .....	20
RFIs in Phase Two .....	20

Issuing of an Assessment.....	21
Access to file.....	22
Response to the Assessment.....	22
Consequence of failure to respond .....	22
Oral Submissions .....	23
Discussions and Proposals.....	23
Determination without issuing of an Assessment.....	24
<b>4. Final Determinations.....</b>	<b>25</b>
Phase Two determination .....	25
Contents of Commission’s written determination.....	26
Publication of the Commission’s determination.....	26
Special provision regarding media mergers.....	26

## PREFACE

---

This document outlines the procedures for dealing with mergers and acquisitions notified to the Competition and Consumer Protection Commission (“Commission”) under Part 3 of the Competition Act 2002, as amended (the “Act”).

It replaces the previous Commission Procedures for the Review of Mergers and Acquisitions of December 2021. The Commission has published this revised version in order to take account of the amendments made to Part 3 of the 2002 Act by the Competition (Amendment) Act 2022 (the “2022 Act”) and to build on the Commission’s recent experience.

This document reflects the views and practice of the Commission at the time of publication and applies to all mergers notified to the Commission under sections 18(1), 18(3), 18(3A), 18(12A) or 18A of the Act. While the Commission will apply this guidance in handling mergers under the Act, it is not possible to provide for every case and the Commission may depart from these procedures where there is an appropriate and reasonable justification for doing so.

## 1. NOTIFYING THE COMPETITION AND CONSUMER PROTECTION COMMISSION

---

### Statutory background

1.1 The merger control regime under Part 3 of the Act requires and/or entitles undertakings involved in “*mergers or acquisitions*”<sup>1</sup> within the meaning of the Act<sup>2</sup> to notify such mergers to the Commission. This includes:

- (a) Mergers where the undertakings involved meet or exceed the turnover thresholds set out in section 18(1)(a) of the Act or which fall within a specified class of merger (currently only Media Mergers as defined below).<sup>3</sup> For ease of reference, such mergers are referred to in these procedures as “Above Threshold Mergers”;
- (b) Mergers which do not constitute Above Threshold Mergers (“Below Threshold Mergers”) which are notified to the Commission on a voluntary basis by at least one of the undertakings involved in the merger (either before the merger is put into effect<sup>4</sup> or after it has been put into effect<sup>5</sup> as the case may be) (each a “Voluntary Notification”); and
- (c) Mergers which are Below Threshold Mergers where none of the undertakings involved have made a Voluntary Notification and in respect

---

<sup>1</sup> In these procedures, mergers and acquisitions are referred to collectively as “mergers”.

<sup>2</sup> “*Mergers and acquisitions*” are defined in section 16(1) of the Act.

<sup>3</sup> See section 18(1)(b) of the Act, which refers to mergers falling within “*a class of merger or acquisition specified in an order under subsection (5)*” of section 18 of the Act. As of the date of these procedures, Statutory Instrument No. 122 of 2007 is the only order which has been made by the Minister specifying a class of merger or acquisition for the purposes of section 18(1)(b) of the 2002 Act. This order relates to media mergers and establishes the obligation to notify to the CCPC (i) mergers and acquisitions in which two or more of the undertakings involved carry on a media business in the State, and (ii) mergers and acquisitions in which 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.

<sup>4</sup> Under section 18(3) of the Act.

<sup>5</sup> Under section 18(3A) of the Act, as inserted by section 14(a) of the 2022 Act.

of which the Commission has exercised its power to require notification under section 18A of the Act<sup>6</sup> (a “Call-in Notification”).

- 1.2 The Commission has jurisdiction to examine all mergers notified to it and form a view as to whether the result of the merger would be to substantially lessen competition in markets for goods or services in the State.

## **Mandatory notification of Above Threshold Mergers**

- 1.3 In accordance with section 18(1) of the Act, each of the undertakings involved in an Above Threshold Merger shall notify the Commission in writing and provide full details of the proposal to put the merger into effect. A notification under section 18(1) must be made before the proposed merger is put into effect.

- 1.4 Section 18(12A) of the Act confirms that the Commission may request or accept notification of an Above Threshold Merger which was purported to have been put into effect without having been notified to the Commission.

## **Voluntary Notifications of Below Threshold Mergers**

### **Voluntary Notifications prior to implementation**

- 1.5 If a merger is not required to be notified to the Commission pursuant to section 18(1) of the Act, any of the undertakings involved in that Below Threshold Merger may, before putting the merger into effect, voluntarily notify the Commission in writing of the merger pursuant to section 18(3) of the Act.

### **Voluntary Notifications after implementation**

- 1.6 If a merger is not required to be notified to the Commission pursuant to section 18(1) of the Act, any of the undertakings involved in that Below Threshold Merger may, after putting the merger into effect, voluntarily notify the Commission in writing of the consummated merger pursuant to section 18(3A) of the Act.<sup>7</sup>

---

<sup>6</sup> Inserted by section 15 of the 2022 Act.

<sup>7</sup> Inserted by section 14(a) of the 2022 Act.

## Call-in Notifications of Below Threshold Mergers

- 1.7 Section 18A of the 2002 Act<sup>8</sup> empowers the Commission to require undertakings involved in a Below Threshold Merger for which no Voluntary Notification has been made to notify the merger to the Commission (the “Call-in Power”). The Commission may exercise its Call-in Power where it is of the opinion that the relevant Below Threshold Merger may have an effect on competition in markets for goods or services in the State. The Commission will exercise its Call-in Power by serving a notice in writing on each of the undertakings involved in the merger.<sup>9</sup>
- 1.8 The Commission encourages undertakings involved in a Below Threshold Merger that may have an effect on competition in markets for goods or services in the State to approach the Commission with a view to engaging in potential pre-notification discussions concerning the Below Threshold Merger.
- 1.9 In order to assist the Commission in forming an opinion as to whether a Below Threshold Merger may have an effect on markets for goods or services in the State, the Commission may also contact one or more of the undertakings involved in the merger to seek relevant information to assist the Commission in reaching an opinion.
- 1.10 Where the Commission has exercised its Call-in Power to require the notification of a merger under section 18A of the Act, the undertakings involved in the merger must notify the Commission in writing and provide full details of the proposal to put the merger into effect.<sup>10</sup> The notification must be made before the expiration of the period specified by the Commission in the notice issued to the undertakings involved in the merger.<sup>11</sup> The undertakings involved may request an extension to this period from the Commission.<sup>12</sup>

---

<sup>8</sup> Inserted by section 15 of the 2022 Act.

<sup>9</sup> In accordance with section 18A(2) and section 18A(3)(a) of the Act, as inserted by section 15 of the 2022 Act.

<sup>10</sup> In accordance with section 18A(2) of the Act, as inserted by section 15 of the 2022 Act.

<sup>11</sup> In accordance with section 18A(3)(b) of the Act, as inserted by section 15 of the 2022 Act.

<sup>12</sup> In accordance with section 18A(4) of the Act, as inserted by section 15 of the 2022 Act.

- 1.11 Where an undertaking does not comply with a requirement to notify a Below Threshold Merger within the period specified by the Commission, the Commission may examine the merger in accordance with section 20 of the Act as if a notification had been received by the Commission in respect of it on the last day of the period specified in the requirement.<sup>13</sup> The Commission may also impose interim measures in relation to such merger as explained in more detail below.<sup>14</sup>

## Simplified Merger Notification Procedure

- 1.12 The Commission operates a Simplified Merger Notification Procedure (“SMNP”) in respect of mergers that clearly do not raise competition concerns. Further information regarding the operation of the SMNP is available on the Commission’s website.<sup>15</sup>

## Receipt of the Merger Notification Form

### Submission of Merger Notification Form

- 1.13 All notifications are required to be made on the Commission’s Merger Notification Form published on the Commission’s website (“Merger Notification Form”)<sup>16</sup> and may be made by any of the undertakings involved in the merger. In most cases, undertakings are encouraged to make a joint notification (taking account of their obligations not to share commercially or competitively sensitive information), though they are not obliged to do so.<sup>17</sup>
- 1.14 In respect of all notifications, for the purposes of establishing the “appropriate date” referred to in section 19(6) of the Act, a notification shall be deemed to have

---

<sup>13</sup> In accordance with section 18A(6)(a) of the Act, as inserted by section 15 of the 2022 Act.

<sup>14</sup> In accordance with section 18A(6)(b) of the Act, as inserted by section 15 of the 2022 Act.

<sup>15</sup> See: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2020/05/Simplified-Merger-Notification-Procedure-Guidelines.pdf>

<sup>16</sup> See: <https://www.ccpc.ie/business/mergers/how-to-notify/>

<sup>17</sup> Section 18(1) of the Act provides that each of the undertakings involved in an Above Threshold Merger is required to notify the Commission in writing. Sections 18(3) and 18(3A) of the Act provide that, in the case of Voluntary Notifications, any of the undertakings involved in the merger may notify the Commission. Section 18A(3) of the Act provides that, in the case of Call-in Notifications, the Commission shall serve the requirement to notify the merger on each of the undertakings involved in the merger and specify the period within which the undertakings involved shall submit a notification.



been received by the Commission when a complete copy of the Merger Notification Form, including all annexes to same, in electronic copy format, is submitted to the Commission before 15:00, Monday – Friday (excluding public holidays) by email to [mergers@ccpc.ie](mailto:mergers@ccpc.ie).

- 1.15 Where a notification or any part thereof is received after this time limit, the date of receipt as referred to in section 19(6) of the Act shall be the next working day.
- 1.16 In accordance with section 19(8) of the Act, where undertakings do make separate notifications, the “appropriate date” from which the merger review period commences, as defined in section 19(6) of the Act, shall be the date of receipt by the Commission of the later or latest complete notification.<sup>18</sup>

### **Payment of fee**

- 1.17 In accordance with section 18(8) of the Act, a notification shall be accompanied by the prescribed fee. The filing fee is payable by way of Electronic Funds Transfer (EFT) into the bank account of the Commission, as set out in the Merger Notification Form. As stated in section 18(8) of the Act, any notification unaccompanied by the prescribed fee will be invalid. In such cases, the notifying parties will be so informed by the Commission as soon as possible. Where the notification fee is subsequently paid, and subject to section 18(12) of the Act, the furnishing of the fee will render the notification valid and the “appropriate date” will be the date of receipt of the fee.

### **Consequences of an invalid notification**

- 1.18 Section 18(12) of the Act provides that a notification under section 18(1), 18(3) or 18A(2)<sup>19</sup> (as the case may be) shall not be valid where any information provided or statement made is false or misleading in a material respect, or if the Commission is of the opinion that the full details required in the Merger

---

<sup>18</sup> There is a separate provision for notifications made under section 18(3). Please see section 19(6)(b).

<sup>19</sup> Section 18(12) applies to notifications under section 18A(2) by virtue of section 18A(5)(a).

Notification Form have not been provided, and that any determination made by the Commission on foot of such notification is void.

- 1.19 The Commission reserves the right to reject any notification as void in accordance with section 18(12) of the Act at any stage during the merger review process including without prior engagement with the notifying parties. For further information, see paragraphs 2.1 to 2.5 of these Procedures below.

### **Interim measures**

- 1.20 In respect of all notifications made to it under Part 3 of the Act, the Commission may, where it considers it appropriate to do so due to the risk that the merger may have an effect on competition in any markets for goods or services in the State, impose an interim measure or interim measures on one or more undertakings involved in the merger.<sup>20</sup>
- 1.21 The Commission may also impose interim measures on the undertakings involved in a Below Threshold Merger in respect of which the Commission has exercised its Call-in Power where: (i) the undertakings involved have failed to notify the merger to the Commission within the time allowed; and (ii) there is a risk that the merger may have an effect on competition in any markets for goods or services in the State.<sup>21</sup>
- 1.22 An interim measure imposed by the Commission may require an undertaking involved in a merger:
- (a) to refrain from taking any step, or such steps as may be specified by the Commission, towards putting the merger into effect, or from further putting it into effect, or

---

<sup>20</sup> Pursuant to section 18B(1) of the Act, as inserted by section 15 of the 2022 Act.

<sup>21</sup> Pursuant to section 18A(6)(b) of the Act, as inserted by section 15 of the 2022 Act.

- (b) to take such actions as may be specified by the Commission for the purpose of mitigating the impact of any step already taken by such undertaking towards putting the merger into effect.<sup>22</sup>

1.23 Where the Commission exercises its power to impose an interim measure it will do so by serving notice in writing on the undertaking on which the interim measure is imposed. This notice will specify:

- (a) the nature of the interim measure(s) imposed, and
- (b) the period for which the interim measure(s) shall remain in force, which may include such period as is required for the Commission to make a determination under section 21 or section 22 of the Act in relation to the merger.<sup>23</sup>

1.24 The Commission may vary or revoke an interim measure imposed at any time during which the interim measure is in force. This will be done by notice in writing served on the undertaking on which the interim measure was imposed.<sup>24</sup>

1.25 It is an offence for an undertaking to fail to comply with an interim measure imposed by the Commission.<sup>25</sup>

### **Interaction between Part 3 and Sections 4 and 5 of the Act**

1.26 Sections 4(8) and 5(3) of the Act exempt mergers notified to and cleared by the Commission from prohibition under sections 4(1) and 5(1), respectively. Where a merger that raises competition concerns has not been notified to and cleared by the Commission under Part 3 of the Act, sections 4(1) and 5(1) of the Act may still apply.

---

<sup>22</sup> Pursuant to section 18B(6) of the Act, as inserted by section 15 of the 2022 Act.

<sup>23</sup> Pursuant to section 18B(2) of the Act, as inserted by section 15 of the 2022 Act.

<sup>24</sup> Pursuant to section 18B(3) of the Act, as inserted by section 15 of the 2022 Act.

<sup>25</sup> Pursuant to sections 18B(4) and 18B(5) of the Act, as inserted by section 15 of the 2022 Act.

## 2. PHASE ONE<sup>26</sup>

---

### Preliminary assessment of notification

- 2.1 Where the parties have questions or doubts as to whether a proposed transaction constitutes a “*merger or acquisition*” within the meaning of section 16 of the Act, these should be resolved with the Commission in advance of notification.
- 2.2 Upon its receipt by the Commission, the notification will be assessed (i) to ensure that it concerns a “*merger or acquisition*” within the meaning of section 16 of the Act and has been notified under the correct provision of the Act, (ii) to consider, where appropriate, whether it concerns a media merger within the meaning of section 28A(1)<sup>27</sup> of the Act,<sup>28</sup> and (iii) to confirm that all requisite information has been furnished.
- 2.3 Where the Commission considers that the notified transaction is not a “*merger or acquisition*” within the meaning of the Act or has not been correctly notified, it will so inform the notifying parties as soon as possible. In these circumstances, there is no obligation on the Commission to return the filing fee paid.
- 2.4 In addition to the requirement to notify the Commission in writing, sections 18(1), 18(3), 18(3A)<sup>29</sup> and 18A(2)<sup>30</sup> of the Act require the undertakings involved to provide “*full details*” of the proposed merger. The Commission understands “*full details*” as requiring that the Merger Notification Form be completed fully.
- 2.5 As soon as practicable after receiving a notification, the Commission will examine it to verify if full details have been provided. Where full details are not provided,

---

<sup>26</sup> In these Procedures, “Phase One” means the period of review of a notified merger by the Commission between the date of receipt by the Commission of a valid notification and the date on which a determination is made pursuant to section 21(2) of the Act.

<sup>27</sup> Section 28A(1) of the Competition Act 2002, as inserted by section 74 of the Competition and Consumer Protection Act 2014.

<sup>28</sup> Statutory Instrument No. 122 of 2007 requires certain specified classes of mergers to be notified to the Commission under section 18(1)(b) of the Act – see paragraph 2.20 below. Those specified classes are defined in that statutory instrument in terms identical to the definition of “*media merger*” in section 28A(1) of the Act.

<sup>29</sup> Section 18(3A) of the Act is inserted by section 14(a) of the 2022 Act.

<sup>30</sup> Section 18A of the Act is inserted by section 15 of the 2022 Act.

the Commission, in accordance with section 18(12) of the Act, will inform the undertakings involved that it is of the opinion that the full details required under the relevant section of the Act have not been provided. In such circumstances, the relevant notification will not be valid. The Commission reserves the right, in such circumstances, to reject the notification as invalid in accordance with section 18(12) of the Act or to allow the parties to withdraw the notification. In these circumstances, there is no obligation on the Commission to return the filing fee paid.

### **Publication of receipt of notification**

2.6 Within 7 calendar days from the date of receipt of the notification providing full details of the proposed merger (accompanied by the prescribed fee), the Commission will publish notice of the merger notification on its website, except in the case of those transactions in respect of which:

- (a) the notification submitted to the Commission is invalid pursuant to section 18(8) of the Act;
- (b) the Commission, after a preliminary examination, has concluded that the transaction is not a “*merger or acquisition*” within the meaning of the Act;
- (c) the Commission – in accordance with section 18(12) of the Act – is of the opinion that the full details required under the Act have not been provided; or
- (d) the Commission, in accordance with section 20(1)(a) of the Act, considers that it may not be in the public interest to publish notice of the notification.

2.7 Notice of notifications will give the following information:

- (a) the name(s) of the undertakings which are stated to be involved in the merger;

- (b) the reference number of the notification;
- (c) the name and contact details of the authorised officer assigned to the notification;
- (d) the business activities of the undertakings involved in the merger; and
- (e) notice to third parties wishing to make submissions about the merger that they must do so within 10 working days of publication of the notice. The Commission may, however, change this time limit by notice on its website in individual cases, if circumstances so require.

2.8 Publication of the said notice on the Commission’s website will not of itself constitute confirmation that the Commission is of the opinion that the full details required under section 18(1), section 18(3), section 18(3A) or section 18A(2) of the Act have been provided, or that the transaction is a “*merger or acquisition*” within the meaning of the Act, or that the merger has been notified pursuant to the correct section of the Act. The Commission reserves the right at any stage in its review of a notified merger to express the opinion that the full details required under section 18(1), section 18(3), or section 18A(2) of the Act have not been provided and that the notification is consequently invalid.

## Submissions

2.9 Submissions from third parties should clearly indicate any information which should be treated as confidential. Further guidance on the treatment of confidential information by the Commission is considered in the Commission’s *Access to the File Procedures*.<sup>31</sup>

---

<sup>31</sup> The Commission’s *Access to the File Procedures* can be accessed at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2023/07/CCPC-Access-to-the-File-Procedures.pdf>.

## Requirement to provide further information

- 2.10 The Commission may issue a written requirement, under section 20(2)(a)(i) of the Act,<sup>32</sup> **to any one or more of the undertakings involved** in the merger to provide further specified information within a specified time period (which period may be extended pursuant to section 20(2A)<sup>33</sup> and/or section 20(2B)<sup>34</sup> of the Act).
- 2.11 The Commission may also issue a written requirement under section 20(2)(a)(ii)<sup>35</sup> of the Act, **to any other person or undertaking** that it considers may have information relevant to the Commission’s consideration of the merger to provide specified information within a specified time period (which period may be extended pursuant to section 20(2A) of the Act and/or section 20(2B) of the Act).
- 2.12 Written requirements issued by the Commission under sections 20(2)(a)(i) or 20(2)(a)(ii) of the Act are referred to as “RFIs”.
- 2.13 When providing a response to an RFI, a director or other similar officer or a person who purports to act in such capacity (where the undertaking is a body corporate), partner (where the undertaking is a partnership), the individual in control (in the case of any other form of undertaking), or the person (where the RFI is made of a natural person) shall certify in writing that, to the best of his or her knowledge and belief, the person or undertaking has complied with the RFI (such a certification is referred to in these procedures as a “Certificate of Compliance”).<sup>36</sup>
- 2.14 Upon receipt of a Certificate of Compliance, the Commission shall, in accordance with section 20(2)(c) of the Act, notify the person providing the Certificate of

---

<sup>32</sup> As inserted by section 17(a) of the 2022 Act.

<sup>33</sup> As substituted by section 17(b) of the 2022 Act.

<sup>34</sup> As substituted by section 17(c) of the 2022 Act.

<sup>35</sup> As inserted by section 17(a) of the 2022 Act.

<sup>36</sup> Pursuant to section 20(2)(b)(i) of the Act, as inserted by section 17(a) of the 2022 Act.

Compliance whether or not the Commission is satisfied that the requirement to which the Certificate of Compliance relates has been complied with. The Commission shall provide this notification within 10 working days from the date on which it is provided with the Certificate of Compliance.

- 2.15 It is an offence under section 18(9)<sup>37</sup> and section 18(10) of the Act for an undertaking, or the person in control of an undertaking, or other person, to fail to comply with an RFI made under section 20(2) of the Act. Failure to comply may also result in the Commission exercising the powers conferred on it under section 18 or 37 of the Competition and Consumer Protection Act 2014, as amended, to obtain the information.
- 2.16 Where the Commission issues an RFI (or RFIs) to one or more undertakings involved in the merger in accordance with section 20(2)(a)(i) of the Act,<sup>38</sup> and where such a requirement is made within 30 working days from the date of receipt by the Commission of the notification, the statutory time period the Commission has for the review of the merger shall stand suspended and shall restart in accordance with the Act when the undertakings involved comply with the RFI. The calculation of the statutory time period in instances where all RFIs are not complied with or instances where only one or more (but not all) RFIs are complied with is set out in section 19 of the Act.<sup>39</sup>

## Proposals

- 2.17 Before the expiry of 30 working days after the appropriate date (as defined in section 19(6) of the Act),<sup>40</sup> the Commission may enter into discussions with the undertakings involved and the undertakings involved may make proposals to the Commission with regard to the manner in which the merger may be put into effect

---

<sup>37</sup> As amended by section 14(c) of the 2022 Act.

<sup>38</sup> As inserted by section 17(a) of the 2022 Act.

<sup>39</sup> As amended by section 16 of the 2022 Act.

<sup>40</sup> As amended by section 16(c) of the 2022 Act.



or to the taking, in relation to the merger, of any other measures which would ameliorate any effects of the merger on competition.

### **Determination that the merger or acquisition may be put into effect**

2.18 Having considered the information provided and all submissions received, the Commission, if it forms the opinion that the result of the merger will not be to substantially lessen competition in markets for goods or services in the State, will determine that it may be put into effect. The Commission will then, within 30 working days after the appropriate date,<sup>41</sup> (or within 45 working days, if proposals of the kind referred to at paragraph 2.17 above have been made) inform the undertakings involved and any other undertakings or third parties who have made submissions, that it has so determined.

2.19 On the date of the determination, the Commission, in addition to informing the undertakings involved, will publish notice of the making of the determination on its website. The Commission will publish the text of its determination on its website, with due regard for commercial confidentiality, at the earliest possible date thereafter (and in any event, no later than 60 working days after the making of its determination). In advance of publication of the determination, the Commission will allow the undertakings involved a number of days to indicate whether certain information in the determination should be redacted on the grounds of commercial confidentiality. The undertakings involved must substantiate each such claim of commercial confidentiality, providing specific reasoning. The Commission will not accept 'blanket' or non-specific confidentiality claims.

### **Special provision regarding media mergers**

---

<sup>41</sup> As defined in section 19(6) of the Act, as amended by section 16(c) of the 2022 Act.

- 2.20 Under section 18(1)(b) of the Act, and pursuant to Statutory Instrument No. 122 of 2007, a merger or acquisition must be notified to the Commission, irrespective of the turnover of the undertakings involved, if:
- (a) two or more of the undertakings involved carry on a media business in the State, or
  - (b) 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
- 2.21 A merger which satisfies either of condition (a) or condition (b) above is referred to as a “media merger”. Section 28B(1) of the Act requires that a “media merger” notified either to the Commission or to the European Commission must also be notified to the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media. The statutory regime relating to the notification of media mergers to the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media is set out in Part 3A of the Act.<sup>42</sup>
- 2.22 Where, in respect of a media merger, the Commission makes a determination at Phase One that the merger may be put into effect, or where it decides to carry out a full investigation (i.e. proceed to Phase Two), it will, immediately after doing so, inform the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media of that fact.

---

<sup>42</sup> Statutory Instrument No. 372 of 2020 transferred the functions of the Minister for Communications, Energy and Natural Resources under Part 3A of the 2002 Act to the Minister for Culture, Heritage and the Gaeltacht, and Statutory Instrument No. 403 of 2020 altered the title of the Minister for Culture, Heritage and the Gaeltacht to that of the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media.

### 3. PHASE TWO

---

#### Determination to carry out a full investigation

- 3.1 Where, having considered the information provided and all submissions received, the Commission is unable on the basis of the information before it to form the view that the result of the merger will not be to substantially lessen competition in markets for goods or services in the State, the Commission will make a determination to carry out a full investigation, i.e. proceed to Phase Two.<sup>43</sup>
- 3.2 The Commission, within 30 working days after the appropriate date<sup>44</sup> (or within 45 working days where proposals of the kind referred to at paragraph 2.17 above have been made), will inform the undertakings involved and any other undertakings or third parties who have made submissions that it intends to carry out a full investigation.

#### Publication of the determination to carry out a full investigation

##### To the notifying undertakings

- 3.3 The determination to conduct a full investigation will be furnished forthwith to the undertakings involved.

##### To third parties who have made submissions

- 3.4 The Commission will inform third parties who have made submissions that it has determined to carry out a full investigation.

##### To the general public

---

<sup>43</sup> In these procedures, “Phase Two” means the period of review of a notified merger by the Commission between the date of a determination made pursuant to section 21(2)(b) of the Act and the date on which a determination is made pursuant to section 22(3) of the Act.

<sup>44</sup> As defined in section 19(6) of the Act, as amended by section 16(c) of the 2022 Act.

- 3.5 On the date of the determination, the Commission will publish notice of the making of the determination on its website and inviting submissions from third parties.

## Submissions

- 3.6 Either the undertakings involved or any individual or other undertaking is entitled to make submissions, whether in writing or orally, and the Commission shall consider all submissions made.<sup>45</sup>
- 3.7 Submissions from third parties must be received in writing within 15 working days of the date of the determination to carry out a full investigation. The Commission may, however, change this time limit by notice on its website in individual cases if circumstances so require.
- 3.8 Submissions from the undertakings involved must be received in writing within 20 working days of the date of the determination to carry out a full investigation (or within such other period as may be specified by the Commission in writing to the undertakings involved).
- 3.9 Submissions should clearly indicate any information which should be treated as confidential. Further guidance on the treatment of confidential information by the Commission is considered in the Commission's *Access to the File Procedures*.<sup>46</sup>

## RFIs in Phase Two

- 3.10 As in Phase One, the Commission may issue an RFI under section 20(2)(a)(i) of the Act, to any one or more of the undertakings involved in the merger to provide further specified information within a specified time period (which period may be extended pursuant to section 20(2A) and/or section 20(2B) of the Act). The Commission may also issue an RFI under section 20(2)(a)(ii) of the Act, to **any**

---

<sup>45</sup> In accordance with section 20(1)(a)(ii) of the Act.

<sup>46</sup> The Commission's *Access to the File Procedures* can be accessed at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2023/07/CCPC-Access-to-the-File-Procedures.pdf>.

**other person or undertaking** that it considers may have information relevant to the Commission’s consideration of the merger to provide specified information within a specified time period (which period may be extended pursuant to section 20(2A) and/or section 20(2B) of the Act).

- 3.11 The procedures set out above regarding provision to the Commission of a Certificate of Compliance in relation to the RFI by a relevant person and notification by the Commission of its satisfaction that an RFI has or has not been (as the case may be) complied with apply to RFIs issued in Phase Two.
- 3.12 Where the Commission issues an RFI (or RFIs) to one or more undertakings involved in the merger in accordance with section 20(2)(a)(i) of the Act<sup>47</sup> within 30 working days of the Commission’s determination to carry out a Phase Two investigation, the statutory time period for the Commission’s review of the merger shall stand suspended and shall resume in accordance with the Act when the undertakings involved comply with the RFI. The calculation of the statutory time period in instances where all RFIs are not complied with or instances where only one or more (but not all) RFIs are complied with is set out in section 22 of the Act.<sup>48</sup>

### Issuing of an Assessment

- 3.13 If, having considered all submissions, the Commission is not satisfied that the result of the merger will not be to substantially lessen competition, it will, within 40 working days of the date of the determination to conduct a full investigation (or such longer period as may result, in a particular case, from the suspension of time provided for in section 22(4A) of the Act),<sup>49</sup> furnish its preliminary assessment of the merger (the “Assessment”) to the undertakings involved in the merger.

---

<sup>47</sup> As inserted by section 17(a) of the 2022 Act.

<sup>48</sup> As amended by section 18 of the 2022 Act.

<sup>49</sup> As amended by section 18(b) of the 2022 Act.

- 3.14 This 40 working day period may be extended by the Commission by up to 10 working days at the Commission's discretion (including in response to a request from one or more of the undertakings involved). In such circumstances, the parties will be provided with the adjusted date for furnishing them with the Assessment and, excluding cases where it is the parties themselves who have requested the extension, the reasons for the extension.
- 3.15 The Assessment will set out clearly the Commission's concerns regarding the effects of the proposed merger on competition in markets for goods or services in the State. The Commission will publish a brief statement of fact on its website explaining that an Assessment has been furnished to the undertakings involved in a given merger.

### **Access to file**

- 3.16 After the Assessment has issued, the undertakings involved will be afforded the opportunity to access the file in accordance with the criteria set out in the Commission's *Access to the File Procedures*.<sup>50</sup> The time period within which the undertakings involved will be afforded the opportunity to access the file will not exceed the deadline for the undertakings involved in the merger to respond in writing to the Assessment as set out in paragraph 3.17 below.

### **Response to the Assessment**

- 3.17 Within 15 working days of the delivery of the Assessment, the undertakings involved in the merger may respond in writing to the Assessment. The Commission shall not be obliged to take account of submissions received from the undertakings involved after the expiry of this time limit. For the avoidance of doubt, this includes any submissions purporting to supplement a response previously submitted.

### **Consequence of failure to respond**

---

<sup>50</sup> The Commission's *Access to the File Procedures* can be accessed at: [x]

- 3.18 Failure by any one of the notifying parties to respond to the Assessment within the time period set out above may be deemed to constitute a waiver of that party's right to contest the issues set out in the Assessment. Failure of all notifying parties to so respond may authorise the Commission, without further notice, to find the facts to be as set out in the Assessment and to adopt a final determination on the basis of such findings.

### **Oral Submissions**

- 3.19 Within five working days of the furnishing of the Assessment, any undertaking involved in the merger who wishes to make oral submissions shall notify the Commission in writing that it intends to do so, and the Commission will fix a date to hear the submissions. For the avoidance of doubt, the date fixed for the oral submissions will fall after the expiration of the period within which the undertakings involved in the merger may respond in writing to the Assessment.
- 3.20 The oral submissions process is a forum whereby the undertakings involved may exercise their statutory right to make oral submissions to the Commission. The undertakings involved may develop arguments in oral format which they have already submitted in writing in their reply to the Assessment. Oral submissions during the merger review process are not adversarial proceedings. The Commission may ask questions or seek further clarification to further understand previous submissions.
- 3.21 Third parties who have furnished submissions to the Commission in respect of the merger may also be invited to make oral submissions, at the sole discretion of the Commission.

### **Discussions and Proposals**

- 3.22 At any stage during the merger review process, but no later than 15 working days after the furnishing of the Assessment, the Commission may enter into discussions with the undertakings involved and the undertakings involved may make proposals to the Commission with regard to the manner in which the merger may

be put into effect or to the taking, in relation to the merger, of any other measures which would ameliorate any effects of the merger on competition.

- 3.23 The time limit above is required in order to allow the Commission sufficient time to assess whether any proposals ameliorate the competition concerns, including carrying out market testing (where applicable). It is only in exceptional circumstances that the Commission may enter into discussions regarding proposals made by the undertakings involved after the expiry of the time limit for their submission set out above. Such consideration of late proposals shall be at the sole discretion of the Commission.

### **Determination without issuing of an Assessment**

- 3.24 Where no Assessment has yet been issued and the Commission is satisfied that the result of the merger will not be to substantially lessen competition in any market for goods or services in the State, the Commission will proceed to make a determination that the merger may be put into effect, or be put into effect having taken into account proposals made by any of the undertakings involved in the merger (and such proposals forming the basis or part of the basis of its determination) without proceeding to issue an Assessment.<sup>51</sup>

---

<sup>51</sup> In accordance with section 22(3)(a) of the Act.



## 4. FINAL DETERMINATIONS

---

### Phase Two determination

4.1 On completion of the Phase Two review period, the Commission shall make one of the following determinations:<sup>52</sup>

- (a) that the merger or acquisition may be put into effect,
- (b) that the merger or acquisition may not be put into effect, or
- (c) that the merger or acquisition may be put into effect subject to conditions specified by the Commission being complied with, including a condition requiring the merger or acquisition to be put into effect within 12 months after the making of the determination.

and will furnish to the notifying parties the written determination within 120 working days after the appropriate date (as defined in the Act) or within 135 working days if proposals have been made to which section 20(3) of the Act applies.

4.2 On completion of the Phase 2 review period, where the merger has already been put into effect, and the Commission finds that the result of the merger will be to substantially lessen competition for markets for goods and services in the State, the Commission may:

- (i) determine that the merger should be unwound or dissolved so as to restore the situation prevailing prior to the merger being put into effect, or

---

<sup>52</sup> See, in particular, section 22 of the Act, as amended by section 18 of the 2022 Act.

- (ii) where it is not possible to unwind or dissolve the merger, determine that the undertakings involved shall take such steps as are appropriate to achieve restoration as far as practicable of the situation prevailing before the merger was put into effect.<sup>53</sup>

### **Contents of Commission’s written determination**

- 4.3 In every case, the Commission’s written determination in regard to the proposed merger will include a statement of the facts, a summary of the information, evidence and submissions considered by the Commission, and the reasons grounding the determination.

### **Publication of the Commission’s determination**

- 4.4 The Commission will publish notice of its determination on its website on the same day as the determination is made. The Commission will publish the written determination on its website, with due regard for commercial confidentiality, within 60 working days after the making of the determination.
- 4.5 In advance of publication of the determination, the Commission will allow the undertakings involved an appropriate period to indicate whether certain information in the written determination should be redacted on the grounds of commercial confidentiality. The undertakings involved must substantiate each such claim of commercial confidentiality, providing specific reasoning. The Commission will not accept ‘blanket’ or non-specific confidentiality claims.

### **Special provision regarding media mergers**

- 4.6 Where, in respect of a media merger, the Commission makes a determination at Phase Two of the kind referred to in paragraph 4.1(a), (b), or (c) above, it will immediately after doing so inform the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media of that fact.

---

<sup>53</sup> In accordance with section 22(3A) of the Act, as inserted by section 18(a) of the 2022 Act.



Coimisiún um  
Iomaíocht agus  
Cosaint Tomhaltóirí

Competition and  
Consumer Protection  
Commission

