



Guidance Note on Pre-Notification Merger Discussions

27 September 2023



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission



1. MERGERS: PRE-NOTIFICATION DISCUSSIONS

Introduction

- 1.1 This note provides useful information on pre-notification discussions between the Competition and Consumer Protection Commission (the "CCPC") and the parties to a proposed merger or acquisition (including joint ventures).
- 1.2 The merger notification form (the "Notification Form") is a tool to give effect to the obligation to provide "full details" of a proposed merger, acquisition or joint venture (a "proposed transaction") to the CCPC in accordance with sections 18(1), 18(3), 18(3A), and 18A(2) of the Competition Act 2002 as amended (the "2002 Act").
- 1.3 Pre-notification discussions can enable the CCPC to identify information which may be required in order for it to be satisfied that "full details" are provided in the Notification Form.

Contact persons

- 1.4 Parties may request pre-notification discussions by contacting the Competition Enforcement and Mergers division by e-mail at mergers@ccpc.ie.
- 1.5 Pre-notification discussions may take place either in the form of in-person or virtual meetings.

Purpose

- 1.6 The CCPC strongly encourages notifying parties to engage in pre-notification discussions with the CCPC before filing a notification in all cases other than those where there is no overlap at all in the activities of the undertakings involved. This is particularly important where the notifying parties believe there are overlaps in the activities of the parties involved and aspects to the proposed transaction, the undertakings involved, or the sector involved, which the CCPC needs to understand to review the proposed transaction.
- 1.7 The purpose of pre-notification discussions is to:

- (a) assist Parties in deciding whether a proposed transaction is suitable for review under the Simplified Merger Notification Procedure;
- (b) assist in clarifying the information and evidence the CCPC will require for the purposes of its review of the Notification Form
- (c) assist undertakings involved in a proposed transaction in the preparation of the Notification Form;
- (d) give such undertakings involved the opportunity to provide an explanation to the CCPC's authorised officers about the nature of competition and any potential competition issues in the market(s), industry(ies) or sector(s) concerned; and,
- (e) to allow undertakings involved in a proposed transaction which does not satisfy the criteria for mandatory notification pursuant to section 18(1) of the 2002 Act to assist the CCPC in forming an opinion as to whether that proposed transaction may have an effect on markets for goods or services in the State.

Documentation requested in advance of pre-notification meeting

- 1.8 In order to facilitate a meaningful discussion with the CCPC, in advance of the first pre-notification meeting, the undertakings involved or their representatives should submit a written briefing paper, describing the proposed transaction, the market(s) involved and the potential effects of the proposed merger or acquisition in any markets for goods or services in the State, together with a list of attendees, to the Competition Enforcement and Mergers Division at mergers@ccpc.ie.
- 1.9 This briefing paper should not exceed 5 pages in length and should arrive at least 2 full working days before the first pre-notification meeting. Drafts of any relevant agreements or heads of agreement should also be submitted.

Content

- 1.10 In the course of pre-notification discussions, the CCPC's authorised officers will endeavour to point out any immediately evident potential competition issues arising from the proposed transaction, and areas where further information would be useful for the CCPC's analysis.
- 1.11 Where appropriate, the CCPC will discuss whether the proposed transaction is suitable for review under the Simplified Merger Notification Procedure. In cases where the proposed transaction does not meet the criteria to be reviewed under the Simplified Merger Notification Procedure, where appropriate, the CCPC may nevertheless waive completion of parts of the Notification Form.
- 1.12 Please note, however, that further competition concerns may be identified during the course of the CCPC's formal merger investigation and the CCPC reserves the right to request additional information at any stage. Therefore, no indication of whether the merger is likely to require a full (Phase 2) investigation will be provided during the course of pre-notification discussions.
- 1.13 Parties should note that any comments made by the CCPC's authorised officers during the course of pre-notification discussions can only be preliminary and non-binding, in light of the fact that the CCPC does not have all the information to hand. For example, third parties have not had a chance to present their views and no investigation has yet been conducted.

Attendance at pre-notification meetings

- 1.14 It will be essential to have at least one director or senior employee of the undertakings involved in the proposed transaction to be present during the pre-notification discussions. In particular, in a horizontal merger situation that involves competitors, the CCPC would prefer to meet the parties separately. In this regard, the CCPC encourages parties in all cases to schedule separate meetings and may require separate meetings where necessary to avoid the risk of unlawful information sharing.

Non-binding and confidential nature

- 1.15 It is important to note that the CCPC will not be bound by any comments made by its staff in the course of pre-notification discussions. Any views expressed reflect the preliminary views of the CCPC's authorised officers based on the information provided.
- 1.16 Pre-notification discussions are held in the strictest of confidence. The discussions are a voluntary part of the process and remain without prejudice to the handling and investigation of the case following formal notification. The CCPC considers both the fact that pre-notification discussions have taken place and any information provided to the CCPC by the parties to be highly confidential. Similarly, any comments made by the CCPC's authorised officers should be treated by the parties and their representatives as strictly confidential.

Validity of merger notification

- 1.17 Please note that there is a risk that the CCPC may regard a notification to be invalid pursuant to section 18(12) of the Competition Act, 2002, as amended, where parties opt not to fill in parts of the Notification Form without the CCPC's prior approval, whether or not they purport to notify the proposed transaction under the Simplified Merger Notification Procedure which excludes certain information from the Notification Form.