

Mergers: Pre-Merger Notification Discussions

1.1 Pre-merger notification discussions are voluntary. This note provides useful information on pre-merger notification discussions between the Competition and Consumer Protection Commission ("the CCPC") and the parties to a proposed merger or acquisition (including joint ventures) ("Parties").

Contact persons

1.2 Parties may request pre-merger notification discussions by contacting the Director of Competition Enforcement and Mergers Division at +353 (0)1 470 3683 and by e-mail at mergers@ccpc.ie. The CCPC will endeavour to acknowledge such a request and arrange discussions with Parties within two working days from receiving the contact.

Purpose

1.3 The CCPC welcomes the opportunity to hold pre-merger notification discussions with Parties who have expressed their intention to notify a proposed merger or acquisition in accordance with section 18 of the Competition Act 2002, as amended (the "2002 Act"). These discussions may take place either in the form of a meeting or a teleconference or videoconference call.

1.4 The purpose of pre-merger notification discussions is to:

- (a) assist Parties in deciding whether a merger or acquisition is suitable for review under the simplified merger notification procedure;
- (b) assist Parties in the preparation of the Merger Notification Form; and,
- (c) give Parties the opportunity to provide information to the CCPC about the nature of competition and any potential competition issues in the markets, industries or sectors concerned.

Documentation requested in advance

1.5 In order to facilitate a meaningful discussion with the CCPC, a written submission from Parties or their representatives briefly describing the proposed merger or acquisition, the market(s) involved and the potential effects of the proposed merger or acquisition, together with a list of attendees, should be sent to the Competition Enforcement and Mergers Division at mergers@ccpc.ie. Drafts of any relevant agreements or heads of agreements should also be submitted. These submissions should arrive at least 2 working days before the first meeting/teleconference call.

Content

1.6 In the course of pre-merger notification discussions, the CCPC will endeavour to point out any immediately evident potential competition issues arising from the proposed merger or acquisition, and any areas where further information would be useful for its analysis. The CCPC may also waive completion of parts of the Merger Notification Form and discuss whether the proposed merger or acquisition is suitable for review under the Simplified Merger Notification Procedure. Further competition concerns may be identified during the course of the CCPC's formal merger investigation and as such the CCPC reserves the right to request additional information at any stage. Therefore, no indication of whether the merger or acquisition is likely to require a full (Phase 2) investigation will be provided during pre-merger notification discussions.

Attendance at pre-merger notification meetings

1.7 It will be essential to have at least one director or employee of the Parties present during the pre-merger notification discussions. Although both (or more) Parties may attend the same meeting, this is not generally a desirable practice. In particular, in a horizontal merger situation that involves competitors, the CCPC would prefer to meet each Party separately. In this regard, the CCPC will encourage Parties to schedule separate meetings where necessary to avoid the risk of unlawful information sharing.

Non-binding and confidential nature

- 1.8 It is important to note that the CCPC will not be bound by any comments made by its staff in the course of pre-merger notification discussions. This is because the CCPC will have not yet received a valid notification and will not have all the relevant information available to it. For example, at that point the CCPC would not have commenced its review which includes conducting market enquiries and considering submissions from third parties. Therefore, any views expressed during the pre-merger notification discussions reflect the preliminary views of the CCPC staff based on the information provided, and not the views of the CCPC.
- 1.9 Pre-merger notification discussions are held in the strictest of confidence. The discussions are a voluntary part of the merger notification process and remain without prejudice to the handling and investigation of the merger or acquisition following formal notification to the CCPC. The CCPC considers both the fact that pre-merger notification discussions have taken place and any information provided to the CCPC by Parties to be highly confidential. Similarly, any comments made by the CCPC's staff should be treated by Parties and their representatives as strictly confidential.

Validity of merger notification

- 1.10 Parties should note that there may be an increased risk of a notification being considered invalid pursuant to section 18(12) of the 2002 Act, where Parties opt not to complete parts of the Merger Notification Form without having first contacted the CCPC and received approval to do so. However, there is an exception to this where a merger or acquisition is correctly notified under the Simplified Merger Notification Procedure which excludes certain information.

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