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CCPC announces intention to introduce simplified merger review procedure in 2020

After engaging in a public consultation period in late 2018, the Competition and Consumer Protection Commission (the "**CCPC**") has recently confirmed its intention to introduce a simplified merger review procedure in 2020. This new procedure will apply to mergers which must be notified to the CCPC as they meet the relevant financial thresholds set out in the Competition Acts but which, for one reason or another, raise negligible competition concerns.

Types of Merger

The CCPC identified the following types of mergers and acquisitions as ones which could be reviewed under the forthcoming simplified procedure:

(a) mergers or acquisitions between parties who are not active in the same markets, or in any markets which are upstream or downstream from one another;

(b) mergers or acquisitions between parties who are active in the same market and whose combined market share is less than 15% (or between parties who are active in markets upstream or downstream from one another and whose market share in each of their respective markets is less than 25%); or

(c) mergers or acquisitions where a party which already has joint control over a company acquires sole control of that company.

For further information on any of the issues discussed in this article please contact:

Philip Lea
DD: + 353 (0)1 673 1706
Philip.lea@dilloneustace.ie

Joseph Lynch
DD: + 353 (0)1 673 1890
Joseph.lynch@dilloneustace.ie

New Procedure

Currently, there is one long-form merger notification form which must be completed in full and submitted to the CCPC in the case of all notifiable mergers. However, the CCPC has developed a practice of agreeing with parties in advance of submission that the requirement to complete certain sections will be waived. It is intended that parties wishing to use the forthcoming simplified merger control process will raise this in pre-notification discussions with their CCPC case officer. Parties are not required to engage in pre-notification discussions with the CCPC, but these can help to define the relevant markets that should be analysed and should therefore also help to clarify whether the simplified procedure can be availed of for a particular transaction. It seems that the proposed simplified procedure could result in more parties engaging in discussions with the CCPC prior to submitting merger notifications.

The CCPC will now draft guidelines which will set out:

(a) its proposals as to the criteria that will qualify a merger for the simplified process;

(b) examples of situations in which such mergers may still be assessed under the standard procedure; and

(c) the manner in which the simplified procedure will differ from the standard procedure.

The CCPC intends to publish these guidelines and enter into a consultation process before the end of the year. It is not expected that the new simplified procedure itself will be finalised and adopted until at least 2020.

Comment

The European Commission's recent review of the merger control systems employed by the Member States found that 70% of them include simplified procedures for less concerning mergers. It is noteworthy that the European Commission also employs a simplified procedure which uses similar criteria to many of those used in the Member States. The adoption of a similar system in Ireland will bring merger our procedures in line with these other merger control regimes around Europe.

The CCPC conducted an analysis of the mergers notified to the CCPC from 2016 to 2018 and found that 55% of Irish mergers in that period could have been notified under the simplified procedure if the European Commission's current criteria had been adopted. It is to be hoped that the new simplified procedures, in tandem with the recently revised merger control thresholds (discussed here), allow the CCPC to focus its efforts on transactions which give rise to real competition concerns and will reduce the time and effort required to complete mergers, a result which would be welcomed for sellers and buyers in M&A transactions alike.

However, there is also a danger that it could have the opposite effect. It is not currently common in Ireland for the parties to a transaction to engage in pre-notification submissions with the CCPC. There is a possibility that an increased level of engagement could result in an increase in the time and effort involved in getting a transaction to the point that it is ready to be notified to the CCPC, even if the subsequent notification and clearance procedures are truncated. Much will depend on the criteria that the CCPC ultimately adopts and the level of information that it will require before agreeing that the simplified procedure may apply to a particular transaction.

Should you have any queries in relation to the issues raise in this bulletin, please contact the authors or your usual Dillon Eustace contact for further information.

Dillon Eustace
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DILLON EUSTACE

Dublin
33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

Cayman Islands
Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

New York
245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

Tokyo
12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

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