

Kluwer Competition Law Blog

Is Ireland about to simplify the merger control process?

Vincent Power (A&L Goodbody) · Monday, December 3rd, 2018

Ireland's Competition and Consumer Protection Commission ("CCPC") (www.ccpc.ie) has initiated a very welcome public consultation on possibly simplifying the merger control process.

Simplified procedure for Ireland?

In a consultation paper, the CCPC asks whether there should be a "simplified procedure" for some notifications in Ireland (<https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/11/Simplified-Procedure-Consultation.pdf>). This would apply to deals which "clearly do not raise competition concerns" (i.e. proposed transactions which would not "substantially lessen competition"). Those simple deals would still have to be notified to the CCPC but would be subject to a simplified and shorter procedure than the normal one which would still apply to non-simplified notifications.

Positive impact of a new procedure

Introducing a simplified procedure would reduce significantly the strain on the resources of the CCPC. For example, applying the EU simplified procedure criteria would have reduced the number of full-blown CCPC reviews by 55% over the last three years. It would also bring Ireland into line with many other EU Member States and the EU itself which already have simplified procedures. Notifying parties would have shorter forms to complete and the CCPC would issue shorter determinations. Critically, it would expedite the review timeline for businesses because the CCPC would no longer "sweat the small stuff".

Tough deals will still be scrutinised

It will not mean that difficult deals will be any easier to approved. On the contrary, the CCPC will have more time and resources to allocate to the more difficult deals. In the jargon, the reviews will concentrate more on the "effects" rather than the "formality" of what is happening.

Negative impact of a new procedure

The downsides include that by raising the bar for review, some anti-competitive deals could be approved. This could potentially hurt business and personal consumers because there is a “substantial lessening of competition”, e.g. higher prices and poorer service. However, the CCPC say that they will be vigilant to stop this happening.

Identifying a simple deal is complex

The CCPC is inviting views on what should be the criteria for deals to qualify for the simplified procedure.

It is considering three possible tests and any one would suffice:

1. None of the parties are active in the same product or geographic markets or in any upstream/downstream markets (this should be attractive to the likes of private equity houses investing in a new sector).
2. If two or more of the parties are active in the same market(s) then their combined market share(s) would be less than 15% or, where one or more parties are active in an upstream or downstream market, “the market share of each of the parties involved in each market is less than 25%”.
3. A party having joint control of a company is to acquire sole control over that company.

These should be seen as “general rules” and there could be exceptions depending on the circumstance. Presently businesses largely just check turnover figures but they would have to check market shares and so much turns on how one defines the market. Businesses now have a chance to influence the debate on these general rules.

Shorter and simpler forms and procedures?

The CCPC could introduce a shorter notification form but it is, wisely, consulting on which procedures generally should be simplified.

Improper use of simplified procedure would not be tolerated

Parties who rely on the simplified procedure could find their notifications would be rejected under Section 18(12) of the Competition Act 2002 or a request for information (“RFI”) would be issued under Section 20(2). This could lead to a rise in the number of pre-notification consultations which could reduce the benefit of the simplified procedure.

Let the consultation commence....

Businesses and others have until 6 December 2018 to respond to the consultation. The ball is now in the court of businesses and their advisors to make submissions and make their lives simpler –

attractive in an ever complex world!

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