

New Short Form Notification Procedure for Mergers in Ireland

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As of 1 July 2020, a new "simplified procedure" will be available for certain notifiable mergers which are unlikely to raise a concern of loss of competition.

The procedure is more limited in scope and in its benefits than the EU equivalent. While parties availing of the procedure will be exempt from completing some sections of the standard Notification Form no actual commitments have been made to conduct a quicker review or provide a shorter clearance decision.

The procedure is broadly unchanged from what was put out to public consultation in December 2018, notwithstanding that responses to that consultation (Matheson response available [here](#)) sought improvements in its scope, certainty, and timing benefits.

What Mergers Are Covered?

The Simplified Procedure is available in each of the following cases:

- 'No overlap' cases: where none of the parties are active in the same market, or in any upstream or downstream market (ie no horizontal or vertical overlap arises);
- 'Below-threshold horizontal overlap' cases: where two or more of the parties are active in the same market, but their combined market share (based on undisputable market data & market definitions) is less than 15%;
- 'Below-threshold vertical overlap' cases: where one or more parties is active in a market upstream or downstream to another party, but the market share of each of the parties is less than 25% (based on undisputable market data & market definitions); or
- 'Change in quality of control' cases: where a party which already has joint control over a company acquires sole control of that company.

The CCPC advises parties to engage in pre-notification discussions with the CCPC to confirm that their merger meets the above conditions. The CCPC will endeavour to schedule a pre-notification discussion within two working days of receipt of a request for the same.

What Does The New Procedure Involve?

Parties notifying mergers under the simplified procedure will use the standard CCPC Merger Notification Form, but will be exempt from completing certain sections of it. In particular:

- 'No overlap' mergers will be exempt from providing information on (i) market dynamics (Question 4) and (ii) market share (Question 5). This exemption formalises the current informal approach of the Competition and Consumer Protection Commission ("CCPC") waiving these information requirements.
- Other qualifying mergers will be exempt from providing (i) some information on market dynamics and (ii) internal documents analysing the impact of the notified transaction on competition (the relevant internal document question is inapplicable to 'no overlap' mergers).

What Are The Benefits of The New Procedure?

The Simplified Merger Notification Procedure will somewhat reduce the information burden on parties to qualifying mergers (although parties to 'no overlap' mergers already reap this benefit under an informal waiver system).

Parties might also expect to benefit from quicker CCPC clearances, although no new deadline or target has been set in this respect. In recent times, the average clearance period has been around 25 working days (where the maximum Phase I review period is 30 working days) and the shortest clearance period has been 11 working days.

Finally, parties will expect to benefit from a shorter CCPC clearance determination which includes less information on the notified transaction (similar to the EU Commission short-form decisions), although no commitment has been made in this respect.

What Are The Risks?

It is unclear whether seeking to use the procedure might risk delay or waste time. In particular, the following scenarios are possible and avoiding them may be outside of parties' control:

- Refusal of procedure following pre-notification discussions: The CCPC may refuse the procedure, noting that some exclusions provided for in the CCPC Guidelines are broad and potentially subjective. For example, the Guidelines provide exclusions for (i) concentrated markets, (ii) 'mavericks', (iii) new and novel markets, and (iv) neighbouring markets, and (v) difficulty in identifying the relevant market. Engaging in pre-notification discussions leading to a refusal could delay a process by a week or more.
- Withdrawal of procedure on discovery of new information during the review process: The CCPC Guidelines note that the procedure may be withdrawn, for example where a complaint raises 'serious competition concerns'. Withdrawal could delay a process by a number of weeks.

Conclusion

Together with the revised jurisdictional thresholds which came into effect on 1 January 2019 (see our article, [here](#)), the new simplified procedure is a welcome step towards reducing the burden on business arising from CCPC notification obligations. Time will tell whether the new procedure will confer significant benefits.