Kluwer Competition Law Blog

Irish Merger Control 2016: A Year-in-Review

Philip Andrews (McCann FitzGerald) · Thursday, January 12th, 2017

Are perceptions of increased pushback in Brussels and Washington on international combinations reflected in Irish enforcement? What change (if any) does new management at the Irish agency herald, how did Ireland's most controversial deal of the year fare in Brussels, and what important change might a remedies settlement in August 2016 signal? Answers below!

1. **Irish Merger Filing Numbers Decline**

While it was a banner year for international deal-making (with companies worldwide reportedly agreeing to $3.3 trillion worth of takeovers), Irish merger filing numbers suggest the pace of Irish deals cooled in 2016: 67 deals were notified to the CCPC down 14% from last year's total of 78. At the same time, the number of large Irish mergers-and-acquisitions, big enough to require filings in Brussels, increased from three to four (acquisitions of, separately, Dundrum and ILAC shopping centres, Aviva/Glo Health, two Irish health insurance businesses, and meat processor, Slaney Foods). 75% of 2016 deals notified to the CCPC involved an Irish target, confirming revised 2014 filing thresholds are better designed to catch more Irish deals and fewer foreign ones (pre-2014 changes, 35% of deals notified involved an Irish target).

2. **No Step-Change in CCPC Intervention Levels**

Perceptions of increased pushback on international deals by U.S. and EU authorities in 2016 aren't reflected at national level, where intervention levels remain consistent. The Irish agency intervened in three cases (*i.e.*, 4.5% of filings, as compared with a 9.5% intervention rate in Brussels). In one case, after a lengthy six month review, the CCPC imposed remedies as a condition of clearance (divestment of domestic waste collection customer contracts). In the second case, a hospital merger was cleared with conditions (not yet published) while, in the third, the parties withdrew the filing. Significant management changes within the CCPC Mergers Division are a loss but aren't expected to change the CCPC's effects-based approach: (i) Gerald FitzGerald, a highly regarded competition lawyer and leader of the Mergers Division, retired in October 2016; (ii) Cormac Keating, Director of the Mergers Division for a total of 10 years, announced a move to the CCPC Advocacy Division on 11 January 2017; while (iii) longstanding case officer, Andrew Rae, left the division in late 2016. Pat Kenny, the Division's new leader, is an economist with 20-years experience who first joined the agency in 1997 as case officer. Ibrahim Bah, an economist with prior experience in managing the Mergers Division, returns to replace Cormac Keating as Division Director.

3. **Upfront Buyer in Divestment Remedies Preferred**

For the fifth time in 14 years of merger control, the CCPC conditioned deal approval on substantial divestment remedies. To acquire *Greenstar* (a rival waste collection and processing businesses), *Panda Waste* committed to divest overlapping collection routes in Dublin. The remedies package notably involved: (i) sale of target (*i.e.*, *Greenstar*) assets only; (ii) an upfront CCPC-approved buyer of the assets, with which 'non-binding Heads of Agreement' were in place (only the second time a CCPC mandated remedy package involved an upfront buyer); and (iii) customers lists, customer contract rights and obligations, outstanding customer debts, and wheelie bins (but not collection trucks, employees, transfer stations, or processing facilities). Good guidance is provided on business preservation commitments pending divestment (including on CCPC mandated non-solicitation and non-compete restrictions pending final divestment).

4. **More Agri-Food Sector Consolidation Possible**

Unconditional Phase 1 approval of *ABP Group*/*Slaney Foods* by the European Commission, a contentious acquisition by Ireland's largest beef processor of a significant stake in the No. 5 player (and No. 1 lamb processor) suggests scope for more consolidation of Irish agri-food businesses. Irish farmer organisation, the IFA, opposed the deal arguing it would permit anticompetitive coordination among Irish processors; the deal gives ABP control of 30% of the country's cattle kill and 40% of its lamb kill, with five other nationwide competitors. The European Commission found relevant Irish meat processing markets "moderately concentrated" and, in so doing, rejected IFA economic evidence – primarily, price correlation analysis – of narrower product (premium or speciality cattle) and geographic markets (South Leinster). IFA lobbying for a CCPC referral back was also unsuccessful. Brussels notably accepted there was significant excess processing capacity and left open whether agri-food processing markets may be wider than national.

5. **CCPC Enforcement Priorities: Local Effects (and Company Documents)**

Particularly for deals involving retail or direct consumer-facing businesses, CCPC focus is on local market effects (even if businesses have outlets nationwide). From 2016 filings, for hotel combinations, the CCPC defines overlap areas by reference to 20 minutes drive time; for petrol stations, a 8 km radius in rural areas and a 3 km radius in urban areas is used; for home heating oil a 30 to 50 km radius is applied; for DIY stores, a 10 – 15 mile radius in rural areas and 4 -5 miles in urban areas is used; for car dealer concentrations, a 90 km or an hour's journey time was applied; and for pharmacies, Dublin postal codes is used. A similar approach is followed in assessing on-sale distribution of beer kegs to Irish pubs and bars (where separate relevant geographic markets were defined along Irish county borders). Company documents continue to be considered highly probative, in one case, a vendor prospectus on the target business was considered probative *per se* on market definition.

6. **Plan for Delay for Media Mergers**

Review of so-called "media mergers," defined broadly in Irish law to include any deal involving two or more media businesses if one has minimal Irish revenues, continues to increase. Five media mergers were notified in 2016, most of which involved foreign targets: clearance decisions of three were publicly available at time of writing (all were cleared at Phase 1 without conditions by both the CCPC and the Minister for Communications). On average, final CCPC and Minister approval took 13 weeks (90 days), with the Minister's review typically taking the full Phase 1 period. At the time of writing, acquisition by Independent News & Media Limited of several regional newspaper titles owned by Celtic Media, notified to the Minister on 24 November 2016, has been referred for a full Phase 2 investigation by the Minister for Communications to the Broadcasting Authority of Ireland ("BAI"). This is the first Phase 2 investigation under Ireland's new media plurality regime. This deal is publicly opposed by the National Union of Journalists.

7. **Hailo/mytaxi – A First Merger of Apps**

Acquisition of *Hailo*, a UK taxi hailing app popular in Ireland, by rival app *mytaxi* (owned by Daimler AG) provided the CCPC with its first merger notification relating to digital apps in Ireland. CCPC decisions don't typically assess threshold issues such as turnover calculation or allocation. So no guidance on those points is provided (*Hailo* is free to Irish consumers, but reportedly charges taxi's commission on each e-hailed fare). The CCPC took the view that the two apps don't compete because *mytaxi* is not involved in a taxi business in Ireland. The CCPC appears (albeit implicitly) to consider real-world and e-services as direct competitors.

This entry was posted on Thursday, January 12th, 2017 at 2:00 pm and is filed under Ireland, Source: OECD

“>Mergers
You can follow any responses to this entry through the Comments (RSS) feed. You can leave a response, or trackback from your own site.