

Irish merger control

2023 review and 2024 preview



AT A GLANCE

2023 REVIEW

Irish merger control saw a number of significant decisions and trends in 2023. In particular:

- There continued to be both procedurally and substantively complex transactions in 2023: 5 transactions were subject to a full Phase 2 investigation (including those carried over from 2022) by the Competition and Consumer Protection Commission (CCPC), while a further 14 transactions went to an extended Phase 1 review.
- 4 notified transactions were cleared by the CCPC subject to commitments offered by the parties.
- Assessments (similar to a Statement of Objections under the EU Merger Regulation) and oral hearings are increasingly a feature of the CCPC's determination process in extended Phase 2 cases. Assessments were deployed in two extended Phase 2 transactions in 2023: M/22/040 – Q-Park/Tazbell and M/23/011 – DAA/Certain Assets of Mr Gerard Gannon.
- The CCPC's Simplified Merger Notification Procedure saw its third full year of operation in 2023, having come into effect in the summer of 2020. This has resulted in the shortening and simplification of review processes for transactions that do not raise significant competition concerns. The CCPC used its Simplified Procedure in more than 50% of its determinations in 2023.

2024 PREVIEW

Recent legislative developments will affect Irish merger control and FDI screening in 2024:

- A significant legislative development for Irish merger control was the entry into force on 27 September 2023 of the Competition (Amendment) Act 2022 (**Act**).
- As a result of the Act, the CCPC can now “call in” unnotified below-threshold transactions, impose interim measures on all notified transactions and reverse unnotified deals which the CCPC finds would substantially lessen competition in Ireland. 2024 should see these powers being deployed by the CCPC. In addition, we expect to see greater publicity on the part of the CCPC in their use of these new powers.
- The parameters of the ‘gun jumping’ offence under Irish merger control have been widened by the Act. It is now an offence for parties to a notified transaction to put it into effect prior to obtaining approval from the CCPC. Previously the offence had only penalised parties to a transaction who met the mandatory notification thresholds but failed to notify their transaction to the CCPC.
- We see a continuation of the trend of complex and lengthy merger control review in Ireland with use of remedies in both Phase 1 and Phase 2 of the CCPC's

review process. We also see the evolving theories of harm in merger control internationally being applied where appropriate in Irish merger control.

- Pre-notification contacts between parties to a transaction and the CCPC are likely to be a more frequent feature of merger control practice in 2024. The CCPC recently issued guidance to parties to use short briefing papers to inform the CCPC about their proposed transactions – we see this as a tool which is likely to be used in particular to determine which potentially problematic below-threshold transactions might be called-in by the CCPC for compulsory review.
- The Screening of Third Country Transactions Act 2023 (**FDI Act**) is likely to come into force in Q2 2024. The FDI Act will serve as an additional regulatory hurdle for transactions. It is separate to Irish merger control. It enables the Minister for Enterprise, Trade and Employment to review transactions involving a third country (i.e. other than EEA members and Switzerland) acquirer of businesses in Ireland. The Minister will determine if such transactions would adversely affect security or public order in Ireland. The FDI Act, if applicable, will need to be factored into deal-timing and risk allocation.

KEY IRISH MERGER CONTROL STATISTICS FOR 2023

68

NOTIFICATIONS

The number of notifications in 2023 was the same as in 2022

66

DETERMINATIONS

This is a slight decrease in the 70 determinations issued in 2022

0

PROHIBITIONS

This is not unusual as prohibitions are relatively rare among the leading agencies worldwide

4

DETERMINATIONS SUBJECT TO REMEDIES

As in 2022, remedies contained a mixture of behavioural, structural and hybrid remedies reflecting the continued scrutiny of complex transactions

35

SIMPLIFIED MERGER NOTIFICATION PROCEDURE NOTIFICATIONS

51% of the notifications were simplified which is similar to that in 2022

5

PHASE 2 INVESTIGATIONS

Two of the Phase 2 investigations were opened in 2022

4

PHASE 2 DETERMINATIONS

This was a decrease from the 6 Phase 2 determinations issued in 2022

28

REQUIREMENTS FOR INFORMATION (RFIS) ISSUED

This is a slight decrease in the 30 RFIs issued by the CCPC in 2022. Nonetheless the CCPC continues to be inclined to issue RFIs

2

EU ARTICLE 22 CASES

The CCPC made two Article 22 EUMR referrals to the European Commission (i.e. with *Qualcomm/Autotalks* and *Adobe/Figma*, the latter case was abandoned by the parties)

KEY CONTACTS



Dr. Vincent Power
*Partner and Head of EU,
Competition & Procurement*
+353 1 649 2226
vpower@algoodbody.com



Alan McCarthy
*Partner - EU, Competition &
Procurement*
+353 1 649 2228
amccarthy@algoodbody.com



Anna-Marie Curran
*Partner - EU, Competition &
Procurement*
+353 1 649 2227
amcurran@algoodbody.com



Micaela Diver
*Partner - EU, Competition &
Procurement*
+44 28 9072 7592
mdiver@algoodbody.com