

Ireland introduces a Simplified Procedure for Merger Control

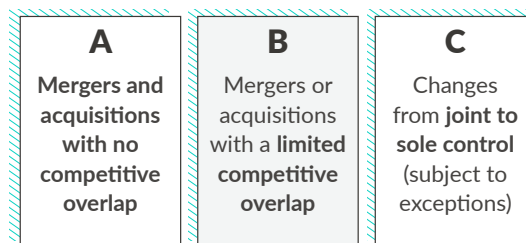
In this briefing, the key features of Ireland’s new Simplified Merger Notification Procedure announced by the Competition and Consumer Protection Commission (CCPC) on 7 May 2020 are explained.

The Simplified Procedure applies to notifiable mergers, acquisitions and joint ventures that ‘clearly’ do not raise competition concerns in Ireland. It is intended that such transactions will benefit from:

- a. a shorter review period and
- b. reduced information requirements in the notification process.

1. What transactions qualify for notification under the Simplified Procedure?

From 1 July 2020, the Simplified Procedure will apply to transactions that are notifiable to the CCPC under the Competition Act 2002 (as amended) (the **Competition Act**). The CCPC has identified three categories of merger, acquisition or joint venture which are unlikely to raise competition concerns and which will ‘in principle’ be eligible for notification under the Simplified Procedure:



A. Mergers and acquisitions with no competitive overlap

The first and most straightforward category concerns transactions where none of the businesses

involved in the transaction are active or potentially active in the same product or geographic market (i.e. horizontal overlap) or in any upstream or downstream markets (i.e. vertical overlap).

B. Mergers or acquisitions with limited competitive overlap

The second category concerns transactions giving rise to a limited competitive overlap i.e. where the market shares of the undertakings involved are less than:

- 15% combined in cases of horizontal overlap or
- 25% in each vertically affected market in cases of vertical overlap.

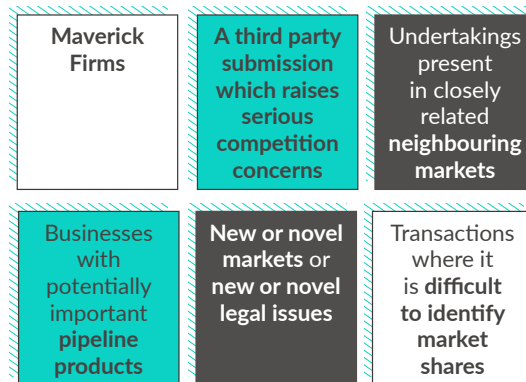
The CCPC has indicated that these thresholds may not apply where the market in which the parties overlap is ‘already concentrated’.

C. Changes from joint to sole control

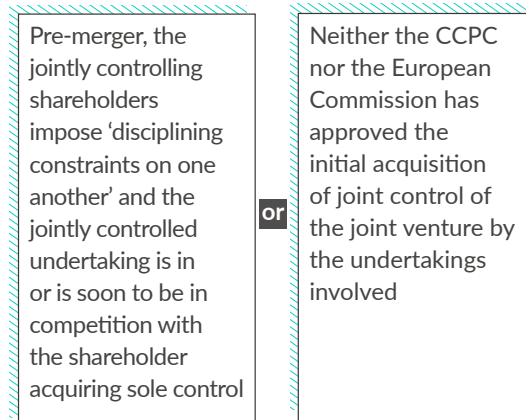
Changes from joint to sole control will in principle be notifiable under the Simplified Procedure subject to the specific exceptions outlined below.

2. Are there any exceptions to these categories of cases?

Yes. Even if a transaction falls within one of the categories identified above, the CCPC's Simplified Procedure Guidelines (available [here](#)) identify a number of cases where the CCPC is 'unlikely' to apply the Simplified Procedure. These include transactions which involve or concern:



For changes from joint to sole control, the CCPC is also unlikely to apply the Simplified Procedure where:



3. What does the Simplified Procedure process involve?

The notifying parties will still need to notify the CCPC using the standard merger notification form however the notifying parties are exempt from completing certain sections of the form. In practice, this means that:

- there will be no requirement to provide contact details for the parties' top five customers, competitors, suppliers and trade associations (i.e. sections 4.4-4.10) or
- internal documents which assess or analyse the transaction (i.e. section 7.3)

In cases involving no overlap, the parties are also exempt from completing sections 4.4, 4.11, 5.1 and 5.2 of the merger notification form. In practice, this means that there is no need to provide details on:

- the industry sector and goods and services concerned (section 4.4)
- the relevant product and geographic markets (section 4.11)
- estimates of competitor turnover (section 5.1) and
- market share information (section 5.2)

The standard CCPC merger notification form has been updated to reflect the introduction of the Simplified Procedure (updated version available [here](#)).

4. Are pre-notification discussions with the CCPC advised?

Yes. Pre-notification is not mandatory but parties are 'strongly encouraged' to engage with the CCPC in pre-notification to identify the relevant markets and confirm that the Simplified Procedure is appropriate. Although the CCPC will not provide a binding confirmation that the transaction qualifies for the Simplified Procedure, pre-notification is highly recommended before embarking on a Simplified Procedure notification, except perhaps in limited cases where it is very clear there is no actual or potential competitive overlap between the parties.

5. Is there a shorter review period for Simplified Procedure notifications?

Technically, no. Transactions notified to the CCPC under the Simplified Procedure remain subject to the standard 30 working day review period under the Competition Act. However, the purpose of the Simplified Procedure is to provide for speedier reviews of no issues transactions and the CCPC will aim to make a determination 'as soon as practically possible' following the expiration of the deadline for third party comments.

6. Is there a reduced filing fee paid to the CCPC for Simplified Procedure notifications?

No. The merger filing fee is the same as for standard merger notifications i.e. €8,000.

7. If a transaction is notified under the Simplified Procedure, may the CCPC revert to the standard procedure?

Yes. The CCPC may revert to the standard procedure at any point of the notification process. The CCPC may do this in two ways:

- by issuing a request for information (RFI) under Section 20(2) of the Competition Act or
- by declaring the notification 'invalid' in accordance with Section 18(12) of the Competition Act

If an RFI is issued, the 30 working day review period is reset starting from the day on which the parties respond in full to the RFI. Where the CCPC declares a notification invalid, the parties will have to submit a new notification under the standard procedure and the 30 working day period will commence on the date of the new notification. Both of these scenarios would be likely to considerably delay the overall review period.

Conclusion

The introduction of the Simplified Procedure is a welcome development by the CCPC and brings Ireland more into line with international practice including the European Commission. It is hoped that the introduction of the Simplified Procedure will fulfil its function of significantly reducing the time needed by the CCPC to review no-issue transactions. However, there will be a degree of uncertainty for businesses seeking to rely on the Simplified Procedure, as the CCPC has a wide discretion to issue an RFI or revert back to the standard procedure thereby restarting the 30 working day clock.

Notifying parties seeking to use the Simplified Procedure should engage with the CCPC early in the process to determine if the merger or acquisition is suitable. This may be relatively straightforward in cases of no overlap however for cases where there is a small or *de minimis* overlap, the notifying parties will need to present a clear picture of the goods or services involved, the markets concerned and the estimated market shares to take advantage of the Simplified Procedure.

A&L Goodbody's EU, Competition & Procurement Group is widely recognised as the leading and most experienced team in its field. If you have any questions on the CCPC's Simplified Procedure please contact any of our [team](#).

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