

Irish Competition/Antitrust Law

Ireland's Competition and Consumer Protection Commission's 2019 Annual Report published

- Ireland's competition and consumer agency is the Competition and Consumer Protection Commission (CCPC).
- The CCPC must, by law, compile an annual report. It has just submitted its 2019 Annual Report to the Irish Parliament (the **Oireachtas**).
- Key elements of the report cover: merger control notifications; criminal enforcement of merger control law; potential bid-rigging; closed investigations; studies; the ECN+ Directive; and organisational changes. Finally, the Annual Report identified the CCPC's four strategic goals.

- **On merger control:**
 - » There was 47 merger notifications made to the CCPC in 2019, a 52% decrease in notifications compared to 2018. This significant decrease can be attributed largely to the introduction on 1 January 2019 of higher turnover thresholds to trigger compulsory filings.
 - » The CCPC undertook nine extended Phase 1 investigations and two Phase 2 investigations (*Berendsen/King's Laundry* and *LN-Gaiety/MCD Productions*) during 2019.
 - » 2019 saw the CCPC prepare for the introduction of a new simplified merger procedure (**SMP**) for the notification of mergers that do not raise competition concerns in Ireland. (The SMP came into force on 1 July 2020.)
- **On the criminal enforcement of merger control law**, the CCPC secured Ireland's first criminal conviction, following guilty pleas, for '*gun-jumping*' in a merger that ought to have been notified.
- **On potential bid-rigging**, the CCPC referred a file to the Director of Public Prosecutions (**DPP**) in relation to potential bid-rigging in the procurement of publicly funded transport services in certain parts of Munster and Leinster.
- **On closed investigations**, the CCPC closed an investigation into alleged exclusive purchasing arrangements between CRH's subsidiary, Irish Cement Limited, and retail distributors of bagged cement. The CCPC did not find sufficient evidence of a breach of competition law to warrant further action.
- **On studies** during 2019, the CCPC commenced a market study into the public liability insurance sector in Ireland (following a request from the Minister for Business, Enterprise and Innovation) and continued its motor insurance study which had been commenced in 2016.
- **On the EU's ECN+ Directive** (to improve competition law enforcement across the EU), the CCPC says in the Annual Report that it has been working with Government on the Directive's implementation.
- **On organisational changes**, the CCPC filled 39 new positions across the organisation in 2019. These additional roles are to ensure that the CCPC has the capacity to deal with Brexit and the likely increase in merger notifications it will bring.

The Annual Report identified the CCPC's four strategic goals as:

1. The CCPC will use its statutory powers to increase compliance with competition and consumer protection law, taking enforcement actions where appropriate
2. The CCPC will empower consumers to help them make informed decisions
3. The CCPC will work to influence public debate and policy development, promoting competition and highlighting the interests of consumers
4. The CCPC will support its staff's ambition to maximise the CCPC's impact and help its people achieve their potential

Merger Control

Mergers and acquisitions which meet the Irish merger control turnover thresholds or which are media mergers under the Competition Act 2002 (as amended) (**Competition Act**) must be notified to the CCPC for prior approval (and if it is a media merger under the Competition Act it must subsequently be notified to the Minister for Climate Action, Communication Networks and Transport for prior approval).

2019 saw significant changes within the merger regime in Ireland. Following on from an active year in 2018, the implementation of the new, higher merger financial thresholds on 1 January 2019 resulted in a significant reduction in the number of mergers notified. 2019 saw 47 merger notifications to the CCPC which was a 52% decrease in notifications compared to 2018 (98 notifications). Nine notifications required an extended Phase 1 review, and two of those required a Phase 2 investigation.

Overall, the CCPC issued 49 determinations, four of which required commitments to secure approval. Two transactions which were notified to the CCPC in 2018 (Berendsen/King's Laundry and LN-Gaiety/MCD Productions) resulted in extensive Phase 2 assessments in 2019 and were approved on the basis of a range of commitments offered by the parties to obtain CCPC approval.

2019 also saw the CCPC prepare for the introduction of a new simplified merger procedure (SMP) to deliver '*an improved merger process for Irish consumers and businesses*'. On 7 May 2020, following public consultation, the CCPC announced the introduction of its simplified procedure for the notification of mergers that do not raise competition concerns in Ireland. From 1 July 2020, the SMP applies to some transactions that are notifiable to the CCPC under the Competition Act 2002. 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 SMP. For more information on Ireland's new simplified merger procedure, see [here](#).

Enforcement of Competition Law in Ireland – Gun-Jumping

2019 saw the first criminal conviction in Ireland for '*gun-jumping*' in a merger with two guilty pleas. Under the Irish merger control rules, a notifiable merger or acquisition should not be put into effect until it has been approved by the CCPC. Gun-jumping (i.e. integrating merging businesses prior to approval by the CCPC) is a breach of Irish law. In particular, a failure to notify a transaction that is compulsorily notifiable is a criminal offence. While there has been an offence since the 1978 mergers legislation, the CCPC has said that there was never a conviction until 2019.

In 2017, the CCPC had opened an investigation and prepared a file for the DPP into a potential '*gun-jumping*' case. Armalou Holdings, through its subsidiary Spirit Ford Limited, had acquired Lillis O'Donnell Motor Company Limited without notifying the CCPC when a notification was, according to the CCPC, needed. In April 2019, Armalou Holdings pleaded guilty to six charges arising out of its failure to notify the CCPC of the transaction before putting it into effect and in May, Airfield Villas Limited (formerly known as Lillis-O'Donnell Motor Company Limited), also pleaded guilty to illegally putting into effect a business merger without first notifying the CCPC. This was Ireland's first criminal investigation and guilty pleas for '*gun jumping*' in a merger.

The ECN+ Directive

The 2019 Annual Report notes that the CCPC continued to work closely with the Department of Business, Enterprise and Innovation (DBEI) in the transposition into Irish law of the ECN+ Directive (ECN+) – Directive (EU) 2019/1. ECN+ is scheduled to be transposed into EU Member State law by 4 February 2021. It will introduce a number of significant changes to the current competition law enforcement regime in Ireland, in particular, the requirement to introduce non-criminal financial sanctions for breaches of EU competition law or breaches of both EU and Irish competition law. The purpose of the Directive is to ensure that national competition authorities have the appropriate public enforcement tools in order to bring about a genuine common competition enforcement area. In particular, the CCPC believes that the introduction of an administrative enforcement regime, whereby the CCPC would itself have the power to impose fines for breaches of competition law, would fill a significant gap in the existing competition law enforcement regime in Ireland. (It is not yet clear how the Directive will be implemented in Ireland given the already established role of the courts in imposing fines.)

Market study and investigations

In August 2019, the Minister for Business, Enterprise and Innovation requested that the CCPC commence a market study into the public liability insurance sector in Ireland. By the end of 2019, the CCPC's review was, according to the 2019 Annual Report, well underway, with extensive research and stakeholder engagement having taken place.

On 12 June 2020, the CCPC announced that it has opened a public consultation and is seeking views from stakeholders on their experiences in the public liability insurance market. This ongoing consultation will provide the CCPC with further evidence to make a fully informed examination of the market. The CCPC is seeking views from representative groups, public bodies, industry representatives, and customers in relation to the competitive conditions in the market for public liability insurance. Based on the evidence collected, the CCPC will make recommendations to address issues found in the sector (as of 10 August 2020, the study is still on-going).

2019 saw the closure of an investigation into alleged exclusive purchasing arrangements between CRH's subsidiary, Irish Cement Limited, and retail distributors of bagged cement. The CCPC conducted an extensive investigation and gathered a large number of documents, but did not find sufficient evidence of a breach of competition law to warrant further action.

The motor insurance study commenced in 2016, as of 10 August 2020, is still on-going.

Following an in-depth investigation that commenced in 2016, involving a wide number of parties and multiple lines of enquiry, 2019 saw the CCPC refer a file to the DPP in relation to potential 'bid-rigging' in the procurement of publicly-funded transport services in certain parts of Munster and Leinster.

Conclusion

The Annual Report is a useful snapshot of, and window into, the CCPC's year. It is important for all concerned with competition and consumer issues in Ireland to be able to see what the CCPC has been doing so it is a helpful source of information – probably, the best source of information currently available. This year's annual report has a number of helpful insights but could have more statistics (e.g., the number of competition inspections) which would help promote deterrence and compliance.

For more information on this topic please contact any member of A&L Goodbody's [EU, Competition & Procurement team](#).

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