

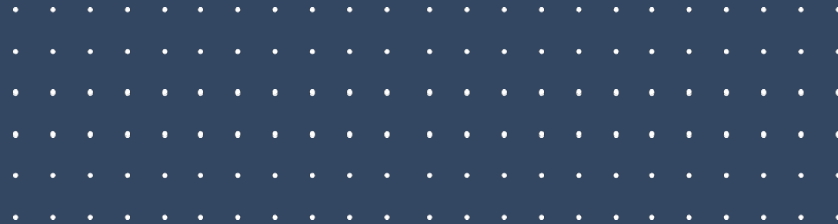
26 September 2023

# Changes to the Merger Regime in Ireland

CCPC briefing to stakeholders



Coimisiún um  
Iomaíocht agus  
Cosaint Tomhaltóirí | Competition and  
Consumer Protection  
Commission



# Agenda

1. Welcome from Úna Butler,  
Member, CCPC
2. The Competition  
(Amendment) Act 2022
3. Updated Mergers  
& Acquisitions  
Procedures
4. Updated Merger  
Notification  
Form
5. Questions & Answers



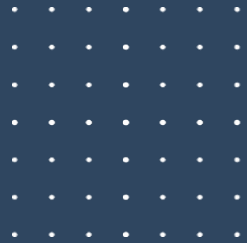
Welcome from

**Úna Butler**

Member, CCPC

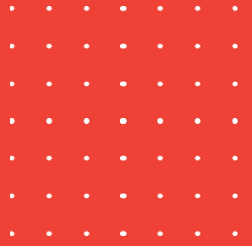


**Craig Whelan**  
Head of Unit, CEM





# The Competition (Amendment) Act 2022



# Commencement and merger provisions



# The Competition (Amendment) Act 2022

2 [448]

S.I. No. 448 of 2023

## COMPETITION (AMENDMENT) ACT 2022 (COMMENCEMENT) ORDER 2023

I, SIMON COVENEY, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 1(3) of the Competition (Amendment) Act 2022 (No. 12 of 2022), hereby order as follows:

1. This Order may be cited as the Competition (Amendment) Act 2022 (Commencement) Order 2023.

2. The 27th day of September 2023 is appointed as the day on which the Competition (Amendment) Act 2022 (No. 12 of 2022), other than section 26, shall come into operation.



GIVEN under my Official Seal,  
13 September, 2023.

SIMON COVENEY,  
Minister for Enterprise, Trade and Employment.

**Minister signed Commencement Order on 13 September 2023**

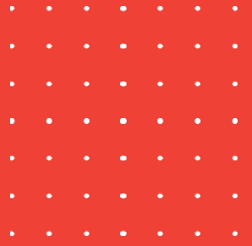
**Entire Act (except section 26) comes into force on 27 September 2023**

**New CCPC procedures effective from this date**  
(both merger and enforcement)

# New legislative provisions for mergers

1. Ability for undertakings to voluntarily notify mergers after they have been put into effect
2. Power to 'call in' mergers
3. Power to impose interim measures
4. New offence for putting merger into effect after notification but before clearance
5. Clarification on ability to RFI 'undertakings involved' not 'undertakings concerned'
6. Ability to issue statutory RFIs to third parties
7. New statutory period for assessing RFI compliance, and ability for Commission to issue notice of compliance/non-compliance and for non-compliance to be remedied
8. Ability for Commission to order implemented mergers unwound upon determination of SLC





# Call-in mergers



# Call-in mergers

## Section 18A – what can be called in?

Mergers (within the meaning of section 16) that ...

- a) are not required to be notified on a mandatory basis,
- b) have not been notified on a voluntary basis, and
- c) may, in the opinion of the CCPC, have an effect on competition in markets for goods or services in the State

If this is the case, the CCPC can issue a notice in writing requiring notification by a certain date specified by the CCPC

# Call-in mergers

## When can mergers be called in?



the date on which one of the undertakings involved in the merger publicly announces an intention to make a public bid or a public bid is made but not yet accepted



the date on which the Commission becomes aware that the undertakings involved in the merger have entered into an agreement the result of which will, if the agreement is implemented, be that the merger occurs



the date on which the merger or acquisition is put into effect.

**No later from 60 working days from the earliest of ...**

# Call-in mergers

## What will change?

**CCPC merger monitoring activity will continue as it always has.**

- Regular letters will continue to be sent – main focus: are thresholds met?
- 11 cases so far this year → 2 notifications received.

**New addition will likely be invitation to submit short summary document (no more than 5 pages).**

- In cases where CCPC is considering ‘calling-in’, will endeavour to engage with parties as much as possible.

**Not every merger having an effect on competition in markets for goods or services in the State will be called in.**

**Legal advisors best placed to advise. Work with corporate colleagues to highlight importance of CCPC process.**

- Advisors will see deal long before we do.
- Pre-notification discussions strongly encouraged – particularly where competition concerns likely to be evident.
- CCPC would not encourage notification of below threshold transactions without prior engagement.

# Call-in mergers

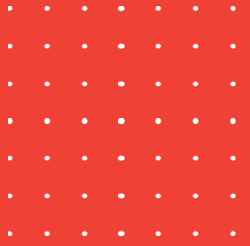
## Key takeaways

### Where potential competition concerns are evident

Approach the CCPC to engage in pre-notification discussions.

### Otherwise

CCPC will reach out to seek information. May invite briefing paper to be submitted by parties.



# RFIs



# RFIs to parties

## Main changes

- New statutory period for assessing RFI compliance, and ability for CCPC to issue notice of compliance/non-compliance and for non-compliance to be remedied.
- Engagement on RFI compliance has been more and more common
- CCPC will interrogate information given, will spot gaps
- How we do this won't change. Timelines and turnaround for CCPC and parties will

# RFIs

## Key takeaways

### Do

- Provide all available documents and information.
- Provide all passwords. All documents should be accessible.
- Discuss approach to response with CCPC (custodians, keywords, structure of data etc.)
- Submit RFI responses in batches
- Provide as much information / explanation as possible. Methodology / approach helps us understand how party sought to comply with RFI.

### Do not

- Wait until last minute to submit RFI response.
- Limit scope of questions without prior engagement with CCPC.
- Convert documents from one format to another without engaging with the CCPC.
- Withhold documents for any reason other than LPP.

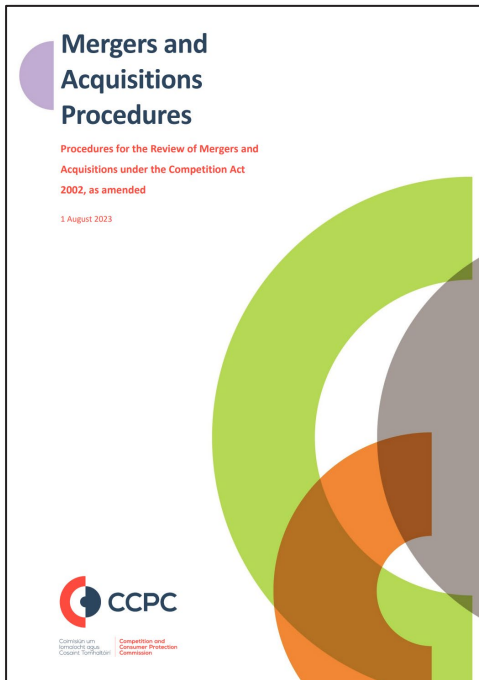




# Updated Mergers and Acquisitions Procedures

# Main updates in 2023 Procedures

2023 Procedures needed to reflect new legislation and to reflect recent Phase 2 experience



## Main changes include:

1. Updated to reflect all bases of notification
2. Parties in below threshold mergers strongly encouraged to engage in pre-notification discussions
3. Clarifies status re return of filing fee (mostly not returned, but can be re-used)
4. New Assessment issuing provisions (ability to adjust date)
5. More detail on Oral Submissions
6. Strengthening of language re late submission of proposals



# The Assessment

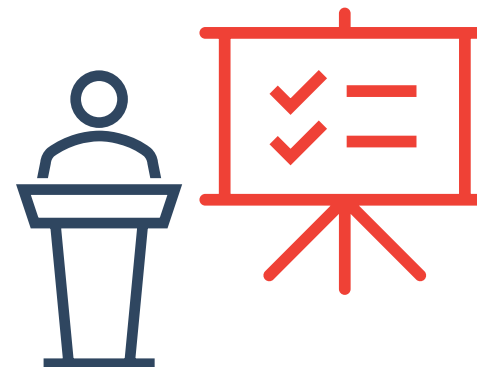


## New procedures provide further clarity on the issuing of the Assessment

- Assessment will normally be issued 40 working days from opening of Phase 2. However, CCPC may adjust this date by up to 10 working days (at own motion or following request from parties). Reasons must be given.
- This should happen in limited cases (e.g., dealing with late submissions / proposals).
- State of play generally occurs ~2 weeks prior to Day 40

## Oral Submissions

- Clarifies that Oral Submissions take place after parties have responded to Assessment
- Clarifies that Oral Submissions are opportunity for parties to address Members directly – not to debate case team.



# Proposals



## **CCPC can generally not enter into discussions on proposals after 15 working days from issuing of Assessment**

- Need for proposals to be considered and assessed – do they address SLC concerns?
- Market testing may need to take place
- Engagement on legal drafting of Proposals.

# New Mergers and Acquisitions Procedures

## Key takeaways

- More clarity around issuing of Assessment and engagement before issuing
- Do not submit late proposals.



# Updated Merger Notification Form

# Updated Merger Notification Form



## Evolution rather than revolution

- Updated to reflect new legislation
- Clarity on detail of information required rather than requiring new types of information to be provided
- Explain more. “Full details” required – give us the information needed to effectively commence our review.

## Provide more evidence to support notification.

- Documents from parties, explanations of approach to providing info.
- Providing more information upfront reduces our need to issue RFI to fill basic evidence gaps

## Ancillary Restraints

- For each restraint notified, you must give justification. Blanket/high level justification no longer accepted.

# New Merger Notification Form

## Key takeaways

- Provide as much detail as possible. The notification form may be the first time we've heard of this market or these undertakings.
- Provide as much evidence as possible to support your views. Documents, reports, etc.
- Explain basis of any estimates and approach to estimating – underlying data and assumptions.
- We love illustrations/graphs of how market works.





# Other merger process updates

# New bank account details



- CCPC moving bank account as part of Government wide process.
- Danske Bank is replacing AIB.
- New details included in updated Merger Notification Form.
- Active from today.
- Transition period: current AIB account will remain active for next month. Team happy to discuss / confirm arrangements.

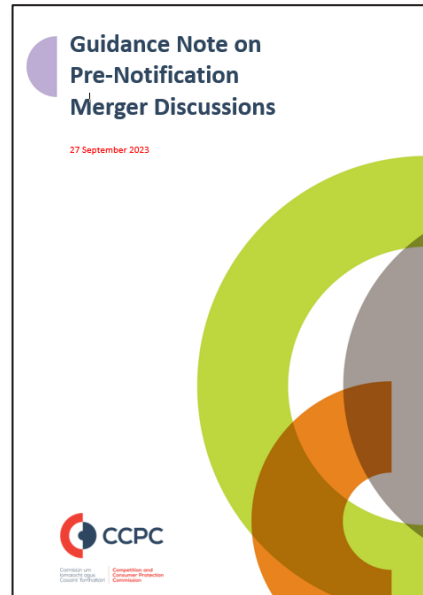
# Other policy/guidance changes

## New Access to File Procedures

- Single procedure for all CCPC competition work. Consultation held in 2022.

## Updated guidance on pre-notification discussions

- Minor changes – 5 page submission; strongly encouraged for parties involved in below threshold mergers where competition concerns may be evident.



# Access to File

## Key takeaways

- No blanket confidentiality claims. Justify each such claim.
- Claims should be specific – do not black out entire pages.
- Submit non-confidential documents
- Remember, information provided to CCPC may be disclosed to other party in merger review after issuing of Assessment as part of Access to File. Blanket confidentiality affects their rights.



**Thank you.  
Questions?**



Coimisiún um  
Iomáiocht agus  
Cosaint Tomhaltóirí

Competition and  
Consumer Protection  
Commission