

# ICN MERGER NOTIFICATION AND PROCEDURES TEMPLATE

## Merger Working Group

### The Competition and Consumer Protection Commission

12 March 2020

**IMPORTANT NOTE:** This template is intended to provide background on ICN jurisdiction’s merger notification and review procedures.

Reading the template is not a substitute for consulting the referenced statutes and regulations.

[Please include, where applicable, any references to relevant statutory provisions, regulations, or policies as well as references to publicly accessible sources, if any.]<sup>1</sup>

<b>1. Merger notification and review materials [references to publicly accessible sources (homepage address) and indication of the languages in which these materials are available]</b>
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#### Statutory Laws

<b>A. Notification provisions</b>	<a href="#">Section 18 of the Competition Act 2002 as amended</a>  <a href="#">S.I. No. 623 of 2002</a> in relation to the notification fee  <a href="#">S.I. No. 122 of 2007</a> in relation to media mergers  <a href="#">S.I. No. 388 of 2018</a> in relation to financial thresholds for mandatory notification
<b>B. Substantive merger review Provisions</b>	<a href="#">Part 3 and Part 3A of the Competition Act 2002, as amended</a>

<sup>1</sup> Editor’s note: all the comments in [square brackets] are intended to assist the agency when answering this template but will be removed once the completed template is made public.

<b>C. Implementing regulations</b>	<a href="#">The Competition Act 2002 as amended and Statutory Instruments listed in A, above.</a>
<b>D. Notification forms or information requirements</b>	<a href="#">CCPC webpage with merger notification form and information on how to notify</a>

**Interpretative Guidelines and Notices**

<b>E. Guidance on Merger Notification Process [e.g., information on calculation of thresholds, etc.]</b>	<p><a href="#">CCPC webpage with information on when to notify and the thresholds for notification</a></p> <p><a href="#">Notice in respect of certain terms used in Part 3</a> of the Competition Act. This Notice outlines the CCPC’s understanding of certain terms used in Part 3 of the 2002 Act, as amended by the 2014 Act. However, this Notice is not, and does not purport to be, an interpretation of the law.</p> <p><a href="#">Notice in respect of non-notifiable mergers and acquisitions.</a> This Notice gives information about mergers and acquisitions that do not meet the statutory thresholds but may raise competition issues.</p>
<b>F. Guidance on Substantive Assessment in Merger Review [Please include reference separately, if applicable]</b>	<a href="#">Merger guidelines</a>
<b>G. Has your agency published guidelines or directives on notification of mergers involving specific sectors (e.g., digital economy)? [If affirmative, please provide references and languages available]</b>	<p>Yes, for media mergers. See <a href="#">S.I. No. 122 of 2007</a> in relation to media mergers.</p>
<b>H. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the agency’s decision-making process</b>	<p><a href="#">Simplified Merger Notification Procedure Guidelines</a></p> <p><a href="#">Communications policy in relation to mergers</a></p> <p><a href="#">Procedure for access to file in merger cases</a></p> <p><a href="#">Information on pre-notification discussions</a></p> <p><a href="#">Merger and Acquisitions Annual Reports</a></p> <p><a href="#">Notice in respect of non-notifiable mergers and acquisitions</a></p>

[Mergers and acquisitions procedures](#)

**2. Agency (or Agencies) responsible for merger enforcement.**

**A. Name of the Agency which reviews mergers. If there is more than one agency, please describe the allocation of responsibilities.**

The Competition and Consumer Protection Commission (CCPC)

**B. Contact details of the agency [address and telephone including the country code, email, website address and languages available on the website]**

Address: Bloom House, Railway Street, Dublin 1, D01 C576  
Telephone: +353 (1) 402 5500  
Email: [mergers@ccpc.ie](mailto:mergers@ccpc.ie)  
Languages available: English

**C. Is agency staff available for jurisdiction/filing guidance? [If yes, please provide contact points for questions on merger filing requirements and/or consultations]**

Yes, contact [mergers@ccpc.ie](mailto:mergers@ccpc.ie)

**3. Covered transactions**

**A. Thorough definition of potentially covered transactions [i.e., share acquisitions, asset acquisitions, mergers, de-mergers, consolidations, consortia, amalgamations, joint ventures or other forms of contractual relationships, such as partnerships and alliance agreements]**

The CCPC potentially covers transactions that meet the definition of a merger or acquisition, and the definition of control.

As provided for in [section 16](#) of the 2002 Act, a merger or acquisition arises if any of the following events occur:

- (a) Two or more undertakings, previously independent of one another, merge;
- (b) one or more individuals who already control one or more undertakings, or one or more undertakings, acquire direct or indirect control of the whole or part of one or more other undertakings, or, and;
- (c) the acquisition of part of an undertaking, although not involving the acquisition of a corporate legal entity, involves the acquisition of assets that constitute a

business to which a turnover can be attributed, and for the purposes of this paragraph ' assets ' includes goodwill.

It is also stated that *“the creation of a joint venture to perform, on a lasting basis, all the functions of an autonomous economic entity shall constitute a merger.”*

In section 16(6), it is stated that a merger or acquisition shall **not** be deemed to occur if—

( a ) the person acquiring control is a receiver or liquidator acting as such or is an underwriter or jobber acting as such, or

( b ) all of the undertakings involved in the merger or acquisition are, directly or indirectly, under the control of the same undertaking, or

( c ) control is acquired solely as a result of a testamentary disposition, intestacy or the right of survivorship under a joint tenancy, or

( d ) control is acquired by an undertaking referred to in *subsection (7)* in the circumstances specified in *subsection (8)*.

In these definitions above control, in relation to an undertaking, shall be regarded as existing if, by reason of securities, contracts or any other means, or any combination of securities, contracts or other means, decisive influence is capable of being exercised with regard to the activities of the undertaking and, in particular, by:

	<ul style="list-style-type: none"> <li>a) ownership of, or the right to use all or part of, the assets of an undertaking; or</li> <li>b) rights or contracts which enable decisive influence to be exercised with regard to the composition, voting or decisions of the organs of an undertaking.</li> </ul> <p>Pursuant to section 16(3) of the Act, control is acquired by an individual or other undertaking if he or she or it:</p> <ul style="list-style-type: none"> <li>a) becomes holder of the rights or contracts, or entitled to use the other means, referred to in subsection (2); or</li> </ul> <p>although not becoming such a holder or entitled to use those other means, acquires the power to exercise the rights derived therefrom.</p>
<p><b>B. What is the geographic scope of transactions covered?</b></p>	<p>As long as a merger/acquisition meets the definition of a merger/acquisition and the definition of control and meets the financial thresholds in the State, the transaction must be notified. Transactions therefore can be global in scope.</p>
<p><b>C. If change of control is a determining factor, how is control defined and interpreted in practice?</b></p>	<p>Pursuant to <a href="#">section 16(2) of the 2002 Act</a>, control, in relation to an undertaking, shall be regarded as existing if, by reason of securities, contracts or any other means, or any combination of securities, contracts or other means, decisive influence is capable of being exercised with regard to the activities of the undertaking and, in particular, by:</p> <ul style="list-style-type: none"> <li>c) ownership of, or the right to use all or part of, the assets of an undertaking; or</li> </ul>

	<p>d) rights or contracts which enable decisive influence to be exercised with regard to the composition, voting or decisions of the organs of an undertaking.</p> <p>Pursuant to section 16(3) of the Act, control is acquired by an individual or other undertaking if he or she or it:</p> <p>b) becomes holder of the rights or contracts, or entitled to use the other means, referred to in subsection (2); or</p> <p>c) although not becoming such a holder or entitled to use those other means, acquires the power to exercise the rights derived therefrom.</p>
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<p><b>D. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels? Are acquisitions of assets ever covered? If so, do the assets have to form a free-standing business or can the combination of the assets with the business of the acquirer be considered in order to have jurisdiction? Does the authority have jurisdiction over “bare” asset purchases, e.g. where the assets purchased do not relate to the acquirer’s existing business?</b></p>	<p>The acquisition of a minority interest in an undertaking will only amount to a merger/acquisition for the purposes of the 2002 Act where the minority interest is sufficient to give the undertaking involved joint or sole control.</p> <p>Section 16 (1)(c) of the 2002 Act provides that a merger of acquisition occurs if – <i>“the acquisition of part of an undertaking, although not involving the acquisition of a corporate legal entity, involves the acquisition of assets that constitute a business to which a turnover can be attributed, and for the purposes of this paragraph ‘ assets ’ includes goodwill.”</i></p>
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<p><b>4. Thresholds for notification</b></p>	
<p><b>A. What are the general thresholds for notification? [If the thresholds are subject to adjustment, state on what basis and how frequently (e.g., for inflation, annually)]</b></p>	<p>The general rule for mandatory notification is found in <a href="#">section 18(1)(a)</a> of the Competition Act 2002, as amended (the “Act”) (as substituted by section 55(a) of the 2014 Act), which provides that a notification must be made to the CCPC if, in the most recent financial year,</p>

	<ul style="list-style-type: none"> <li>• the aggregate turnover in Ireland (the “State”) of the undertakings involved is not less than €60,000,000, and</li> <li>• the turnover in the State of each of two or more of the undertakings involved is not less than €10,000,000</li> </ul>
<p><b>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</b></p>	<p>The thresholds apply to the undertakings involved in the transactions. Although the 2002 Act does not define the term “undertaking involved”, the CCPC has published a <a href="#">“Notice in respect of certain terms used in Part 3 of the Competition Act 2002, as amended”</a>, where the CCPC understands the phrases “undertakings involved” and “undertakings involved in the merger or acquisition” to mean the entire group of undertakings to which an undertaking party to a proposed transaction belongs.</p>
<p><b>C. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an “effects doctrine”, please describe how this is applied in practice. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?”</b></p>	<p>The Commission’s <a href="#">“Notice in respect of certain terms used in Part 3 of the Competition Act 2002, as amended”</a> states the following:</p> <p><i>“Section 18(1)(a)(i) and section 18(1)(a)(ii) of the 2002 Act, as substituted by section 55(a) of the 2014 Act, sets out thresholds in respect of “turnover in the State”. The Commission understands “turnover in the State” to comprise sales made or services supplied to customers within the State.”</i></p>
<p><b>D. Can a single party trigger the notification threshold (e.g., one party’s sales, assets, or market share)?</b></p>	<p>If the turnover in the State of each of two or more of the undertakings involved is not less than €10,000,000 then the notification threshold will be triggered.</p>
<p><b>E. Are any sectors excluded from notification requirements? If so, which sectors? To what period(s) of time do the thresholds</b></p>	<p>No; Most recent financial year.</p>

<p>relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</p>	
<p><b>F. Are there special threshold calculations for specific sectors (e.g., banking, airlines, media, digital markets) or specific types of transactions (e.g., joint ventures, partnerships, financial investments)? If yes, for which sectors and types of transactions?</b></p>	<p>Under <a href="#">section 18(1)(b)</a> of the 2002 Act (as amended by section 55(a) of the 2014 Act), where a proposed merger or acquisition falls within a class of merger or acquisition specified in an order made by the Minister for Business, Enterprise and Innovation, it must be notified to the CCPC irrespective of the turnover of the undertakings involved. To date, Statutory Instrument No. 122 of 2007 is the only order made by the Minister specifying a class of merger or acquisition for the purposes of section 18(1)(b) of the 2002 Act.</p> <p>This order relates to media mergers and establishes the obligation to notify to the CCPC:</p> <p>mergers or acquisitions in which two or more of the undertakings involved carry on a media business in the State, and</p> <p>mergers and acquisitions in which one or more of the undertakings involved carries on a media business in the State and one or more of the undertakings involved carries on a media business elsewhere.</p>
<p><b>G. Are there special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign (foreign-to-foreign transactions)? [Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets]</b></p>	<p>No. The CCPC has previously examined transactions in which both the acquiring and acquired undertakings are foreign.</p>



<p><b>H. Does the agency have the authority to review transactions that fall below the thresholds or otherwise do not meet notification requirements? If so, what is the procedure to initiate a review? [Describe methodology for calculating exchange rates]</b></p>	<p>Section 18(3) of the Act provides that parties to a <u>proposed</u> merger or acquisition which does not meet the turnover thresholds for a mandatory notification to the CCPC under section 18(1) of the 2002 Act may nevertheless submit a notification to the CCPC on a voluntary basis <u>before</u> they put the proposed merger or acquisition into effect.</p> <p>At present, the CCPC cannot require a transaction that does not meet the threshold(s) to be notified. The CCPC has, in the past, requested that transactions that fall just short of the thresholds to be notified, but the undertakings are ultimately under no legal obligation to do so. Where the CCPC learns of a proposed merger which in the CCPC's view raises competition-related questions and which has not been notified as it does not meet the thresholds it may contact the parties to enquire whether they intend to notify voluntarily. If the parties intend to notify voluntarily the CCPC will ask for confirmation in writing. The matter will then rest in abeyance until the transaction has been notified. The parties may avail themselves of the CCPC's pre-notification service to assist them in preparing their notification.</p> <p>A merger or acquisition that does not meet the requisite thresholds may nonetheless be also be subject to review under Articles 101 and 102 of the Treaty on the Functioning of the European Union and/or sections 4 and 5 of the Competition Act, 2002 as amended (the domestic equivalents to Articles 101 and 102 TFEU).</p> <p>Exchange rates are calculated using the ECB Annual Average Exchange rate for the year of the turnover in question.</p>
<p><b>I. Are current notification criteria catching relevant transactions related to digital markets?</b></p>	<p>There have been relatively few cases related to digital markets reviewed by the CCPC in recent years. Those that have been reviewed have not presented particular difficulties. The CCPC takes into account the digital environment in which the undertakings operate as part of its review, where relevant. For example, in a number of merger reviews regarding newspapers, the decline in newspaper circulation and the related increase in the consumption of news through online sources were considered important competitive constraints on the notifying parties, as seen in <a href="#">Irish Times/Sappho</a> and <a href="#">Trinity Mirror/Northern &amp; Shell</a>.</p>

**Calculation Guidance and related issues**

<p><b>J. If thresholds are based on any of the following values, please describe how they are identified and calculated to determine if notification is required:</b></p> <ul style="list-style-type: none"><li><b>i) the value of the transaction;</b></li><li><b>ii) the relevant sales or turnover;</b></li><li><b>iii) the relevant assets;</b></li><li><b>iv) market shares;</b></li><li><b>v) other (please describe).</b></li></ul>	<p><b>ii) the relevant sales or turnover</b> – The thresholds are based on the turnover of the undertaking involved and not just the legal entity/asset to be acquired. As provided for in <a href="#">section 18(2)(a) of the 2002 Act</a>, “turnover” does not include any payment in respect of value-added tax on sales or the provision of services or in respect of duty of excise</p> <p>The Commission’s <a href="#">“Notice in respect of certain terms used in Part 3 of the Competition Act 2002, as amended”</a> states the following:</p> <p><i>“Section 18(1)(a)(i) and section 18(1)(a)(ii) of the 2002 Act, as substituted by section 55(a) of the 2014 Act, sets out thresholds in respect of “turnover in the State”. The Commission understands “turnover in the State” to comprise sales made or services supplied to customers within the State</i></p>
<p><b>K. Which entities are included in determining relevant investment funds for threshold purposes? If based on control, is the definition of control in these cases any different from the definition of control in general (question 3C)? If yes, how?</b></p>	<p>The ultimate controlling parent/entity of the undertaking involved in the transaction.</p> <p>Pursuant to <a href="#">section 16(2) of the 2002 Act</a>, control, in relation to an undertaking, shall be regarded as existing if, by reason of securities, contracts or any other means, or any combination of securities, contracts or other means, decisive influence is capable of being exercised with regard to the activities of the undertaking and, in particular, by:</p> <ul style="list-style-type: none"><li>e) ownership of, or the right to use all or part of, the assets of an undertaking; or</li></ul>

	<p>f) rights or contracts which enable decisive influence to be exercised with regard to the composition, voting or decisions of the organs of an undertaking.</p> <p>Pursuant to section 16(3) of the Act, control is acquired by an individual or other undertaking if he or she or it:</p> <p>d) becomes holder of the rights or contracts, or entitled to use the other means, referred to in subsection (2); or</p> <p>e) although not becoming such a holder or entitled to use those other means, acquires the power to exercise the rights derived therefrom.</p>
<p><b>L. In case an investment fund is part of a transaction, are its controllers required to present turnover information related to other funds under same manager (general partner) control? Are those other funds considered as part of the transaction for turnover purposes?</b></p>	<p>The turnover of the company that (i) ultimately controls acquiring undertaking; and (ii) ultimately controls that which is to be acquired is required.</p>
<p><b>M. Describe the methodology applied for currency conversion [e.g. which exchange rates are used].</b></p>	<p>ECB Annual Average Exchange rate for the year in which the turnover was generated.</p>
<p><b>5. Pre-notification</b></p>	
<p><b>A. If applicable, please describe the pre-notification procedure and whether it can be mandatory or not [e.g., time limits, type of guidance given, etc.].</b></p>	<p>Pre-notification discussions are voluntary. The purpose of pre-merger notification discussions is to: (a) assist notifying parties in deciding whether a merger or acquisition is suitable for review under the simplified merger notification procedure; (b) assist notifying parties in the preparation of the Merger Notification Form; and, (c) give notifying parties the opportunity to provide information to the CCPC about the nature of competition and any potential competition issues in the markets, industries or sectors concerned.</p>

<p><b>B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?</b></p>	<p>In order to facilitate a meaningful discussion with the CCPC, a written submission from notifying parties or their representatives briefly describing the proposed merger or acquisition, the market(s) involved and the potential effects of the proposed merger or acquisition should be submitted. Drafts of any relevant agreements or heads of agreements should also be submitted. These submissions should arrive at least 2 working days before the first meeting/teleconference call.</p> <p>In general, less information is required for pre-notification calls discussing the transaction's suitability to be assessed under the Simplified Merger Notification Procedure.</p>
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<p><b>6. Notification requirements and timing of notification</b></p>	
<p><b>A. Is notification mandatory? [Please describe if notification is mandatory in pre-notification phase, post-merger or voluntary]</b></p>	<p>Mergers and acquisitions, involving companies that meet the requirements set out in <a href="#">section 18(1)</a> of the Competition Act 2002 (2002 Act) (as substituted by section 55(a) of the Competition and Consumer Protection Act 2014 (2014 Act)), are subject to mandatory notification to the CCPC.</p> <p>The general rule for mandatory notification is found in <a href="#">section 18(1)(a)</a> of the 2002 Act (as substituted by <a href="#">section 55(a) of the 2014 Act</a>), which provides that a notification must be made to the CCPC if, in the most recent financial year,</p> <ul style="list-style-type: none"> <li>• the aggregate turnover in the State of the undertakings involved is not less than €60,000,000, and</li> <li>• the turnover in the State of each of two or more of the undertakings involved is not less than €10,000,000</li> </ul> <p>Under <a href="#">section 18(1)(b) of the 2002 Act</a> (as amended by section 55(a) of the 2014 Act), where a proposed merger or acquisition falls within a class of merger or acquisition specified in an order made by the Minister for Business, Enterprise and Innovation, it</p>

	<p>must be notified to the CCPC irrespective of the turnover of the undertakings involved. To date, Statutory Instrument No. 122 of 2007 is the only order made by the Minister specifying a class of merger or acquisition for the purposes of section 18(1)(b) of the 2002 Act.</p> <p>This order relates to media mergers and establishes the obligation to notify to the CCPC:</p> <ul style="list-style-type: none"> <li>• mergers or acquisitions in which two or more of the undertakings involved carry on a media business in the State, and</li> <li>• mergers and acquisitions in which one or more of the undertakings involved carries on a media business in the State and one or more of the undertakings involved carries on a media business elsewhere.</li> </ul>
<p><b>B. If parties can make a voluntary merger filing when may they do so?</b></p>	<p>When the above requirements are not met, mergers or acquisitions can be notified to the CCPC on a voluntary basis in accordance with <a href="#">section 18(3)</a> of the 2002 Act (as substituted by section 55(c) of the 2014 Act).</p>
<p><b>C. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)</b></p>	<p>In accordance with <a href="#">section 18(1A)</a> of the 2002 Act (as inserted by <a href="#">section 55(a)</a> of the 2014 Act), a notification must be made to the CCPC before the proposed merger or acquisition is put into effect, and may be made after any of the following applicable events occurs:</p> <ul style="list-style-type: none"> <li>• one of the undertakings involved has publicly announced an intention to make a public bid or a public bid is made but not yet accepted</li> <li>• the undertakings involved demonstrate to the CCPC a good faith intention to conclude an agreement or a merger or acquisition is agreed</li> <li>• in relation to a scheme of arrangement, a scheme document is posted to shareholders</li> </ul>

<b>D. When must notification be made? If there is a triggering event, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?</b>	<p>In accordance with <a href="#">section 18(1A)</a> of the 2002 Act (as inserted by <a href="#">section 55(a)</a> of the 2014 Act), a notification must be made to the CCPC before the proposed merger or acquisition is put into effect, and may be made after any of the following applicable events occurs:</p> <ul style="list-style-type: none"> <li>• one of the undertakings involved has publicly announced an intention to make a public bid or a public bid is made but not yet accepted</li> <li>• the undertakings involved demonstrate to the CCPC a good faith intention to conclude an agreement or a merger or acquisition is agreed</li> <li>• in relation to a scheme of arrangement, a scheme document is posted to shareholders</li> </ul>
<b>E. If there is a notification deadline, can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.</b>	No, the merger/acquisition cannot be put into effect until the transaction has been cleared. So as long as the transaction has not been notified the merger will not be in effect, and no extension is needed.

<b>7. Simplified Procedures</b>	
<b>A. Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain information requirements, etc.).</b>	A merger can be notified under the Simplified Merger Notification Procedure (SMNP) for certain notifiable mergers or acquisitions that clearly do not raise competition concerns in Ireland. The notification form is the same as the standard CCPC Merger Notification Form, but the notifying parties are not required to complete certain sections of the form. Following receipt of a notification, the CCPC will endeavour to make a determination as soon as practically possible following the expiration of the deadline for third party submissions (10 days from the date the merger was published on the CCPC website).

<p><b>B. Describe the criteria adopted to consider a transaction under the simplified procedure.</b></p>	<p>Subject to certain exceptions, the CCPC will apply the SMNP in each of the circumstances:</p> <ul style="list-style-type: none"> <li>• none of the undertakings involved in the merger or acquisition are active or potentially active in the same product and geographic markets, or in any market(s) which is upstream or downstream to a market(s) in which another undertaking involved is active or potentially active;</li> <li>• two or more of the undertakings involved in the merger or acquisition are active in the same product and geographic market, but their combined market share is less than 15%. Or, where one or more undertakings involved in the merger or acquisition are active in any market(s) which is upstream or downstream to a market(s) in which another undertaking involved is active, but the market share of each of the undertakings involved in each market is less than 25%; or</li> <li>• an undertaking involved, which already has joint control over a company, is to acquire sole control over that company.</li> </ul> <p>There are however, certain situations where mergers or acquisitions which, notwithstanding that they fulfil the above criteria, may require the more detailed approach taken in a Standard Merger Notification Procedure. This may arise for example, where, the undertakings involved act as mavericks, where the undertakings involved have pipeline products, where the market involved is already concentrated, or in cases where third party submissions have been made.</p> <p>See the <a href="#">Simplified Merger Notification Guidelines</a> for more information.</p>
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**8. Information and documents to be submitted with a notification**

<p><b>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).</b></p>	<p>Along with the notification form, documents such as a copy of the agreement (if any), the relevant scheme document (if any), evidence of the public announcement of the intention to make a public bid or, where a public bid has been made, a copy of the offer document relating to the proposed transaction should be submitted. The notifying parties must also submit a copy of the most recent annual report for each undertaking involved. Where there is overlap/relationship in the activities of the undertakings, the parties should provide copies of all surveys, reports, analyses, studies, presentations and comparable documents, whether or not in electronic format, assessing or analysing the proposed transaction with respect to market shares, competition, competitors (actual and/or potential), markets, potential for sales growth or geographic or product expansion and state the name and title of each individual who prepared each such document.</p> <p>The notifying parties must also furnish details of any Internet websites or other sources of which they are aware, which may contain information relevant to the assessment of the proposed transaction.</p>
<p><b>B. Is there a distinction between tangible and intangible (e.g., customer portfolio, data on consumers, etc.) assets in the description of the transaction? [In respect to digital markets, state if the agency considers the amount of user data the companies have, and which will be passed on in the transaction]</b></p>	<p>No, but the parties must provide the CCPC with a description of the assets which are being acquired.</p>
<p><b>C. Are documents proving the efficiencies of the transaction required? [If applicable, please provide the type of documents normally required]</b></p>	<p>The merger notification form requires that notifying parties outline their view as to why a substantial lessening of competition (“SLC”) will not occur. Notifying parties may, on occasion, advance an argument that the proposed transaction may, in fact, have efficiencies/a pro-competitive effect. On occasion, notifying parties will submit economics report further justifying their view as to why an SLC will not occur. This may also be submitted in response to RFIs/questions from the CCPC.</p>



<p><b>D. What information is required in case the target company is experiencing financial insolvency?</b></p>	<p>The CCPC’s failing firm test has four elements – all of which must be met. (a) The firm must be unable to meet its financial obligations in the near future. (b) There must be no viable prospect of reorganising the business through the process of receivership, examinership or otherwise. (c) The assets of the failing firm would exit the relevant market in the absence of a merger transaction. (d) There is no credible less anti-competitive alternative outcome than the merger in question.</p> <p>Section 9 of the CCPC’s <a href="#">Guidelines for Merger Analysis</a> states that the onus is on the notifying parties to demonstrate that the test is met. Paragraphs 9.6. – 9.10 set out specific examples of evidence that may demonstrate that this test has been met.</p>
<p><b>E. Is there a specific procedure for obtaining information from target companies in the case of hostile/ unsolicited bids?</b></p>	<p>No. The CCPC’s formal procedure for obtaining information (RFI under <a href="#">section 20(2)</a> of the 2002 Act) is the same for all notifications.</p>
<p><b>F. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalized?</b></p>	<p>No.</p>
<p><b>G. What are the agency’s rules and practice regarding exemptions from information requirements (e.g., information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign (foreign-to-foreign transaction)?</b></p>	<p>None. The requirements of the merger notification form are the same irrespective of whether the transaction is foreign-to-foreign or not. In issuing formal requests for information (“RFIs”), the CCPC would consider what information it needs in each particular case and would not consider the foreign (or not) nature of the transaction <i>per se</i>.</p>
<p><b>H. Can the agency require third parties to submit information during the review process? Can third parties voluntarily submit information or otherwise contact the agency to intervene?</b></p>	<p>Third parties can make submissions to the CCPC with their views on the merger/acquisition. In the case of a phase 1 investigation, the third party submission deadline is 10 working days from when the merger notice was published on the CCPC website. In the case of a Phase II investigation, third parties have 15 working days from when the decision to move to Phase II was published online.</p>

	At present, the CCPC does not have powers to issue formal RFI to third parties.
<b>I. Are parties allowed to submit information beyond what is required in the initial filing voluntarily (e.g., to help narrow or resolve potential competitive concerns)?</b>	Yes, for example notifying parties may submit an economics report when submitting the notification or in response to an RFI.
<b>J. Are there different forms for different types of transactions or sectors?</b>	No
<b>K. With respect to investment funds:</b>	
<p><b>i) Is it requested that an investment fund taking part in a transaction provide a statement that its controllers do not manage any other investment funds in the same relevant market?</b></p> <p><b>ii) Should an investment fund be controlled by an entity that is also responsible for other funds in the same relevant market, are such funds considered part of the transaction? Is it requested that the controlling entity provide market information (e.g., market share) related to the other funds it manages and which are in the same relevant market?</b></p> <p><b>iii) Should there be no classic concentration, is there any sort of exemption regarding presenting certain information requested in the form?</b></p>	<p>(i) No</p> <p>(ii) We don't treat investment funds any differently than another undertaking. They would be required to provide market information on all entities controlled by the ultimate controlling entity that is active on the same relevant market. This would include shares.</p> <p>(iii) No special exemption for funds – may be suitable for assessment under the Simplified Merger Notification Procedure.</p>

<b>9. Translation</b>	
<b>A. In what language(s) can the notification forms be submitted?</b>	English and Irish
<b>B. Describe any requirements to submit translations of documents:</b> i) with the initial notification; and ii) later in response to requests for information. In addition: iii) what are the categories or types of documents for which translation is required; iv) what are the requirements for certification of the translation; v) which language(s) is/are accepted; and vi) are summaries or excerpts accepted in lieu of complete translations and in which languages are summaries accepted?	N/A

<b>10. Review Periods</b>	
<b>A. Describe any applicable review periods following notification.</b>	As provided for in <a href="#">section 21 of the 2002 Act</a> , the CCPC's deadline to make a Phase 1 determination is 30 working days after the "appropriate date", after which the CCPC must decide whether to clear the merger or proceed to a full investigation (Phase 2). The CCPC's deadline to make a Phase 2 determination is 120 working days after the "appropriate date". The appropriate date is the date of receipt by the CCPC of the notification of the merger or acquisition, as defined in <a href="#">section 19(6) of the 2002 Act</a> , as amended by section 56(c) of the 2014 Act.
<b>B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?</b>	No.

<p><b>C. What are the procedures for an extension of the review periods, if any? Do requests for additional information suspend or re-start the review period?</b></p>	<p>As provided for in <a href="#">section 20(2)</a> of the 2002 Act, the CCPC may request further information by writing served on the undertaking (an RFI). This changes the appropriate date to a later date if the CCPC issues, within 30 working days from the date of notification, a formal requirement for the parties involved to provide further information. In addition, the CCPC's deadline for making a Phase 2 determination will stand suspended for a certain period if – within 30 working days from the date of opening of its Phase 2 investigation – the CCPC issues a formal requirement for the parties involved to provide further information. The new appropriate date from which the review deadlines are calculated is the last date the notifying parties provide satisfactory responses to the CCPC's request for further information.</p>
<p><b>D. Is there a statutory or other maximum duration for extensions?</b></p>	<p>No.</p> <p>As provided for in <a href="#">section 20(2A)</a> of the 2002 Act, if, before the expiration of the period specified in a notice of an RFI, the undertaking or undertakings concerned request, in writing, an extension to the specified period, the CCPC may, where it considers it appropriate to do so, extend that period, and an undertaking to which such an extension is granted shall comply with the requirement for information within the specified period as so extended.</p> <p>The Commission, pursuant to a request from the undertaking or undertakings concerned, and where it considers it appropriate to do so, may further extend the period as extended under subsection (2A) described above.</p>

<b>E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?</b>	Review periods cannot be suspended, only extended through a request for further information or a submission of proposals.
<b>F. What are the time periods for accelerated review of non-problematic transactions, if any?</b>	If a merger is reviewed under the Simplified Merger Notification Procedure (SMNP), the CCPC will endeavour to clear that merger as soon as practically possible following the expiry of the deadline for third party submissions (10 working days after the merger notification has been published on the website).
<b>G. If remedies are offered, do they impact the timing of the review?</b>	In a case where remedies are offered, the review period will be extended to 45 working days for a Phase 1 review and 135 working days for a Phase 2 review.

<b>11. Waiting periods / suspension obligations</b>	
<b>A. Describe any waiting periods/suspension obligations following notification (e.g., full suspension from implementation, restrictions on adopting specific measures) during any initial review period and/or further review period.</b>	A merger or acquisition cannot be put into effect until clearance has been given by the CCPC.
<b>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</b>	No.
<b>C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the agency's jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent can the parties implement the transaction outside the agency's jurisdiction prior to clearance (e.g., through derogation from suspension, hold separate arrangements)?</b>	Yes.

<b>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</b>	Yes
<b>E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.</b>	Only notifying parties can seek an extension to the period specified for them to respond to a formal Request for Information.
<b>F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.</b>	N/A
<b>G. Describe any provisions or procedures allowing the parties to close the transaction at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).</b>	N/A

<b>12. Responsibility for notification / representation</b>	
<b>A. Who is responsible for notifying – the acquiring company(ies), acquired company(ies), or both? Does each party have to make its own filing?</b>	<p>In accordance with <a href="#">section 18(1)</a> of the 2002 Act, each of the undertakings involved in a proposed merger or acquisition must notify the CCPC in writing of the proposal to put into effect a merger or acquisition that satisfies the conditions set out in section 18(1)(a) or section 18(1)(b) of the 2002 Act. The CCPC permits all the undertakings involved in a proposed transaction to make a joint notification, although they are not legally obliged to do so.</p> <p>Although the 2002 Act does not define the term “undertaking involved”, the CCPC has published a <a href="#">“Notice in respect of certain terms used in Part 3 of the Competition Act 2002, as amended”</a>, where the CCPC understands the phrases “undertakings involved” and “undertakings involved in the merger or acquisition” to mean the entire group of undertakings to which an undertaking party to a proposed transaction belongs.</p>

<p><b>B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?</b></p>	<p>Section <a href="#">18(1A)5</a> of the 2002 Act allows for a notification to be made to the CCPC prior to a public bid being accepted. For example, a notification can be made to the Commission after one of the undertakings involved has publicly announced an intention to make a public bid, or a public bid has been made but not yet accepted.</p> <p>In addition, as regards a scheme of arrangement, section 18(1A) allows for a notification to be made to the CCPC once a scheme document has been posted to shareholders. If a bid is notified before it has been accepted, there is at that stage only one undertaking involved in the merger, namely, the purchaser. Therefore, only the purchaser is required to notify. Insofar as the purchaser is able, it should provide as much detail as is in its possession in relation to the activities of the target business.</p>
<p><b>C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?</b></p>	<p>There is no obligation for the parties to be represented by a lawyer/solicitor.</p>
<p><b>D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized, or apostilled?</b></p>	<p>Power of attorney should be sent in along with the notification form.</p>
<p><b>13. Filing fees</b></p>	
<p><b>A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)? [Please provide the amount in local currency and in USD as of December 31<sup>st</sup>, 2020]</b></p>	<p>As provided for in <a href="#">Statutory Instrument No. 623 of the 2002 Act</a>, notification of a merger or acquisition must be accompanied by a fee of €8,000 (approximately US \$9590 as of 31/12/2020). The fee is payable by Electronic Funds Transfer (EFT) to the CCPC using the bank account details set out in the merger notification form.</p>

<b>B. Who is responsible for payment?</b>	The notifying parties are responsible for making the payment.
<b>C. When is payment required?</b>	In advance of making a notification.
<b>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</b>	The fee is payable by Electronic Funds Transfer (EFT).

<b>14. Process for substantive analysis and decisions [Please give a brief summary and provide information on relevant Guidance papers]</b>	
<b>A. What are the key procedural stages in the substantive assessment (e.g., screening mergers, consulting third parties)?</b>	<p>The stages involved in assessing a merger depend on the particularities of each case. Parties can take part in pre-notification discussions with the CCPC as discussed above.</p> <p><b>Phase I Stages</b></p> <ul style="list-style-type: none"> <li>• Notification is submitted, due to COVID-19 this notification is submitted electronically.</li> <li>• The notice of notification is published on the CCPC's website within 7 days of receipt of the notification. This usually happens within 2 working days.</li> <li>• Third party submissions may be made within 10 working days of publishing the notice on the website. The Case Team may follow up with any submissions;</li> <li>• If the case team requires a greater understanding of the market, they may contact third parties or regulatory agencies directly;</li> <li>• There is possibility of a formal requirement for information (RFI) that stops and, when complied with to CCPC's satisfaction, restarts the Phase I timetable or the case team may informally request information or clarification to the notification which does not impact the Phase I timing;</li> <li>• There may be a discussion of remedy proposals from the parties (if applicable), which extends the Phase I period to 45 working days;</li> <li>• The determination is written</li> </ul>



- The determination is made and the parties are informed. Merging parties may request redactions from the public version of the determination; and publication of Phase I determination within 60 working days of the day it was made

Phase II (if applicable)

- Third parties can make submission up to 15 working days after the decision to move to a Phase investigation was published online;
- The case team can make a formal request for information;
- The CCPC may commission a market survey or economics report;
- An early determination approving the merger can be issued within 40 working days of the beginning of Phase II (rather than 120 working days from notification; this is the usual Phase II outcome) or if the investigation is to progress, the CCPC sends the parties an assessment setting out its concerns about the merger;
- oral hearing (if requested within five working days of receipt of the CCPC's assessment);
- the parties can request access to the CCPC's file within 15 working days of the assessment;
- there may be a discussion of remedy proposals from the parties (no later than 15 working days after receipt of the CCPC's assessment);
- there may be market testing of remedy proposals of parties (depending on circumstances and at the discretion of the CCPC);
  
- the CCPC will give notice to parties of determination (clearance, conditional clearance or blocking) and press release;
  
- the merging parties may request redactions from the public version of the determination; and

	<ul style="list-style-type: none"> <li>the Phase II determination will be published within 60 working days of date of it been issued to the notifying parties following request for redactions.</li> </ul>
<b>B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?</b>	As provided for in <a href="#">section 20(1)</a> of the 2002 Act, the CCPC is required to examine whether the result of the notified merger or acquisition would be to substantially lessen competition in any market for goods and services in the State (“SLC”).
<b>C. What theories of harm does the agency consider in practice?</b>	<p>As outlined in the <a href="#">CCPC’s Merger Guidelines</a>, In horizontal mergers, the CCPC’s analysis focuses mainly on unilateral (when the merged firm finds it profitable to raise price, irrespective of the reactions of its competitors) and coordinated effects (when a merger facilitates coordinated interaction by competitors to raise price).</p> <p>Non-horizontal mergers (vertical and conglomerate) are also examined on the basis of unilateral and coordinated effects. Non-horizontal mergers may result in an SLC where (a) the merged entity having market power (i.e., the ability to unilaterally increase prices above what they would have been in a competitive market) is able to exercise this power to lessen competition by: (i) foreclosing competitors (after a vertical merger) or (ii) tying or bundling the purchase of one product to the purchase of another (after a conglomerate merger), or (b) the merger facilitates coordination between the merged entity and some or all of its competitors.</p>
<b>D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?</b>	<p>The key stages in analysing a merger depend on the particularities of the case.</p> <ul style="list-style-type: none"> <li>The case team will review the notification;</li> <li>The case team will take into account third party submissions;</li> <li>The case team may reach out to third parties/regulatory agencies to get a greater understanding of the market;</li> <li>The case team may make an informal/formal request for information, or ask the parties to clarify information;</li> </ul>

	<ul style="list-style-type: none"> <li>• The product and geographic markets will be defined based on CCPC and European Commission precedent;</li> <li>• Theories of harm will be analysed in the product and geographic markets defined;</li> <li>• In a Phase II investigation, an external economic and legal review may take place.</li> </ul> <p>No. Joint ventures that are notifiable under section 16(4) of the Act must satisfy the same SLC test.</p>
<p><b>E. Are non-competition issues ever considered (in practice or by law) by the agency? If so, can they override or displace a finding based on competition issues?</b></p>	<p>No, all transactions notified to the CCPC are reviewed by reference to whether or not a substantial lessening of competition would arise.</p> <p>Media mergers are subject to an additional review by the Minister for Media, Tourism Arts, Culture, Sport and the Gaeltacht which assess the impact of the transaction on plurality of the media in Ireland.</p>
<p><b>F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?</b></p>	<p>As provided for in <a href="#">section 21(2)</a> of the 2002 Act, at the end of a Phase 1 investigation, the CCPC must make a determination to clear the merger or acquisition (with or without proposals) or that it intends to carry out a full (Phase 2) investigation.</p> <p>As provided for in <a href="#">section 22(3)</a> of the 2002 Act, following the Phase 2 investigation, the CCPC will determine whether the merger or acquisition can be cleared, cleared with conditions, or blocked.</p>

<p><b>G. What types of remedies does the agency accept? Is there a preference on any particular type of remedies? How is the process initiated and conducted?</b></p>	<p>The CCPC may enter into discussions with the undertakings involved in a transaction with a view to identifying measures which would ameliorate any effects of the merger on competition. The CCPC accepts both behavioral and structural remedies. Once the remedies have been agreed with the CCPC, they become binding on the undertaking which gives them and are published by the CCPC as part of its determination.</p>
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<p><b>15. Confidentiality</b></p>	
<p><b>A. To what extent, if any, does the agency make public the fact that a premerger notification filing was made or the contents of the notification? If applicable, when is this disclosure made?</b></p>	<p>The contents of the notification or pre-notification discussions are not made public.</p>
<p><b>B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?</b></p>	<p>The parties will be given access to the CCPC's file upon request, during the 15 working day period following the receipt by the parties of the Commission's Assessment during the phase 2 investigation. Access to the file intended to enable the parties to whom an Assessment has been addressed to reply to it in a fully-informed manner. Prior to the issue of the CCPC's Assessment, the parties have no right of access to the file.</p> <p>An Assessment occurs if, within 40 working days of the date of the determination to conduct a full investigation (Phase 2), the CCPC is not satisfied that the result of the merger will not be to substantially lessen competition. An Assessment will set out clearly the CCPC's concerns regarding the effect of the proposed merger on competition in the relevant markets.</p>
<p><b>C. Can third parties or other government agencies obtain access to notification materials and any other information provided by the parties (including confidential and non-confidential information)? If so, under what circumstances?</b></p>	<p>No.</p>

<p><b>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</b></p>	<p>As provided for in <a href="#">section 20(1)</a> of the 2002 Act, the CCPC must publish notice of the notification within seven days after the date of receipt of the notification, unless the circumstances involving the merger or acquisition are such that the CCPC considers it would not be in the public interest to do so.</p> <p>Where an undertaking involved believes that information furnished on foot of a notification is commercially sensitive and should remain confidential, such information should be clearly marked, and clear reason given as to why the information should be classed as confidential. The Commission will decide whether to accede to the request and that decision will be final. In the case of a joint notification, such confidential information may be furnished under separate cover by the respective undertakings involved.</p>
<p><b>E. Can the agency deny a party's claim that certain information contained in notification materials is confidential? Are there procedures to challenge a decision that information is not confidential? If so, please describe.</b></p>	<p>Where an undertaking involved believes that information furnished on foot of a notification is commercially sensitive and should remain confidential, such information should be clearly marked, and clear reason given as to why the information should be classed as confidential. The Commission will decide whether to accede to the request and that decision will be final. In the case of a joint notification, such confidential information may be furnished under separate cover by the respective undertakings involved.</p> <p>The notifying parties can request information to be redacted before the written determination is published on the CCPC website. The parties must explain to the CCPC why such information is confidential. Any information which has been requested to be redacted which can be found in the public domain (e.g online) will not be redacted.</p> <p>Where the CCPC intends to reject a redaction request, it will inform the party in writing of its intention, give its reasons and set a time-limit within which such party may inform the CCPC in writing of its views. The CCPC will take into account the written views duly submitted by the party and the CCPC will reject the claim for confidentiality, if the information is necessary for the proper performance of the CCPC's merger review functions.</p>

<p><b>F. Does the agency have procedures to provide public and non-public versions of agency orders, decisions, and court filings? If so, what steps are taken to prevent or limit public disclosure of information designated as confidential that is contained in these documents?</b></p>	<p>The notifying parties can request information to be redacted before the written determination is published on the CCPC website. The parties must explain to the CCPC why such information is confidential. Any information which has been requested to be redacted which can be found in the public domain (e.g online) will not be redacted.</p> <p>Where the CCPC intends to reject a redaction request, it will inform the party in writing of its intention, give its reasons and set a time-limit within which such party may inform the CCPC in writing of its views. The CCPC will take into account the written views duly submitted by the party and the CCPC will reject the claim for confidentiality, if the information is necessary for the proper performance of the CCPC’s merger review functions.</p>

<b>16. Transparency</b>	
<p><b>A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.</b></p>	<p>Yes, please see <a href="#">here</a>.</p>
<p><b>B. Does the agency publish press releases related to merger policy or investigations/reviews? If so, how can these be accessed (if available online, please provide a link)? How often are they published (e.g., for each decision)?</b></p>	<p>Press releases will be published <a href="#">here</a>. Press releases will be issued in the following circumstances:</p> <ul style="list-style-type: none"> <li>(a) When the CCPC decides to carry out a full (Phase 2) investigation in respect of a particular merger.</li> <li>(b) When the CCPC makes a determination at the end of a full (Phase 2) investigation.</li> </ul>

	<p>(c) In the event of something “remarkable”, i.e. when the CCPC makes a decision at Phase 1 in which it accepts proposals put forward by the parties in relation to the merger, in cases involving the referral of a merger between the CCPC and the European Commission, in cases involving “gun-jumping”, and where a notified merger is of particular public interest.</p> <p>Once a determination has been made for a transaction, a merger announcement will be posted on the webpage for that merger. Subscribers to the merger webpage will receive an email alert informing them of the determination. The merger notification pages can be found <a href="#">here</a>.</p>
<p><b>C. Does the agency publish decisions on why it challenged, blocked, or cleared a transaction? If available online, provide a link. If not available online, describe how one can obtain a copy of decisions.</b></p>	<p>A written determination will be published following the decision of the CCPC. Once the CCPC has made its determination on whether the transaction has been blocked, cleared or cleared with conditions, the written determination explaining the CCPC’s reasoning will be published on the website in no later than 60 working days, to allow for the notifying parties to make redaction requests. The written determinations can be found on the website <a href="#">here</a>.</p>
<p><b>E. Does the agency publish statistics or the number of annual notifications received, clearances, prohibitions, etc.? [if applicable, please provide a link for these figures]</b></p>	<p>Yes, these statistics can be found in the CCPC’s annual merger reports. These can be found <a href="#">here</a>. In <a href="#">2020</a>, for example, the total number of notified mergers was 41, representing a reduction of 6 notifications or 13% from the 2019 level and delivered 43 merger determinations of which 11 were in respect of proposed transactions notified towards the end of 2019.</p>

<p><b>17. Cooperation</b></p>	
<p><b>A. Is the agency able to exchange information or documents with international counterparts?</b></p>	<p>As provided for in <a href="#">section 23</a> of the 2002 Act (as amended), the CCPC may, with the consent of the Minister, enter into arrangements with a foreign competition or consumer body whereby each party to the arrangements may –</p>

	<p>(a) furnish the other party information in its possession if the information is required by that other party for the purpose of performance by it of any of its functions, and</p> <p>(b) provide such other assistance to the other party as will facilitate the performance by that other party of any of its functions.</p> <p>The notification form requires notifying parties to state whether the transaction has been notified to any other competition agency. If it has, the CCPC may contact this competition agency.</p>
<p><b>B. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</b></p>	<p>In 2011, the EU member states published <a href="#">“Best Practices on Co-operation in Merger Review”</a>. The document provides clarity on how cooperation among national competition authorities should operate in multi-jurisdictional cases.</p>
<p><b>C. Does the agency need consent from the parties who submitted confidential information to share such information with foreign competition authorities? If the agency has a model waiver, please provide a link to it here, or state whether the agency accepts the ICN’s model waiver of confidentiality in merger investigations form.</b></p>	<p>The CCPC get consent from the parties who submitted the confidential information.</p> <p>The CCPC does not have a published model waiver.</p>
<p><b>D. Is the agency able to exchange information or documents with other domestic regulators?</b></p>	<p>The CCPC can exchange information with domestic regulators subject to a waiver being signed by the notifying parties.</p>
<p><b>18.Sanctions/penalties</b></p>	
<p><b>A. What are the sanctions/penalties for:</b></p> <p><b>i) failure to file a notification;</b></p> <p><b>ii) incorrect/misleading information in a notification;</b></p>	<p>As provided for in section <a href="#">18(9) of the 2002 Act</a>, failure to notify a transaction to the CCPC where the parties’ turnover exceeds the thresholds or failure to supply the information required within the time period specified by the CCPC are criminal offences. The maximum</p>



<p>iii) failure to comply with information requests;  iv) failure to observe a waiting period/suspension obligation;  v) breach of interim measures;  vi) failure to observe or delay in implementation of remedies;  vii) implementation of transaction despite the prohibition from the agency?</p>	<p>fine, on summary conviction, is €3,000 (with a maximum daily default fine of €300) and, on conviction on indictment, is €250,000 (with a maximum daily default fine of €25,000). As provided for in <a href="#">section 18(12)</a> of the 2002 Act, a notification will not be valid where any information provided or statement made is false or misleading in a material respect, or if the CCPC is of the opinion that the full details required, or all the specified information requested under <a href="#">section 20(2)</a> (a requirement for information), have not been provided, and any determination made on foot of such notification is void.</p>
<p><b>B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(vii)?</b></p>	<p>An undertaking, or person in control of an undertaking.</p> <p>A person in control of an undertaking is, as provided for in <a href="#">section 18(11)</a> of the 2002 Act—</p> <p>( a) in the case of a body corporate, any officer of the body corporate who knowingly and wilfully authorises or permits the contravention,</p> <p>( b) in the case of a partnership, each partner who knowingly and wilfully authorises or permits the contravention,</p> <p>( c) in the case of any other form of undertaking, any individual in control of that undertaking who knowingly and wilfully authorises or permits the contravention.</p>
<p><b>C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial</b></p>	<p>Currently the CCPC have to bring judicial action against the infringing party.</p> <p><i>Armalou/Lillis O'Donnell</i> was the first criminal prosecution for gun-jumping in the State.</p>

<p><b>action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.</b></p>	<p>In August 2017, the CCPC was informed that Armalou Holdings Limited, through its subsidiary Spirit Ford Limited, may have acquired Lillis O'Donnell Motor Company Limited without first notifying the acquisition to the CCPC. In October 2017, the CCPC commenced an investigation into a suspected failure to notify the CCPC of the acquisition. After an extensive investigation involving the gathering of a significant amount of documentation and analysis, the CCPC referred a file to the Director of Public Prosecutions concerning the parties' conduct for failing to notify a notifiable transaction before putting it into effect. On 9 February 2018, the acquisition by Armalou Holdings Limited, through its wholly-owned subsidiary, Spirit Ford Limited, of Lillis-O'Donnell Motor Company Limited was notified to the CCPC and was cleared on the 23 March 2018. On 8 April 2019, Armalou Holdings Limited pleaded guilty in Dublin Metropolitan District Court to illegally putting into effect a business merger without first obtaining the necessary regulatory approval.</p>
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<p><b>D. Are there any recent or significant fining decisions?</b></p>	
<p><b>D. Are there any recent or significant fining decisions?</b></p>	<p>The CCPC cannot impose fines themselves, but the CCPC and its predecessor, the Competition Authority have investigated gun jumping cases, i.e. where undertakings, or those in control of undertakings fail to notify a notifiable transaction, and implementing the transaction prior to clearance. In 2019, the first criminal prosecution for gun-jumping occurred in the Ireland in <i>Armalou/Lillis O'Donnell Holdings Limited</i>. Following the investigation and guilty pleas by the parties involved, the prosecution under indictment was brought by the DPP and the court ordered each party to pay a €2,000 contribution to costs and witness expenses to the CCPC and each make a €2,000 charitable donation. See the CCPC press release <a href="#">here</a>.</p>

<p><b>19. Independence</b></p>	
<p><b>A. Is there possibility for any ministry or a cabinet of ministries to abrogate, challenge or change merger decisions issued by the agency or by a court? If yes, to which merger decisions does this apply (e.g., any decision, prohibitions, clearances, remedies)?</b></p>	<p>No. However, the Minister for Tourism, Culture, Arts, Gaeltacht Sport and Media is responsible for deciding media mergers on grounds of media plurality and diversity following a decision by the CCPC or the EU Commission decision to clear the media merger on competition</p>

	<b>grounds. There is a separate notification process to the Minister for Tourism, Culture, Arts, Gaeltacht Sport and Media.</b>
<b>B. What are the grounds for such ministerial intervention?</b>	See answer to 19A.
<b>C. Please provide any description or guidance regarding the ministerial intervention process and procedures [If applicable]</b>	Please see the Media Merger Guidelines for the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media <a href="#">here</a> .

<b>20. Administrative and judicial processes/review</b>	
<b>A. Describe the timetable for judicial and administrative review related to merger transactions.</b>	<p>As provided for in <u>section 24</u> of the 2002 Act, any issue of fact or law concerning the determination made by the CCPC may be subject to an appeal to the High Court.</p> <p>With respect to an issue of fact, the High Court, on the hearing of the appeal, may not receive evidence by way of testimony of any witness and shall presume, unless it considers it unreasonable to do so, that any matters accepted or found to be fact by the Authority in exercising the relevant powers were correctly so accepted or found.</p> <p>An appeal must be made within 40 working days after the date on which the undertaking is informed by the CCPC (or the Minister for Media, Tourism, Arts, Sport and the Gaeltacht in the case of a media merger) of the determination concerned.</p> <p>The High Court should, in so far as it is practicable, hear and determine an appeal under this section within 2 months after the date on which the appeal is made to it.</p>
<b>B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision.</b>	N/A

<b>C. Are there any limitations on the time during which an appeal may be filed?</b>	As provided for in <a href="#">section 24(3)</a> of the 2002 Act, any of the notifying parties may appeal the determination to the High Court within 40 working days after being informed of the CCPC's decision.
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<b>21. Additional filings</b>	
<b>A. Are any additional filings/clearances required for some types of transactions (e.g., sectoral or securities regulators or national security or foreign investment review)?</b>	In the case of a media merger, the Minister for Tourism, Culture, Arts, Gaeltacht Sport and Media also makes a determination to clear (with/without conditions) or block the merger.

<b>22. Closing Deadlines</b>	
<b>A. When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized? If yes, can the parties obtain an extension of the deadline to close?</b>	As provided for in <a href="#">section 19(3) of the 2002 Act</a> , the determination made by the CCPC shall not operate to permit the merger or acquisition concerned to be put into effect if the merger or acquisition is not put into effect before the expiry of the period of 12 months after the date on which the determination is made.

<b>22. Post Merger review of transactions</b>	
<b>A. Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?</b>	No, once a determination has been made, the transaction cannot be reopened. If the merger was not put into effect 12 months after the determination was made on the transaction, the merger will not be permitted. If this is the case, the transaction can be re-notified to the CCPC.
<b>B. Does the agency publish studies regarding ex-post analysis of reportable transactions which have been cleared by the agency? Are these studies publicly available? How does the agency obtain data for carrying out these studies?</b>	No, not currently. It's in the pipeline.