

Irish Merger Control in 2015

This is a review of the merger and acquisitions notified to Ireland's Competition and Consumer Protection Commission (CCPC) in 2015 and an analysis of the emerging notification trends by comparison with previous years.

Background to Irish merger control in 2015

The remit of the CCPC (and previously the Competition Authority) is to assess whether a notified transaction would substantially lessen competition in any market in Ireland.

On 31 October 2014, merger control in Ireland changed in a number of important respects:

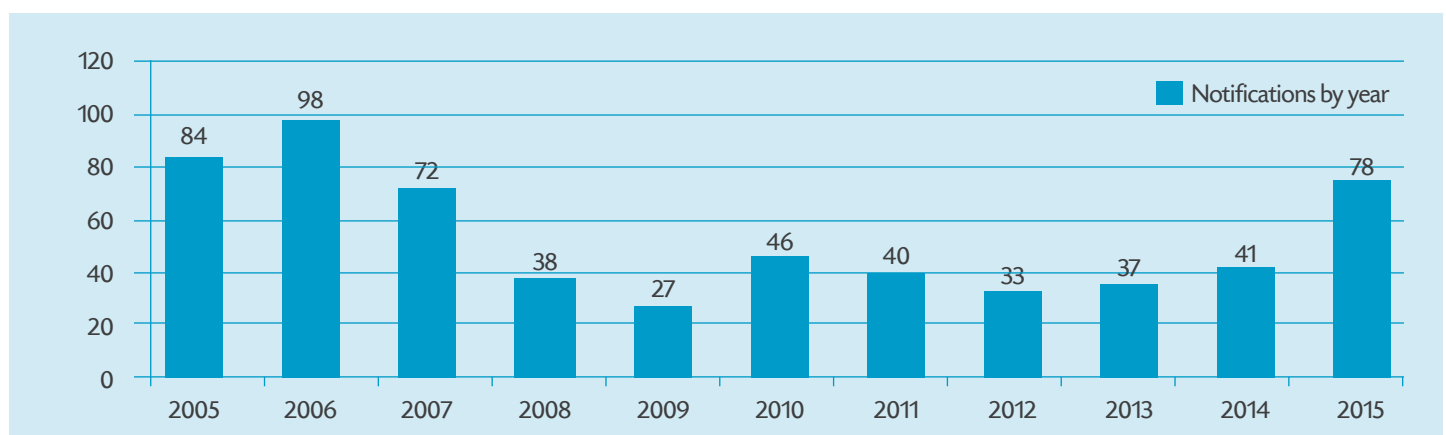
- mergers became notifiable to the CCPC (itself a combination of the Competition Authority and the National Consumer Agency);
- the Irish merger control thresholds for a compulsory notification changed so that a transaction must now be notified to the CCPC where, in their last respective financial years:
 - (a) at least 2 of the relevant parties to the transaction had aggregate turnover in Ireland of at least €50m; and
 - (b) each of at least 2 of the relevant parties to the transaction had turnover in Ireland of at least €3m;
- the CCPC was given a longer time-period to assess notified transactions (30 working days in Phase 1 (but extendable) and 120 working days for any combined Phase 1 and 2 process (also extendable));
- the type of asset acquisition notifiable to the CCPC was changed; and
- while all "media transactions" must still be notified to the CCPC irrespective of the thresholds set out above, they must also be separately notified to the Minister for Communications, Energy and Natural Resources (Minister) for approval but only after the CCPC (or the European Commission where applicable) has approved the transaction under the merger control rules (the Minister assesses the transaction by reference to separate "media plurality" rules).

Trends in Irish merger control during 2015

Notifications and Determinations

- There were 78 notifications made to the CCPC in 2015, almost double the number made to the CCPC/Competition Authority in 2014 (i.e. 41);
- The CCPC made 67 approval determinations in 2015 compared with 36 in 2014;
- The CCPC started into 2016 with 11 notifications awaiting determination (one being an extended Phase 1 notification i.e., Paddy Power/Betfair). By comparison, the CCPC started 2015 with 9 notifications awaiting determination;
- There were more Phase 1 clearances in 2015 than in 2014 (65 compared with 32) and the same number of Phase 2 clearances in 2015 as in 2014 (2 in 2015 and 2 in 2014);

Number of Notifications (2005 – 2015):



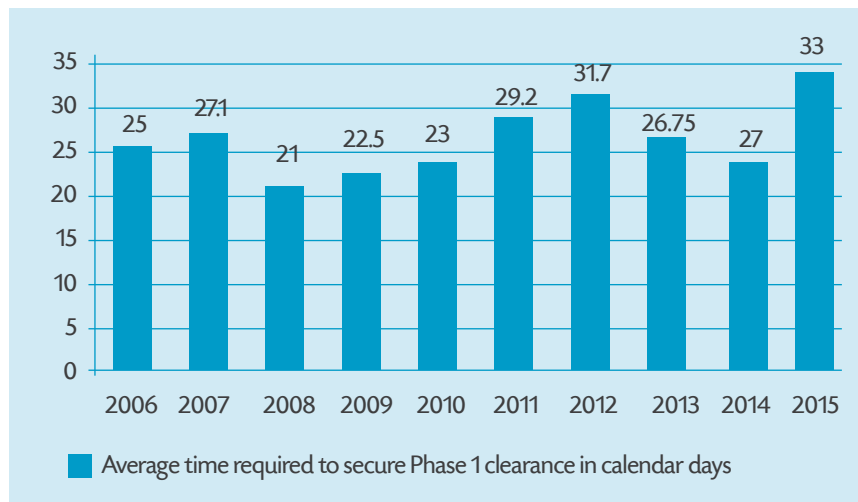
Note: The figure for 2014 represents the total number of notifications made in the 2014 calendar year to the Competition Authority and the 10 notifications made to the CCPC under the new regime.

- No notifications were prohibited in 2015 (nor in 2014);
- There was a slight increase in the number of extended Phase 1 assessments in 2015 (3 in 2015 compared to 1 in 2014);
- There were no Phase 1 clearances with commitments given by notifying parties in 2015 (though commitments were offered in Phase 1 but rejected by the CCPC in Topaz/Esso Ireland) compared to 1 in 2014;
- There was one Phase 2 clearance with commitments given by notifying parties, the same as in 2014;
- There were no Phase 2 clearances with conditions imposed by the CCPC in 2015 (the same as in 2014);
- The CCPC made 6 formal "Requests for Further Information" in 2015 (including Paddy Power/Betfair which is still being considered by the CCPC) compared to 2 in 2014);
- There were no voluntary notifications in 2015 compared to 3 in 2014;
- The CCPC applied the Failing Division Defence in one Phase 2 clearance in 2015 – this is a first (Baxter/Fannin);
- There were no notifications made and then withdrawn before determination in 2015, the same as in 2014.

Key time periods

- The average duration of a no-issues Phase 1 determination in 2015 in calendar days was 33, compared with 27 calendar days in 2014 (the average length of time in working days was 23 in 2015 compared to 19 in 2014);
- The average duration of an extended Phase 1 determination in calendar days in 2015 was 93 compared to 70 in 2014;
- The average duration of a Phase 2 determination in calendar days was 160 (compared to 124 in 2014);
- The average duration of a Phase 2 determination in working days was 113 (compared to 84 in 2014);
- The fastest Phase 1 approval in 2015 was given in 7 working days (11 calendar days) in Endless/Imtech which involved the target in administration (compared to 15 calendar days in Linkbey/BMGSL in 2014);
- The slowest no-issues Phase 1 approval in 2015 took 30 working days (this happened twice in Invesco/Frascati and Fane Valley/Lakeland) compared to 46 working days (31 calendar days) in 2014 in Dalata/Clayton Hotel.

Speed of Decision Making (2006 – 2015):



Notifications by sector

There was an increase in the number of notifications in all sectors:

- Hotels – 8 notifications in 2015 compared to 5 in 2014. The trend toward hotel transactions being notified became very marked almost immediately after the new thresholds began to apply;
- Commercial property – 8 notifications in 2015 compared to none in 2014. A number of commercial property acquisitions were notified to the CCPC in 2015 whereas this had not been a significant feature of the merger control regime in Ireland prior to the introduction of the new regime;
- Sport/betting – 4 notifications in 2015 compared to none in 2014. Sports and betting notifications have also become a feature of notifications to the CCPC in 2015 whereas they had not been a significant feature prior to the introduction of the new regime;
- Food – 9 notifications in 2015 compared to 4 in 2014 representing a significant increase;
- Retail – 4 notifications compared to 3 in 2014;
- Energy/Oil/Fuel – 6 notifications compared to 5 in 2014;
- Healthcare/Pharmacy/Pharma/Medical Devices – 9 notifications compared to 8 in 2014;
- Financial services (including insurance, accountancy and funds) – 4 in 2015 compared to 3 in 2014; and

- Media/telecoms/broadcasting – 8 in 2015 compared to 6 in 2014; and
- Others (including business process outsourcing/asset management, hospitality, logistics, IT and IT consultancy, aircraft leasing, agriculture, engineering, motorways, security, advertising, freight forwarding and genomic testing, transport, business supplies, outdoor holidays sector, enterprise education, computer hardware and chemicals) – 18 notifications in 2015 compared to 14 in 2014.

Media transactions

A look at the CCPC determinations in 2015 for media transactions compared to the determinations by the Competition Authority in the 12 months to 30 October 2014 shows the following trends:

- There was an increase in the number of media transactions notified in 2015 with 7 media transactions notified in 2015 compared to 5 in 2014
- The CCPC started 2016 with 2 media transactions to be determined (eir/Setanta and ITV/UTV);
- There was no change in the level of Phase 1 approval determinations with 5 given in 2015 and 5 given in 2014;
- There was the same number of extended Phase 1 assessments (1 in 2015 - Liberty Global/TV3 and 1 in 2014 – Sappho/TCH);
- There were no Phase 1 clearances with commitments in media transactions given by notifying parties compared to 1 in 2014 Sappho/TCH;
- There were no Phase 2 determinations in 2015 continuing the trend of no contentious media transactions being assessed by the CCPC or the Competition Authority;
- There was 1 formal “Request for Further Information” in a media transaction (Liberty Global/TV3) – the same as in 2014;
- The average duration of a Phase 1 no-issues media transaction determination in working days was up slightly at 21.5 compared to 17.5 in 2014;
- The average duration of a Phase 1 no-issues media transaction determination in calendar days was 29.7, again up slightly from 24 in 2014;
- The average duration of an extended Phase 1 media transaction determination in working days was 53 compared to 27 in 2014;
- The average duration of an extended Phase 1 media transaction determination in calendar days was 73 compared to 45 in 2014;
- The fastest Phase 1 approval for a media transaction was 11 working days (15 calendar days) compared to 15 working days (21 calendar days in 2014);
- The slowest no-issues Phase 1 approval for a media transaction was 28 working days (39 calendar days).

The Minister and media transactions in 2015 - list of notifications determined by the CCPC in 2015:

- Currently, 3 media transaction determinations have been published on the Department of Communications, Energy and Natural Resources website although since 31 October 2014, there have been 7 media transactions notified to the CCPC; and
- According to the published media transaction determinations, the Minister took on average 28 working days (i.e. 42 calendar days) to issue an approval determination under the media plurality rules.

List of notifications determined by the CCPC in 2015:

- | | |
|---|---|
| ■ M/15/068 - Lisavaird / Glenmar | ■ M/15/044 - Thornmont / Hilton Hotel Kilmainham |
| ■ M/15/067 - PRL / CP | ■ M/15/043 - EQT VI / Martin Moller / NAC |
| ■ M/15/066 - Aurora Acquisitions (Carlyle) / Abtran Group | ■ M/15/042 - Grant Thornton / RSM Farrell |
| ■ M/15/065 - Green REIT / Central Park | ■ M/15/041 - Green Bridge / Ballsbridge Hotel / Berkeley Court Apartments / Clyde Court Hotel |
| ■ M/15/064 - Aramark / Avoca | ■ M/15/040 - Aryzta / La Rousse |
| ■ M/15/063 - Posterscope / Poster Management | ■ M/15/039 - Liberty Global / TV3 |
| ■ M/15/062 - Elverys / Mahers | ■ M/15/038 - Sodexo / EHC and HCT |
| ■ M/15/061 - East Cork Oil / Tara Oil | ■ M/15/037 - Deloitte / System Dynamics |
| ■ M/15/060 - Trinity Mirror / Local World | ■ M/15/036 - Fitzwilliam / Wittington / Arnotts |
| ■ M/15/058 - Fane Valley / Lakeland | ■ M/15/035 - Tetrarch / Dawson Hotel |
| ■ M/15/057 - Noonan/Brinks | ■ M/15/034 - Mitsubishi UFJ Fund / UBS Fund |
| ■ M/15/056 - DCC/Exertis/Espion | ■ M/15/033 - Paddy Power / Mulholland Bookmakers |
| ■ M/15/055 - Brait / Iceland | ■ M/15/032 - Irish Life Assurance / Royal London Mutual Insurance Society |
| ■ M/15/054 - Sports Direct / Heatons | ■ M/15/031 - Invesco / Frascati |
| ■ M/15/053 - Irish Bison / Windsor / Autolease Fleet | ■ M/15/030 - IPUT / Riverside One |
| ■ M/15/052 - DIF / Eurolink | ■ M/15/029 - Goldman Sachs / Piershine / Tifco |
| ■ M/15/051 - Dunnes Stores / Café Sol | ■ M/15/028 - Atlantic Troy / Killeshin Hotel |
| ■ M/15/050 - Greatbatch / Lake Region | ■ M/15/027 - Uniphar / Allcare |
| ■ M/15/049 - AIB / Certain properties of Mr. Gannon | ■ M/15/026 - Baxter Healthcare / Fannin Compounding |
| ■ M/15/048 - Endless / Imtech | ■ M/15/025 - Lloydspharmacy / Dargle Pharmacies |
| ■ M/15/047 - Nikkei / Financial Times | ■ M/15/024 - Petrogas Group / Knockmitten Petroleum |
| ■ M/15/046 - Cargill / EWOS | |
| ■ M/15/045 - Pat the Baker / Irish Pride | |

- M/15/023 - Glanbia / Cold Chain
- M/15/022 - Paddy Power / Hacketts
- M/15/021 - Lloyds Pharmacy/Walsh's and Friary Allcare Pharmacies
- M/15/020 - Topaz / Esso Ireland
- M/15/019 - Tedcastles Oil Products (TOP) / Ashbourne Oil Company
- M/15/018 - Southbank / N-Vision
- M/15/017 - Core / Carroll
- M/15/016 - PRL / MFS
- M/15/015 - Carbon / Colebridge
- M/15/014 - Irish Property / Ballsbridge Holdco1
- M/15/013 - Paddy Power / Track
- M/15/012 - Man Group / New Smith
- M/15/011 - Sernal / Payzone
- M/15/010 - IIF CCD / CCD Hotel / SDDC
- M/15/009 - BWG / Londis
- M/15/008 - Discovery / Setanta
- M/15/007 - Fuelplus / Valero
- M/15/006 - Avonbeg / Maple Healthcare
- M/15/005 - AIG / Avondhu (Laya Healthcare)
- M/15/004 - Blackstone / Atrium Buildings
- M/15/003 - LSF / Jurys
- M/15/002 - Atlantic / Charville Park Hotel
- M/15/001 - Cinven / PCL

Notifications yet to be determined by the CCPC (at 31 December 2015):

- M/15/078 - Vitol / Sargeant Marine
- M/15/077 - Uniphar / Murray Medical
- M/15/076 - Uniphar / Lindchem
- M/15/075 - KKR / LGC
- M/15/074 - eir / Setanta
- M/15/073 - LSG / RIM 1
- M/15/072 - Schenker / Redhead
- M/15/071 - JDM / Karmann
- M/15/070 - Starwood / Elm Park
- M/15/069 - ITV / UTV
- M/15/059 - Paddy Power / Betfair

KEY CONTACTS



Dr. Vincent Power

Partner
T: +353 1 649 2226
E: vpower@algoodbody.com



Alan McCarthy

Partner
T: +353 1 649 2228
E: amccarthy@algoodbody.com



Anna Marie Curran

Partner
T: +353 1 649 2227
E: amcurran@algoodbody.com



Aileen Murtagh

Associate
T: +353 1 649 2170
E: ammurtagh@algoodbody.com



Micaela Diver

Associate
T: +44 28 9072 7592
E: mdiver@algoodbody.com



Lorna McLoughlin

Solicitor
T: +353 1 649 2187
E: lmcloughlin@algoodbody.com



Kate McCann

Solicitor
T: +44 28 9072 7483
E: kmccann@algoodbody.com



Jessica Egan

Solicitor
T: +353 1 649 2323
E: jegan@algoodbody.com

The contents of this note are necessarily expressed in broad terms and limited to general information rather than detailed analysis or legal advice. Specialist professional advice should always be obtained to address legal and other issues arising in specific contexts.

© A&L Goodbody 2016