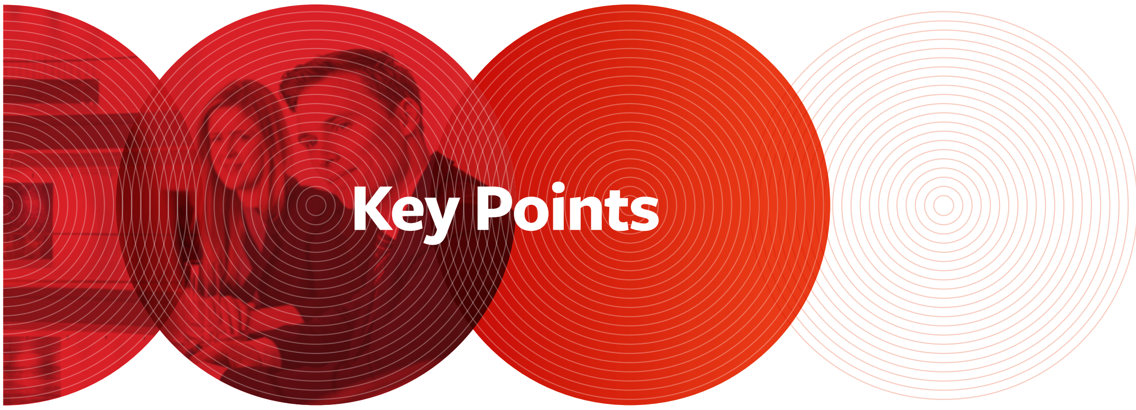

McCann FitzGerald

Irish Merger Control 2017: 6 Takeaways

CCPC Steps Up Enforcement

Of 72 deals notified to the CCPC in 2017, 9 received extended CCPC review, triple the 2016 number (when 3 out of 67 filings did). 4 deals so far were cleared conditional on CCPC-approved remedies (circa 7%), compared with 2 in 2016 (circa 3%), and a typical pre-2017 annual intervention rate of 4%. Average time this year for Phase 1 clearance was 6 weeks. CCPC decisions on 10 2017 filings are outstanding, including a newspaper deal involving two national titles, The Irish Times and The Irish Examiner.

Proactive Remedy Proposals Preferred

No deal was blocked outright. But the CCPC required significant fixes in some cases. One remedy package required upfront divestment of a target's production equipment and customer contracts, supplemented with commitments on pricing and access to services. In another case, involving acquisition of a 50% stake in a Dublin fuel import terminal, the CCPC required the buyer to continue a business line (jet fuel supply) indefinitely. 5-year firewalls to block exchange of competitively sensitive information were accepted in a separate case.

CCPC Policing of Below-Threshold Deals Increases

Own-initiative CCPC investigations of deals not notified to it increased materially in 2017. Kantar Media/Newsaccess, a merger of close rivals, cleared after an extensive divestment commitment and 4-month review, is one example: it did not meet Irish reporting thresholds but, having learned of it via media reports, the CCPC required the parties to notify the deal.

Proposed New Thresholds May Cut Filings by 40%

Proposals to raise mandatory reporting thresholds may, by the CCPC's own estimate, reduce the number of filings up to 40%. A key proposed change: instead of €3 million as a threshold for each party's Irish activities, €10 million may apply. When new thresholds may come into effect is not yet clear. Also unknown is the extent foreign-to-foreign deals, which accounted for around 20% of Irish filings in 2017, may benefit. The stated purpose is to exclude acquisitions of small Irish businesses.

Complex Media Mergers Face Significant Delay

Review of a national newspaper's bid to acquire some regional titles showed how long regulatory approval of a media merger can take: 9 months (275 days). Filed with the CCPC on 5 September 2016, CCPC approval of INM's acquisition of Celtic Media issued on 10 November 2016. Then followed an exhaustive media merger review process involving: (i) a Phase 1 review from 21 November to 4 January 2017; (ii) an advisory panel review from 13 February to 9 March 2017; (iii) review by the Broadcasting Authority of Ireland from 16 January to 9 May 2017; and (iv) review and submission to the Minister by Department officials from 9 May to 30 May 2017. Under statutory timeframes, the Minister ultimately had until 6 June 2017 to decide the case, but the parties announced their intention to abandon the deal on 2 June 2017.

Foreign Investor Acquisitions Drive Filings

Investments by Bain Capital, Kennedy Wilson, Hammerson plc, Deka Group, Oaktree, Macquarie, Capvest, Exponent and Carlyle in Irish real estate and businesses (notably, shopping centres and hotels) accounted for 15% of 2017 filings. Acquisition of independent motor fuel retailers by the major franchises (Topaz, Applegreen and Maxol) accounted for another 15%. Meanwhile consolidation in Irish lamb, beef and pork processors continues apace.

Principal Office
Riverside One, Sir John Rogerson's Quay
Dublin 2 D02 X576
+353 1 829 0000

New York
Tower 45, 120 West 45th Street, 19th Floor
New York, NY 10036
+1 646 952 6001

London
Tower 42, Level 38C, 25 Old Broad Street
London EC2N 1HQ
+44 20 7621 1000

Brussels
40 Square de Meeûs, 1000 Brussels
+32 2 740 0370