



The Competition Authority
An tÚdarás Iomaíochta

MERGERS AND ACQUISITIONS PROCEDURES

Competition Act 2002

Revised Procedures for the Review of Mergers and Acquisitions

February 2006

This document outlines the procedures for dealing with mergers and acquisitions notified to the Authority. It replaces the previous *Procedures for the Review of Mergers and Acquisitions* and is applicable from 1st March 2006.

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1. NOTIFYING THE COMPETITION AUTHORITY

1.1 In accordance with section 18(1) of the Competition Act 2002 (“the Act”), each of the undertakings involved in a proposed merger or acquisition shall notify the Authority in writing within 1 month of the conclusion of the agreement or the making of the public bid. Notifications are made on the Authority’s Notification Form. Undertakings are encouraged to make a joint notification, though they are not obliged to do so. Where undertakings do make separate notifications, the “appropriate date” from which the merger review procedure commences, as defined in section 19(6) of the Act, shall be the date of receipt of the last notification. (Section 19(8) of the Act) In the situation where one of the parties, which should have notified, fails to notify, the appropriate date is the latest date by which the non-notifying party could have notified on time, i.e. a month after the agreement was concluded.

1.2 For the purposes of establishing the “appropriate date” referred to in paragraph 1.1 above, a notification shall be deemed to have been received by the Authority when a complete copy of same, in hardcopy format, is delivered to the above address between the hours of 09.15 and 17.30, Monday – Friday (excluding public holidays). Where a notification is received later than 17.30 it shall be deemed to have been received on the next working day. In addition to the hard copy, the Notification Form and as many of the other notification documents as are capable of being supplied electronically should be so supplied.

All notifications should be addressed to:

The Competition Authority,
Mergers Division,
3rd Floor,
Parnell House,
14 Parnell Square,
Dublin 1
email: mergers@tca.ie

1.3 A notification unaccompanied by the prescribed fee will be invalid, and the notifying parties will be so informed as soon as possible. The filing fee may also be paid in electronic format. In such cases, the furnishing of the fee will render the notification valid and the “appropriate date” will be the date of receipt of the fee.

2. PHASE ONE

(a) Preliminary assessment

- 2.1 Upon its receipt by the Authority, the notification will be assessed (i) to ensure that it is a merger or acquisition within the meaning of section 16 of the Act, (ii) to consider, where appropriate, whether it is a media merger within the meaning of section 23(10) of the Act and (iii) to confirm that all requisite information has been furnished.
- 2.2 Where the Authority considers that the notified transaction is not a merger or acquisition within the meaning of the Act, it will so inform the notifying parties as soon as possible. Where a notified transaction does not amount to a merger or acquisition, then it and the filing fee will be returned to the undertakings involved.
- 2.3 In addition to the requirement to notify the Authority in writing, section 18(1) and (3) of the Act require the undertakings involved to provide “full details” of the proposed merger or acquisition. The Authority understands “full details” as requiring that the Notification Form be completed fully. Within 5 days of receiving a notification, the Authority will examine it to verify if full details have been provided. Where full details are not provided, the Authority will reject the notification. The appropriate date shall be the date that the undertakings involved submit full details to the Authority.
- 2.4 Where the Authority considers that the notified merger is a media merger, it will within 5 days of receipt of the notification forward a copy to the Minister and inform the undertakings involved that it considers the merger to be a media merger.¹

(b) Publication

- 2.5 Within 7 days from the date of receipt of the notification, the Authority will publish notice of it on its website, except in the case of those transactions which: -
- (i) are invalid pursuant to section 18(8) of the Act;
 - (ii) the Authority, after a preliminary examination, has concluded are not notifiable;
 - (iii) are rejected for not containing “full details” as required by section 18(1) of the Act; or,
 - (iv) the Authority considers that it may not be in the public interest to publish notice of the notification.
- 2.6 Notice of notifications will give the following information:
- (i) The name(s) of the undertakings involved;
 - (ii) The reference number of the transaction;

¹ The word “days” when used in this document refers to calendar days, unless otherwise specified.

- (iii) The name and contact details of the case officer assigned to the transaction
- (iv) The business activities of the undertakings involved in the merger or acquisition; and
- (v) Notice to third parties wishing to make submissions about the merger that they must do so within 10 days of publication of the notice. The Authority may however change this time limit by notice on its website in individual cases, if circumstances so require.

(c) Submissions

- 2.7 Submissions from third parties should clearly indicate any information which should be treated as confidential. Further guidance on the treatment of confidential information by the Authority is considered in the Authority's Procedures for Access to the File in Merger Cases.

(d) Requirement to provide further information

- 2.8 The Authority may make a written requirement, under section 20(2) of the Act, upon any one or more of the undertakings involved to provide further specified information within a specified time period. It is an offence under section 18(9) and section 18(10) for a person in control of an undertaking knowingly and wilfully to authorise or permit a failure to comply with a section 20(2) requirement. Failure to comply may also result in the Authority exercising the powers conferred on it under section 31 or 45 of the Act to obtain the information.

(e) Proposals

- 2.9 Before the expiry of 1 month from the appropriate date (as defined in the Act), the Authority may enter into discussions and the undertakings involved may make proposals to the Authority with regard to the manner in which the merger may be put into effect or to the taking, in relation to the merger or acquisition, of measures which would ameliorate any effects of the merger on competition.

(f) Determination that the merger or acquisition may be put into effect

- 2.10 Having considered the information provided and all submissions received, the Authority, if it forms the opinion that the result of the merger or acquisition will not be to substantially lessen competition in markets for goods and services in the State, will determine that it may be put into effect. The Authority will then, within 1 month after the appropriate date (as defined in the Act), or within 45 days, if proposals of the kind referred to at 2.9 above have been made) inform the undertakings involved and any other undertakings or third parties who have made submissions, that it has so determined. On the date of the determination, the Authority, in addition to informing the undertakings involved, will publish notice of the making of the determination on its website. The Authority will publish the text of its determination on its website at the earliest possible date thereafter (and in any event, no later than two months from the date of the determination), after allowing the undertakings involved a number of days to indicate

whether certain information in the determination should be redacted on the grounds of constituting a business secret.

(g) Special provision regarding media mergers

- 2.11 Where, in respect of a media merger, the Authority has made a determination that the merger may be put into effect, it will immediately so inform the Minister for Enterprise, Trade and Employment ("the Minister"). It will also inform the undertakings involved and any third parties who have made submissions of its determination, but it will not publish that determination unless 10 days have elapsed without the Minister having issued a direction to the Authority, notwithstanding its determination, to carry out an investigation under section 22 of the Act. During this period the Authority will publish notice of the fact that the determination has been sent to the Minister on its web site.

3. PHASE TWO (FULL INVESTIGATIONS)

(a) Determination to carry out a full investigation

3.1 Where, having considered the information provided and all submissions received, the Authority is unable on the basis of the information before it to form the view that the result of the merger or acquisition will not be to substantially lessen competition in markets for goods and services in the State, the Authority will make a determination to carry out a full investigation, i.e. proceed to phase 2. The Authority, within 1 month after the appropriate date (as defined in the Act) or within 45 days where proposals of the kind referred to at 2.9 above have been made, will inform the undertakings involved and any other undertakings or third parties who have made submissions that it intends to carry out a full investigation.

(b) Publication of the determination to carry out a full investigation

i. To the notifying undertakings

3.2 The determination to conduct a full investigation will be furnished forthwith to the undertakings involved.

ii. To third parties who have made submissions

3.3 The Authority will inform such third parties that it has determined to carry out a full investigation.

iii. To the general public

3.4 On the date of the determination, the Authority will publish notice of the making of the determination on its website and inviting submissions from third parties.

(c) Special provision regarding media mergers

3.5 Where the Minister has directed the Authority to carry out a full investigation in relation to a media merger, the Authority will so notify the undertakings involved in the merger and will publish that fact on its web site. The Authority will also invite submissions for the purpose of the full investigation by notice posted on its website.

(d) Submissions

3.6 Submissions must be received in writing within 21 days of the date of the determination to carry out a full investigation. Either the undertakings involved or any individual or other undertaking is entitled to make submissions, whether in writing or orally, and the Authority shall consider all submissions made (section 20(1)(a)(ii) of the Act). The Authority may however change this time limit by notice on its website in individual cases, if circumstances so require. Submissions should clearly indicate any information which should be treated as confidential. Further guidance on the treatment of confidential information by the Authority is considered in the Authority's Procedures for Access to the File in Merger Cases.

(e) Early determination of a full investigation

3.7 If the Authority, within 8 weeks of the date of the determination to conduct a full investigation, is satisfied that the result of the merger will not be to substantially lessen competition, it will, without proceeding to make an assessment of the proposed merger or acquisition ("the Assessment"), determine that the merger may be put into effect, or may be put into effect subject to conditions. The Authority will inform the undertakings involved, on the same date, of its Determination.

(f) Assessment

3.8 If, having considered all submissions, the Authority is not satisfied that the result of the merger will not be to substantially lessen competition, it will, within 8 weeks of the date of the determination to conduct a full investigation, furnish its Assessment to the undertakings involved. This time period may be adjusted following consultation and agreement between the undertakings involved and the Authority. The Assessment will set out clearly the Authority's concerns regarding the effect of the proposed merger on competition in the relevant markets.

(g) Access to file

3.9 After the Assessment has issued, the undertakings involved will be afforded the opportunity to access the file in accordance with the criteria set out in its Procedures for Access to the File in Merger Cases.

(h) Response to Assessment

3.10 Within 3 weeks of the delivery of the Assessment, the undertakings involved may respond in writing thereto.

(i) Consequence of failure to respond

3.11 Failure by any one of the notifying parties to respond within the time provided may be deemed to constitute a waiver of that party's right to contest the issues set out in the Assessment. Failure of all notifying parties to so respond may authorise the Authority, without further notice, to find the facts to be as set out in the Assessment and to adopt a final determination on the basis of such findings.

(j) Oral Submissions

3.12 Within a week of the furnishing of the Assessment, any party to the merger who wishes to make oral submissions shall notify the Authority in writing that it intends to do so, and the Authority will fix a date to hear the submissions.

3.13 Third parties who have furnished submissions may also be invited to make oral submissions, at the sole discretion of the Authority.

(k) Discussions and Proposals

3.14 During the phase 2 review period, but no later than 3 weeks after the furnishing of the Assessment, the Authority may enter into discussions and the undertakings involved may make proposals to the Authority

with regard to the manner in which the merger may be put into effect or to the taking, in relation to the merger or acquisition, of measures which would ameliorate any effects of the merger on competition.

4. FINAL DETERMINATIONS

(a) Phase 2 determination

4.1 On completion of the phase 2 review period, the Authority shall make one of the following determinations: -

- (i) that the merger or acquisition may be put into effect,
- (ii) that the merger or acquisition may not be put into effect,
- (iii) that the merger or acquisition may be put into effect subject to conditions specified by the Authority being complied with, including a condition requiring the merger or acquisition to be put into effect within 12 months after the making of the determination.

and will furnish to the notifying parties the written determination within 4 months after the appropriate date (as defined in the Act).

(b) Contents of Authority's written determination

4.2 In every case, the Authority's final determination in regard to the proposed merger or acquisition will include a statement of the facts, a summary of the information, evidence and submissions considered by the Authority and the reasons grounding the determination.

(c) Publication of the Authority's determination

4.3 The Authority will publish notice of its determination on its website on the same day as the determination is made. The Authority will publish the written determination on its website after allowing the undertakings involved an appropriate period to indicate whether certain information in the written determination should be redacted on the grounds of constituting a business secret

(d) Special provision regarding media mergers

4.4 Where the Authority makes a determination of the kind referred to in (i) and (ii) above, in relation to a media merger, it will so inform the Minister. The Authority will then inform the undertakings involved and any third parties who made submissions of the nature of the determination it has made and will publish notice on its web site that the determination has been sent to the Minister. If at the end of 30 days the Minister has made no order pursuant to section 23(4) of the Act, or if, during that period, the Minister has stated in writing that he or she does not intend to make such an order, the Authority will so inform the undertakings involved.