December 2014

Competition and Consumer Protection Act 2014

Introduction

The Competition and Consumer Protection Act 2014 (the "**2014 Act**") came into force on 31 October 2014 and contains a number of significant changes to Irish competition and consumer law which we have set out below

Competition Law Enforcement

On 31 October 2014 the Competition Authority and the National Consumer Agency were amalgamated to form the Competition and Consumer Protection Commission ("**CCPC**")

The CCPC has the full range of consumer, competition and criminal powers of the Competition Authority and the National Consumer Agency, along with the following additional powers put in place by the 2014 Act:

- Under section 33 of the 2014 Act, the CCPC may compel parties to disclose information to it even if such information may turn out to be privileged legal material. The confidentiality of the information disclosed must be maintained pending a determination by the High Court as to whether the information is privileged legal material.

- Section 24 of the 2014 Act provides for the CCPC to share information with other authorities including An Garda Síochána, the Director of Corporate Enforcement and the Revenue

For further information on any of the issues discussed in this article please contact:

Tom Carney
DD: +353 (0)1 673 1706
tom.carney@dilloneustace.ie

David O'Mahony
DD:+ 353 (0)1 673 1724
david.omahony@dilloneustace.ie

Commissioners which in the opinion of the CCPC may relate to the commission of certain offences.

- A detained person can be released and their detention suspended for further investigations during the suspension period.

- Under Section 89 of the 2014 Act, where the CCPC is satisfied that certain data is required for the prevention, detection, investigation or prosecution of a competition offence, it may make a request for data from a telecommunications service provider retained under the Communications (Retention of Data) Act 2011. Telephone and internet service providers are required to retain call and data records for up to 2 years.

- Section 90 of the 2014 Act amends the Criminal Justice Act 2011 (the "**2011 Act**") so as to bring cartel offences within the full scope of that Act. The 2011 Act makes it an offence for a person not to report to Gardaí information which they know or believe might be of material assistance in preventing the commission of certain offences or, amongst other things, securing the conviction of any persons for those relevant offences. As a result, the Garda Síochána can obtain an Order requiring production of information to investigate cartels.

- Section 37 of the 2014 Act sets out further provisions which grant the CCPC and its officials increased rights and powers to contribute to, and participate in, the Gardaí's investigation and questioning of individuals regarding suspected competition offences.

Irish Merger Control

New compulsory Irish merger control thresholds

The 2014 Act increased the compulsory merger control thresholds for notifying the CPCC of a qualifying merger. The new thresholds are that, in their most recent financial year:

(i) the aggregate turnover in Ireland of the merging parties is at least €50 million; and

(ii) the turnover in Ireland of each of 2 or more of the merging parties is at least €3 million.

New time periods for Merger review

The 2014 Act also increases the timeframes for the review of mergers. The timeframe for an unextended Phase I merger review has been increased to 30 working days. The timeframe for an unextended Phase II merger review has been increased to 120 working days. Both of these timeframes are extendable where a formal information request is made or remedies are proposed.

A notification of a proposed merger may now be made where the undertakings involved demonstrate a good faith intention to conclude an agreement. Under the previous regime, a

notification can only be made upon the conclusion of an agreement, which resulted in a split signing and completion. The new regime allows for a notification to be made upon the signing of a non-binding Heads of Agreement/Letter of Intent, meaning the approval process can run parallel to the negotiation of a final share/asset purchase agreement. This more closely reflects the position under the EU Merger Regulation.

Media Merger

The 2014 Act introduces a new media mergers regime in Ireland. A media merger must be notified to the Minister for Communications, Energy and Natural Resources ("**Minister**") as well as to the EU Commission (if the thresholds under the EU Merger Regulation apply) or to the CCPC (irrespective of the Irish merger control turnover thresholds above).

The Minister reviews the effect of the media merger on media plurality in Ireland (e.g. diversity of ownership and diversity of content) and can clear, clear on conditions, or prohibit a media merger.

The 2014 Act also amends the definition of a media merger to include online media businesses, which are not covered by existing media merger rules. The 2014 Act provides that at least one of the merging media businesses must carry on 'a media business in Ireland', meaning that it must: have a physical presence in Ireland and make sales to customers in Ireland; or make sales to customers in Ireland of at least €2 million in the most recent financial year.

The Minister has up to 30 working days in Phase 1 to review the media merger. Where the Minister opens a Phase 2 review, this will involve a referral to the Broadcasting Authority of Ireland (the "**BAI**") to conduct a more detailed review. The BAI will have 80 working days to report and the Minister 20 working days in which to make a decision. These periods are extendable where formal information requests are made. The reviews by the Minister and by the CCPC can run concurrently.

New Provisions for the Grocery Goods Sector

The Competition and Consumer Protection Act introduces significant new investigation and enforcement powers for the CCPC. This is to ensure fairness between suppliers and retailers in the grocery goods sector. In an update to the Consumer Protection Act of 2007, the 2014 Act empowers the Minister for Jobs Enterprise and Innovation to make regulations covering new legal requirements for the inclusion of certain terms in written contracts and record-keeping.

The CCPC now has power to investigate alleged breaches of these regulations, including the power to carry out inspections of grocery goods undertakings and dawn raid undertakings for suspected breaches. Failure to comply with the regulations is an offence punishable by fines and imprisonment. In addition, aggrieved parties can seek damages from grocery goods undertakings which have breached the Regulations, and the CCPC will also publish a list of offenders (a "*name*

and shame" provision). The CCPC can also issue enforceable "Contravention Notices" against larger grocery goods undertakings for breach of the Regulations and can.

Conclusion

Overall, the Act makes a number of important changes to the Irish merger control, competition enforcement and consumer protection landscape and provides the CCPC with a wide range of consumer, competition and criminal law powers to protect consumers' rights.

This document contains a general overview of the Competition and Consumer Protection Act 2014 and is for information purposes only; it is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

For further information on any of the issues discussed, please contact Tom Carney or your usual contact in Dillon Eustace.

DILLON EUSTACE

Dublin
33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

Cayman Islands
Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

Hong Kong
604 6F Printing House, 6 Duddell Street, Central, Hong Kong. Tel: +852 352 10352.

New York
245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

Tokyo
12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.