Chapter 10
Ireland

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1. Introduction

In Irish legislation, mergers and acquisitions are covered by both company and competition laws. In this context, the Cross-border Mergers Directive (2005/56/EC) ('the Directive') was, in part, transposed into company legislation by a statutory instrument in May 2008, some two and a half years after it was adopted by the Council of Ministers and the European Parliament and thus only slightly later than the transposition deadline of December 2007. The company law aspects of the transposition followed the minimum requirements of the Cross-Border Mergers Directive fairly closely. Regarding scope, only companies in liquidation and investment companies were added to the types of companies covered. With respect to stakeholder protection, such protections were included for creditors, minority shareholders and employees, but not for holders of other rights such as bondholders. The optional national veto right in the public interest was also not implemented (Bech-Bruun and Lexidale 2013).

The worker participation aspect of the Cross-Border Mergers Directive was transposed into an employment relations system that still, to a large extent, functions through traditionally adversarial industrial relations. The transposition followed closely the outline and wording of the Directive, with a few notable exceptions. One of the interesting aspects of the transposition was how Article 16, on employee participation, was dealt with. The original European Company (SE) Directive (2001/86/EC), referred to in Article 16.2 and 16.3, was 're-transposed' by the statutory instrument, having been originally transposed into law in 2006. This was done in its entirety, with just one difference: the amendment to Article 7 of the SE Directive by Article 16 of the Cross-Border Mergers Directive, regarding the threshold for implementation of employee involvement rights. However, while the Cross-Border Mergers Directive has been transposed, its application to cross-border mergers involving Irish enterprises is not a factor in assessing such mergers by the designated 'competent bodies'.

2. National background to cross-border mergers

The Irish Competition Authority was established by legislation in 2002.[1] It is an independent statutory body that enforces Irish and European competition laws. Its

1. Competition Act 2002, amended by the Competition (Amendment) Act 2006 and the Competition (Amendment) Act 2012. Competition legislation was again updated by the Competition and Consumer Protection Act 2014. See also Global Legal Insights (GLI) (2015: 109).

mission is to ensure that markets work well for Irish consumers, business and the economy. It does this by taking action against anti-competitive practices, such as price-fixing, blocking anti-competitive business mergers and informing government, public authorities, businesses and the wider public about competition issues. Part 3 of the Competition Act 2002 deals specifically with mergers and acquisitions and sets out the responsibilities and powers of the Competition Authority in examining and approving such activities.

The Competition and Consumer Protection Act, 2014, merged the Competition Authority with the National Consumer Agency to form the Competition and Consumer Protection Commission (CCPC). The Act states that the primary duty of the CCPC is 'a) to promote competition and b) to promote and protect the interests and welfare of consumers' (Section 10(1)(a):(b)). This legislation updated the regulation of mergers by introducing a number of key amendments designed to make mergers and acquisitions easier.

One such amendment is an increase in the thresholds before notification to the CCPC is required, to (as of 1 January 2019) (i) not less than €60 million of aggregate turnover in Ireland of the companies involved (from a worldwide turnover of more than €40 million of the undertakings involved in the merger or acquisition, as set out in the 2002 Act), and (ii) the turnover in the Member State of each of two or more of the undertakings involved is not less than €10 million. The change means that if two (or more) parties were involved in a merger or acquisition then the transaction would have to be notified to the CCPC where the combined turnover in the Member State of: (a) the acquirer (in its entirety); and (b) the target business exceeded €60 million in the previous year and the turnover of the business being bought was more than €10 million.

As a result of the adjustment to the financial thresholds for mandatory notification, there has been a significant increase in the number of mergers notified to the CCPC. The intention of the revised thresholds was to create a better-targeted regime, focusing more closely on mergers that have a potential competitive impact in Ireland (CCPC 2015).

A second important amendment is the removal of the obligation on firms to notify a merger within any specific time period and the extension of the maximum time periods for review of notified mergers. This change has resulted in a lengthening of the review period during which the CCPC shall approve or reject a merger or acquisition, from 27 days in 2014 to 37 days in 2015. The Act also has a number of amendments to the merger regime for the media sector, set out in the 2002 Act.

The CCPC functions within the framework of this Act and EU Council Regulation (EC) No. 139/2004, known as the Mergers Regulation. The Cross-border Mergers Directive is not referred to or taken into consideration by the CCPC in assessing proposed mergers.

Another recent change is in company legislation. The legal regulation of companies goes back to the original 1862 British legislation, which has been amended a number of times in the past century and a half, in particular in substantial legislation 1908 and again in 1963. In 2014 all existing company law – some 17 different pieces of legislation –

was consolidated and completely updated by the Companies Act 2014, which came into force in June 2015. This was the biggest reform of company law in over 50 years. For the first time there is a statutory process in company law, as distinct from competition law, for the merging of Irish enterprises, as the Act incorporates Council Regulation (EC/139/2004) and Directive 2005/56/EC. Part 9 of the Act (*Reorganisations, Acquisitions, Mergers and Divisions)* includes the definitions and other provisions of the Directive, albeit not exclusively applying these to cross-border mergers, but also to company mergers in general.[2]

3. Transposition of Directive 2005/56/EC into Irish law

Statutory instruments are a legal mechanism for introducing secondary legislation without having to take primary legislation through all legislative stages in the two houses of the *Oireachtas* (parliament) and are defined by the Statutory Instruments Act, 1947, as being *an order, regulation, rule, scheme or bye-law made in exercise of a power conferred by statute*. A statutory instrument sets out legislation through a series of 'Regulations'. They are available to members of the Oireachtas for scrutiny for 21 days and become law when signed by the relevant minister and published in the Official Journal of the State (*Iris Oifigiúil*).

Statutory Instrument 157 of 2008 ('the Statutory Instrument') transposed Directive 2005/56/EC into Irish law. This statutory instrument has been subsequently amended to take account of further EU directives on company mergers, such as Directive 2009/109/EC (on reporting and documentation requirements in the case of mergers) and Directive 2012/17/EC (for 'the interconnection of central, commercial and companies registers'). This statutory instrument divides the legislation into three parts: Parts 1 and 2 are incorporated into company law, while Part 3 is a 'standalone' set of laws relating to worker involvement:

- Part 1 deals with what are called 'Preliminary and General' issues, which include terms and definitions used in the first two parts of the Statutory Instrument;
- Part 2 deals with company law to be followed and adhered to during a merger process. Parts 1 and 2 are incorporated into Irish company law and are to be considered together with the Companies Act, 1963 to 2006 (consolidated by the Companies Act 2014);
- Part 3 on the Regulations for Employee Participation.

3.1 Access to pre-merger reports – articles 5 and 7

In general, the text of the Statutory Instrument closely follows the wording in the Directive. For example, with regard to the 'Common Draft Terms' document the text is exactly the same, including Article 5.(d) of the Directive on the 'likely repercussions

2. Companies Act 2014. See also assessment by Orpen Franks Solicitors at: http://www.orpenfranks.ie/the-companies-act-2014-spotlight-on-mergers-corporate/

of the cross-border merger on employment' – this is reproduced as Regulation 5.(2).(d) in the SI, while Article 5.(j) is transposed as Regulation 5.(2).(i), with reference to 'arrangements for the involvement of employees ... are determined under Part 3'.

A significant divergence from the Directive is in relation to the reports to be drawn up by the management or administrative organs of the merging companies (Article 7). The Statutory Instrument requires the directors of the Irish company involved in a merger to draft this report, thus putting the legal onus on the members of the company board, rather that management, for preparing such a report.

The Common Draft Terms, the directors' report and an 'expert's report' (if any) are to be made available for:

> 'a period of one month immediately preceding the general meeting of an Irish merging company ... [by] the members of the company and its employee representatives (or, if there are no representatives, the employees) shall be permitted, free of charge, to inspect at its registered office during business hours ... (for) a period of no less than 2 hours in each day ... (Regulation 9.(1))'

While in Article 7 of the Directive, employee representatives are entitled to provide an 'opinion' on the proposed merger to be appended to the report of the management or administrative organ, this is not incorporated as a right in the Statutory Instrument and is referred to only in Regulation 9.(1).(b), as follows: 'the directors' explanatory report together with the *opinion* thereon, if any, received from the employee representatives' (italics added).

3.2 General meetings – Article 9

Under Article 9, having noted these reports, general meetings of the proposed merging companies are required to approve 'the common draft terms of the cross-border merger'.[3] The approval of the general meetings is subject to the 'express ratification of the arrangements decided on with respect to the participation of employees in the company resulting from the cross-border merger' (Article 9.2). Regulation 10.(2).(a) incorporates this sub-article into the Statutory Instrument, which again refers to the arrangements as set out in Part 3.

3.3 Approval of cross-border mergers – Articles 10 to 13

Articles 10 and 11 require each Member State 'to designate the court, notary or other authority competent to scrutinise the legality of the cross-border merger ...' and the Irish legislation designates the High Court, which incorporates the Commercial Court (Regulation 4), and the Competition Authority (Regulation 16.(1)) as the competent

3. An exception to requiring the holding of a general meeting is set out in Article 8 of Directive 2011/35/EC, that repealed Directive 78/855/EC referred to in Article 9 of Directive 2005/56/EC.

bodies. The Competition Authority already had responsibility for scrutinising mergers under the legislation setting it up in 2002.

If the successor company is registered in Ireland, the High Court may make an order confirming that all the legal procedures have been completed, including any arrangements for worker participation in the successor company, as set out in Article 11.1 of the Directive (Regulation 14.1). Such an order can be made, however, only when the Competition Authority confirms that the merger conforms to the terms of the Statutory Instrument and other existing national and EU legislation on mergers and takeovers, including the Takeover Panel Act, 1997 (Regulation 16).

Regulation 17 requires the order of the High Court to be sent to the Company Registrar, who will then publish it in the CRO Gazette within 14 days and the Irish company involved in the merger must also notify the Registrar, within 14 days of receiving the High Court order, the date on which the cross-border merger will take effect.

The Registrar is also required to inform the company registry authorities in the other EEA Member States of the involved companies in the merger under the terms of Directive 2012/17/EC (for 'the interconnection of central, commercial and companies registers'). This also operates conversely, in other words, it is the duty of the Registrar to remove an Irish company from the CRO register if the successor company is to be located in another EEA Member State, on notification of that registration of the successor company from the company registry authority of that Member State (Regulation 18).

3.4 Consequences of a cross-border merger – article 14

Regulation 19 transposes Article 14. While the text is similar, there are some small differences in phraseology, for example:

- Article 14.1.(c) states: the company being acquired shall cease to exist;
- Regulation 19.(1).(c) states: the transferor companies are dissolved.

With regard to Article 14.4 on the transfer of 'the rights and obligations of the merging companies arising from contracts of employment or from employment relations ...' into the terms of employment of the employees of the successor company, this is incorporated in Regulation 19.(1).(f). However, this Regulation refers only to contracts of employment and does not mention any obligations arising from 'employment relations'.

3.5 Worker participation – article 16

Part 3 of the Statutory Instrument transposes Article 16. However, rather than just refer to the relevant articles of the SE Directive (2001/86/EC), as in Article 16.2 and 16.3.(a) to (h), Part 3 reiterates in detail the rights and obligations set out in that Directive. It requires any successor company registered under Irish legislation to establish the participation of employees in accordance with the Regulations in Part 3 (22 to 44), plus

Schedules 1 and 2, and 'the rules in force in the State concerning employee participation, if any'. However, Regulation 23, setting out this general principle, is qualified by sub-regulation (3) that transposes Article 16.2 of the Directive. Furthermore, sub-regulation (4) transposes, almost word-for-word, Article 16.3 (on the regulation by the Member States of worker participation in the successor company). The following sub-sections are an analysis of Part 3 of the Statutory Instrument:

Chapter 1 – Preliminary and general

Regulation 22 outlines the definitions of terms used in this Part 3, including the following, all of which closely follow the definitions in the SE Directive:

– 'Consultation' means the establishment of dialogue and exchange of views between the representative body or the employees' representatives (or both) and the competent organ of the successor company at a time, in a manner and with a content which allows the employees' representatives, on the basis of the information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the successor company.
– 'Employee participation' means the influence of the representative body or the employees' representatives (or both) in the affairs of a company by the way of (a) the right to elect or appoint some of the members of the company's supervisory or administrative organ, or (b) the right to recommend or oppose, or both to recommend and oppose, the appointment of some or all of the members of the company's supervisory or administrative organ.
– 'Information' means the informing of the representative body or the employees' representatives (or both), by the competent organ of the successor company on questions which concern the company itself and any of its subsidiaries or establishments situated in another EEA state or which exceed the powers of the decision-making organs in a single EEA state at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the company.
– 'Involvement of employees' means any mechanism including information, consultation and employee participation, through which employees' representatives may exercise an influence on decisions to be taken within the company.

Chapter 2 – Negotiations and the SNB

As soon as possible after the publication of the Common Draft Terms for a merger, the management or administrative organ of each company that proposes to be involved in the merger is required to take the necessary steps to start negotiations with the representatives of the employees of that company on arrangements for the involvement of those employees in the successor company. To begin negotiations, the company(s) must provide the employee representatives with information about the identity of the other merging companies, the number of employees in each (identified according to the

EEA Member State in which they are located) and the number of employees covered by an existing employee participation system (Regulation 24).

In giving effect to Article 16.4.(b), Regulations 25 to 31 set down, in detail, the rules regarding the special negotiating body (SNB), including:

(i) the allocation of members in proportion to the involved EEA Member State;
(ii) those employees who are qualified to be appointed/elected, including the right of trade union officials from a union recognised by the company and nominated by at least two employees;
(iii) the conduct of the elections for national representatives;
(iv) its remit to negotiate a written agreement with management of the merging companies;
(v) the voting procedures for decision-making, which includes a 'double-lock' procedure, that is, a majority of members of the SNB and a majority of employees in the involved companies represented by the members of the SNB (if at least 25 per cent of the overall number of employees are covered by existing employee participation rights and the result of the negotiations would result in a reduction of these rights);
(vi) in approving a final agreement for employee involvement in the successor company, a 'triple-lock' procedure is required, as follows:
   – two-thirds of the members of the SNB voting in favour;
   – votes in favour representing at least two-thirds of the total workforce of the merging companies;
   – including the votes of SNB members representing at least two EEA Member States;
(vii) the right to engage experts, including from EU/EEA-level trade union organisations (European trade union industrial federations);
(viii) the right to inform relevant organisations, including trade unions, of the negotiations;
(ix) expenses for the SNB are to be covered by the merging companies.

All of these closely follow Article 3.2 to 3.7 (Creation of a special negotiating body) of the SE Directive (2001/86/EC).

Chapter 3 – Negotiations and agreement

Regulation 32 closely follows Article 4 of the SE Directive, including negotiating 'in a spirit of co-operation'.

With reference to the content of an agreement, Regulation 33 sets out, word for word, Article 4.2 of the SE Directive, covering:

– the scope of the agreement;
– the arrangements for worker participation, including 'the number of members of an administrative or supervisory body of the successor company whom the employees will be entitled to elect, appoint, recommend or oppose';

– the procedures for election/appointment of these employee representatives;
– the date on which the agreement comes into force, its duration and the procedures for its re-negotiation.

Regulation 34 transposes Article 5 of the SE Directive with regard to the duration of the negotiations. It also transposes Article 3.6 on the termination of negotiations and the voting requirements for such a decision, which are the same as those set out in the SE Directive (see point vi above).[4]

Chapter 4 – Supplementary issues

The Statutory Instrument is completed by the addition of a number of ancillary Regulations, such as:

– Regulation 37 (transposing Article 16.7 of the Cross-border Mergers Directive) requires companies registered in Ireland and operating a worker participation arrangement to ensure that these worker rights are protected in the event of a domestic merger for a period of three years after the merger has come into effect.
– Article 10 of the SE Directive, on the protection of members of the SNB or a representative body and employee representatives undertaking functions set out in the Statutory Instrument, in the event of his/her dismissal or other actions by management that are '*prejudicial to his or her employment*', including selection for redundancy, is covered by Regulation 39.
– The provision of 'reasonable' facilities for members of the SNB and employee representatives to undertake their duties under the Statutory Instrument. However, while these facilities are not defined, they should not impair the '*efficient operation of the company'*.
– Disputes between the company and employees and/or their representatives on any of the Regulations in Part 3 may be referred to the Conciliation Service of the Labour Relations Commission (LRC) and, if no resolution to the dispute is reached at the LRC, to the Labour Court.[5]

Regulation 38, which deals with the issue of confidential information, closely follows the conditions set out in Article 8 of the SE Directive. Article 8.4 requires Member States to provide for an administrative or judicial appeal procedure in the event of a dispute regarding the withholding of information that the management of a company deems to be 'confidential' and Regulation 39.(5) and (8) set out how the Labour Court, on hearing all the evidence, should deal with such a dispute, including assistance from a panel of experts to decide on what constitutes 'confidential information'.

4. Article 3.6 of the SE Directive states that 'the majority required to decide not to open or to terminate negotiations shall be the votes of two-thirds of the members representing at least two-thirds of the employees, including members representing employees employed in at least two Member States'.
5. The Workplace Relations Act, 2015, merged the Labour Relations Commission, the Employment Rights Authority, the Rights Commission Service and some of the functions of the Employment Appeals Tribunal into a new independent statutory body, the Workplace Relations Commission.

Schedule 2 of the Statutory Instrument also allows for an individual employee involved in a dispute related to Regulation 39 to take a case to the Rights Commissioner Service for resolution. Failure to implement a determination of the Labour Court or a decision of a Rights Commissioner can be brought to the Circuit Court as a complaint and that Court can make an order directing the offending party to carry out the determination of the Labour Court or the decision of a Rights Commissioner. This order can be appealed by either party to the dispute to the High Court on a point of law. This is in accordance with the normal industrial dispute procedures of the State.

Schedule 1 – Standard Rules

Schedule 1 and the Standard Rules closely follow the rules set out in the Annex to the SE Directive. Part 1 (Composition of Body Representative of Employees) details how such a representative body (that is, a European Works Council) in the successor company is to be constituted; its members elected or appointed; the allocation of seats; and the setting up of a select committee. This representative body can decide, after four years, to re-open negotiations on an agreement, or decide to continue to operate under the Standard Rules. If it decides to re-open negotiations, then a new SNB must be established. However, if this new SNB still cannot reach agreement, then the Standard Rules of the Statutory Instrument will continue to apply.

While Schedule 1 set out the Standard Rules in detail, Regulation 33.2 states that unless the agreement reached by the SNB provides otherwise, a negotiated agreement is not subject to these Rules. However, Regulation 35.(1) states that the Standard Rules will apply to a successor company registered in Ireland, from the date of registration, if:

(a) the SNB agrees;
(b) the management of the merging companies decide to accept the Standard Rules; and
(c) the SNB fails to reach agreement, as set out in Regulation 29 (2).

Part 2 outlines the Standard Rules for information and consultation. In these, the representative body has the right to:

- be informed and consulted;
- receive reports on the progress of the business of the successor company, including:
  - the economic and financial situation;
  - probable development of the business;
  - trends in employment;
  - investments;
  - substantial changes to the business, including organisation, introduction of new work practices, cut-backs, closures, and collective redundancies;
- meet management at least once a year;
- receive agenda for meetings of the administrative, management and supervisory organs and documents submitted to general meetings of shareholders;

- be informed in the event of relocations, transfers, closure of establishments or undertakings, or collective redundancies 'significantly' affecting employees and in a situation of urgency, the right of the select committee to request a meeting with management;
- be assisted by experts of its choice (this also applies to the select committee);
- training, without loss of wages, to enable members to fulfil their duties as members of the representative body.

If the management of the successor company decides to ignore the opinion of the representative body and/or the select committee on a proposed measure, the representative body has the right to request a further meeting with management with a view to reaching agreement. For such meetings, the members of the representative body who represent employees affected by the proposed measures have a right to join with the select committee members and to hold a pre-meeting, without management representatives being present.

Part 3 of the Schedule deals with the Standard Rules for worker participation. Referring back to Regulation 35 (6), which states that it is possible to reach agreement to limit the proportion of employee representatives on the administrative or supervisory organs of the successor company. However, where one of the merging companies already has two-thirds employee representation on the administrative or supervisory board, then Regulation 36 (7) requires any proposed limit to be agreed by the representative body, again on the principle of 'double-lock' voting; in other words, a majority of at least two-thirds of employees, including employees in two Member States; or two-thirds of the members of the representative body, representing at least two-thirds of the total workforce of the successor company, including the votes of members representing employees in two Member States.

Subject to these qualifications, employees of the successor company and/or their representatives 'have the right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory body of the company, equal to the highest proportion in force in the merging companies concerned before registration of the successor company'.

The representative body can decide on the allocation of seats on the administrative or supervisory organ, proportionate to the numbers of employees in the EEA Member States involved, ensuring that there is representation from all the Member States the successor company proposes to operate in. These members have the same rights and obligations as members representing shareholders, including the right to vote. However, one key difference with regard to the SE Directive is a raising of the threshold for the continuity of these employee participation rights in the successor company from 25 per cent to one-third (Regulation 35.2.(a)), meaning that with a merger under the Cross-Border Mergers Directive it is more difficult to ensure the continuation of worker involvement on the administrative or supervisory board of a successor company than is possible under the SE Directive. Furthermore, if none of the merging companies had worker participation arrangements before the cross-border merger, then the successor company is not required to provide for worker participation after the merger.

4. Worker involvement rights in Ireland

Within the public sector, commercial state-owned companies and state agencies have statutory works council–type bodies for information and consultation – so-called sub-board or partnership structures – as part of a general framework of employee participation.[6] However, there is no such statutory requirement for permanent employee representation in the private sector. Those who work in unionised workplaces – about one-third of total private sector employment – have representation though their trade unions.

New procedures were introduced as a result of the EU Information and Consultation Framework Directive (2002/14/EC), to promote and advance employee involvement arrangements. This includes a Code of Practice *to assist employers, employees and their representatives to develop effective arrangements for communications and consultation*.[7] However, in most cases, employees continue to be represented through the unions, or not represented at all (O'Mara 2003).

The European Company Survey (ECS), 2013, shows, however, that some organisations have set up works council–type bodies on a voluntary basis. In most cases, these are in addition to trade union representation. The ECS indicated that there is still a long way to go before information and consultation of workers in the policies and strategies of the companies and organisations in which they work would be the *modus operandi* of Irish employment relations (Eurofound 2013). The findings of the ECS show that just 28.4 per cent of all enterprises have some form of employee representation structures within the workplace. This percentage rises to almost 80 per cent in larger companies:

Table 1 **Employee representation structures in Irish establishments (by size – %)**

Size of Establishment	% with employee representation structures
10 to 49	24.5
50 to 249	52.1
250 +	79.5
All	28.4

Source: Eurofound (2013)

However, various forms of 'direct participation' are more popular and used for the involvement of employees in the organisation of work, generally for the dissemination of company 'information', but this does not progress to 'consultation'. Table 2 shows

6. See the Worker Participation (State Enterprises) Acts, 1977 and 1988.
7. See Statutory Instrument No. 132 of 2008.

examples of some findings on these direct participation forms, which indicate that holding regular meetings with all staff is the most common form of information dissemination and direct participation.

Table 2 **Forms of direct participation for employee involvement in the organisation of work (%)**

Size of Establishment	% of establishments with specific type of participation		
	Information to employees	Employee surveys	Regular employee meetings
10 to 49	46.7	23.4	66.9
50 to 249	65.0	47.7	69.8
250 +	83.7	78.8	84.8
All	49.2	26.9	67.4

Source: Eurofound (2013)

The indications from other surveys of worker involvement were that the worker director system in state-owned companies and agencies has worked well, but that the political environment has shifted against such workplace-based participation arrangements (TASC 2012). Second, company-level information and consultation arrangements are not widespread in the private sector or effective in workplaces and, where there were information and consultation structures operating at different levels within workplaces, there was a lack of connection or coordination of these different structures, with employee representatives operating independently of each other within enterprises and organisations.[8]

As with much EU employee rights legislation, the employee rights under the Cross-Border Mergers Directive were superimposed on this adversarial system of employment relations, in which information, consultation and participation, on the whole, do not function.

5. Cross-border mergers in Ireland

Statistics on mergers are not readily available from the State agencies that deal with the regulation of enterprises. The following are just some of the 'scraps' of information available.

8. See, for example, the National Centre for Partnership and Performance (2009) and the findings of the ICTU INFORMIA: http://informiaproject.org/language/en/uploads/files/materials__0/events__c2bdb89e7c93db367821deb65560e8e6.pdf

5.1 Competition and Consumer Protection Commission (CCPC)

In the five years 2008 to 2013 the Competition Authority examined and approved some 183 proposed mergers. However, in its reports it does not differentiate between national and cross-border mergers. Of the top ten mergers and acquisitions in 2015, by value, only one could be considered an 'internal' EEA transaction, that been the acquisition of certain assets of cement manufacturer Holcim und Lafarge by the dominant cement company in Ireland, CRH plc, in a deal worth €6.5 billion (GLI 2016).

The CCPC is required to attend and participate in EU mergers advisory committees when it considers there is a significant Irish interest. During 2016 the CCPC was actively involved in the European Commission's investigations into six proposed mergers that had an Irish interest (CCPC 2016).

Table 3 **Mergers examined by the Competition Authority, 2009–2016**

	Merger notifications	Approved mergers
2009	27	24 (3 approved in 2010)
2010	46	40 (6 approved in 2011)
2011	40	36 (4 approved in 2012)
2012	33	27 (6 approved in 2013)
2013	37	33 (4 approved in 2014)
2014 (Jan-Oct)	31	25 (6 carried over into 2015)
2014 (Nov) – 2015 (Dec)	88	78
2016	67	70 (11 carried over from 2015)

Source: Competition Authority and Competition and Consumer Protection Authority, annual reports

5.2 Company Registry Office (CRO)

In contrast, however, according to the 2015 annual report of the Irish Company Registry Office (CRO), there have been some 100 cross-border mergers, either acquired or absorbed, since the Directive came into force in May 2008 (2009 was the first full year of implementation). However, the CRO does not provide a breakdown of these mergers by business sector or identify the home Member State of the non-Irish companies involved in these cross-border mergers.

Thirty-nine company acquisitions and 69 absorptions were completed using the cross-border merger legislation between 2008 and 2016 (see Table 4).

Table 4 **Cross-border mergers in Ireland, 2009 to 2016**

	Completed acquisitions	Completed absorptions	New companies
2009	5	8	
2010	6	7	
2011	4	22	
2012	4	8	1
2013	4	7	
2014	6	9	
2015	7	4	
2016	3	4	

Source: Company Registry Office (2016: 19)

5.3 Other statistical sources

William Fry M&A reviews

The corporate legal company, William Fry, based in Dublin, publishes quarterly and annual reviews for mergers and acquisitions (M&A) for Ireland (William Fry 2016). Unfortunately these reviews do not distinguish between mergers and acquisitions. The 2016 review estimated that there were 213 M&A transactions involving Irish enterprises during that year. This was made up of 84 Irish enterprises merging or acquiring companies in other jurisdictions (outbound); 79 where Irish companies were merged with or acquired by non-Irish enterprises (inbound) and 50 were domestic M&As. However, the value of these deals increased from €16.1 billion in 2015 to €26.8 billion in 2016, as a result of very large mergers, by value, involving major pharma enterprises and including a substantial bid by Johnson Controls (a US car batteries, heating and ventilation equipment manufacturer) of €14.9bn for Tyco International plc, which was announced at the very start of 2016 – this was an 'inversion' transaction.[9] The main sectors involved in M&As in 2016 were: business services (16%); hospitality and leisure, industrial and chemicals, financial services (all 12%); and the pharma, medical and biotechnology sectors (11%). The number of Irish outbound M&A deals, at 40% of activity, was among the highest in the EU.

The review also quotes Mergermarket data, a global online tracker of mergers and acquisitions, which estimated that across Europe there were 6,507 M&A deals in 2015 and just 3,110 in the first half of 2016, compared to 6,667 transactions in 2014. This report noted a slowing of M&A activity in 2016 as a result of the BREXIT referendum result and the US administration to move against 'inversion' transactions. It should be noted, however, that the majority of the transactions involve non-EU enterprises.

9. The GLI report estimated this deal at €16.6 billion.

Global Legal Group Report

The GLI report estimated that there were 422 mergers and acquisitions during 2016. The pharma sector continues to be a key M&A sector and the source of 'mega-deals'. Also, the aircraft leasing sector saw one of the biggest deals during the year with Avolon, the Irish aviation leasing company, merging with Bohai Leasing Co., Limited, part of the Chinese HNA Group, for €9.3 billion. This transaction will make Avolon the third-largest aircraft-leasing company in the world. With regard to US involvement in M&As with Irish companies, the report notes that, to deal with the increase of 'inversion' transactions:

> 'On 4 April 2016, the US Department of the Treasury announced that it was introducing further measures to "rein in" corporate inversion transactions which see US-parented multinational corporate groups acquiring smaller foreign companies and then altering the tax domicile of the merged group to that of the foreign-acquired company in order to reduce or avoid paying tax in the US. ... Despite the US Treasury's guidance, inversion transactions had become quite a prevalent feature of the Irish corporate landscape in recent years due to the low rate of corporate tax payable in Ireland once a US company re-domiciles to Ireland.'[10]

6. Conclusion

Mergers are covered by a number of statutes in Irish legislation. For example, the series of Acts for controlling competition, culminating in the Competition and Consumer Protection Act 2012 and also the Companies Act 2014, which incorporates the EU Cross-Border Mergers Directive, introducing for the first time into company law statutory procedures for company mergers.

With a particular focus on the Cross-border Mergers Directive, a Statutory Instrument transposed this legislation into Irish law.[11] The relevant Statutory Instrument closely follows the text of the Directive, with some minor exceptions, but with one significant difference. Article 16, on worker participation, is transposed by incorporating the SE Directive (2001/86/EC) in full into this legislation. The only modification to the SE Directive in this 're-transposition' is the change to the threshold set out in Article 7.2.(b) (for application to Part 3 of the Annex), for the continuity of worker participation in a new merged entity, which is increased from 25 per cent to one-third of the workforce by Article 16.3.(e) of the Cross-border mergers Directive.

While there is now a substantial body of national legislation dealing with mergers, in the assessment of such mergers the employee information, consultation and participation rights are not part of the appraisal as to whether a merger meets all necessary legal requirements before being approved. The CCPC and the High Court are the 'competent

10. GLI Report 2017 – see: https://www.globallegalinsights.com/practice-areas/mergers-and-acquisitions/global-legal-insights---mergers- and-acquisitions-6th-ed./Ireland.
11. Statutory Instrument (SI) 157 of 2008.

bodies' designated to ensure that, under Irish law, all these requirements are fulfilled by the merging enterprises; these statutory bodies do not include legal employee rights as part of their assessments. The only focus of any formal assessment of a proposed merger is its impact on competition in the relevant business sector. The statutory rights of employees are not a consideration.

Detailed statistics are not readily available on the number of cross-border mergers involving Irish enterprises that might be covered by the Directive; where such information is available, such as in the Company Registry Office annual reports, there is no detailed analysis of the mergers. Consequently, it is difficult to assess the number of employees involved or in which other EEA Member States the merging companies are located.

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