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Merger Control Update

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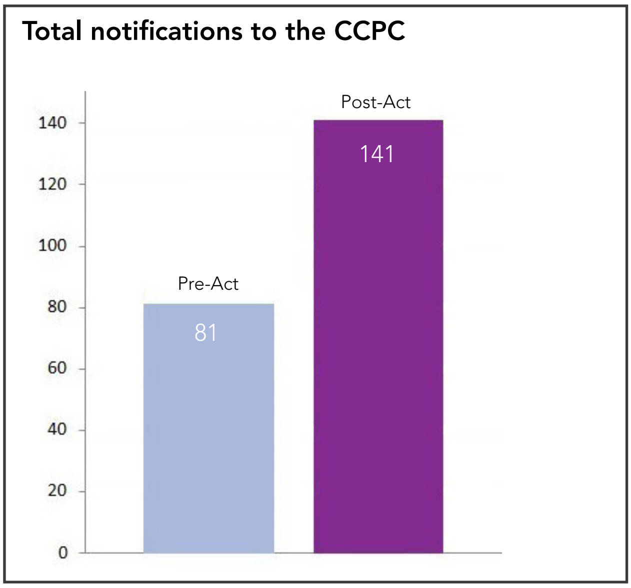
Irish Merger Notifications up 75% since 2014

The last 2 years have seen a dramatic spike in merger control in Ireland. The number of transactions notified to the Competition and Consumer Protection Commission ("CCPC") has increased by 75%, following the introduction of a new Act on 31 October 2014.[1] This bulletin examines developments under the new regime, highlighting sectors that have been particularly affected. Clients in the property, hospitality, and agri-food sectors should take particular note.

The graph below illustrates the total number of notifications made since the introduction of the 2014 Act.

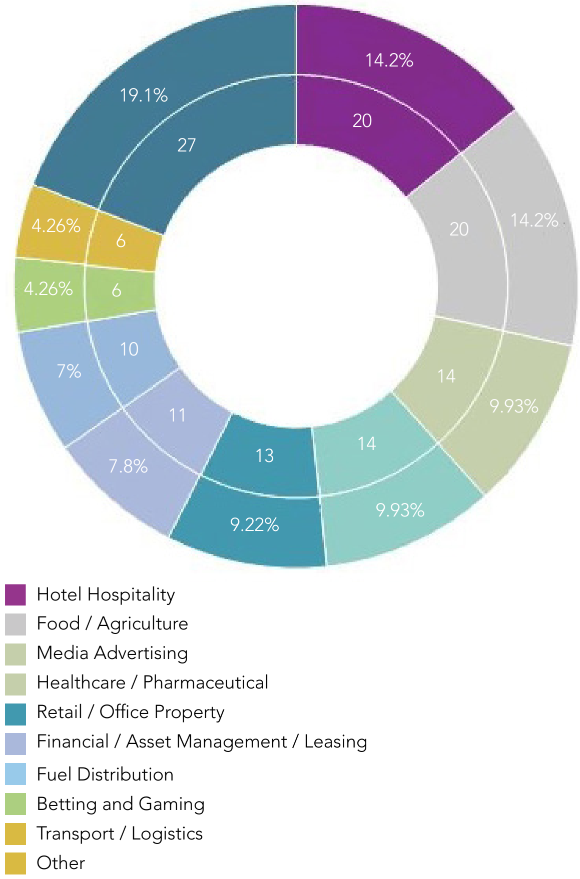
It is clear that the changes to the merger thresholds have had a very significant impact on the number of transactions that now require notification. 81 transactions were notified in the 24 months prior to the enactment of the 2014 Act, compared to 141 in the first 24 months of the new regime.



[1] Competition and Consumer Protection Act 2014 (29/2014)

What gets notified?

Total notifications since the 2014 Act



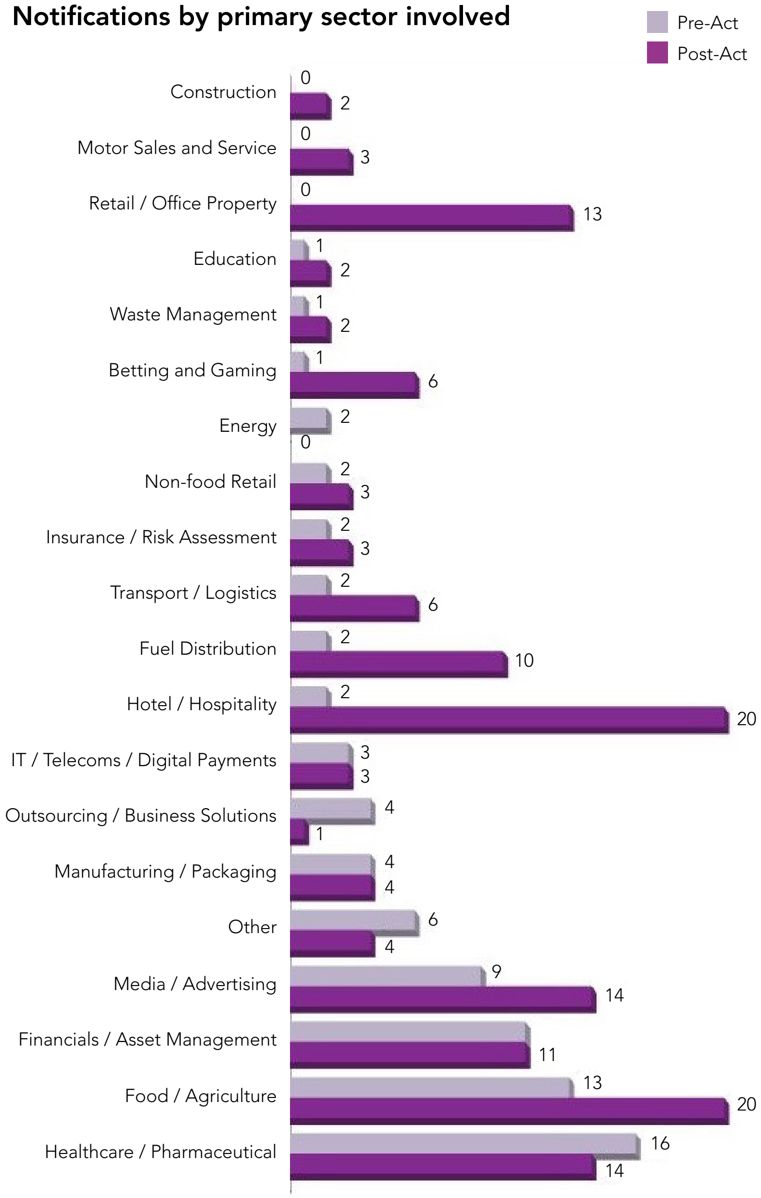
Other recent trends become apparent when pre-Act and post-Act notifications are broken down by the primary economic sector involved as illustrated to the right.

Activity in the Hotel sector clearly increased and is now caught by the new thresholds. A significant number of other property transactions reflect the impact of the change on specific sectors as highlighted overleaf.

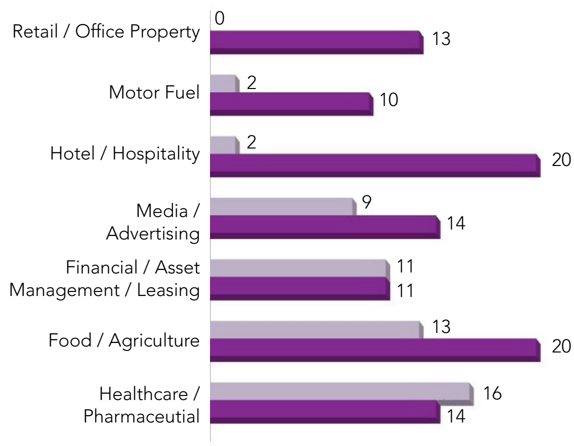
As can be seen opposite, the number of notifications in every major economic sector rose, with the exception of the healthcare / pharma industry. This may be attributed to the significant consolidation experienced in this sector in the wake of the economic downturn and prior to the 2014 Act.

Certain sectors are bearing the brunt of the competition effects analysis. Notifications in the hotel sector are up 900%; motor fuel is up by 400%; while in retail and office property there have been 13 acquisitions under the new regime, compared to none during the 24 months prior to the 2014 Act.

Notifications by primary sector involved



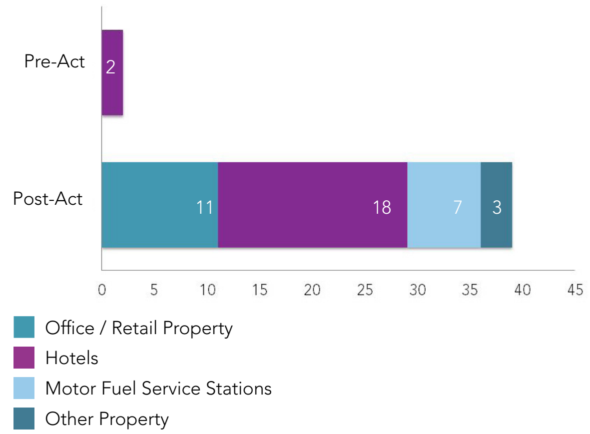
Most popular industry sectors



Property transactions

Not only does the new regime mean lower turnover thresholds for notification, but because business turnover associated with property assets (e.g. rental income) must be included when calculating turnover, a large number of property transactions are now caught by the new regime. It is clear that the 2014 Act has had a significant impact on property transactions, and those involved in such transactions must now consider whether a notification to the CCPC is required and thus whether completion may be delayed as a result.

Change in notified property transactions



Critically, for transactions involving the sale of rented property, where annual rental income exceeds €3 million, there is a notification requirement, where the combined turnover of the parties involved exceeds €50 million.

x15 increase
in property notifications

Parties and their advisors should therefore be aware that their deal may now be caught by the Irish merger control regime. In some circumstances, where time is critical, the buyer who does not require merger control clearance may be a more attractive option for sellers.

Conclusion

The Competition and Consumer Protection Act 2014 (the "2014 Act") established the CCPC (in replacing the former Competition Authority) and introduced significant changes to the Irish merger control regime. Transactions now require notification to the CCPC where, in the most recent financial year:

i) the aggregate turnover in the State all of the undertakings involved is **at least €50 million**; and
ii) turnover in the State of each of two or more undertakings involved is **at least €3 million**. [2]

Under the previous higher thresholds, it was considered that many international mergers without Irish competition implications were unnecessarily caught, while some Irish transactions with competition implications were not being caught by that regime.

There are questions to be asked around whether the current merger thresholds are proportionate in their impact on business – less than 3% of mergers move to Phase II, suggesting that the vast majority do not raise substantive competition issues. However, for now, those involved in a transaction where all the parties involved have a combined annual turnover of €50 million need to stop and consider the implications of the 2014 Act. The tables above provide guidance on those sectors most severely impacted since the 2014 Act was introduced.

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[2] Prior to the 2014 Act, the notification threshold was met if: (i) at least two of the entities involved had worldwide turnover of over €40 million; and (ii) the turnover in the State of one of the entities was at least €40 million.