

CCPC declares merger notification relating to LloydsPharmacy takeover of McCabes Pharmacy as invalid

February 2, 2024

The Competition and Consumer Protection Commission (CCPC) has decided the merger notification relating to the proposed acquisition by LloydsPharmacy Ireland Limited (LloydsPharmacy), which is ultimately controlled by PHOENIX Pharma SE (PHOENIX Group), of McCabes Pharmacy (McCabes) is not valid.

The proposed acquisition was notified to the CCPC on 25 October 2023. In line with its merger review process as set out in the Competition Act 2002 as amended (the Act), the CCPC began a preliminary (or 'Phase 1') investigation. On 5 December 2023, during its Phase 1 investigation, the CCPC issued a 'Requirement for Information' (RFI) to each of PHOENIX Group and McCabes. Responses were provided by each of the parties on 16 January 2024.

As a result of the Competition (Amendment) Act entering into operation, the CCPC is now required, within 10 working days from the date on which it is provided with the parties' RFI responses, to notify the parties as to whether or not it is satisfied that the RFIs have been complied with.

Upon reviewing the responses submitted by each of PHOENIX Group and McCabes, the CCPC conducted further engagement with each of the parties and decided that it was not satisfied that the RFI issued to each of PHOENIX and McCabes had been complied with.

Section 18(12) of the Act provides that a merger notification shall not be valid where the CCPC is of the opinion that all the specified information requested in an RFI has not been provided. In this case, the CCPC has decided that the merger notification is invalid under section 18(12) of the Act as all specified information requested in the RFI had not been provided.

The CCPC has written to the notifying parties informing them of its decisions, providing reasons for its decisions and expressed its willingness to further engage with the notifying parties in relation to the proposed acquisition. No further information or comment can be provided.

What happens next

The CCPC will now close its Phase 1 investigation and no determination will be issued. The CCPC's decision that the merger notification is invalid is not a decision on whether or not the proposed acquisition can be put into effect. The parties are required to re-notify the proposed acquisition before it can be put into effect. Should the parties choose to renotify the proposed acquisition, another preliminary investigation will begin.

Background information

LloydsPharmacy currently operates 82 retail pharmacies across the State.

The PHOENIX Group ultimately controls LloydsPharmacy and also ultimately controls United Drug (Wholesale) Ltd, one of two full-line pharmaceutical wholesalers in the State.

McCabes comprises a portfolio of 31 retail pharmacies in Ireland, which are primarily located in the Dublin/Leinster region.

Section 20(2)(c) of the Act, as inserted by section 17 of the Competition (Amendment) Act 2022 provides that the CCPC is required to notify a party as to whether or not it is satisfied that an RFI has been complied with within 10 working days from the date on which it is provided with the party's RFI response. The Competition (Amendment) Act came into operation on 27 September 2023.

Transaction Timelines to Date	
Notification	25 October 2023
Requirement for Information was issued to parties	5 December 2023
Responses received from parties	16 January 2024
CCPC declares merger not valid	31 January 2024