



InfPreventa - Report of Study in Ireland

KEVIN P O'KELLY
Associate Researcher ETUI

OUTLINE

- 1. TAKEOVER BIDS DIRECTIVE
2004/25/EC**
- 2. CROSS-BORDER MERGERS
DIRECTIVE 2005/56/EC**
- 3. CASE STUDY - Ryanair bids for Aer
Lingus**

1 TAKEOVER BIDS DIRECTIVE 2004/25/EC

Art 6.1

*... As soon as a bid has been made public, the boards of the offeree company and of the offeror shall **inform the representatives of their respective employees** or, where there are no such representatives, the employees themselves*

Art 6.2

Before the [offer] document is made public, the boards

DIRECTIVE 2004/25/EC

Art 6.3 (i)

offerors intensions with regard to:

- **Safeguarding jobs**
- **Changes in conditions of employment**
- **Likely repercussions on employment and the locations of company places of business**

IRISH TAKEOVER PANEL

- **Set up by Takeover Panel Act, 1997**
- **Directive transposed into Irish legislation by Statutory Instrument (SI) 255 of 2006**
- **SI sets out the powers of the Takeover Panel and also amends the Takeover Panel Rules to bring these in line with Directive**

TRANSPOSITION OF DIRECTIVE

Key amendments to Takeover Panel Rules:

1. Rule 24.1.(e): Impact of offer on jobs and conditions of employment
2. Rule 2.6. (c) and (d): Right to information on offer
3. Rule 30.3: Right of employee reps to give an *Opinion* on offer
4. Rule 32.5 and 32.6: Employees right to information and to give an *Opinion* on a revised bid



2 **CROSS-BORDER MERGERS DIRECTIVE 2005/56/EC**

MERGERS IN IRELAND

Mergers examined by the Competition and Consumer Protection Authority 2009-2014

Year	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	41	39 (2 still pending)

MERGERS IN IRELAND

Cross-border Mergers Registered with the CRO 2009-2013

Year	Completed Acquisitions	Completed Absorptions	New Companies
2009	5	8	
2010	6	7	
2011	3	6	
2012	2	19	1
2013	4	7	

CROSS-BORDER MERGERS DIRECTIVE

- **Transposed into Irish legislation by Statutory Instrument (SI) 157 of 2008**
 - ❖ **Three parts**
 - 1. Preliminary and General (including definitions)**
 - 2. Company Law Provisions**
(Parts 1 and 2 amend Company Law Acts)
 - 3. Employee Participation**

DEFINITIONS

Article 7 is not transposed as in Directive:

An opinion from the representatives of the employees, as provided by national law, that opinion shall be appended to the report

The SI is not as strong (Regulation 9 (1) (b)):

The directors' explanatory report together with the opinion thereon, if any, received from the employee representatives.

COMPETENT AUTHORITIES

The SI designates the High Court and the Competition Authority (now the Competition and Consumer Protection Commission (CCPC)) as the competent authorities

COMPETENT AUTHORITIES

- **High Court incorporates the Commercial Court**
- **The Competition Authority was merged with the National Consumer Agency on 1 October 2014 to form the **Competition and Consumer Protection Commission (CCPC)****

COMPETENT AUTHORITIES

- **The CCPC already had responsibility to scrutinise mergers, including cross-border mergers, under the 2002 Act that set up the Competition Authority.**
- **The High Court cannot issue an order confirming a merger without notification from the CCPC that all laws have been complied with**

CONSEQUENCES OF CRM

Article 14.4 of Directive states that on the transfer of assets and liabilities:

the rights and obligations of the merging companies arising from contracts of employment or from employment relationships and existing at the date on which the cross-border merger takes effect ...

However .. Regulation 19 (1) (f) of the SI states:

the rights and obligations of the merging companies arising from contracts of employment...

EMPLOYEE PARTICIPATION

- **Part 3 of the SI transposes Article 16 by setting out in detail the relevant Articles of Directive 2001/86/EC (European Company (SEs))**
 - ❖ **Chapter 1 (Preliminary and General - including definitions related to Part 3)**
 - ❖ **Chapter 2 (Negotiations and the SNB)**
 - ❖ **Chapter 3 (Negotiations and Agreement)**
 - ❖ **Chapter 4 (Supplementary Issues)**

EMPLOYEE PARTICIPATION

- **In Part 3 the 'Court' refers to the Labour Court**
 - ❖ **Schedule 1 (Standard Rules)**
 - ❖ **Schedule 2 (Redress for Contravention of Regulation 39 - protection of members of SNB)**
 - ❖ **Rights Commissioner Service:**
 - **Labour Court - Circuit Court - High Court**

3 CASE STUDY

Ryanair's three bids for Aer Lingus

- **Ryanair control of almost 30% of Aer Lingus (AL) equity**
- **1st bid - 2006: Rejected by AL, Irish Government, ESOT, other shareholders and European Commission (TU open letter)**
- **2nd bid - 2008: Rejected**
- **3rd bid - 2012: Again rejected (TU *Opinion*)**

CRC OPINION

AL Trade Union's Central Representative Council (CRC) drafted a formal *Opinion* under Takeover Panel Rule 30

***Opinion* included key points:**

- **Financial strength of AL**
- **Ryanair undervaluing AL including value of LHR slots**
- **Concerns of European Commission on competitiveness**

CRC *OPINION*

Opinion included key points:

- AL employee doubts about Ryanair intentions with regard to:
 - Existing collective bargaining arrangements
 - Existing employment rights
 - Proposed employment creation
 - Recognition of trade unions
 - The AL pension fund
- CRC Opinion appended to AL Board rejection document

KEY FINDINGS

- **AL CRC *Opinion* unique in Irish takeover history**
- **Coalition of AL shareholders to reject takeover bids**
- **Staff concerns with impact of a possible takeover on pensions**
- **AL Board frustrated by large Ryanair shareholding and effect of commercial operations**

UK COMPETITION COMMISSION

- UK Office of Fair Trading investigation (2010)
- Reference to Competition Commission (2011)
- Competition Commission findings (2013)
 - Ryanair directed to divest its AL shareholding down to 5%
- Ryanair appeal to UK Supreme Court - lost case
- Referred back to Competition Appeals Tribunal - again Ryanair lost case (March 2014)
- Appealed to UK Court of Appeal - lost appeal (January 2015) - added a restriction on sale of shares

UPDATE!!

- ❖ **IAG (British Airways/Iberia) has made two takeover bids for AL since December 2014**
- ❖ **Talks on going with Government and trade unions**



благодаря

Thank You

Go Raibh Maith Agat