

# Competition watchdog thresholds 'too low'

**Philip Connolly**

CHANGES to the thresholds over which deals must be referred to the competition authority has led to a dramatic spike in the number of merger notifications and an unnecessary rise in transaction costs, according to one of Ireland's leading law firms.

A report by law firm ByrneWallace found that merger notifications have increased by 75% during the past two years, following the introduction of the Competition and Consumer Protection Act 2014. The act brought in significant changes

to the Irish merger control regime.

"Questions remain as to whether the current merger thresholds are proportionate in their impact on business," said Joanne Finn, the head of EU, competition and regulated markets at ByrneWallace.

"Less than 3% of mergers move to a full phase two investigation, suggesting that the vast majority do not raise substantive competition issues and unnecessary time and costs are being added to deals," she added.

Finn said that the Competition and Consumer Protection Commission

(CCPC) was now catching transactions that were too small and that the thresholds should be revisited.

"A number of competition lawyers made submissions to the Department for Jobs, Enterprise and Innovation at the time of the legislation because of concerns that the changes would disproportionately increase transaction costs, particularly for small transactions, and could impede transactions unnecessarily," she said.

ByrneWallace found that the property, hospitality and agri-food sectors had been the most affected. According

to the law firm, there have been 15 times the number of property notifications and nine times the number of hotel merger notifications.

Under the act, merger transactions must be notified to the CCPC when the aggregate turnover in Ireland of all of the parties involved is at least €50m and when the turnover of each of two or more of the parties involved is at least €3m.

It currently costs €8,000 in filing fees, plus legal fees, to notify the commission. The notification requirement also creates significant time delays, of up to six weeks, for

deals to be concluded, according to Finn. The act was changed as the old regime examined a high number of international transactions but fewer Irish mergers than under the current thresholds.

"The old thresholds were picking up a lot of international mergers, with sometimes surprising results – for example Disney's acquisition of Pixar needed to be notified in Ireland. The new thresholds are better, in that they definitely identify more Irish deals, but there is an argument that they have gone too far to redress the balance," said Finn.