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CCPC Continues Trend of Imposing Behavioural Remedies

KEY CONTACT(S): Kate McKenna

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In its January 2020 **decision** on CVC’s acquisition of control of Celtic Rugby DAC (the owner of rights in respect of the PRO14 Rugby Union competition), the CCPC continued its trend of imposing behavioural remedies which are unusual in an international context. As a condition to approval of this acquisition (during an extended Phase 1 review period lasting just over two months), the CCPC required a commitment which restricts behaviour which is not directly related to the notified transaction. Specifically, the CCPC obtained a commitment that *“if an entity invested in by CVC Funds, directly or indirectly, enters a legally binding agreement to acquire control over the commercial activities of the Six Nations Championship, it will voluntarily notify that transaction to the CCPC in the event the transaction does not meet the mandatory notification thresholds”*.

This is not the first time that the CCPC has imposed a behavioural commitment by an acquirer to notify future acquisitions (regardless of whether this would be legally required based on the turnover test). As we commented in our article from **July 2019**, such a commitment was obtained in the 2019 Phase 2 approval of LN-GAIETY’s acquisition of MCD and in the 2017 Dalata/Clarion/Clayton extended Phase 1 approval. However, it seems that the commitment obtained from CVC may cross a new frontier in its breadth given that it covers a future acquisition by any “entity invested in by CVC Funds”, which definition would seem to cover entities in which CVC has a minority non-controlling interest, although it is difficult to see how this could rightly be the case and how this could be something in respect of which a commitment could reasonably be given by someone in the position of CVC.



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