

What's in Store for Real Estate in 2015

Inhouse Masterclass 23/6/15

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Rent Review in Commercial Leases

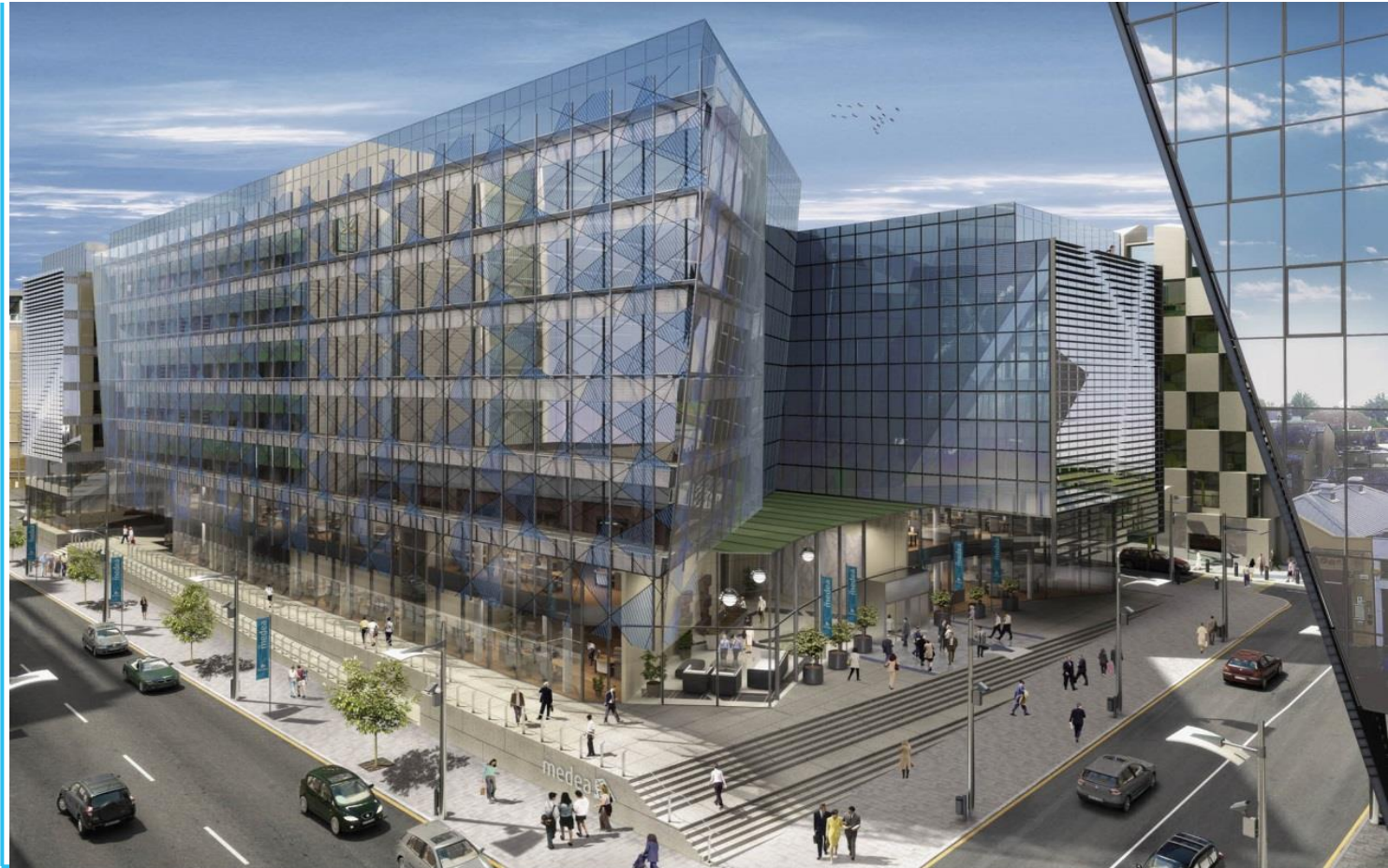
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Revised Rent

- The full open market rent of the premises
- Let as a whole with vacant possession and with no fine or premium
- For a particular term
- On the basis of certain hypothetical assumptions (compliance with tenant's covenants, no damage or destruction to the premises; and
- On the basis of certain hypothetical disregards (occupation by the tenant, goodwill of business carried out, tenant's improvements)

Unit 4 & 5 Grand Canal Square



Two Tier System now in operation:

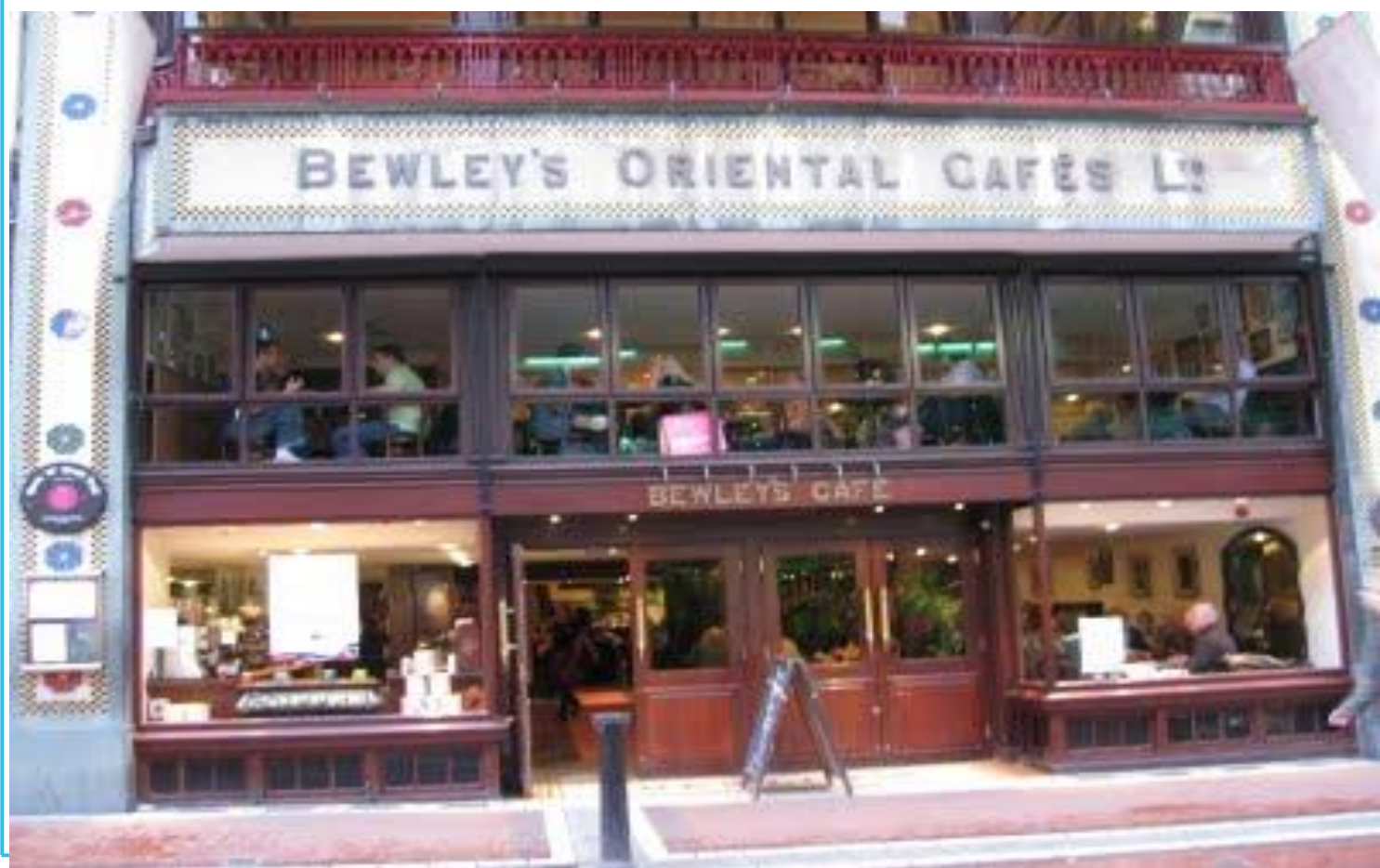
- Upwardly only leases entered into before 28 February 2010 (or post 28 February 2010 where an agreement for lease was entered into before 28 February 2010)
- Leases created after 28 February 2010 (save where there was an agreement for lease entered into pre 28 February 2010). On each rent review, the rent can be revised up, down or remain the same



Section 132

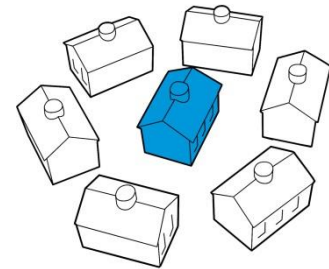
- (1) “This section applies to a lease of land to be used wholly or partly for the purpose of carrying on a business”.
- (2) S132 (1) “shall not apply where (a) the lease concerned, or (b) an agreement for such a lease, is entered into prior to the commencement of this section”
- (3) “Any provision in a lease to which this section applies which provides for the review of rent payable under the lease shall be construed as providing that the rent payable following such review may be fixed at an amount which is less than, greater than or the same as the amount of rent payable immediately prior to the date on which the rent falls to be reviewed”.
- (4) S132 (3) “shall apply –
 - (a) notwithstanding any provision to the contrary contained in the lease or in any agreement for the lease, and
 - (b) only as respects that part of the land demised by the lease in which business is permitted to be carried on under the terms of the lease”.

Bewleys Café, Grafton Street



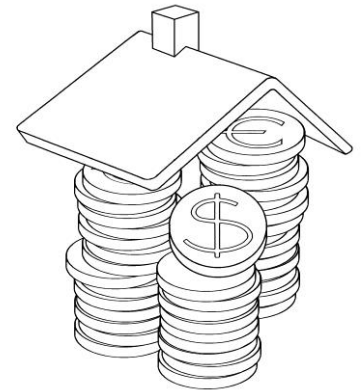
Commercial lease register – Property Services Regulatory Authority (PSRA)

- the address of the property
- the date and term of the lease
- the rent payable, rent free periods and frequency of rent reviews
- fitting out time and fit out allowances
- any capital contribution paid or capital allowances
- details of break clauses



Summary of what to know for a rent review

- Be alive to the detail of the provisions of rent review
- If you occupy under a Lease, when is the next rent review? Is it upward only? Can you argue for a rent reduction?
- Take timely advice and arm yourself with knowledge of the legal position to enable strategic engagement on rent review



Merger Control and Property Transactions

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Setting the scene



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

- A **mandatory** merger control filing to the CCPC is required when:
 - acquisition of shares or assets amounting to a **change of control** ...
“decisive influence” is enough
- +
- ... outright
ownership not
necessary
- certain **financial thresholds** are met



- On **31 October 2014**, revised merger control regime came into effect
- Since that date ...
- **37 notifications** have been made to the Commission, of which:

- **9** relate to the **hotel/hospitality sector**

- **1** relates to an office block

Blackstone

- **1** relates to a petrol forecourt



What's changed? *... the financial thresholds ...*

- A transaction that amounts to a “change of control” is notifiable where, in the most recent financial year:
- **combined turnover** in the **Republic of Ireland** of the parties is not less than €50 million; **and**
- **turnover in the Republic of Ireland** of each of at least **two** of the parties is not less than €3 million.

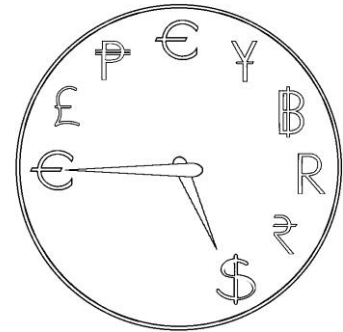
Merger control – Why should you care?

- **Thresholds** easily met
- **Criminal sanctions** for failure to file
- **Suspended completion** pending clearance
- Transaction **void** without clearance
- **€8,000** filing fee



Recap on why you need to care about merger control

- **Thresholds** easily met
- Impact on **closing timetable** and failure to file is a **criminal offence**
- Transaction **void** if complete without clearance



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