

# Irish merger control

2023 review and 2024 preview



## KEY IRISH MERGER CONTROL STATISTICS FOR 2023

68

### NOTIFICATIONS

The number of notifications in 2023 was the same as in 2022

66

### DETERMINATIONS

This is a slight decrease in the 70 determinations issued in 2022

0

### PROHIBITIONS

This is not unusual as prohibitions are relatively rare among the leading agencies worldwide

4

### DETERMINATIONS SUBJECT TO REMEDIES

As in 2022, remedies contained a mixture of behavioural, structural and hybrid remedies reflecting the continued scrutiny of complex transactions

35

### SIMPLIFIED MERGER NOTIFICATION PROCEDURE NOTIFICATIONS

51% of the notifications were simplified which is similar to that in 2022

9

### EXTENDED PHASE 1 INVESTIGATIONS

6 of these extended Phase 1 investigations were carried forward from 2022

5

### PHASE 2 INVESTIGATIONS

Two of the Phase 2 investigations were opened in 2022

4

### PHASE 2 DETERMINATIONS

This was a decrease from the 6 Phase 2 determinations issued in 2022

5

### MEDIA MERGER NOTIFICATIONS

All notifications have been cleared by the CCPC in Phase 1

2

### MERGER ASSESSMENTS

*(akin to Statements of Objections)*

This represents a slight decrease from the four assessments issued in 2022

2

### WITHDRAWN NOTIFICATIONS

CCPC has indicated that two notifications were withdrawn in 2023

28

### REQUIREMENTS FOR INFORMATION (RFIs) ISSUED

This is a slight decrease in the 30 RFIs issued by the CCPC in 2022. Nonetheless the CCPC continues to be inclined to issue RFIs

2

### EU ARTICLE 22 CASES

The CCPC made two Article 22 EUMR referrals to the European Commission (i.e. with *Qualcomm/Autotalks* and *Adobe/Figma*, the latter case was abandoned by the parties)

### MOST PROMINENT SECTORS

- Professional services (8 of the 68 notifications – c. 13%)
- Grocery – Retail & Wholesale (7 of the 68 notifications – c. 10%)
- Three sectors: (a) Financial and Insurance services (b) Information and Communications, and (c) Other Retail/Wholesale each had 6 notifications (i.e. c. 9% each of the notifications)
- The figures do vary annually without any discernible pattern, however notably the sectoral numbers in 2023 did largely resemble the comparative 2022 numbers across most sector

Irish merger control notifications are made to the Competition and Consumer Protection Commission (**CCPC**) under Part 3 of the Competition Act 2002 (as amended) (**2002 Act**).

Certain transactions in the media sector (i.e. “media mergers”) must also be notified to the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media (**Minister**) under Part 3A of the 2002 Act.

This review examines the merger control practice of the CCPC under Part 3 of the 2002 Act during 2023 and is based on information available at the date of publication.

## AT A GLANCE

- 68 transactions (meaning mergers, acquisitions and joint ventures) were notified to the CCPC in 2023, this matched the 68 transactions notified to the CCPC in 2022.
- Unlike 2022, no transactions were prohibited by the CCPC in 2023.
- There were longer and more complex cases in 2023 including 5 cases that were subject to a full Phase 2 investigation (including those carried over from 2022).
- Average clearance times for all cases notified in 2023 was approximately 59 working days .
- 2 notifications were withdrawn by the parties; M/22/017 – *Linnaeus Veterinary / Blackhall Facilities* & M/22/063 – *Windsor Motors / certain assets of Green Cars (t/a Agnelli Motor Park)*
- 4 cases were cleared subject to remedy commitments offered by the parties.
- 35 of the 68 merger notifications were notified under the Simplified Merger Notification Procedure (**Simplified Procedure**).
- 5 media mergers were notified to and all 5 have been approved by the CCPC in Phase 1: M/23/015 – *Bauer Media/Certain Assets of Sunshine Radio*, M/23/031 – *Bauer Media/Certain Assets of Jack Media*, /23/038 – *Mediahuis/Euractiv*, /23/039 – *Bauer Group/Wilton Radio Limited t/a iRadio FM*, and M/23/066 – *SSBL/Viaplay* has been cleared by the CCPC at the time of publication.

## NUMBER OF DEALS NOTIFIED TO THE CCPC IN 2023

The current Irish merger control regime has been in place since 1 January 2003. As can be seen in the chart below, the number of notifications made to the CCPC can fluctuate significantly from year to year due to a number of factors.

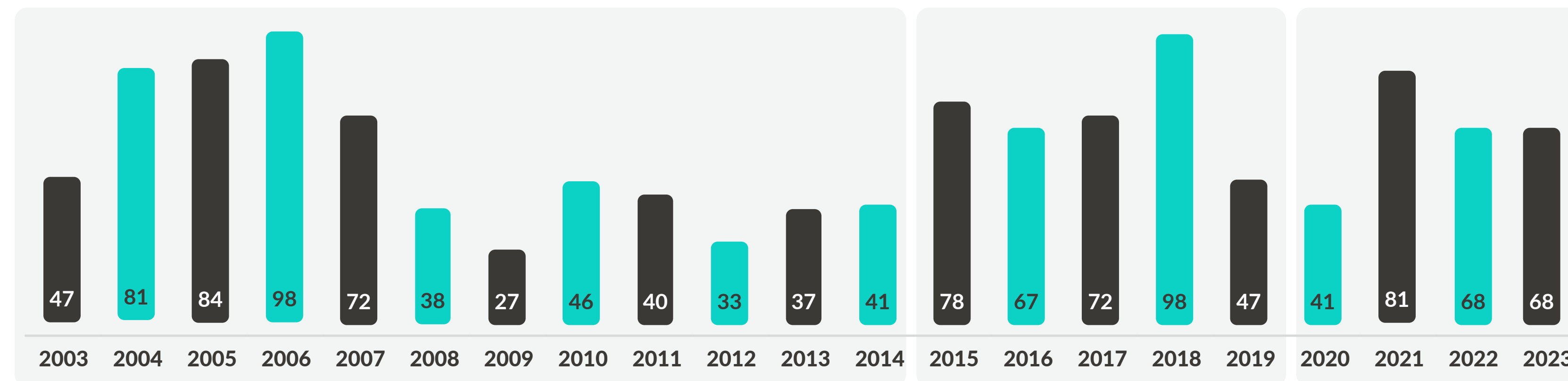
The number of notifications made is periodically affected by changes to the rules on notifiability (such as the changes to the applicable financial thresholds in 2014 and 2019). There was a dramatic increase in the number of notifications in the period 2015 – 2019 due to a lowering

of the applicable financial turnover thresholds. Changes in economic conditions can also trigger changes year-on-year, such as the effect of recessions, economic growth and other unexpected societal disturbances.

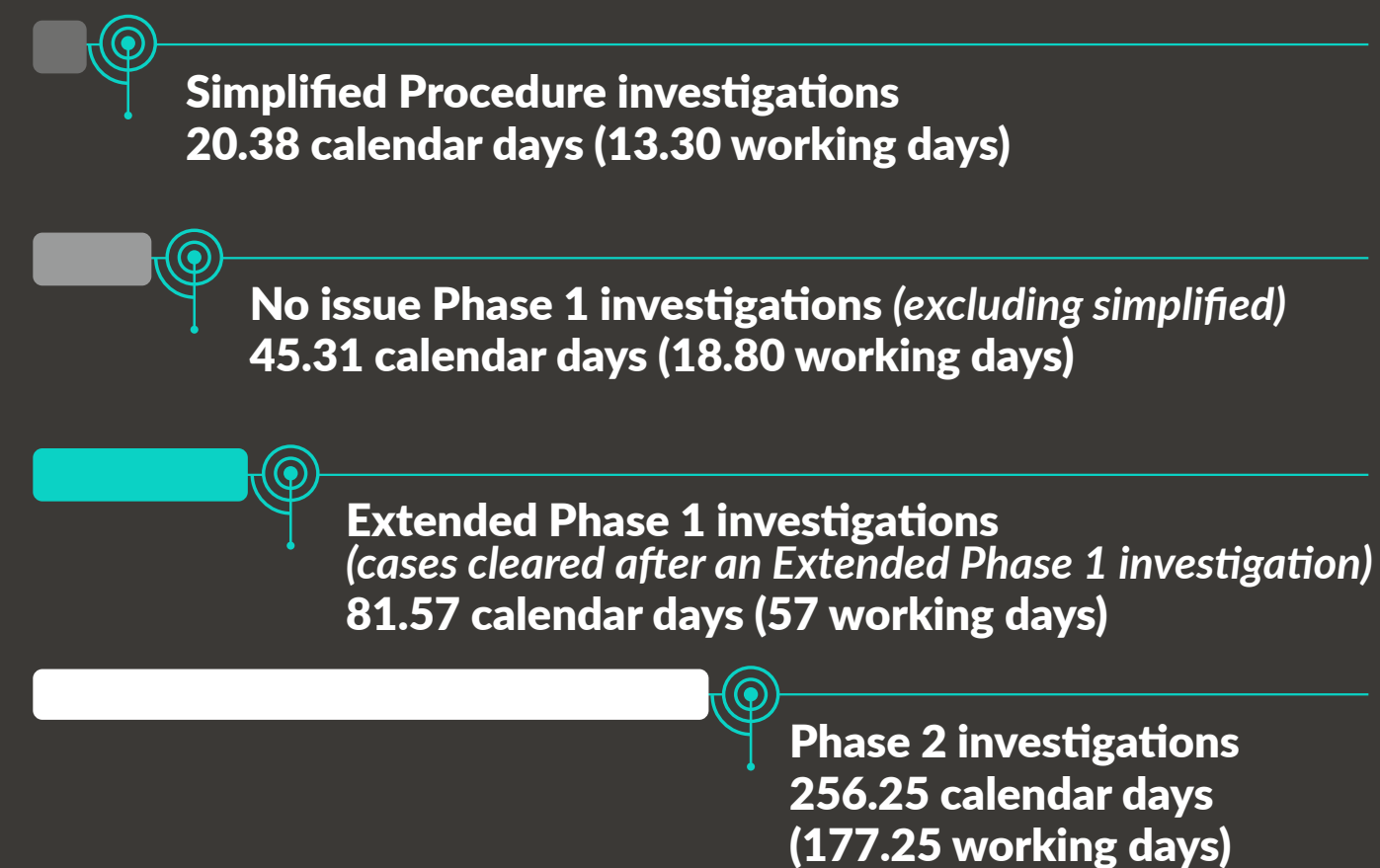
The total of 68 transactions notified in 2023 matches the 68 notifications made in 2022. The number of transactions made in both 2023 and 2022 was a decrease from the record of 81 notifications recorded in 2021, however it is widely accepted that 2021's

figures represented something of an aberration in the context of pent-up demand in 2020 linked to the impact of Covid-19 on merger control. The consistency between the 2022 and 2023 figures would appear to be indicative of something of a standard norm of notifications the CCPC can expect over the next number of years reflective of the general health of activity in merger control at present. The graphic below illustrates notification activity over the course of the 3 different eras of financial thresholds which trigger a mandatory notification.

## NUMBER OF NOTIFICATIONS - THREE TURNOVER REGIMES



## AVERAGE TIME PERIODS FOR CCPC INVESTIGATIONS OF DEALS NOTIFIED IN 2023



## MERGER TRENDS IN 2023

- Typically there are more notifications made in H2 than H1 in a calendar year. A total of 26 notifications were received by the CCPC in the first half of 2023 (a slight decrease on the 30 made in the first half of 2022). The number of notifications increased in H2 2022 with 42 notifications in total (which was an increase on the 38 notifications made in H2 2022).
- Assessments (similar to a Statement of Objections under the EU Merger Regulation) and oral submissions are increasingly a feature of the CCPC's Phase 2 investigations. Assessments were deployed in two Phase 2 transactions in 2023: M/22/040 – Q-Park/Tazbell and M/23/011 – DAA/Certain Assets of Mr Gerard Gannon. This follows on from a number of assessments in recent years: M/22/015 – East Cork Oil / Misty Lane, M/21/079 – Unipharm/NaviCorp, M/21/021 – Bank of Ireland/Certain Assets of KBC, and M/21/004 – AIB/Bol/PTSB – Synch Payments JV.
- There continued to be both longer investigations in 2023: 5 transactions were subject to a full Phase 2 investigation (including those carried over from 2022) by the CCPC, while a further 9 transactions went to an extended Phase 1 review but did not proceed to a Phase 2.
- There were a total of 9 cases notified in 2022 that were carried over into 2023, two of these were reviewed in Phase 2, and some of which involved multiple RFIs, namely: M/22/067 – Thorntons Recycling/Carducci Holdings (The City Bin Co.) and M/22/040 – Q-Park/Tazbell.
- In terms of sectoral breakdown, 2023 saw a doubling in the number of information & communications cases notified to the CCPC, from 3 in 2022 to 6 in 2023. It remains to be seen whether the sectoral numbers for this year are an aberration or will form part of a future trend. Amongst the notifications to the CCPC in this sector were: M/23/046 – Westcoast Holdings / Binnian Limited and M/23/032 – Global Logic / Sidero Limited.

## MERGER TRENDS IN 2023

- Phase 2 transactions that concluded in 2023 took an average of 256.25 calendar days (177.25 working days) to receive clearance from their initial date of notification. These figures are an increase on the same figures recorded for 2022, and are a reflection of the fact that the CCPC Phase 2 clearance process is continuing to be more protracted and less predictable given the increase in the number of extended Phase 1 and Phase 2 cases, as well as the recent trend of issuing multiple RFIs within a transaction and also the issuing of assessments.
- The CCPC's Simplified Procedure saw its third full year of operation in 2023, having come into effect in the summer of 2020. This has resulted in the shortening and simplification of review processes for transactions that do not raise significant competition concerns. The CCPC used the Simplified Procedure in more than 50% of the determinations issued in 2023.

- Four notifications were the subject of commitments in 2023 (three of which were originally notified in 2022):

**M/22/049 Uniphar/LXV Remedies (Sam McCauley):** this transaction was cleared by the CCPC at Phase 1 in accordance with commitments from Uniphar to divest three pharmacies in areas in which both Uniphar and Sam McCauley pharmacies were active.

**M/23/010 - BWG/Tuffy Wholesale:** the CCPC cleared this transaction in Phase 1 subject to commitments from BWG that they would prevent the exchange of competitively sensitive information between the parties to the transaction.

**M/22/067 - Thorntons Recycling/Carducci Holdings (The City Bin Co.):** the CCPC approved this merger on the basis of structural commitments from Thorntons Recycling to divest an entire section of domestic waste

customers in an area in which both parties to the transaction were active.

**M/22/040 - Q-Park/Tazbell:** Having initially issued an assessment objecting to the transaction, the CCPC ultimately cleared this transaction in Phase 2. Clearance was issued subject to commitments from Q-Park to relinquish a contract they held in respect of car park in Dublin City Centre and additionally to lease the top level of a car park in Galway City Centre.

## WHAT ABOUT 2024?

- At time of publication there were 6 transactions still active which were notified in 2023. 1 of these cases is currently in Phase 2 (M/23/011 – *DAA plc / Certain Assets of Mr Gerard Gannon*), while 2 are in an extended Phase 1 M/23/060- *Kilsaran / Certain Assets of Kilmurray* and M/23/056 – *LloydsPharmacy/ McCabes Pharmacy*.
- We see a continuation of the trend of complex and lengthy merger control review in Ireland with use of remedies in both Phase 1 and Phase 2 of the CCPC’s review process. We also see the evolving theories of harm in merger control internationally being applied where appropriate in Irish merger control.
- The Screening of Third Country Transactions Act 2023 (**FDI Act**) is likely to come into force in Q2 2024. The FDI Act will serve as an additional regulatory hurdle for transactions and is separate to Irish merger control. It enables the Minister for Enterprise, Trade and

Employment to review transactions involving third country (i.e. non-EEA and Swiss) acquirers of businesses in Ireland. The Minister will determine if such transactions would adversely affect security or public order in Ireland. The Act, if applicable, will need to be factored into deal-timing and risk allocation.

- A significant legislative development for Irish merger control was the entry into force on 27 September 2023 of the Competition (Amendment) Act 2022 (**Act**).
- As a result of the Act, the CCPC can now “call in” unnotified below-threshold transactions, impose interim measures on all notified transactions and reverse unnotified deals which the CCPC finds would substantially lessen competition in Ireland. 2024 should see these powers being deployed by the CCPC in earnest, in tandem to that process we expect to see greater publicity on the part of the CCPC in their use of these powers.

- The parameters of the ‘gun jumping’ offence under Irish merger control have been widened by the Act. It is now an offence for parties to a notified transaction to put it into effect prior to obtaining approval from the CCPC. Previously the offence had only penalised parties to a transaction who met the mandatory notification thresholds but failed to notify their transaction to the CCPC.
- Pre-notification contacts between parties to a transaction and the CCPC are likely to be a more frequent feature of merger control practice in 2024. The CCPC recently suggested the use of guidance to parties to use short briefing papers to inform the CCPC about their proposed transactions – we see this as a tool which is likely to be used to determine if certain below-threshold transactions might be called-in by the CCPC for compulsory review.

## IRISH MERGER CONTROL IN 2023 - THE DETAIL

The CCPC is Ireland's competition and consumer protection agency.

Under the 2002 Act, it is mandatory to notify a transaction to the CCPC if, in their most recent respective financial years; (i) the combined turnover in Ireland of all the undertakings involved is at least €60m and, (ii) the turnover in Ireland of each of 2 or more of the undertakings involved is at least €10m.

In addition, media mergers (as defined under the 2002 Act) must be notified either to the European Commission under the EUMR or, if not, to the CCPC under the 2002 Act irrespective of the turnover of the undertakings involved (as well as being separately notified to the Minister).

The end of 2023 concludes another busy year in Irish merger control. A total of 68 notifications were made to the CCPC, matching the 68 notifications in 2022. Given the

continuity in the merger control rules since 2019, the total of 68 notifications is a sign of relatively strong M&A activity.

Of the 68 notifications made during 2022, the CCPC issued determinations in 59 of these cases by 31 December 2022. The remaining 9 notifications continued into 2023.

4 determinations in 2023 involved commitments to secure approval, namely M/22/049 *Uniphar/LXV Remedies (Sam McCauley)*, M/23/010 - *BWG/Tuffy Wholesale*, M/22/067 - *Thorntons Recycling/Carducci Holdings (The City Bin Co.)* and M/22/040 - *Q-Park/Tazbell*.

No transaction was prohibited by the CCPC in 2023. The CCPC's prohibition of M/21/079 - *Uniphar/NaviCorp* was the first prohibition since its establishment in 2014.

### Voluntary Notifications to the CCPC

Businesses are only required to notify deals to the CCPC if they reach the compulsory notification thresholds or are media mergers under the 2002 Act. Following the enactment of the 2022 Act, CCPC is now empowered to "call in" below-threshold deals which may have an effect on competition in Ireland. Parties are also able to notify transactions even after they have been put into effect.

However, parties may decide to notify a deal to the CCPC on a voluntary basis under the 2002 Act because the CCPC can still investigate and seek to take action in relation to below-threshold deals under its general competition law powers. Businesses need to consider whether their deals raise competition issues in Ireland irrespective of whether the compulsory notification thresholds under the 2002 Act are met. For example, in 2023 the merger notification in M/23/011 - *DAA plc / Certain Assets of Mr Gerard Gannon* was voluntarily notified to the CCPC.

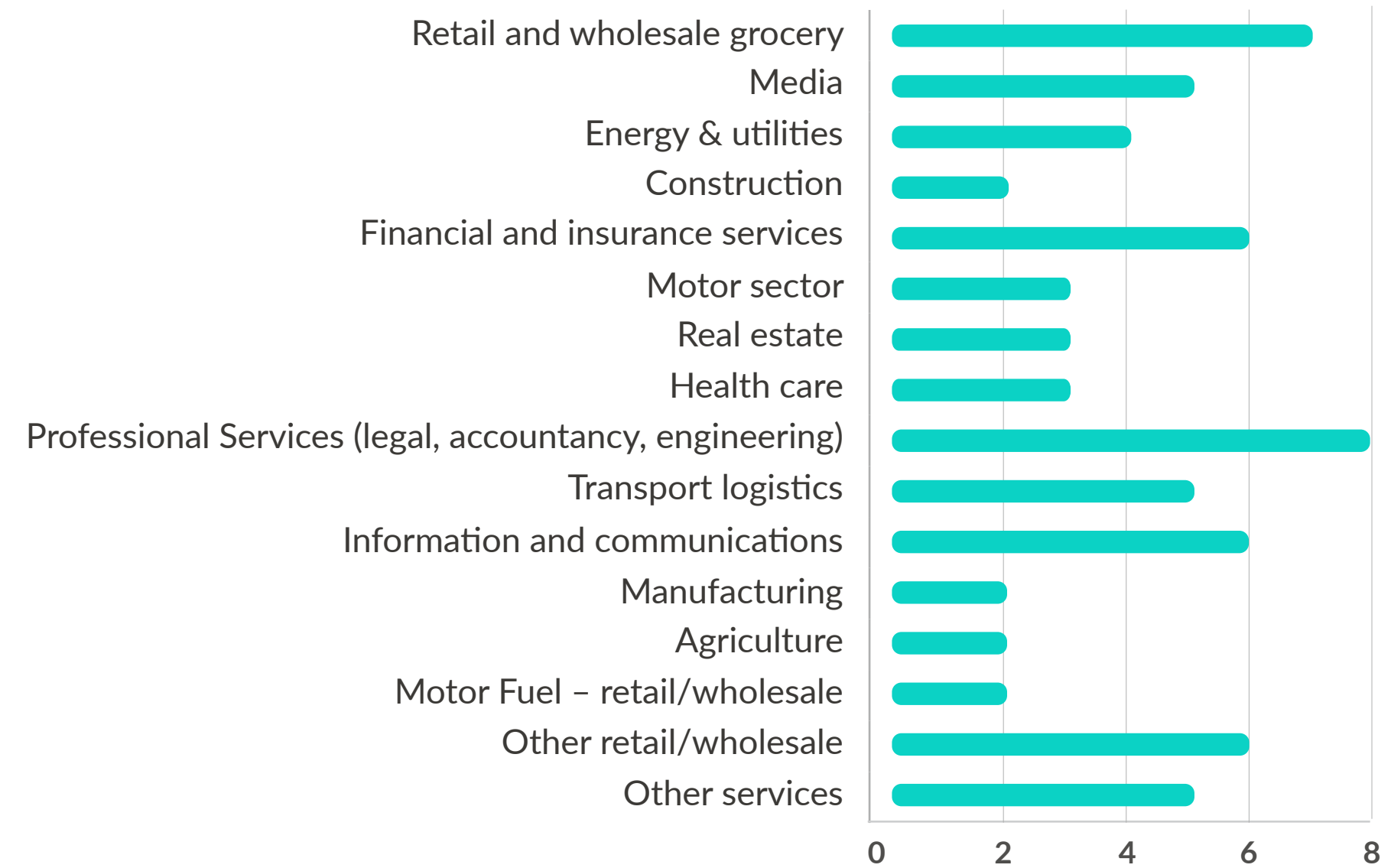


## SECTORS INVOLVED IN DEALS WHICH WERE NOTIFIED TO THE CCPC

The most active sectors for deals notified to the CCPC in 2023 included Professional Services (Legal, accountancy) (8), Retail and Wholesale Grocery (7), Media (6) and Financial and Insurance Services (6).

This is by contrast to the most active sectors in 2022: Retail and Wholesale Grocery (7) and Media (6).

### SECTORS IN 2023



## MEDIA MERGERS NOTIFIED TO THE CCPC

Five media mergers were notified to the CCPC in 2023 (compared to 6 notified in 2022).

- M/23/015 – *Bauer Media/Certain Assets of Sunshine Radio*
- M/23/031 – *Bauer Media/Certain Assets of Jack Media*
- M/23/038 – *Mediahuis/Euractiv*
- M/23/039 – *Bauer Group/Wilton Radio Limited t/a iRadio FM*
- M/23/066 – *SSBL/Viaplay*

## MERGER CONTROL IN NORTHERN IRELAND

Historically in Northern Ireland, there has not been many transactions that have required the Office of Fair Trading or, now, the Competition and Markets Authority (**CMA**) to investigate the proposed deal.

The UK operates a voluntary notification regime, with the obligation on the parties to decide whether a notification is needed.

Notification to the CMA is usually considered when one of the following thresholds is met:

- i. the 'Turnover Test' which relates to whether the company being acquired generates turnover of at least £70m in the UK, or
- ii. the 'Share of Supply Test' which concerns whether as a result of the merger, the relevant companies create or enhance a share of 25% or more in the supply or consumption of goods or services within the UK or a substantial part of the UK.

Once a merging entity exceeds these thresholds, the CMA may investigate for any potential anti-competitive effects the transaction may cause.

Over the past few years, there has been an increase in deals from Northern Ireland being investigated by the CMA. This has been in part been down to Northern Irish business success stories. Some companies have grown to the point where they are acquiring Great Britain (**GB**) based competitors. Others have built up such a successful business, they become the target of an acquisition from GB or international competitors. This increase is also due to regulatory caution on the part of the merging businesses. Given the significant sums involved, businesses have understandably taken a cautious approach and notified deals to the CMA, rather than risk the CMA subsequently investigating and even blocking the deal.

Complex merger control work: very few competition teams advise on Northern Irish transactions that result in notifications to the CMA. A&L Goodbody is the only firm in Northern Ireland which does so. This year has been another busy year for Northern Irish deals which have been investigated by the CMA. The A&L Goodbody team has provided practical, and comprehensive legal advice to a range of clients at several different stages of mergers and assistance in CMA investigations.

## FUTURE TRENDS FOR NORTHERN IRELAND

In 2023 there was a continued upward trend in deals from Northern Ireland being notified to the CMA. This included one Northern Ireland based proposed transaction Whitby Seafoods Merger Inquiry that the A&L Goodbody Competition team assisted on. This matter was the subject of a Phase 1 decision (this was included amongst the 33 Phase 1 decisions issued by the CMA across the UK) in which the CMA concluded that they expected the transaction to result in an Significant Lessening of Competition (**SLC**).

With a proposed increase to the turnover test (from £70m to £100m) and the targeting of "killer acquisitions" under the new Digital Markets, Competition and Consumer Bill, it appears that the CMA wishes to focus its resources on larger deals. This makes

sense as, since Brexit, it has had to spend considerable time looking at deals which would have previously been reviewed by the European Commission. In addition, the safe harbour principle will exempt businesses whose turnover is less than £10m meaning a significant number of deals may proceed without CMA intervention. The perception could be that as a consequence of these changes, fewer deals from Northern Ireland will be notified to the CMA. The Share of Supply test, however, remains unchanged, therefore, it will still be down to businesses to determine whether a notification is appropriate when they enjoy a significant share of supply. The CMA has been prepared to intervene in deals when the parties' shares are below 25% and the deal has only a regional impact on competition.

As noted, a significant focus of the new legislation is on digital markets. This year we can expect to see the CMA's recently created Digital Markets Unit start to find its feet. The legislation gives the CMA the ability to intervene more readily if it considers consumers are subject to unfair practices in online transactions.

The CMA has consulted and is proposing amendments to Phase 2 of its merger control procedure, with the aim of improving the quality of engagement between it and the parties involved, to include additional early-stage opportunities to engage directly with the Inquiry Group. The Phase 2 Investigation process has not been updated since 2014 and it is hoped that these changes take into account recent CMA practices and reflect judgments of the Competition Appeal Tribunal.

## 2023 NOTIFICATIONS - BASED ON CCPC WEBSITE DATA

CCPC SECTORAL CLASSIFICATION								
Agriculture	Construction	Education	Energy & utilities	Engineering & sciences	Financial and insurance services	Healthcare	Hospitality	Information and communications
PARTIES TO THE NOTIFICATION								
M/23/006 - Dawn Meats/Kildare Chilling	M/23/007-WTech Fire Group/ Orbital Welding Solutions	M/23/025 - MML Capital/ Innopharma	M/23/019 Cube/ Enva	M/23/009 Tennants Consolidated/ Brockley Holdings	M/23/020 - First Sentier Investors / AlbaCore	M/23/002 - UPMC/ Swift Spraoi (Sports Surgery Clinic Santry)	M/23/004 - John Laing/ CCD Group	M/23/005 - John Laing/Towercom
M/23/008 - Aurivo Co-Op/Certain Assets of Arrabawn Co-Op	M/23/044 - Quartz Holdco & Mac Construction / Mac-Interiors	M/23/029 Albus (KKR) and Mr. Hassan/Dukes Education Group-JV	M/23/022 - VPI Holding/ Lumcloon Power, Shannonbridge Power & Derrycarney Solar	M/23/012 - Egis Ingénierie/J.B Barry & BeMRA Engineering	M/23/021 - Waystone Group / Link Funds Business	M/23/030 Novo Group/Kelvin Holdco (Ellab)	M/23/016 - Belbyford Limited / The Imperial Hotel (Cork) Limited	M/23/028 Erisbeg / MP & E Trading Company (EMR Integrated Solutions)
			M/23/043 - Statkraft/Taurbeg and MHB Wind Farms	M/23/026 - Fujifilm/CMC Materials	M/23/021 - Waystone Group / Link Funds Business	M/23/030 Novo Group/Kelvin Holdco (Ellab)	M/23/058 - EIM / Certain Assets of the Press Up Group	M/23/032 - Global Logic / Sidero Limited
				M/23/054 - Greenvolt / Enerpower & Sustainable Power Purchase Solutions	M/23/040 - Saol / Certain Assets of Irish Life	M/23/055 - iCON Infrastructure LLP/ Alliance Medical Group		M/23/046 - Westcoast Holdings / Binnian Limited
					M/23/042 - Man Group/ Fideuram/ Asteria	M/23/056 - LloydsPharmacy/ McCabes Pharmacy		M/23/045 - Proximus Opal/ Route Mobile
					M/23/049 - AXA Ireland/Laya Healthcare	M/23/059 - IFX/ Blackhall Facilities Management		
						M/23/065 - Phey Topco/Trasmore		

## 2023 NOTIFICATIONS - BASED ON CCPC WEBSITE DATA

CCPC SECTORAL CLASSIFICATION								
Information technology	Manufacturing	Media	Motor sector	Other retail and wholesale grocery	Professional services	Real estate	Retail	Transport and logistics
PARTIES TO THE NOTIFICATION								
M/23/013 - Ricoh Europe/PFH	M/23/053 - Daily Mail/News Corp UK (JV) M/23/060- Kilsaran / Certain Assets of Kilmurray	M/23/015 - Bauer Media / Certain Assets of Sunshine Radio M/23/031 - Bauer Media/Certain Assets of Jack Media M/23/038 - Mediahuis/Euractiv M23/039-Bauer Group/Wilton Radio Limited t/a iRadio FM M/23/066 - SSBL/ Viaplay	M/23/017 MMM/ John Morrison Motors M/23/018 - Maxol/ Kinsella's Fuel Services M/23/035 - Bright Motor City/Certain Assets of Gowan Group M/23/041-Nissan Ireland Limited/ Renault Ireland Limited	M/23/023 - Compass/Glanmore M/23/036 - Musgrave/Doyles Veg Prep M/23/064 - Sysco Foods/Ready Chef	M/23/024 - Project Management Group/ Milestone Group M/23/034 Moore Kingston Smith/ Moore Ireland M/23/050 - RSK/ Global Rail Services Limited M/23/057 - Waterland/Gaffney Mechanical M/23/067 - Macquarie/Viatel	M/23/003 - John Laing/Valley Healthcare M/23/003 - John Laing/Valley Healthcare M/23/011 - DAA plc / Certain Assets of Mr Gerard Gannon	M/23/010 - BWG/ Tuffy Wholesale M/23/014 Aurelius Group/Retail in Motion M/23/027 - European Bakery Group / Panelto Foods M/23/037 - KTC Edibles/Trilby Trading M/23/047 Next/ Pink M/23/051 Chadwicks/Rooney's M/23/052 - NPP Packaging/Wraptite M/23/062 - Select / DID Electrical 2023-068 McMullan Bros./Naas Fuels Limited	M/23/001 - DFDS / McBurney Transport M/23/033 - Hillebrand Gori Group/ J.F. Hillebrand M/23/061 - Tiger/ Apollo/Modern Aviation - CCPC Business M/23/063 - HIG Capital / DX Group

## KEY CONTACTS

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