

2022

Review of Irish merger control in 2021

The Competition and Consumer Protection Commission (**CCPC**) is the statutory body responsible for promoting compliance with, and enforcing, competition and consumer protection law generally in Ireland.

Mergers, acquisitions and certain joint ventures are notified to the CCPC which determines whether the proposed transaction would “substantially lessen competition” in Ireland. This review examines the merger control practice of the CCPC under Part 3 of the Competition Act 2002 (as amended) (**2002 Act**) during 2021 and is based on information available at the date of publication.

AT A GLANCE

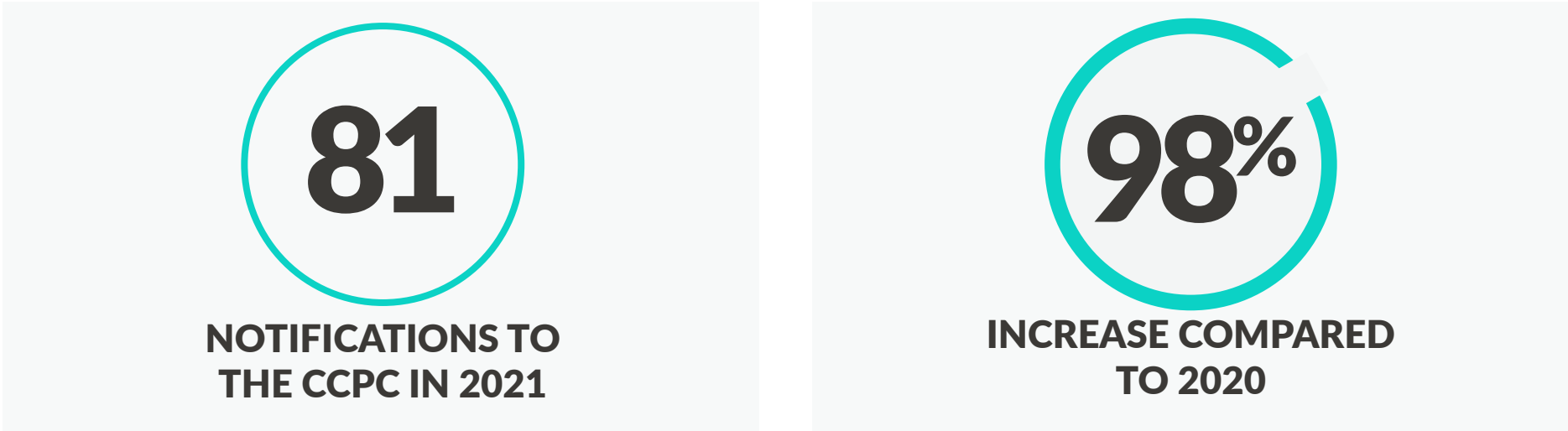
Breakdown of CCPC determinations in 2021

- 32 mergers were cleared using the CCPC's simplified procedure (43% of all determinations in 2021)
- 11 mergers notified to the CCPC in 2021 required an extended Phase 1 investigation (14% of all notifications made in 2021)
- 8 of those mergers were approved following an extended Phase 1 investigation (10% of all notifications made in 2021)
- 3 of those mergers were referred for a Phase 2 investigation (4% of all notifications made in 2021)

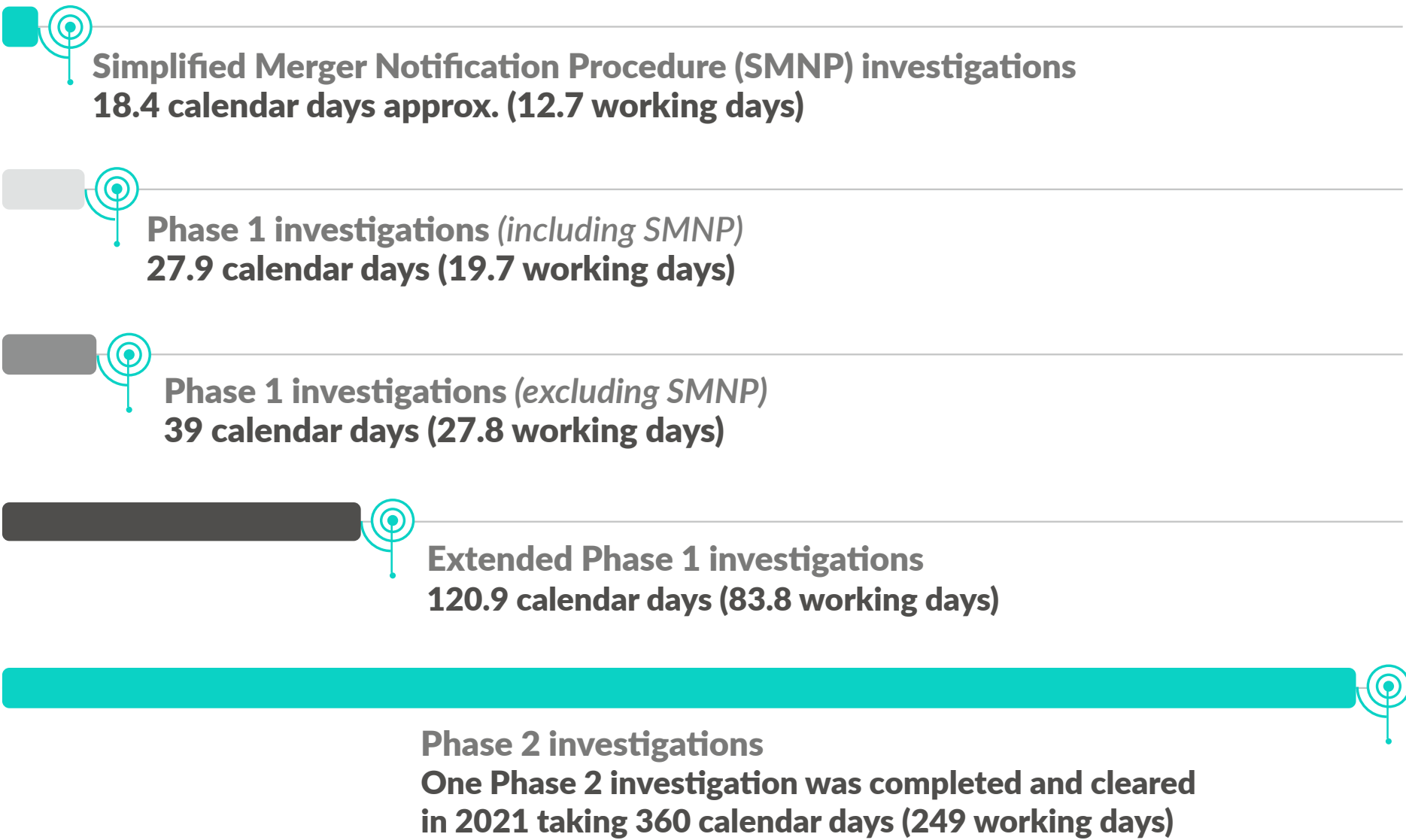
Commitments and other features of mergers in 2021

- 3 mergers involved commitments to secure CCPC approval in 2021 (one of which was notified to the CCPC in 2020)
- 2 mergers were voluntarily notified
- 0 mergers were prohibited
- Financial and Insurance Services was the most active sector with 12 notifications
- 5 media mergers were notified to, and approved by, the CCPC (separately, five media mergers were also notified to, and approved by, the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media (the Minister))

NUMBER OF DEALS NOTIFIED TO THE CCPC IN 2021



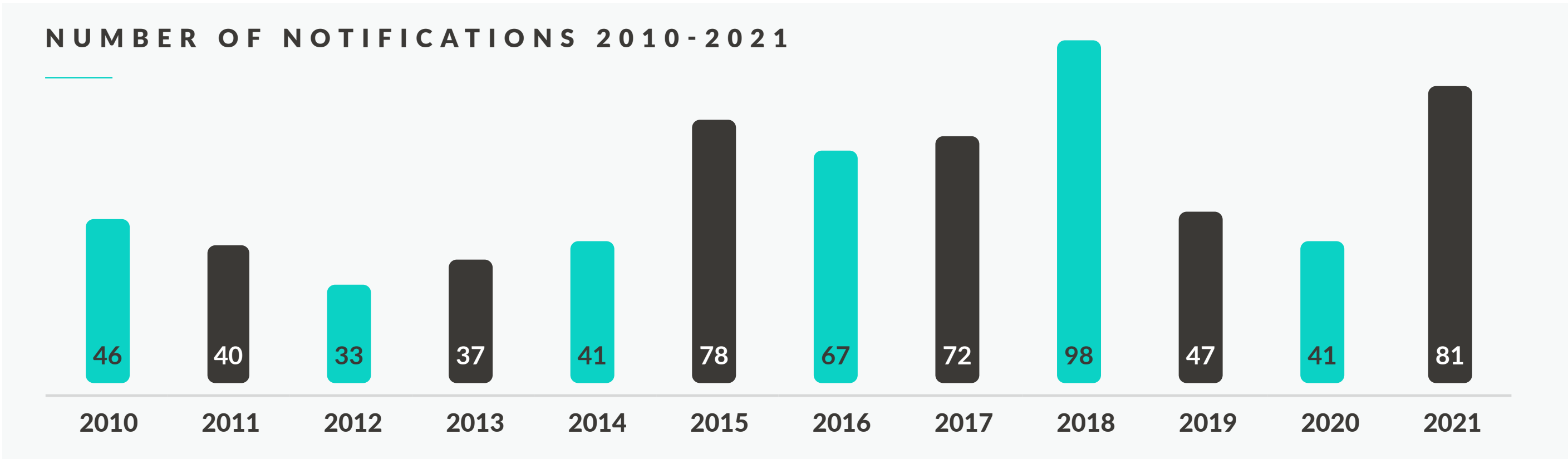
AVERAGE TIME PERIODS FOR CCPC INVESTIGATIONS OF DEALS NOTIFIED IN 2021
(and also one Phase 2 investigation notified in 2020 and cleared in 2021)



MERGER TRENDS IN 2021

- A total of 32 merger notifications were received by the CCPC in the first half of 2021, 13 of those being in Q1 and 19 in Q2 (an increase on the 18 made in the first half of 2020). The number of notifications increased materially in the second half of 2021 with 49 notifications in total (an increase on the 23 made in the second half of 2020). 21 notifications were made in Q3 and 28 in Q4 of 2021.
- The CCPC continued with its detailed assesment of notified deals. Of the deals notified to the CCPC in 2021, there were at least 11 requirements for further information (14% of all notifications made in 2021), with three of those deals advancing to Phase 2 investigations (4% of all notifications made in 2021). This materially extended the clearance process for the businesses involved.
- The SMNP saw its first full year of operation in 2021, having come into effect in the summer of 2020. This has resulted in the shortening of review periods for mergers that do not raise significant competition concerns. The CCPC cleared 32 mergers using the SMNP in 2021 (43% of all determinations in 2021). SMNP deals notified in 2021 were cleared in an average of 18.4 calendar days (12.7 working days), by contrast to 19.4 calendar days (14.1 working days) in 2020.¹
- Three merger notifications were the subject of remedy commitments in 2021:
 - » **M/20/005 ESB/Coillte (JV)** – the joint venture (JV) was cleared by the CCPC subject to certain joint commitments to ensure directors appointed to the JV by ESB do not have access to or exchange competitively sensitive information between ESB and the JV. The clearance was also subject to further commitments by Coillte to prevent the exchange of information between Coillte and the JV in relation to Coillte’s third party land customers.

- » **M/21/016 Pandagreen/Exomex** – the transaction was cleared by the CCPC subject to certain commitments, whereby the purchaser was required to enter into a non-binding Heads of Terms with a proposed “upfront buyer”. The purchaser committed, for example, to divest certain commercial and industrial customers.
- » **M/21/024 Orpea/FirstCare** – the CCPC cleared the acquisition by Orpea of sole control of six companies trading in the nursing home sector. The clearance was subject to commitments by the buyer to inform and voluntarily notify future transactions in Co. Kildare to the CCPC during the following two years.
- A number of changes to the notification process were introduced by the CCPC on 1 December 2021, including: (i) notifying parties are now required to provide the names and email addresses of their top 20 (as opposed to five previously) largest customers, suppliers and competitors; (ii) merger notifications (including supporting documentation) may only be submitted electronically; and (iii) the daily deadline for submission of notifications to the CCPC is 3pm each working day.



¹ See the CCPC’s [Simplified Merger Notification Procedure Guidelines](#) for further information

WHAT DO WE THINK WILL HAPPEN IN 2022?

- The Irish Government has now stated that the proposed Competition (Amendment) Bill (**Bill**) will be published very shortly and we think will become law during 2022. The Bill will confer new merger control powers on the CCPC, including the power to:
 - » bring summary prosecutions for “gun jumping” offences in the District Court (e.g. not notifying a transaction which is notifiable on a compulsory basis or implementing a notified transaction before CCPC clearance)
 - » accept voluntary notifications for completed transactions
 - » make interim orders to prevent any action (e.g. integration of merging businesses) which could impede its review of voluntary notifications
 - » find that where an already implemented merger substantially lessens competition in Ireland, require that transaction be unwound and the pre-transaction position be restored (this applies also to voluntary notifications)
 - » make compulsory information requests of third parties where such information would be relevant to the CCPC’s merger review
- One potential impact of the introduction of these new merger control powers is an even more heightened focus by the CCPC on procedural issues. This trend was prevalent throughout 2021 and is likely to continue into 2022 with a particular focus on gun jumping.
- It is expected that the strong growth in M&A activity will continue into 2022.
- It is expected that CCPC determinations will be issued during 2022 in regard to the several transactions in the financial services sector.
- Overall, merging parties should anticipate CCPC investigations taking longer on average and therefore leading to longer periods required to close deals generally. A prudent approach for merging parties to adopt would be to engage their external legal and economic advisors to carry out as much competition and economic analysis of the deal as possible prior to notification to the CCPC in order to ensure that time is not lost carrying out this work following notification.
- The growing global trend of increased focus on digital/tech transactions could lead to increased scrutiny of such deals notified to the CCPC. In addition

transactions in the digital/tech sector could prompt the CCPC to invoke Article 22 of the EU Merger Regulation (**EUMR**). Article 22 operates to allow the CCPC to refer mergers, acquisitions or certain joint ventures to the European Commission to examine any transaction that does not have an EU dimension under the EUMR but which affects trade between Member States and threatens to significantly affect competition within Ireland (this is applicable to all transactions and not only those that meet the compulsory Irish merger control notification thresholds under the 2002 Act).

For example, in 2021 the CCPC was one of ten competition agencies which made a referral under Article 22 of the EUMR in the Facebook/Kustomer case (*M.10262 Meta (Formerly Facebook)/Kustomer*). It was the only Article 22 referral by the CCPC in 2021.

- As in 2020, the COVID-19 pandemic could have reduced the turnover in Ireland of various businesses in 2021. As notification is compulsory when businesses have turnover above particular thresholds, it is possible that some deals that would have otherwise required compulsory notification may now come

below this compulsory threshold. For this reason, the CCPC may undertake more voluntary investigations of sub-threshold transactions to assess their effect on competition in Ireland.

- The SMNP will continue to be a popular method of notifying unproblematic transactions to the CCPC.
- Environmental, social and governance (**ESG**) factors may be a consideration that the CCPC chooses to focus on, for example to protect green innovation in Ireland in the context of its merger reviews.
- It is anticipated that the proposed investment screening legislation will be enacted into law in 2022 implementing a scheme for the screening of foreign direct investment (**FDI**) in Ireland (i.e. investment from non-EU Member States). Under the proposed legislation, the Irish Government will likely be able to assess, investigate, authorise, condition, prohibit or unwind foreign investments from outside of the EU, based on a range of security and public order criteria. Once enacted, merging parties will need to do FDI assessments on their deals under Irish legislation in addition to merger control assessments.

IRISH MERGER CONTROL IN 2021 - THE DETAIL

- The end of 2021 brings to a close one of the busiest years in Irish merger control. There was a significant increase in the number of merger notifications made in 2021. A total of 81 notifications were made to the CCPC, a sizeable increase on the total of 41 merger notifications made in 2020.
- The higher number of merger notifications in 2021 reverses the trend that has seen a material drop in the number of notifications since the start of 2019. That reduction was largely due to an increase in the merger notification thresholds in January 2019.
- Of the 81 merger notifications made during 2021, the CCPC had issued determinations in 66 of these cases by 31 December 2021. The remaining 15 notifications continued into 2022.
- Three determinations in 2021 involved commitments to secure approval, namely *M/20/005 ESB/Coillte (JV)*, *M/21/016 Pandagreen/Exomex*, and *M/21/024 Orpea/FirstCare*. One merger was withdrawn i.e. *M/20/003 Link Group/Pepper*.
- There were eight merger clearances by the CCPC in 2021 that related to notifications made in 2020. All of these were cleared within the first two months of 2021.
- Separately and throughout 2021, the CCPC continued to monitor EUMR activity and, for example, followed the European Commission investigations in:
 - » *M.10132 Blackstone/B&J/Applegreen*
 - » *M.10493 Illumina/Grail*
 - » *M.8181 Merck/Sigma-Aldrich*
 - » *M.9987 Nvidia/Arm*
 - » *M.10262 Meta (Formerly Facebook)/Kustomer*

Voluntary Notifications to the CCPC

- CCPC determinations confirm there were two voluntary notifications in 2021: *M/21/011 Easycash/Bank of Ireland ATMs* and *M/21/009 CityLink/GoBus*.
- Businesses are only required to notify deals to the CCPC if they reach the merger control thresholds under Part 3 of the 2002 Act.²
- 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 sub-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.

² Or constitute a media merger under the 2002 Act, in which case it must be notified either to the European Commission if the transaction has an EU dimension, or to the CCPC irrespective of the turnover of the undertakings involved (as well as being notified to the Minister).



IRISH MERGER CONTROL IN 2021 - THE DETAIL

Key time periods for investigation for mergers notified in 2021

- **SMNP** - The average duration for a SMNP investigation by the CCPC in 2021 was 18.4 calendar days compared to 19.4 calendar days in 2020. The average length of time in working days was 12.7 compared to 14.1 in 2020.
- **Shortest SMNP** - The shortest period for a SMNP clearance by the CCPC in 2021 was 15 calendar days (11 working days) (*M/21/018 Ryhall (Woodberry Packaging)/ Colorman*) compared to 16 calendar days (12 working days) for the shortest period in 2020.
- **Longest SMNP** - The longest period for a SMNP clearance by the CCPC in 2021 was 21 calendar days (14 working days) (*M/21/027 Kennedy Wilson/AXA – LeisurePlex JV* and *M/21/058 EQT/ Stonepeak – DELTA*).
- **No-issues Phase 1³** - The average duration for a no-issues Phase 1 investigation by the CCPC in 2021 was 39 calendar days compared to 35.9 calendar days in 2020.

The average length of time in working days was 27.8 compared to 25.3 in 2020.

- **Shortest Phase 1** - The shortest period for a no-issues Phase 1 clearance by the CCPC in 2021 was 31 calendar days (23 working days) (*M/21/066 BoyleSports/ Tully Bookmakers*) compared to 20 calendar days (14 working days) for the shortest period in 2020.
- **Longest Phase 1** - The longest period for a no-issues Phase 1 clearance by the CCPC in 2021 was 43 calendar days (29 working days) (*M/21/008 DMG Media/ New Scientist* and *M/21/023 DCC Energy/ Jones Oil*). In 2020, the longest period for a no-issues Phase 1 clearance was also 43 calendar days (29 working days).
- **Extended Phase 1** - There were 11 notifications made in 2021 in which the CCPC undertook an extended Phase 1 investigation. Eight of these extended Phase 1 investigations were approved (10% of all notifications made in 2021), while three have progressed to Phase 2 investigations and remain active in 2022. Nine clearances in total were issued

in 2021 following extended Phase 1 investigations, including one extended Phase 1 investigation that had been notified in 2020. This is compared to 12 clearances issued following extended Phase 1 investigations in 2020. The average length for clearance in 2021 following an extended Phase 1 investigation was 120.9 calendar days (83.8 working days). This is an increase from 117 calendar days (81.1 working days) in 2020.

There were three notifications made in 2020 in which the CCPC undertook an extended Phase 1 investigation in 2021. One was cleared in Phase 1 (*M/20/029 Brookfield (Greenergy)/Amber Oil*), one was withdrawn (*M/20/003 Link Group/ Pepper*) and one was approved in Phase 2 (*M/20/005 ESB/Coillte (JV)*).

- **Phase 2** - One Phase 2 clearance was issued by the CCPC in 2021 (*ESB/Coillte (JV)*) with a time period of 360 calendar days (249 working days). No Phase 2 investigation clearances were issued in 2020.

Sectors involved in deals which were notified to the CCPC⁴

- The most active sectors for deals notified to the CCPC in 2021 included Financial and insurance services (twelve notifications) Manufacturing (eight), Energy and utilities (seven) and Real estate (seven).
- This is by contrast to the most active sectors in 2020: Information and communications (nine) and Healthcare (nine).

Commitments to the CCPC

- Commitments were given by notifying parties to the CCPC in three notifications that were decided in 2021 (*M/20/005 ESB/Coillte (JV)*, *M/21/016 Pandagreen/ Exomex* and *M/21/024 Orpea/FirstCare*).

Prohibitions by the CCPC

- No transactions were prohibited by the CCPC in 2021 (as has been the case since 2008). In total, there have been three prohibitions by the CCPC since 2003 with one of those being appealed to, and overturned by, the High Court.

³ Phase 1 investigation time periods exclude SMNP figures unless otherwise stated.

⁴ The sectoral classification of all transactions in this review are based on information publicly available on the CCPC's website. We note that the CCPC has revised its approach to some categories of sectoral classification in its CCPC Mergers & Acquisitions Report 2021.



NOTIFICATIONS BY QUARTER

Number of notifications
to the CCPC

	2021	Month	No. of notifications	% change from 2020	2020	Month	No. of notifications
Q1	13	JAN	4	-7%	14	JAN	1
		FEB	2			FEB	5
		MAR	7			MAR	8
Q2	19	APR	10	+375%	4	APR	2
		MAY	4			MAY	1
		JUN	5			JUN	1
Q3	21	JUL	8	+91%	11	JUL	5
		AUG	6			AUG	1
		SEP	7			SEP	5
Q4	28	OCT	8	+133%	12	OCT	2
		NOV	7			NOV	4
		DEC	13			DEC	6
TOTAL	81			+98%	41		

MEDIA MERGERS

Notified to the CCPC

- Five media mergers were notified to the CCPC in 2021 (compared to three notified in 2020).
 - » M/21/007 Bauer/Communicorp
 - » M/21/008 DMG Media/New Scientist
 - » M/21/028 Bauer/Imagine Radio
 - » M/21/052 DMG Media/Nalac
 - » M/21/072 Bauer (Expres Net)/E2 Services
- There were two no-issues Phase 1 investigations into media mergers in 2021 which took an average of 40.5 calendar days (28 working days) compared to 36 calendar days (25 working days) in 2020.
- Three clearances were issued by the CCPC under the SMNP in respect of media mergers notified in 2021 (M/21/007 Bauer/Communicorp; M/21/028 Bauer/Imagine Radio;

- M/21/072 Bauer (Expres Net)/E2 Services). While the remaining two media mergers were initially notified under the SMNP, the CCPC decided to review the transactions under the standard merger notification procedure.
- A media merger notified to the CCPC under the SMNP in 2021 took an average of approximately 17.3 calendar days (approximately 12.7 working days).
 - 16 calendar days (12 working days) was the shortest period in 2021 for a clearance to be issued by the CCPC following the notification of a media merger under the SMNP (M/21/028 Bauer/Imagine Radio).
 - There were no extended Phase 1 investigations undertaken by the CCPC into media mergers notified in 2021 (as was the case in 2020).

⁵ It appears this case was notified to the European Commission under the EUMR in case M.10241 Colony Capital/Liberty Global/JV. A qualifying transaction with an EU dimension under the EUMR and which constitutes a media merger under the 2002 Act must also be notified to the Minister for approval before being put into effect.

⁶ It appears this case was notified to the European Commission under the EUMR in case M.10318 Apollo Management/Verizon Media Group.

⁷ It appears this case was notified to the European Commission under the EUMR in case M.10187 BBC/ITV/Channel 4/Freesat.

Notified to the Minister

- Five media mergers were notified to the Minister for examination in 2021 and all were cleared following a short Phase 1 investigation:
 - » M/21/007 Bauer/Communicorp
 - » M/21/028 Bauer/Imagine Radio
 - » Digital Bridge Group/Liberty Global⁵
 - » Verizon/Apollo⁶
 - » Freesat/Digital Trading⁷
- The Minister took, on average, 39 calendar days (27 working days) to clear a media merger notified in 2021 (compared to 52.3 calendar days (36.8 working days) in 2020).
- The shortest period for a clearance to be issued by the Minister following a Phase 1 media merger investigation was 23 calendar days (16 working days) (Verizon/Apollo).
- The longest period for a clearance to be issued by the Minister following a Phase 1 media merger investigation was 51 calendar days (35 working days) (Bauer/Communicorp).



⁸ The sectoral classification of all transactions in this review are based on information publicly available on the CCPC's website. We note that the CCPC has revised its approach to some categories of sectoral classification in its CCPC Mergers & Acquisitions Report 2021.

2021 FIGURES - BASED ON CCPC WEBSITE DATA

CCPC Sectoral Classification										
Agriculture	Builders merchanting sector	Energy & utilities	Engineering	Entertainment & recreation	Financial and insurance services	Food	Healthcare	Information and communications	Manufacturing	Media
Parties to the Notification										
M/21/073 Fane Valley/Drummonds	M/21/029 Murdock/ Brooks	M/21/062 DCC plc (Flogas)/Naturgy Limited	M/21/017 Aurelius/ SSE Contracting	M/21/026 CVC/Six Nations Rugby	M/21/040 AIB/ Certain Assets of Ulster Bank	M/21/041 Pilgrims Pride/Kerry Foods	M/21/M/21/019 Brindley (Orpea)/ Belmont	M/21/001 Koguma/ Agile DC	M/21/031 Glennon Brothers/Balcas	M/21/007 Bauer/ Communicorp
		M/21/048 Tyco/ Airflow Services		M/21/066 BoyleSports/Tully Bookmakers	M/21/042 Canada Life/AIB (JV)		M/21/020 Orpea/ Brindley	M/21/002 Blackstone/Liftoff Mobile	M/21/038 PMI Group/Fertin Pharma	M/21/008 DMG Media/New Scientist
		M/21/064 BHSL/ Mota-Engil			M/21/045 ILHAWK/ Ark Life		M/21/024 Orpea/ FirstCare	M/21/022 Eagle (KKR)/Ensono	M/21/051 Vertiv/ E&I Engineering Group	M/21/028 Bauer/ Imagine Radio
		M/21/010 GR Wind Farms/Cordal Wind Farm			M/21/004 AIB/ Bol/PTSB Synch Payments JV ⁹		M/21/037 Bon Secours/Alliance Medical/Barringtons MRI	M/21/058 EQT/ Stonepeak – DELTA	M/21/053 Celestica/ PCI	M/21/052 – DMG Media/Nalac
		M/21/016 Pandagreen/Exomex			M/21/011 Easycash/ Bank of Ireland ATMs		M/21/074 Pelican/ Cruinn	M/21/005 eir/Evros	M/21/054 Zeus Packaging/Limerick Packaging	M/21/072 Bauer (Expres Net)/E2 Services
		M/21/044 EQT/ Covanta			M/21/012 AIB/ Goodbody		M/21/030 Murano Bidco/Vectura Group		M/21/059 Flextronics/ACS Acquisitions Inc.	
		M/21/075 Vermilion/Equinor Energy			M/21/015 BC Partners/Davies Group				M/21/060 Givaudan/DDW	
					M/21/021 Bank of Ireland/Certain Assets of KBC				M/21/077 BGF/ Aubren Limited	
					M/21/034 Arachas/ Hooper Dolan					
					M/21/046 Bank of Ireland/Davy					
					M/21/076 PTSB/ Certain Assets of Ulster Bank					
					M/21/065 MPRC- PSC/Aryza					

⁹ M/21/004 AIB/Bol/PTSB – Synch Payments was initially notified to the CCPC on a voluntary basis under section 18(3) of the 2002 Act on 8 January 2021. Following a preliminary review of the notification, the CCPC subsequently rejected the notification as invalid under section 18(12) of the 2002 Act. The CCPC was of the view that the notifying parties had not provided full details of the proposed transaction as required under section 18(3) of the 2002 Act. The notification was subsequently re-notified to the CCPC on 8 April 2021.

2021 FIGURES - BASED ON CCPC WEBSITE DATA

CCPC Sectoral Classification									
Motor fuel (retail/wholesale)	Motor sector (retail/wholesale)	Printing, publishing and packaging	Other (retail/wholesale)	Other (services)	Pharmaceuticals	Professional services	Real estate	Grocery (retail/wholesale)	Transport & logistics
Parties to the Notification									
M/21/047 Shuttington Holdings/H2 Properties	M/21/049 Nissan/Autolease Fleet Management	M/21/025 News Corp UK/Smurfit Kappa News Press	M/21/080 Grafton Group/Chadwicks (Sitetech)	M/21/043 Colas/SIAC	M/21/078 Triton Group (Triley Bidco)/Clinigen	M/21/035 H.I.G. Orca/Oxford Global Resources	M/21/003 Blackstone/Burlington Plaza and the Three Building & Whitaker Court	M/21/050 Ard Services Limited (Circle K)/certain companies from the Griffin Retail Group	M/21/055 ERAC/Walker Vehicle Rentals
M/21/023 DCC Energy/Jones Oil	M/21/057 JDM Automotive/CAB Motor Company	M/21/018 Ryhall (Woodberry Packaging)/Colorman	M/21/079 Uniphar/NaviCorp	M/21/032 Bank of America/CVC Credit/Celtic Roads Group (Waterford) DAC (JV)		M/21/061 BIL/Vantage	M/21/006 EQT/Exeter	M/21/071 Tesco Ireland/Joyce's Supermarkets	M/21/009 CityLink/GoBus
	M/21/056 Gowan Group/Fiat Chrysler Ireland		M/21/068 Heineken/Comans	M/21/033 Xtratherm (Unilin)/Ballytherm		M/21/063 CD&R Fund XI/PWC's Global Mobility Business	M/21/067 Sicon/Sensori		
			M/21/070 Meteor Mobile Communications (t/a eir)/Synchro	SS&C/Capita			M/21/081 Blackstone/Certain Properties at the Bankcentre Ballsbridge		
				M/21/069 ORG/Aurora			M/21/013 Blackstone-Starwood/Extended Stay America-ESH Hospitality		
				M/21/036 Montagu/Waystone			M/21/027 Kennedy Wilson/AXA – LeisurePlex JV		
				M/21/014 Bidvest Noonan/Lynch Interact			M/21/039 CBRE/Turner & Townsend		

MERGER CONTROL IN IRELAND

- The CCPC is Ireland's competition and consumer protection agency.
- Under the 2002 Act, it is mandatory to notify a merger or acquisition to the CCPC if, in their most recent respective financial years, the combined turnover in Ireland of all the undertakings involved is at least €60m and the turnover in Ireland of each of two or more of the undertakings involved is at least €10m.
- 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).

Key contacts



Dr. Vincent Power
*Partner and Head of EU,
Competition & Procurement*
+353 1 649 2226
vpower@algoodbody.com



Alan McCarthy
*Partner - EU, Competition &
Procurement*
+353 1 649 2228
amccarthy@algoodbody.com



Anna-Marie Curran
*Partner - EU, Competition &
Procurement*
+353 1 649 2227
amcurran@algoodbody.com



Micaela Diver
*Partner - EU, Competition &
Procurement*
+44 28 9072 7592
mdiver@algoodbody.com