

2023

Review of Irish merger control in 2022

68

NOTIFICATIONS

16% decline from the 81 notified in 2021 but 21% higher than the average over the previous three years

70

DETERMINATIONS

There were more complex cases compared to previous years

1

PROHIBITION

Uniphar/Navicorp – the first prohibition since 2008

4

DETERMINATIONS *subject to remedies*

Mixture of behavioural, structural and hybrid remedies – these reflect more involved reviews of complex transactions

37

SIMPLIFIED MERGER NOTIFICATION PROCEDURE NOTIFICATIONS

54% of the notifications were simplified

18

EXTENDED PHASE 1 INVESTIGATIONS

7 of these extended Phase 1 investigations were carried forward from 2021

7

PHASE 2 INVESTIGATIONS

6 of the Phase 2 investigations opened in 2022

6

PHASE 2 DETERMINATIONS

This was a significant number compared to previous years

5

MEDIA MERGER NOTIFICATIONS

All cleared by the CCPC in Phase 1

4

MERGER ASSESSMENTS

(akin to Statements of Objections)
This represents a significant increase on previous years

4

WITHDRAWN NOTIFICATIONS

CCPC is showing a greater willingness to reject notifications for incompleteness. 2 were effectively re-notified

30

REQUIREMENTS FOR INFORMATION

(RFIs) Issued
CCPC is becoming more inclined to issue formal statutory requirements/requests for information

2

CCPC JOINING IN ARTICLE 22 REFERRALS TO THE EUROPEAN COMMISSION

Viasat/Inmarsat and Cochlear/Oticon Medical

MOST PROMINENT SECTORS

- Professional services (9 of the 68 notifications – 13%)
- Grocery – Retail & Wholesale (7 of the 68 notifications (i.e., 10%))
- Three sectors: (a) financial and insurance services (b) energy and utilities and (c) media each had 6 notifications (i.e., 3.8% each of the notifications)
- The figures vary annually without any discernible pattern
- There were 5 notifications in the construction sector in 2022 while there was none in that sector in 2021

AT A GLANCE

- 68 transactions (meaning mergers, acquisitions and joint ventures) were notified to the CCPC in 2022, a decrease from 81 notifications in 2021.
- 1 transaction was prohibited by the CCPC in 2022 (M/21/079 - *Uniphar/NaviCorp*).
- There were longer and more complex cases in 2022: 6 cases were subject to a full Phase 2 investigation (including those carried over from 2021), while a further 7 notifications went to extended Phase 1, a significant increase on recent years.
- Average clearance times for all cases notified in 2022 was 27 working days.
- 4 notifications were withdrawn by the parties (M/22/015 - *East Cork Oil/Misty Lane*, M/22/037 - *Thorntons Recycling/Carducci Holdings (The City Bin Co.)*, M/22/025 - *The Agricultural Trust/Irish Garden* and M/22/017 - *Linnaeus Veterinary/Blackhall Facilities*). Two of the withdrawn transactions have been effectively re-notified (M/22/052 - *Linnaeus Veterinary/Blackhall Facilities* and M/22/067 - *Thorntons Recycling/Carducci Holdings (The City Bin Co.)*).
- 4 cases were cleared subject to remedy commitments offered by the parties.
- 37 of the 68 merger notifications were notified under the Simplified Merger Notification Procedure (**Simplified Procedure**).
- 5 media mergers were notified to and approved by the CCPC in Phase 1: M/22/008 - *Bauer/MCR*, M/22/011 - *Isle of Man FM/3FM*, M/22/043 - *Viaplay/FreeSports & Premier Media*, M/22/059 - *Bauer Media/Siteridge Limited (RedFM)*, M/22/060 - *Formpress Publishing (Iconic)/Mayo News*.

NUMBER OF DEALS NOTIFIED TO THE CCPC IN 2022

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.

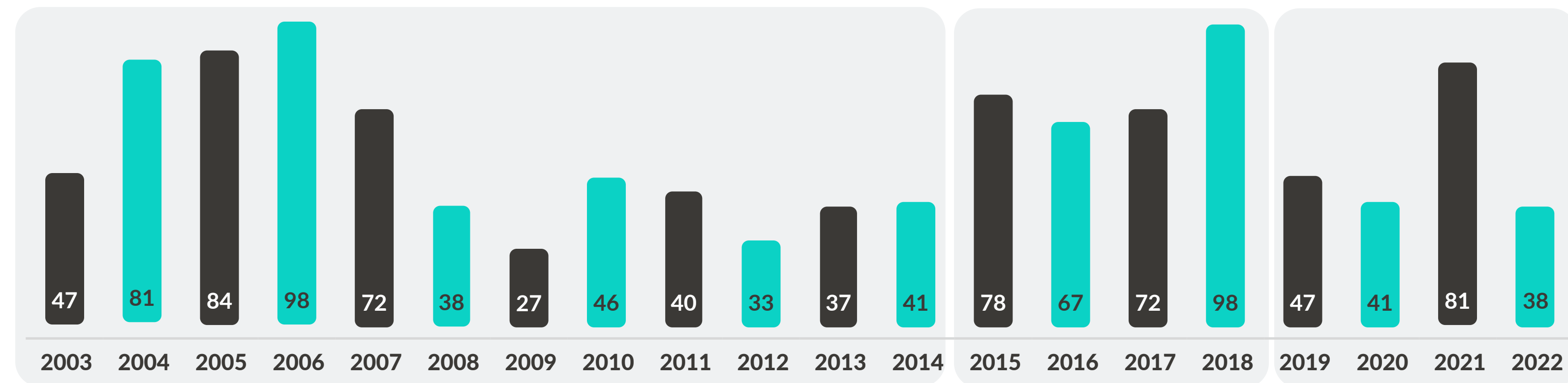
The number of notifications made is periodically affected by changes to the rules on notifiability (such as the changes to the applicable financial thresholds in 2014 and

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 the impact of COVID-19.

The total of 68 transactions notified in 2022 is a decrease on the 81 notifications

in 2021. However, 68 notifications is still a significant increase on the number of notifications in 2019 (47 notifications) and 2020 (41 notifications) which comprised the first 2 years of the current financial thresholds. 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



MERGER TRENDS IN 2022

- There were more notifications made in H2 than H1 in 2022. A total of 30 notifications were received by the CCPC in the first half of 2022 (a slight decrease on the 32 made in the first half of 2021). 15 transactions were notified in Q1 and 15 in Q2 in 2022. The number of notifications increased in H2 2022 with 38 notifications in total (though this was down on the 49 notifications made in H2 2021).
- There was an increase in the number of extended Phase 1 cases in 2022 (i.e. those which involved formal requirements for information. Of the cases under review by the CCPC in 2022, there were 12 extended Phase 1/Phase 2 cases. Of these cases, 5 were notified in 2021 and extended into 2022.
- A significant feature of the CCPC's caseload in 2022 were the notifications made in 2021 which were still active throughout 2022. Multiple cases notified in 2021 were reviewed in Phase 2, and some of which involved multiple RFIs, for example: *BOI/KBC*, *AIB/Certain Assets of Ulster Bank*, *Tesco/Joyce's*, *PTSB/Certain Assets of Ulster Bank*, *Uniphar/NaviCorp*.
- Several of the banking/financial sector transactions, triggered primarily by the withdrawals of KBC Bank and Ulster Bank from Ireland were notified in 2021 but ran into summer 2022; while the *Uniphar/Navicorp* case was reviewed for 12 months by the CCPC before being prohibited in December 2022.
- Phase 2 transactions that concluded in 2022 took an average of 274.8 calendar days (170 working days) to receive clearance from their initial date of notification. The process of having transactions cleared by the CCPC is becoming generally more protracted and less predictable given the increase in the number of extended Phase 1 and Phase 2 cases.
- The CCPC's Simplified Procedure saw its second full year of operation in 2022, having come into effect in the summer of 2020. This has resulted in the shortening of review periods for transactions that do not raise significant competition concerns. The CCPC issued determinations in 29 transactions using the Simplified Procedure in 2022.
- Four notifications were the subject of commitments in 2022 (three of which were originally notified in 2021):
 - » **M/21/004 – AIB/Bol/PTSB – Synchron Payments:** the CCPC cleared this payment services joint venture subject to certain commitments that would allow new participants to join the JV, as well as ensuring interoperability, an independent governance structure and preventing the exchange of commercially sensitive information. This transaction was originally notified to the CCPC in January 2021 but the notification was rejected as invalid and had to be re-notified.
 - » **M/21/021 – Bank of Ireland/Certain Assets of KBC:** this transaction was cleared by the CCPC subject to certain novel commitments, whereby Bank of Ireland was required to financially support non-bank lenders to become viable competitors to the merged entity post-transaction.
 - » **M/21/071 – Tesco Ireland/Joyce's Supermarkets:** The CCPC approved Tesco's acquisition of 10 supermarkets in Co. Galway, subject to a commitment by Tesco to sell 1 of those supermarkets to a suitable purchaser.
 - » **M/22/047 – BWG/McCarrick Brothers Wholesale:** the CCPC cleared the acquisition by BWG of a wholesale grocery business subject to a commitment not to acquire certain aspects of the vendor's business and to prevent the sharing of commercially sensitive information relating to the vendor's business.

WHAT ABOUT 2023?

- As of 1 January 2023, there were 10 transactions still active which were notified in 2022. 1 of these cases is currently in Phase 2 (M/22/40 - *Q-Park/Tazbell Services*), while 4 were in an extended Phase 1 (M/22/044 - *AIB/Certain Mortgage (Tracker) Assets of Ulster Bank*, M/22/048 - *Frank Keane/Doran Motors*, M/22/049 - *Uniphar/LXV Remedies (Sam McCauley)* and M/22/052 *Linnaeus Veterinary/Blackhall Facilities*).
- The key development for Irish merger control in 2023 will likely be the entry into force of certain provisions of the Competition Amendment (Act) 2022. This Act was signed into law on 29 June 2022, however at time of writing, none of the provisions of the Act have been formally commenced. The 2022 Act will introduce some important changes to the Irish merger control regime.
- The 2022 Act will allow the CCPC to compel the notification of below-threshold deals that were not the subject of a compulsory notification (either pre- or post-implementation) where the CCPC believes that they may have an effect on competition in markets for goods or services in Ireland. Even where a party fails to comply with this notification requirement, the CCPC is nonetheless empowered to proceed to examine the transaction as if a notification had been made.
- This new "call-in" power for the CCPC is likely to increase the number of notifications made annually to the CCPC.
- Under the 2022 Act, the CCPC may impose "interim measures" where it considers it appropriate to do so due to the risk that the acquisition may have an effect on competition in any markets for goods or services in Ireland. This right applies in respect of notifiable transactions, as well as those which have been voluntarily notified and those whose notification has been compelled by the CCPC.
- Even where parties have filed a merger notification, implementing a notified transaction prior to CCPC approval will also be an offence. The offence of "gun-jumping" (punishable by fines of up to €250,000 on conviction on indictment) may be prosecuted in respect of the implementation of transactions prior to receipt of clearance from the CCPC. Any such transactions are also deemed to be void pending CCPC approval or referral to a Phase 2 review.
- Where a transaction is the subject of a Phase 2 review and is put into effect before the CCPC has issued a clearance determination, the 2022 Act allows for the unwinding or dissolution of the transaction where the CCPC concludes that the transaction will substantially lessen competition in Ireland. If unwinding is not possible, the parties must take appropriate steps to restore the situation to that which prevailed pre-transaction.
- The 2022 Act permits below-threshold deals which were not voluntarily notified prior to implementation to be voluntarily notified to the CCPC after they have been put into effect. In such circumstances, interim measures may be imposed by the CCPC as part of its review.
- Under the 2022 Act, the CCPC must now confirm compliance with requirements for further information within 10 working days of certification. The 2022 Act also allows the CCPC to compel information from third parties (e.g. competitors or customers) whom it considers may have information relevant to its consideration of a transaction and not just from the businesses that are party to a transaction.

IRISH MERGER CONTROL IN 2022 - 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 for Tourism, Culture, Arts, Gaeltacht, Sport and Media).

The end of 2022 concludes another busy year in Irish merger control. A total of 68 notifications were made to the CCPC, compared to 81 notifications in 2021. 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 2021, the CCPC issued determinations in 57 of these cases by 31 December 2022. The remaining 11 notifications continued into 2023.

4 determinations in 2022 involved commitments to secure approval, namely M/21/004 - *AIB/Bol/PTSB - Synch Payments*, M/21/021 - *Bank of Ireland/ Certain Assets of KBC*, M/21/07 - *Tesco Ireland/Joyce's Supermarkets* and M/22/047 - *BWG/McCarrick Brothers Wholesale*.

1 transaction was prohibited by the CCPC in 2022 (M/21/079 - *Uniphar/NaviCorp*) and 4 notifications were withdrawn by the parties (M/22/015 - *East Cork Oil/Misty Lane*, M/22/037 - *Thorntons Recycling/Carducci Holdings (The City Bin Co.)*, M/22/025 - *The Agricultural Trust/Irish Garden* and M/22/017 - *Linnaeus Veterinary/Blackhall Facilities*). Two of the withdrawn transactions have been effectively re-notified i.e. M/22/052 - *Linnaeus Veterinary/Blackhall Facilities* and M/22/067 - *Thorntons Recycling/Carducci Holdings (The City Bin Co.)*.

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, parties will be able to notify transactions even after they have been put into effect.

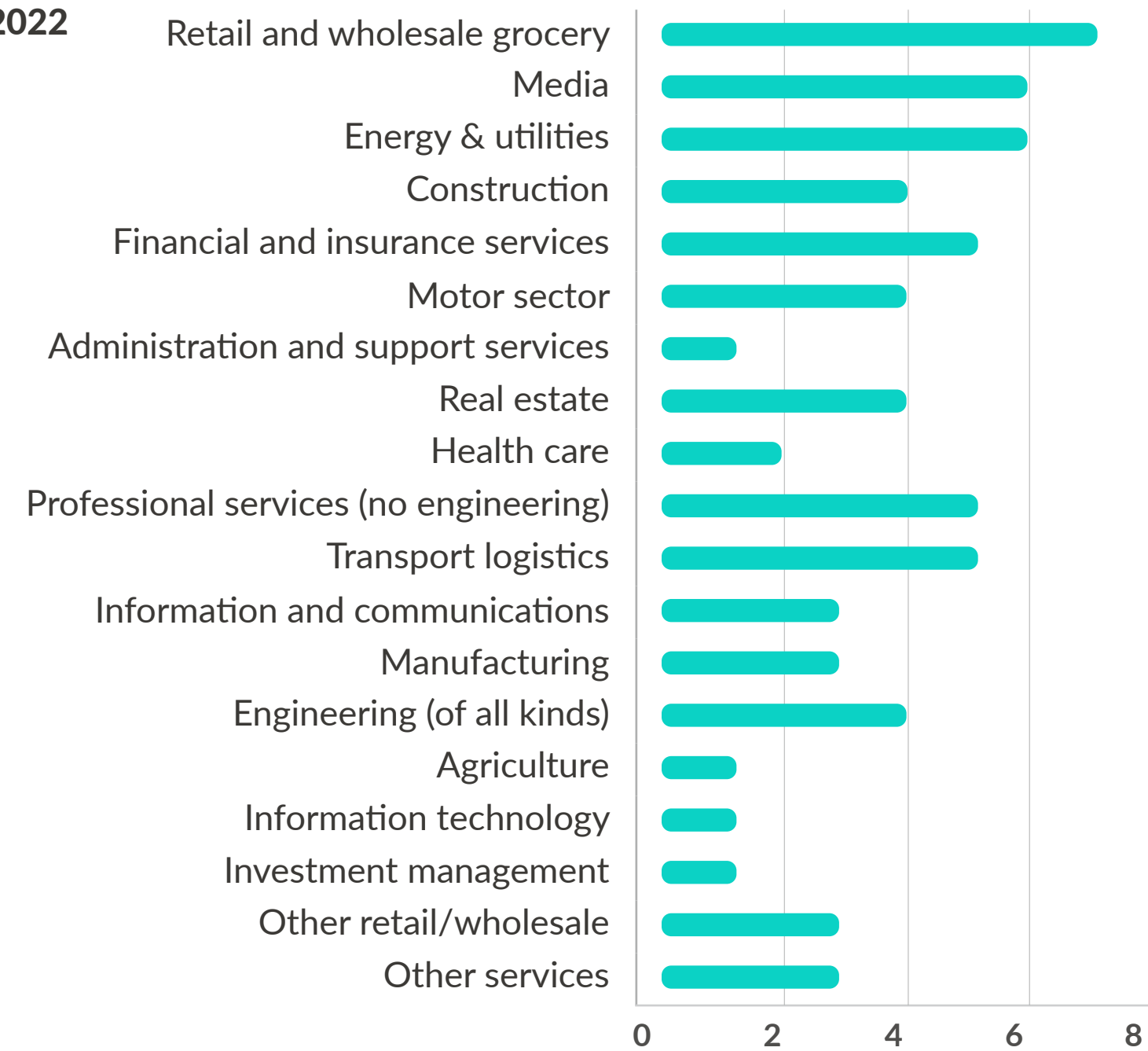
However, parties may decide to notify a deal to the CCPC on a voluntary basis under the 2002 Act because the CCPC can still investigate and seek to take action in relation to below-threshold deals under its general competition law powers. Businesses need to consider whether their deals raise competition issues in Ireland irrespective of whether the compulsory notification thresholds under the 2002 Act are met. For example, in 2022 the merger notification in M/22/041 - *Foresight Group/Etag Fixings* 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 2022 included Retail and Wholesale Grocery (7 notifications), Media (6), Energy and utilities (6) and Construction (4).

This is by contrast to the most active sectors in 2021: Financial and insurance services (12) and Manufacturing (8).

Sectors in 2022



Prohibition by the CCPC

One transaction was prohibited by the CCPC in 2022, which was M/21/079 – *Uniphar/ NaviCorp*. In total, there have now been 4 prohibitions by the CCPC/Competition Authority since 2003 with 1 of those prohibitions by the Competition Authority (i.e., M/08/009 – *Kerry/Breeo*) being appealed to, and overturned by, the High Court in *Rye Investments Ltd -v- Competition Authority* [2009] IEHC 140.

MEDIA MERGERS

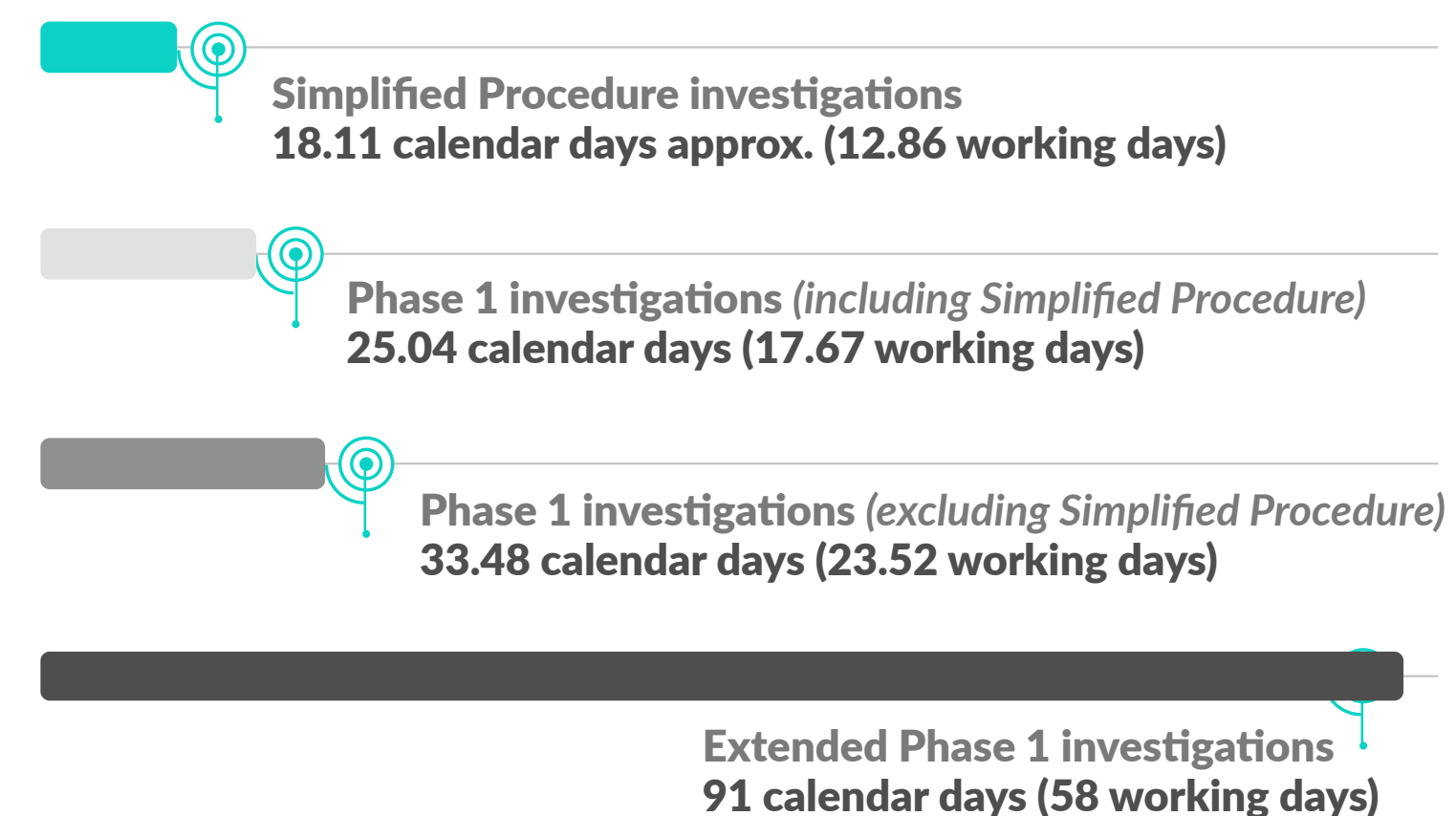
Notified to the CCPC

Six media mergers were notified to the CCPC in 2022 (compared to 5 notified in 2021):

- M/22/008 – Bauer/MCR
- M/22/011 – Isle of Man FM/3FM
- M/22/025 – The Agricultural Trust/Irish Garden
- M/22/043 – Viaplay/FreeSports & Premier Media
- M/22/059 – Bauer Media/Siteridge Limited (RedFM)
- M/22/060 – Formpress Publishing (Iconic)/Mayo News

M/22/025 – The Agricultural Trust/Irish Garden was ultimately withdrawn - the remainder were cleared by the CCPC.

AVERAGE TIME PERIODS FOR CCPC INVESTIGATIONS OF DEALS NOTIFIED IN 2022



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 Competition and Market Authority (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 acted on all of these deals.

MERGER CONTROL IN NORTHERN IRELAND

Northern Ireland Merger Control Deals in 2022

There was a hiatus of Northern Irish deals investigated by the CMA in 2019 and 2020. This began to pick up in 2021 with Balcas Ltd being acquired by Glennon Bros UK Holdings Limited.

2022 marked an uptick in deals from Northern Ireland being notified to the CMA, this included one proposed transaction which was referred to the CMA's more extensive Phase 2 process (this was 1 of 7 Phase 2 investigations determinations that the CMA reached during the reporting year) and another notification which resulted in a Phase 1 decision (this deal is one of 73 total transactions across the UK which were notified to the CMA in this period. The Phase 1 decision was 1 of 29 made by the CMA during this period).

With several transactions on the CMA radar at the end of 2022, it looks to be a busy 2023 for merger control in Northern Ireland.

Future trends for Northern Ireland

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 £10 million 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.



2022 NOTIFICATIONS - BASED ON CCPC WEBSITE DATA

CCPC SECTORAL CLASSIFICATION									
Administration and support services	Agriculture	Construction	Energy & utilities	Engineering	Financial and insurance services	Healthcare	Information and communications	Information technology	Investment management
PARTIES TO THE NOTIFICATION									
M/22/064 Murdock/Vyrga (Erisbeg)/Eolas Recruitment	M/22/006 Glanbia Co-Op/Glanbia Ireland	M/22/020 Wolseley Group/Cooperstorm	M/22/001 Diamond Generating Europe/ElectroRoute	M/22/009 Watt Bidco/Edison Voltage	M/22/023 RBC Wealth Management (Jersey)/Brewin Dolphin	M/22/049 Uniphar/LXV Remedies (Sam McCauley)	M/22/018 Stephen Trust Company (EY)/Client Solvers	M/22/002 Ergoservices/Asystec	M/22/003 Schroder/Greencoat Capital
		M/22/038 Glenveagh/Harmony Timber and GMP	M/22/014 CPPIB/GIM/OCL/Origin/Octopus Energy/JV	M/22/028 Cathexis Holdings/Leo Lynch Engineering	M/22/042 Arachas/Glennon	M/22/053 DIF/Talbot Group	M/22/039 D9/Arqiva		
		M/22/041 Foresight Group/Etag Fixings	M/22/015 East Cork Oil/Misty Lane	M/22/031 Waterland/MTM Engineering	M/22/044 AIB/Certain Mortgage (Tracker) Assets of Ulster Bank		M/22/046 Granicus/Rock Solid Technology		
			M/22/037 Thorntons Recycling/Carducci Holdings (The City Bin Co.)	M/22/032 Cathexis Ireland/Jones Engineering	M/22/058 Global Payments/EVO Payments				
			M/22/067 Thorntons Recycling/Carducci Holdings (The City Bin Co.)		M/22/066 Buckthorn Financing and PAF Lux SCA/Phoenix Asset Management				
			M/22/068 Vermilion/Equinor Energy						

2022 NOTIFICATIONS - BASED ON CCPC WEBSITE DATA

CCPC SECTORAL CLASSIFICATION								
Manufacturing	Media	Motor sector	Other retail/wholesale	Other services	Professional services	Real estate	Retail and wholesale grocery	Transport & logistics
PARTIES TO THE NOTIFICATION								
M/22/022 Ennoconn/Certain assets of NCR	M/22/008 Bauer/MCR	M/22/005 AIB/Autolease Fleet Management	M/22/007 Assa Abloy/Arran Isle	M/22/010 Apollo/Flex-Novolex	M/22/004 Exponent/Xeinadin	M/22/019 Brookfield Asset Management/Hibernia REIT	M/22/012 BWG/Certain assets of Thurles Wholesale	M/22/024 Monza BidCo (Elysian)/Parcel Connect
M/22/029 BGF/Galway Natural Health Sales	M/22/011 Isle of Man FM/3FM	M/22/016 Keary Motors/Renault Retail Group Ireland	M/22/030 BGF/DPB Meats/Stillorgan Trading Post	M/22/026 Partner Group/ Sionnach (Version 1)	M/22/013 Carlyle/NVP/Yipit/JV	M/22/045 CD&R/OCS	M/22/027 Ferrero International/Fulfil (Bartoni)	M/22/035 DFDS/Lucey Transport
M/22/033 MM/ESNT/Essentra	M/22/025 The Agricultural Trust/Irish Garden	M/22/048 Frank Keane/Doran Motors	M/22/056 Cipcasa/Uform	M/22/040 Q-Park/Tazbell Services	M/22/017 Linnaeus Veterinary/Blackhall Facilities	M/22/057 Apleona/Acacia	M/22/034 M&S/Gist	M/22/036 Kinetic/Globalvia/Go-Ahead (JV)
	M/22/043 Viaplay/FreeSports & Premier Media	M/22/063 Windsor Motors/certain assets of Green Cars (t/a Agnelli Motor Park)			M/22/021 AssuredPartners Ireland/Gallivan Murphy Insurance Brokers Limited	M/22/061 O'Callaghan Properties/Johnson & Perrott	M/22/047 BWG/McCarrick Brothers Wholesale	M/22/050 CLdN/Seatruck
	M/22/059 Bauer Media/Siteridge Limited (RedFM)				M/22/052 Linnaeus Veterinary/Blackhall Facilities		M/22/054 Kavanagh Retailing/Clarkes Barna	M/22/051 Carrakeelty (MML)/Bruiseramor (Virginia Transport)
	M/22/060 Formpress Publishing (Iconic)/Mayo News						M/22/055 Musgrave/Italicatessen	
							2022-065 Musgrave Limited/Caulfield Supermarket UC	

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