

# Review of Irish Merger Control in 2019

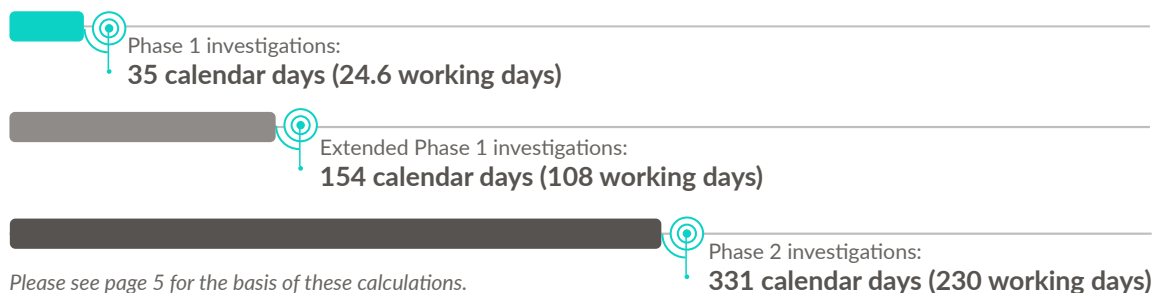
January 2020

## At a glance

### Number of deals notified in 2019



### Average time periods for CCPC investigations



### What do we see happening in 2020?

- The entry into force of the proposed simplified procedure by the end of Q1 2020 will likely lead to quicker clearances in some cases. This is provided that merging parties can show Ireland's main competition authority (the Competition and Consumer Protection Commission (CCPC)) that their deals have no competition issues.
- The CCPC's heightened focus on procedural issues will likely continue into 2020 (e.g. focus on gun-jumping).
- Over 40% of notifications made to the CCPC in 2019 were made in the final quarter of the year, a significant increase from the average number of notifications made in the previous three quarters. This increase in notifications could continue into 2020.
- Deals that could have been held back in 2019 because of the uncertainty over Brexit could go ahead in 2020.
- Brexit could also mean that deals, which would have been notified to the European Commission, will now be notified to the CCPC. This is because they do not meet the necessary EU thresholds as UK turnover no longer constitutes EU turnover.
- The CCPC is likely to change its procedures relating to access to its file by merging parties.



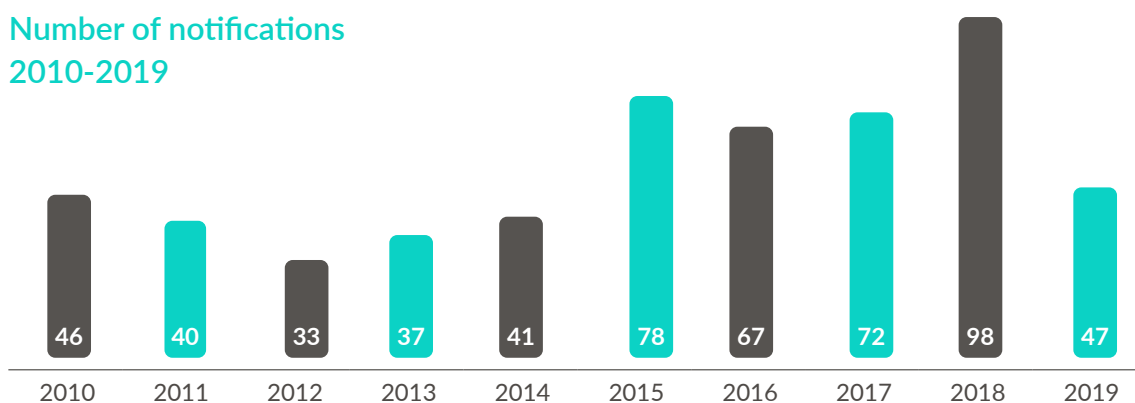
### Procedural trends in 2019

- There has been a heightened focus by the CCPC on procedural issues during the merger investigation process.
- In line with EU and international practice, the CCPC has continued to emphasise procedural irregularities (e.g. not notifying a deal to the CCPC or completing a deal without waiting for clearance from the CCPC i.e. gun-jumping).
- In April 2019, two undertakings pleaded guilty to gun-jumping but benefitted from the application of the Probation Act 1907.

### Statistical trends in 2019

- 47 notifications were made to the CCPC in 2019, representing a 52% decrease in the number of notifications from 2018 (when 98 notifications were made). The sharp drop in notifications is likely due to the increased notification thresholds that entered into force on 1 January 2019.
- The most active sectors in 2019 included: real estate; healthcare; information, technology and communications; motor retail/wholesale and media. There was reduced activity in the financial services and motor fuels sectors.
- The increased thresholds and reduced number of notifications have not resulted in faster clearance times compared to 2018. The CCPC took, on average, 35 calendar days (24.6 working days) to clear a no-issues merger following a Phase 1 investigation (i.e. an investigation that did not move to extended Phase 1 or Phase 2). This is an increase from 33 calendar days (23.7 working days) in 2018.
- There was only one notification notified in 2019 in which the CCPC undertook an extended Phase 1 investigation, with clearance being issued after 154 calendar days (108 working days).
- A total of five clearances were issued in 2019 following extended Phase 1 investigations (including four extended Phase 1 investigations which had been notified in 2018), a reduction from five in 2018. Taking into account the four notifications made in 2018, the average length for clearance in 2019 following an extended Phase 1 investigation was 143 calendar days (98.6 working days).
- Commitments were given in four cases under investigation by the CCPC in 2019 (including in three cases which had been notified in 2018). This represents a slight reduction from 2018 when commitments were given in five cases.
- Two clearances were issued following Phase 2 investigations (both of which had been notified in 2018). This is compared to three clearances issued following Phase 2 investigations in 2018.

### Number of notifications 2010-2019



## Irish merger control during 2019 - the detail



- **47 merger notifications** were made to the CCPC in 2019, compared to 98 notifications in 2018 (a decrease of 52%) and the lowest number since 2014.
- The **sharp drop in the number of notifications** is likely due, in large measure, to the **increased notification thresholds** that entered into force at the beginning of the year and **market uncertainty**. Since **1 January 2019**, the merger notification thresholds are (in their most recent respective financial years):
  - » Aggregate turnover in Ireland of the businesses involved in a proposed merger is not less than €60m (increased from €50m)
  - » Turnover in Ireland of each of at least two of the businesses involved in the proposed merger is not less than €10m (increased from €3m)
- Of the 47 merger notifications made **during 2019**, the CCPC had issued **clearances in 36 of these cases** by 31 December 2019. The remaining 11 notifications continued under investigation into 2020.
- There were **13 merger clearances** by the CCPC in 2019 that **related to notifications notified in 2018**. All of these were cleared within the first two months of 2019, with the exception of: Lakeland/LacPatrick (cleared on 5 March 2019), LN Gaiety/MCD Productions (cleared on 5 July 2019) and Berendsen (Elis)/Kings Laundry (cleared on 8 July 2019).



- At the **end of 2018**, there was **one media merger** (Form Press Publishing (Iconic)/assets of River Media) which had been cleared by the CCPC. The Minister of Communications, Climate Action and Environment (the Minister) subsequently cleared the merger on 1 March 2019.
- **Four media mergers** were notified to the CCPC in 2019, the same number as in 2018 and 2017.
- **Four media mergers were notified to the Minister** all of which were cleared after a short Phase 1 media merger investigation. By comparison, eight media mergers were notified to the Minister in 2018 (a number of which had been previously notified to the European Commission under the EU merger regulation).



- There were **two voluntary notifications** to the CCPC in 2019 (APCOA Parking/NCPS and Duke Street (DS Spring)/DCC Vital (UK) & Kent Pharma UK). While businesses are not required to notify deals unless they reach the new thresholds (or are media mergers), **the CCPC can still investigate below-threshold deals** under the CCPC's general competition law powers. Businesses still need to consider whether their deals raise competition issues irrespective of size.



- In 2019, the CCPC took **on average 35 calendar days** (24.6 working days) to clear a **no-issues merger following a Phase 1 investigation** (an increase from 33 calendar days (23.7 working days) in 2018).
- There was only one notification in 2019 in which the CCPC undertook an extended Phase 1 investigation. Clearance was issued after 154 calendar days (108 working days).
- **Five clearances** in total were issued in 2019 **following extended Phase 1 investigations** (including four extended Phase 1 investigations which had been notified in 2018), a reduction from five in 2018. Taking into account the four notifications made in 2018, the average length for clearance in 2019 following an extended Phase 1 investigation was 143 calendar days (98.6 working days).
- **Two mergers** notified in 2018 were cleared in 2019 following a **Phase 2 investigation** undertaken by the CCPC. Clearance in these cases took an average of 331 calendar days (230 working days). This is compared with three clearances issued following Phase 2 investigations by the CCPC in 2018.



- The **deals most frequently notified** to the CCPC related to the following **sectors**: real estate, healthcare, information/communications and technology, media, motor retail/wholesale.



- Commitments were given in four cases under investigation by the CCPC in 2019 (including in three cases which had been notified in 2018): FormPress Publishing (Iconic)/assets of Midland Tribune (notified in 2019), LN-Gaiety/MCD Productions, Pandagreen/Knockharley Landfill and Natureford and Berendsen (Elis)/Kings Laundry (all notified in 2018). All four cases involved either an extended Phase 1 investigation or a Phase 2 investigation. This represents a slight reduction from 2018 when five deals were cleared subject to binding commitments.



- **Zero transactions** were prohibited by the CCPC in 2019. The last prohibition was in 2008. This is not unusual. For example, the European Commission has prohibited 30 deals out of over 7,600 notifications since 1990. Out of over 1000 merger notifications since 2003, there have been three prohibitions (one of which was overturned by the High Court).



- In April 2019, at the Dublin Metropolitan District Court, two undertakings pleaded guilty to illegally putting into effect a business merger without first notifying the CCPC. The Probation Act 1907 was applied to both parties with donations being made by each party to charity.



- On 14 June 2019, the CCPC confirmed its intention to introduce a simplified merger notification review procedure. On 29 October 2019, the CCPC launched a public consultation on the first draft of its proposed simplified merger notification procedure guidelines. These guidelines, once adopted (anticipated by the end of Q1 2020) will be used to select notifiable transactions for assessment under a simplified procedure.



### Key time periods for the investigation of notifications by the CCPC in 2019

- **No-issues Phase 1** - The average duration for a no-issues Phase 1 investigation in 2019 was 35 calendar days compared to 33 calendar days in 2018. The average length of time in working days was 24.6 days in 2019 compared to 23.7 in 2018.
- **Shortest Phase 1** - The shortest period for a no-issues Phase 1 clearance in 2019 was 19 calendar days (13 working days) compared to 17 calendar days (12 working days) for the shortest period in 2018.
- **Longest Phase 1** - The longest period for a no-issues Phase 1 clearance in 2019 was 42 calendar days (29 working days). In 2018, the longest period for a no-issues Phase 1 clearance was 30 working days.
- **Extended Phase 1** - There was only one notification notified in 2019 in which the CCPC undertook an extended Phase 1 investigation. Clearance was issued after 154 calendar days (108 working days). A total of five clearances were issued in 2019 following extended Phase 1 investigations, including four extended Phase 1 investigations which had been notified in 2018 (a reduction from five in 2018). Taking into account these four notifications made in 2018, the average length for clearance following extended Phase 1 investigations in 2019 was 143 calendar days (98.6 working days).
- **Phase 2** - Two mergers were cleared following Phase 2 investigations in 2019 (both of which had remained active from 2018) with clearance being issued in an average of 331 calendar days (220 working days). This represents a reduction in number from the three mergers cleared in 2018 following a Phase 2 investigation. The longest Phase 2 clearance in 2019 took 336 calendar days (233 working days).

### Notifications by quarter



#### Q1 (1 January – 31 March)



#### Q2 (1 April – 30 June)



#### Q3 (1 July – 30 September)

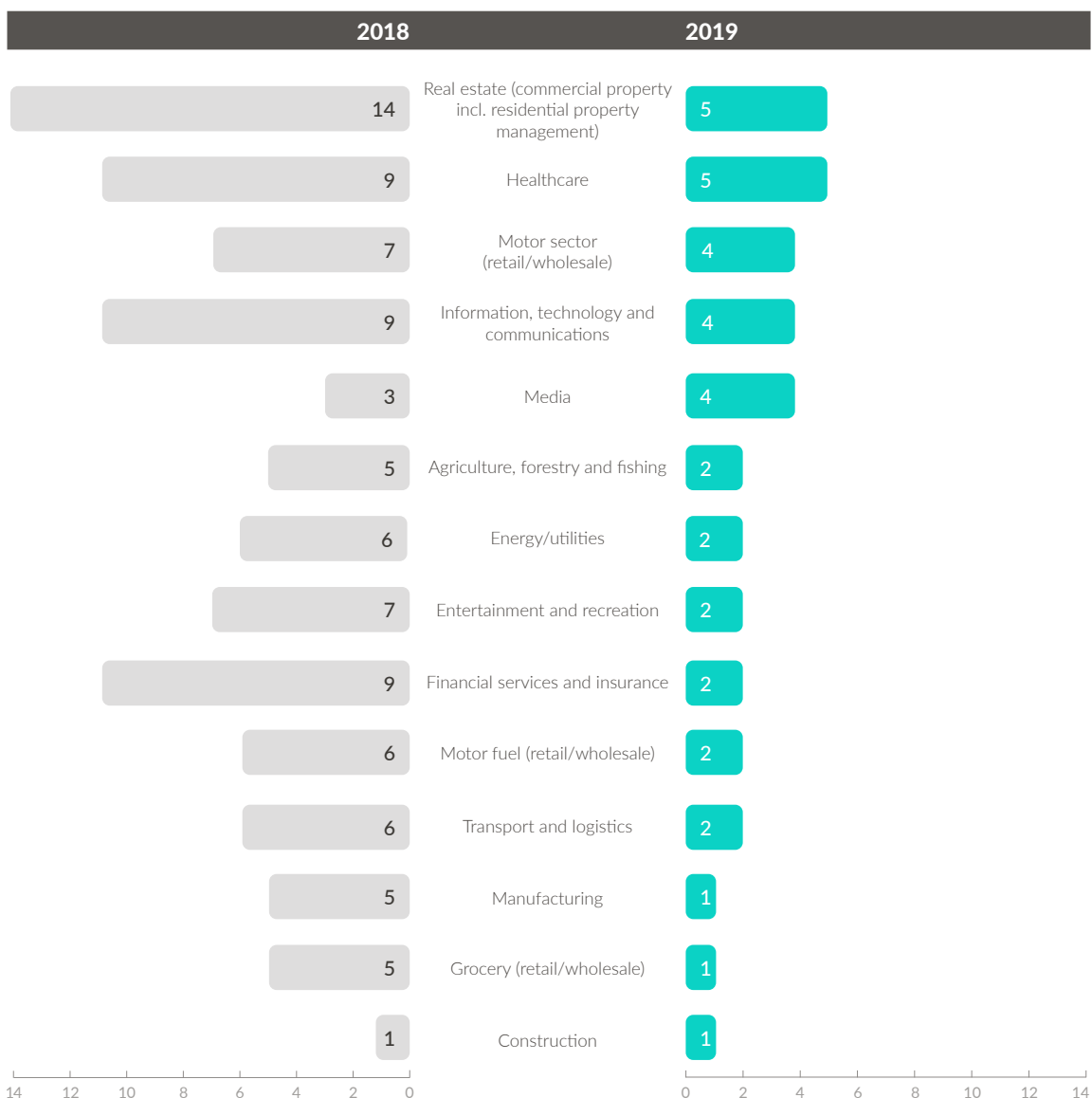


#### Q4 (1 October – 31 December)



*While fewer deals need to be notified, the CCPC is scrutinising them very carefully. The Irish system is maturing and becoming more complex so executives need to be careful not to be tripped up by the Irish-specific rules.*

### Notifications by sectoral activity in 2019



### Notifications were also made by undertakings active in the following sectors in 2019

- » Business process outsourcing
- » Maintenance, repair and overhaul (MRO) services
- » Engineering
- » Aircraft finance
- » Waste sector
- » Supply of parking management services
- » Travel agency services
- » Administration and support services
- » Food services



## Media mergers

### Notified to the CCPC

- Four media mergers were notified in 2019 (same as 2018):
  - » DMG/JPIMedia
  - » FormPress Publishing (Iconic)/assets of Midland Tribune
  - » Mediahuis/IN&M
  - » Kerry FM/Clare Radio, Dreamglade
- Two no-issues Phase 1 clearances were issued in respect of media mergers notified in 2019, compared to three in 2018.
- A no-issues Phase 1 investigation into a media merger in 2019 took, on average, 37.5 calendar days (26 working days) compared to 30 calendar days (21 working days) in 2018.
- There was one extended Phase 1 investigation undertaken into a media merger notified in 2019 (FormPress Publishing (Iconic)/assets of Midland Tribune). It took 154 calendar days (108 working days) for clearance to be issued in that case.
- One media merger notified during 2019 (DMG/JPIMedia) remained at Phase 1 with the CCPC's investigation remaining active into 2020.
- 35 calendar days (24 working days) was the shortest period in 2019 for a clearance to be issued following a no-issues Phase 1 investigation into a media merger (compared to 25 calendar days (17 working days) in 2018).
- 40 calendar days (28 working days) was the longest period in 2019 for a clearance to be issued by the CCPC following a no-issues Phase 1 investigation into a media merger (compared to 35 calendar days (25 working days) in 2018).

### Notified to the Minister

- Four media mergers were notified to the Minister for examination in 2019 were cleared following a short Phase 1 investigation.
- Three of the media mergers notified to the Minister in 2019 were notified and cleared by the CCPC in 2019. These were:
  - » FormPress Publishing (Iconic)/assets of Midland Tribune
  - » Mediahuis/IN&M
  - » Kerry FM/Clare Radio, Dreamglade
- One of the mergers notified and cleared by the Minister in 2019 had been notified and cleared by the CCPC in 2018 (Form Press Publishing (Iconic)/assets of River Media).
- The Minister took, on average, 36 calendar days (26 working days) to clear a media merger notified in 2019 (compared to 38 calendar days (27 working days) in 2018). These figures start from ten working days after the date of the CCPC determination/EU Commission merger clearance issues.
- The shortest period for a clearance to be issued by the Minister following a Phase 1 media merger investigation was 24 calendar days (18 working days) (Kerry FM/Clare Radio, Dreamglade).
- The longest period for a clearance to be issued by the Minister following a Phase 1 media merger investigation was 50 calendar days (36 working days) (Formpress Publishing (Iconic)/assets of River Media).



## Notifications by sector in 2019

Notification	CCPC classification
FRS Networks/Turas Nua	Administration & support services
Fane Valley / Smyths	Agriculture
Timac Agro (Holdings) (Groupe Roullier)/Grassland Agro	Agriculture, forestry and fishing (primary and processing)
Apollo Capital Management L.P./PK Airfinance	Aircraft finance
TELUS/Triple C	Business process outsourcing
NTMA/Cork County Council	Construction
EP UK Investments/Tynagh Energy	Energy and utilities
Masco/BCD Group	Engineering
CVC Funds/Celtic Rugby DAC	Entertainment and recreation
BoyleSport/GT Retail (Bruce Betting)	Entertainment and recreation
Bank of China/GANMAC	Financial and insurance services
Pallas Foods/GHS Classic Drinks	Food service sector
BWG/Heaney Meats	Food service sector
Dunnes Stores/JC Savage	Grocery
Fiducia Bidco/Sora Healthcare & Caringangels	Healthcare
Lloyds Median BOFH	Healthcare
Duke Street (DS Spring)/ DCC Vital (UK) & Kent Pharma UK	Healthcare
Swift Spraai Holdings (Carlyle)/Sports Surgery Clinic Santry	Healthcare
Redbird (Blackstone) / Vungle	Information and communications
Cognizant/Zenith	Information and communications
Arkphire/Trilogy Technologies	Information technology
Applied Materials/Kokusai	Information technology
Merck/Versum Materials	Manufacturing
Pagani/PCI	Manufacturing
DMG/JPIMedia	Media
FormPress Publishing (Iconic)/assets of Midland Tribune	Media
Mediahuis/IN&M	Media and newspaper publishing
Rimbrook	Motor fuel (retail/wholesale)
DCC (Certas Energy)/motor fuel service stations of Tesco	Motor fuel (retail/wholesale)
Windsor Motors/assets of Holcroft Motors	Motor retail sector
Carlyle/Fermoy Medical Hall	Motor retail sector
Connolly Motor/Hyundai Galway	Motor retail sector
Gowan Group/Opel Ireland	Motor sector (retail/wholesale)



Notification	CCPC classification
MML Capital/Eastland Engineering & EES	MRO services
Portlon (Parma)/Galway Clinic	Not listed
Recipharm/Consort	Pharmaceuticals
CDC/La Poste	Postal, banking, insurance
Irish Residential Properties REIT/ XVI Portfolio (Marathon)	Property
Kerry FM/Clare Radio, Dreamglade	Radio broadcasting
Blackstone Group/SPT Cedar	Real estate
IBRC/Slieve Russell & QFHU	Real estate
Wicklow Hotel/Powerscourt Hotel	Real estate (commercial)
Henderson Park/Green REIT	Real estate (commercial)
APCOA Parking/NCPS	Supply of parking management services
Star Capital/ASL Aviation	Transport and logistics
World Travel Centre Core Travel	Travel agency services
Salero (Carlyle)/City Bin (Carducci)	Waste sector

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