

Review of Irish Merger Control in 2018

January 2019

What are the main 2018 themes?

- A 36% increase in the number of notifications to the CCPC; mainly due to a greater level of domestic M&A activity in 2018
- 98 notifications to the Competition and Consumer Protection Commission (CCPC) – the highest in over a decade.
- Real estate continued to be significant as well as healthcare, financial services and IT.
- More than 10% of all deals notified to the CCPC involved extended assessments and five resulted in giving commitments to obtain CCPC approval.
- Significant commitments were given to the CCPC to control access to confidential information – this is a growing trend with CCPC merger reviews.
- On average the CCPC took:
 - » 33 calendar days to approve a no-issues merger review in Phase 1 – very similar to 2017.
 - » 106 calendar days to approve an extended Phase 1 - 11% longer than 2017.
- In line with EU practice, the CCPC is focused on investigating gun-jumping.
- The CCPC used its powers to compel the production of more information from merging parties.
- Despite fewer media mergers notified to the CCPC, the CCPC still conducted two extensive Phase 2 media merger reviews.

What do we see happening in 2019?

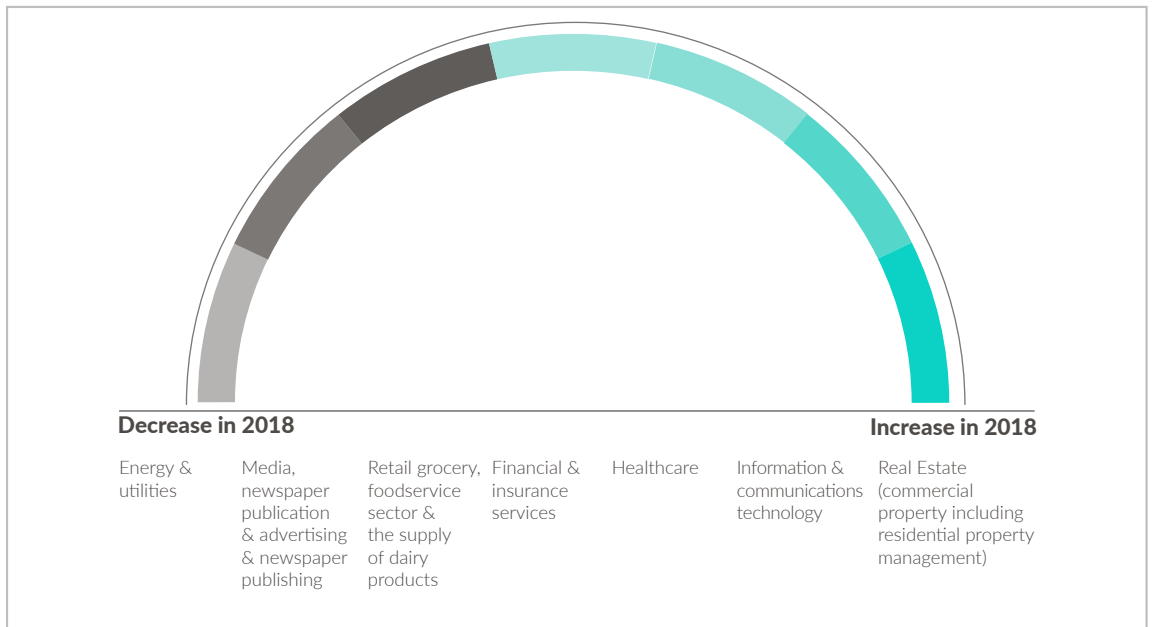
- Quicker clearances owing to the proposed simplified procedure provided merging parties can show the CCPC that their deals have no competition issues.
- Fewer notifications to the CCPC due to the increased notification thresholds (including fewer real estate and motor fuel deals).
- Businesses should be increasingly vigilant in seeking and waiting for CCPC approval before completing notifiable deals.
- With a simplified merger notification regime, the approval process should speed-up.
- The increased thresholds for merger notifications should lead to a reduced number of notified transactions, thus allowing the CCPC to focus on deals with real competition problems in Ireland.
- The CCPC will scrutinise “below-threshold” deals more closely so businesses should vet all their deals to see if they could raise competition problems.

2018 at a glance

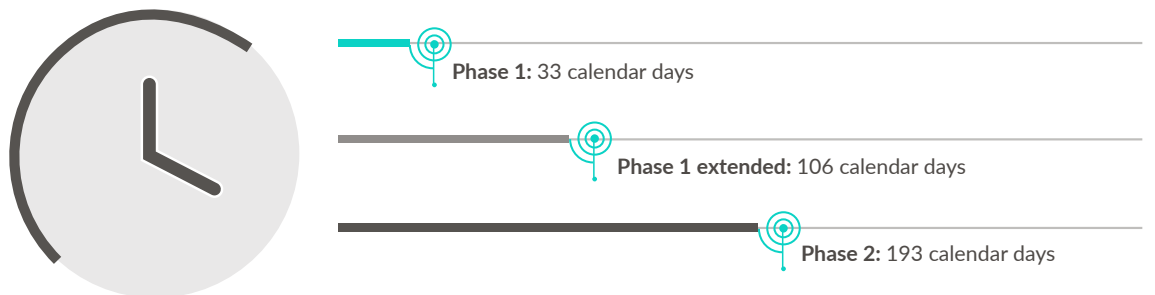
Number of deals notified



Notifications by sector



Average CCPC assessment timeframe



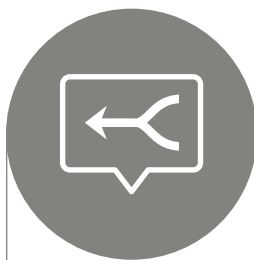
Key developments in Irish merger control during 2018

- 98 merger notifications were made to the CCPC in 2018, compared to 72 notifications in 2017 (an increase of 36%).
- Of these 98 merger notifications, the CCPC issued 85 clearances. The other 13 notifications remain under review by the CCPC into 2019.
- No notifications were withdrawn by the parties.
- There were also ten merger clearances in early 2018 in relation to notifications that had remained active from 2017 into 2018 (we have not included these 2017 mergers in our statistics for 2018). Of these ten merger clearances, two (Bay/Radio Nova and Irish Times/Sappho (Irish Examiner)) were media mergers which were subsequently notified to the Minister of Communications, Climate Action and Environment for media merger examination. Both were cleared by the Minister.
- The CCPC review of no-issue merger notifications took an average of 33 calendar days (23 working days) in 2018 (3% quicker than in 2017).
- Extended Phase 1 merger notifications took an average of 106 calendar days (74 working days) in 2018 (11% longer than in 2017).
- There were three Phase 2 investigations in 2018 which were cleared taking an average total of 193 calendar days (133 working days).
- The most frequently notified deals to the CCPC were in the following sectors:
 - » real estate
 - » financial and insurance services
 - » healthcare
 - » information and communications
- Eight media mergers were notified to the Minister of Communications, Climate Action and Environment in 2018 and the Minister issued eight no-issues Phase 1 media merger clearances in respect of these. By comparison, only four were notified in 2017.
- No transactions were prohibited by the CCPC in 2018. The last prohibition was in 2008.
- The CCPC increased its focus on gun-jumping in 2018. It is investigating at least one example of alleged gun-jumping.
- On 7 November 2018, the CCPC launched a public consultation on a simplified merger procedure for the review of no-issues mergers.
- As a result of a change in the law in 2018, the merger notification thresholds as of 1 January 2019 are (in their most recent respective financial years):
 - » Aggregate turnover in Ireland of the businesses involved in a proposed merger is €60m (increased from €50m); and
 - » Turnover in Ireland of each of at least two of the businesses involved in the proposed merger is €10m (increased from €3m).
- Businesses do not need to notify deals unless they reach these new thresholds. However, the CCPC remain free to scrutinize all deals even if they do not require notification. Businesses will still need to double check whether their deals raise competition issues irrespective of size.

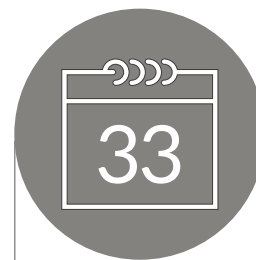
FIVE ←
NOTIFICATIONS
INVOLVING
COMMITMENTS IN 2018

THREE .|||
PHASE 2
INVESTIGATIONS IN
2018, NONE IN 2017

Background and trends in 2018



There were 98 merger notifications made to the CCPC. This represents a 36% increase in notifications compared to 2017 (when 72 notifications were made).



A no-issues notification took an average of 33 calendar days in 2018 (in 2017 it took an average of 34 calendar days).



Out of a total of 958 notifications since 2003, there have only been three prohibitions (one of which was overturned by the High Court).



Four media mergers were notified to the CCPC in 2018, the same as in 2017.



Of all mergers under investigation during 2018, 14 notifications were the subject of an extended Phase 1 review, with six remaining active into 2019.



Five clearances were issued subject to binding commitments in 2018 on behalf of the parties, compared to four in 2017.



Commitments were given in three extended Phase 1 notifications and in two Phase 2 notifications.



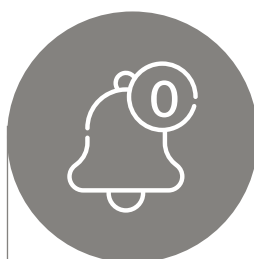
Of all the mergers under investigation in 2018 there were three Phase 2 investigations in 2018, compared to none in 2017.



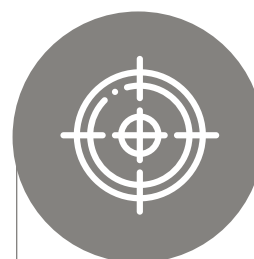
Most active sectors for M&A deals in 2018 were: real estate; financial and insurance services; healthcare; and information and communications.



By comparison, the most active sectors in 2017 for M&A deals were: energy; food and drink; and media, telecoms and broadcasting.



There were no voluntary notifications made to the CCPC in 2018, compared to two in 2017.



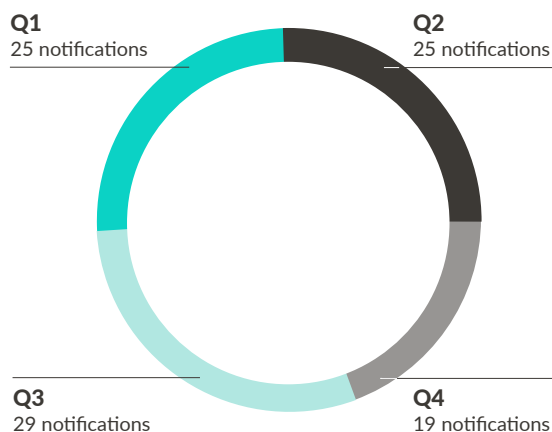
The CCPC increased its focus on gun-jumping in 2018.

Key time-periods

- The average duration of a no-issues Phase 1 assessment by the CCPC in 2018 was 33 calendar days compared to 34 calendar days in 2017 (3% quicker in 2018). The average length of time in working days was 23.7 in 2018 compared to 24 in 2017.
- The average duration of an extended Phase 1 assessment by the CCPC for a notification in 2018 was 106 calendar days compared to 96 in 2017 (11% longer in 2018). The average length of time in working days was 74 in 2018 compared to 66 in 2017.
- The shortest period for a no-issues Phase 1 approval by the CCPC in 2018 was 17 calendar days (12 working days) compared to 16 calendar days (12 working days) for the shortest period in 2017.
- The longest period for a no-issues Phase 1 approval by the CCPC in 2018 was 42 calendar days (30 working days, the statutory maximum time limit). In 2017, the longest period for a no-issues Phase 1 approval was 29 working days.
- The average duration for a notification investigated in Phase 2 was 193 calendar days (133 working days). There were no Phase 2 investigations in 2017.

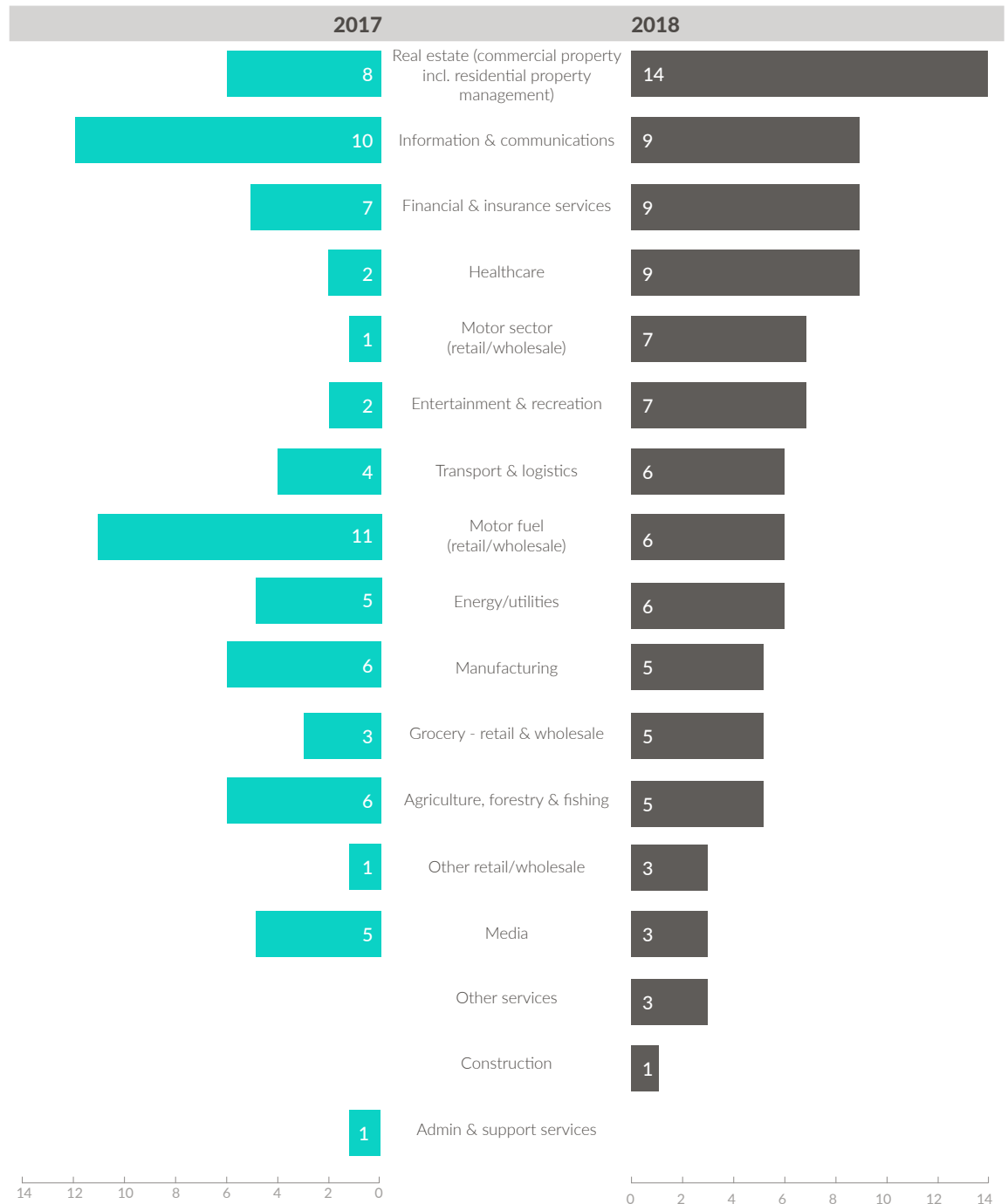
Notifications by quarter in 2018

- Q1 (1 January – 31 March)
- Q2 (1 April – 30 June)
- Q3 (1 July – 30 September)
- Q4 (1 October – 31 December)



Merger review in Ireland is becoming tougher and longer. Businesses need to plan for longer timelines where there are competition issues and seek competition law advice earlier. Some deals in 2018 took as long as seven months to get approval and then approval was conditional on selling assets and agreeing to conditions.

Notifications by sector



Other economic sectors covered by notifications in 2018:

- » Construction
- » Issuing of credit cards
- » Leisure travel
- » Other retail/wholesale
- » Taxi services
- » Retail sale of passenger vehicles and the provision of after-sales service & parts
- » Retail
- » Supply of bathroom and kitchen equipment
- » 'Other services'

Media mergers

Notified to the CCPC

- There were four media mergers notified to the CCPC in 2018, the same number as in 2017:
 - » CMNL/North Dublin Publications
 - » Trinity Mirror/Northern & Shell
 - » Liberty Global/PBN (Casey Cable)
 - » Form Press Publishing (Iconic)/ assets of River Media
- There were three no-issues Phase 1 clearances issued by the CCPC in respect of media mergers notified in 2018 compared to two in 2017.
- The average duration of a Phase 1 no-issues media merger determination by the CCPC in 2018 was 30 calendar days (21 working days) compared to 26 calendar days in 2017 (18 working days).
- There was one Phase 2 assessment and clearance of a media merger by the CCPC in 2018 (Trinity Mirror/Northern & Shell). This determination took 216 calendar days (150 working days).
- As 31 December 2018, Form Press Publishing (Iconic)/assets of River Media has not been notified to the Minister of Communications, Climate Action and Environment Minister for media merger examination.
- There were two media merger assessments which commenced in 2017 and were cleared in 2018: one extended Phase 1 assessment of a media merger by the CCPC (Bay/Radio Nova) and cleared on 22 January 2018 and one Phase 2 assessment of a media merger by the CCPC Irish Times/Sappho (Irish Examiner) cleared on 24 April 2018.
- The shortest period for a no-issues Phase 1 approval by the CCPC for a media merger in 2018 was 25 calendar days (17 working days) compared to 23 calendar days (17 working days) in 2017.
- The longest period for a no-issues Phase 1 approval by the CCPC for a media merger notified in 2018 was 35 calendar days (25 working days) compared to 29 calendar days (19 working days) in 2017.

Notified to the Minister

- There were eight mergers notified to the Minister for media merger examination in 2018, all of which were approved in Phase 1.
- The eight media merger clearances, took on average 38 calendar days (27 working days), almost exactly the same amount of time as in 2017 when the average duration was 37.3 calendar days (26.7 working days). These figures start from ten working days after the date of the CCPC determination/ EU Commission merger approval decision. The examination for CMNL/ North Dublin Publications took 48 working days (69 calendar days) and for Trinity Mirror/Northern & Shell took 49 working days (70 calendar days).
- Three of the mergers notified to the Minister in 2018 had been notified and approved by the CCPC in 2018. These were:
 - » CMNL/North Dublin Publications
 - » Liberty Global/PBN (Casey Cable)
 - » Trinity Mirror/Northern & Shell

Notifications by sector

Notification	CCPC Classification
North Cork Co-Op/Newtownsandes Co-Op	Agriculture
Lakeland/LacPatrick	Agriculture
Goldreed Holdings/Greene Farm	Agriculture, forestry & fishing (primary and processing)
North Cork/Feale Bridge and Headley's Bridge	Agriculture, forestry & fishing (primary and processing)
Ecocem Materials/ArcelorMittal/Ecocem France	Construction
Vermilion Oil & Gas/SEPIL (Shell)	Energy & Utilities
Canada Pension Plan Investment Board/Shell E&P Ireland	Energy & utilities
SSE Airtricity/Marron Activ8	Energy & utilities
LN Gaiety/MCD Productions	Entertainment & recreation
Canadian Pension Plan/Koerl/Sportradar	Entertainment & recreation
Big Bus Tours (Exponent)/Irish City Tours	Entertainment & recreation
Cover-More Australia (Zurich)/Blue Insurance	Financial & insurance services
NS Norway Holding AS (Oceanwood)/Norske Skog AS	Financial & insurance services
Irish Life/Invesco	Financial & insurance services
Phoenix/SLAL	Financial & insurance services
Brookfield / LCH	Financial & insurance services
Eurazeo/Idinvest	Financial & insurance services
SS&C Technologies/DST Systems	Financial & insurance services
LCCGI/Generali Paneurope DAC	Financial & insurance services
Friends First/Aviva	Financial & insurance services
BWG/Roadfield(Corrib Foods)	Foodservice sector
SHS/3V Natural Foods	Groceries
BWG Foods/4 Aces	Grocery retailing & grocery & food wholesaling
Uniphar/Certain pharmacy businesses of Inischem DAC	Healthcare
Uniphar/Bradley's Pharmacy Group	Healthcare
CareChoice (InfraVia)/TMNH Holdings	Healthcare
Cooperatief H2/Primacy Healthcare 21 (Aquilant)	Healthcare
Carlyle (Sam McCauley)/Nolan's Pharmacy	Healthcare
InfraVia/MP Healthcare	Healthcare
Lloyds Pharmacy/McSweeney Group	Healthcare
Carlyle/Fermoy Medical Hall	Healthcare
Uniphar/SISK Healthcare	Healthcare: medical supplies
Apollo/Tifco	Hotel accommodation

Notification	CCPC Classification
Tetrarch/Seed Portfolio Hotels	Hotel sector
Liberty Global/PBN (Casey Cable)	Information & communications
CDC/Netgem/VITIS (JV)	Information & communications
CDC/Netgem/Reunicable (the Oceinde Group)/VITIS (JV)	Information & communications
Brookfield/Imagine	Information & communications
Mirova (BPCE)/Axione (Bouygues)	Information & communications
Fruition Partners (DXC)/TESM	Information & communications
Speed Fibre/GMC-D OH (Ireland)	Information & communications
Blackstone/Taskus	Information and communications
EQT/SUSE	Information & communication technology
Avantcard/Tesco Bank	Issuing of credit cards
Discovery Travel (MML)/The Travel Department	Leisure travel
Novolex (Carlyle)/Waddington	Manufacturing
Givaudan S.A./Naturex S.A.	Manufacturing
Saint-Gobain Performance Plastics/Micro Hydraulics	Manufacturing
Form Press Publishing (Iconic)/assets of River Media	Media
Petrogas/Glenview Motors	Motor fuel(retail/wholesale)
BWG/Keating's Londis (Newtown Cobh)	Motor fuel(retail/wholesale)
Petrogas (Applegreen)/Service Station at Carranstown, Duleek	Motor fuel(retail/wholesale)
Irving/Tedcastles	Motor fuel(retail/wholesale)
Spirit Motor/Certain Assets of Burton Car Sales	Motor retail
Brightstone Trading/Fitzpatrick Motors (Bray)	Motor retail sector
JDM Automotive/certain assets of T.K.F. Autos	Motor retail sector
Quarry Park Motors/certain assets of Linden Copse	Motor retail sector
Alavina Investments (MMM Limited)/Certain Assets of J O'Donohoe Motors	Motor retail sector
Armalou-Spirit Ford/Lillis O'Donnell	Motor retail sector
Trinity Mirror/Northern & Shell	Newspaper publication & advertising; online advertising
CMNL/North Dublin Publications	Newspaper publishing
Stars Group/Sky Betting (Cyan Blue)	Online betting and gaming
House of Fraser(Dundrum)/Sports Direct	Other retail/wholesale
OTTP/Giraffe Childcare	Other services
MCR/Securway At Risk	Other services
Berendsen (Elis)/Kings Laundry	Other services

Notification	CCPC Classification
Sisk/Designer Group Engineering/Designer Group FM	Real estate
Alphabet/South Bank House & The Warehouse	Real estate
Designer Group Engineering/Lenmac Mechanical Services	Real estate
KWPRS ICAV/Grange Stillorgan Road	Real estate
DTZ Worldwide Limited/ Sherry FitzGerald (Commercial)	Real estate
Atlantic Troy(Supermac's)/ Athlone Springs Hotel	Real estate
IPUT plc/Deloitte House	Real estate
SCIF Hotels/Connemara Coast Hotel	Real estate
Kennedy-Wilson / Elysian Building, Cork	Real estate
Davy Target Investments/Navan Town Centre	Real estate(commercial)
SCIF/McWilliam Park Hotel	Real estate(incl. hotels)
William Hill/Mr Green	Recreation & leisure
Oaktree & Alanis Capital/Lioncor (JV)	Residential property development management
Endless LLP/American Golf	Retail
Musgrave/Donnybrook Fair and Morehampton Foods	Retail grocery sector
TOP/Garrycastle (Spar) Athlone	Retail grocery sector
Cedarglade (Musgrave)/Supermarket Premises at Fortunestown	Retail sale of grocery goods
Valero Energy(Ireland)/Riverside Service Station	Retail sale of motor fuels and associated forecourt convenience store
JDM Automotive/Motorpark	Retail sale of passenger vehicles & the provision of after-sales service and parts.
Maxol/Brennan	Retail supply of motor fuels & associated forecourt convenience store
BoyleSports/JP Bookmakers	Sports betting services
Anchorage/Ideal Standard	Supply of bathroom & kitchen equipment
Daimler/Intelligent Apps (mytaxi)	Taxi services
Swan Bidco/Meadow Foods	The supply of dairy products
Cube Transportation (ISQ)/TIP Holdings	Transport & logistics
Johnson & Perrott/National Truck Rental	Transport & logistics
Rhenus/Avant Air and Sea	Transport & logistics
Endless LLP/Menzies Distribution Limited	Transport & logistics
Worldwide Flight Services Holding/Worldwide Flight Services Ireland	Transport & logistics
Pandagreen/Knockharley Landfill and Natureford	Waste
Enva/Rilta	Waste
Thorntons/A Plus	Waste & recycling

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- January 2019