



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

**Competition and
Consumer Protection
Commission**

Merger Review – What's It All About?

Dublin City University 24 February 2015

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Merger Review - Who

- Competition Act 2002 (as amended)
 - Competition Authority 2003 - 2014
 - Competition and Consumer Protection Commission 2014 to present
- Mergers Division
 - Member,
 - Manager,
 - Case Officers (Economists, Lawyers)



Mergers – Good, Bad and Ugly



Merger Review - Why

“Mergers are a mechanism used by businesses to restructure in order to compete and prosper.

However, some mergers can have a negative effect on consumer welfare by, for example, leading to an increase in price or a reduction in output.

That is, they substantially lessen competition and consumers (including businesses) suffer.”

See <<http://www.tca.ie/EN/Mergers--Acquisitions.aspx>>

Merger Review – What

Corporate Control



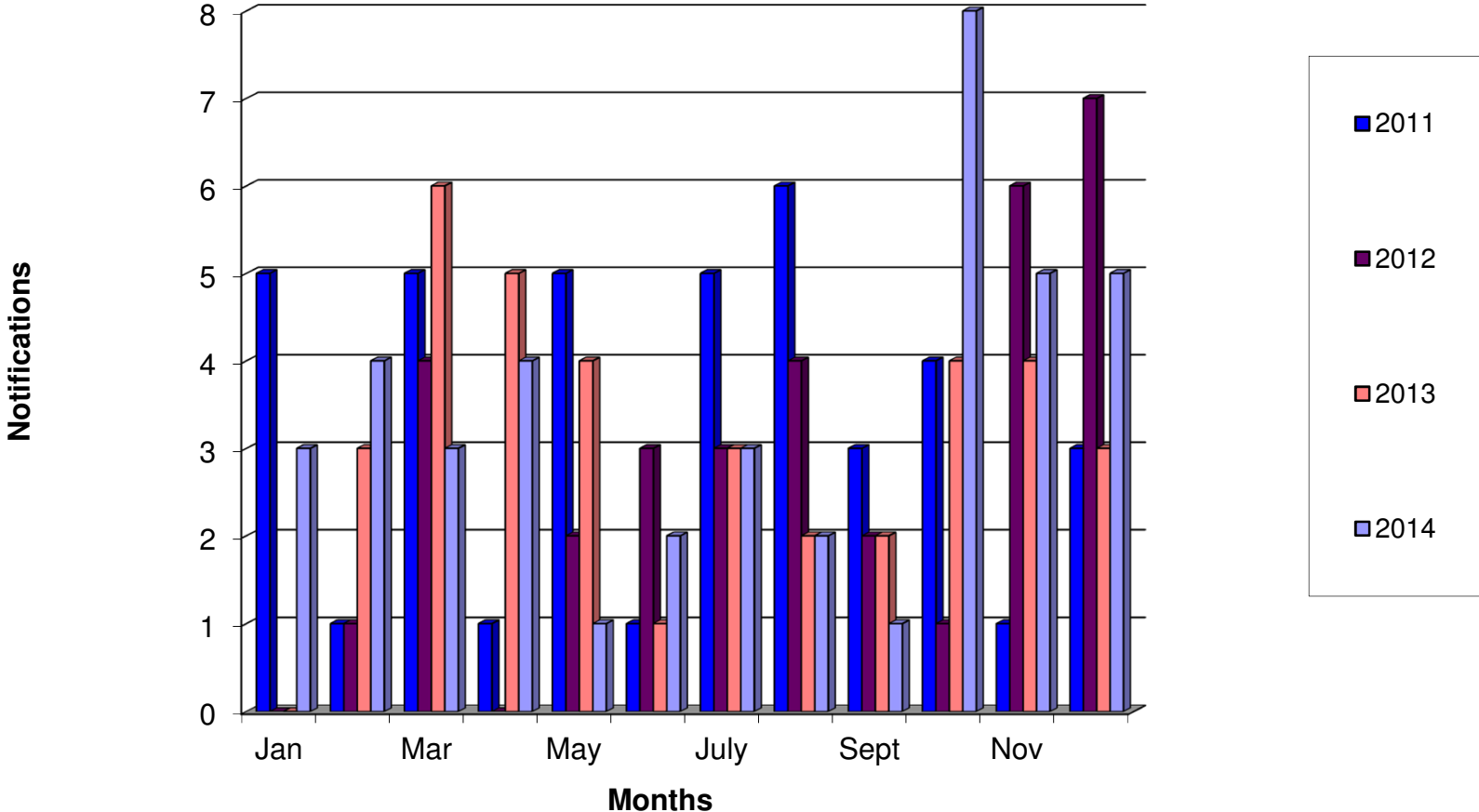
Mergers and acquisitions
- Full or Partial

- Full Takeover e.g., Glanbia / Wexford Creamery
- Business Unit e.g., Irish Wind/SWS
- Certain Assets e.g. Dalata / White's Hotel

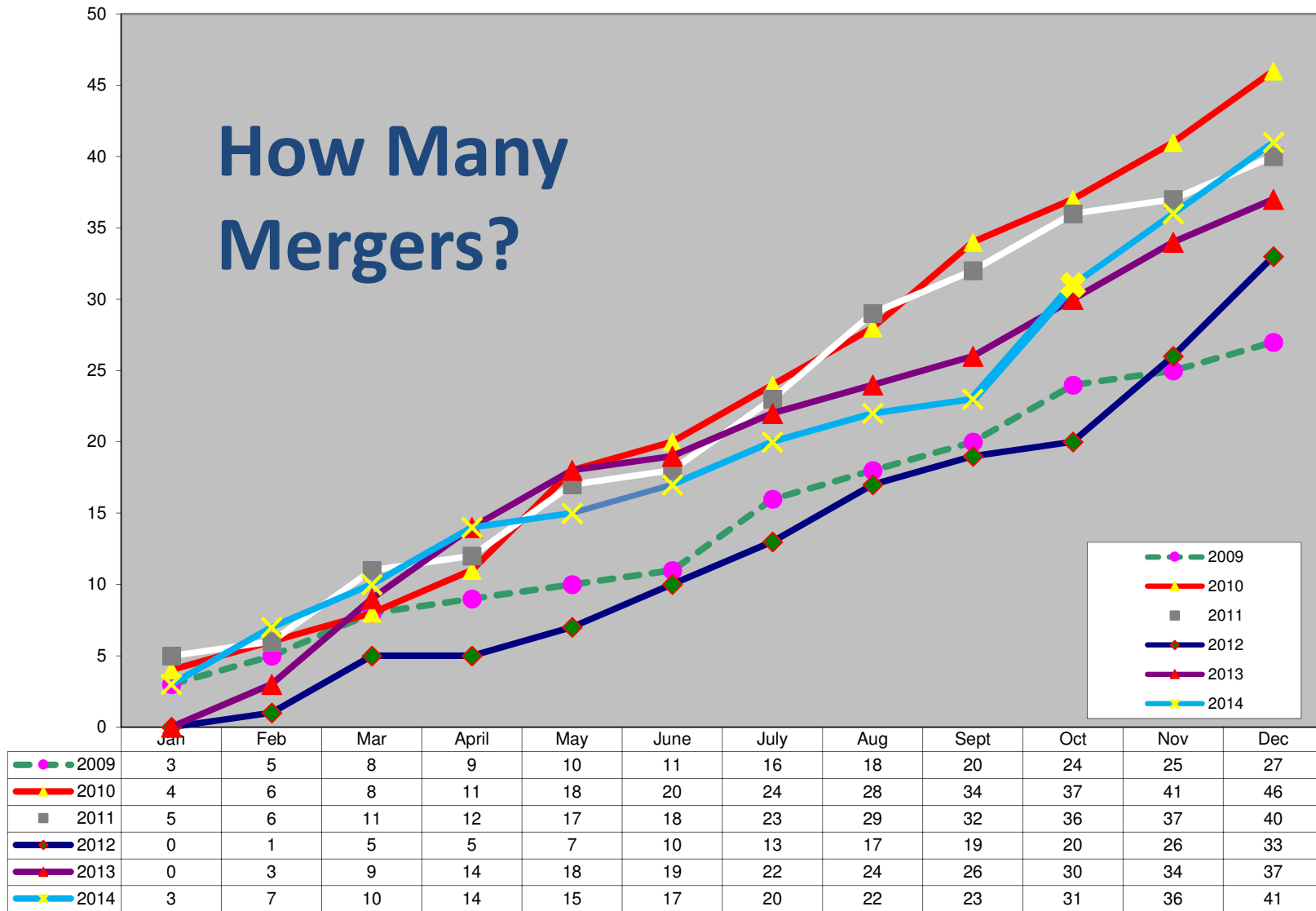
Mergers Reviewed by CCPC

- Mandatory Notification - Section 18(1)(a)
- Financial Threshold
 - a) the aggregate turnover in the State of the undertakings involved is not less than €50 million
 - b) the turnover in the State of each of two or more of the undertakings involved is not less than €3 million
- Media Mergers - no threshold
- Voluntary Notification also possible

How Many Mergers?



How Many Mergers?



European Commission



- European Dimension
- Review by European Commission. E.g.,
 - combined worldwide turnover of all the merging firms over €5, 000 million, and
 - EU-wide turnover for each of at least two of the firms over €250 million.
- Examples
 - Ryanair / Aer Lingus
 - 3/O2



CCPC Merger Review - Process



- Phase 1
- 30 Working Days
 - Clear
 - Clear with Conditions
 - Move to Phase 2
- Phase 2
- 120 Working Days
 - Clear
 - Clear with Conditions
 - Prohibit

Merger Review - Framework

- Analysis of Competitive Effects
- Two Key Points
 - Substantial lessening of Competition (SLC) Test
 - Merger Specific Effects

Competitive Effects

Unilateral



Coordinated





Competitive Effects

- **Horizontal Effects**

- In same sector/market

- E.g., Effects in prices, quality, innovation in relation to competing products



- **Vertical Effects**

- Upstream or Downstream

- E.g. Refusal to Buy

- Refusal to Supply



Substantial Lessening of Competition

“While certain quantitative measures can be used to assist in analysing whether a merger is likely to result in an SLC, there are no standard measures of competitive effects that can determine definitively, on their own, whether a given merger is likely to have such an effect. Each proposed merger needs to be assessed on its merits and in its own particular circumstances.”

See

<http://www.tca.ie/images/uploaded/documents/CCPC%20Merger%20Guidelines.pdf>.



Merger Review – Key Elements 1

- Counter Factual
 - point of comparison “what if there is no merger?”
 - not always *status quo ante*
- Market Definition
 - Product
 - Geographic
- Market Concentration
- Theories of Harm

Merger Review – Key Elements 2

- Entry
- Countervailing Buyer Power
- Efficiencies



Special Case

- Failing Firm / Exiting Assets
- Counter Factual - market output reduction
- “Short Cut?”
- Failing Firm Test
 - I. unable to meet financial obligations
 - II. no viable prospect of reorganising through the process of receivership, examinership or otherwise.
 - III. assets would exit the relevant market
 - IV. No credible less anti-competitive alternative to the merger in question.

Evidence

“The Commission’s review of a notified merger or acquisition is evidence-based. This means that the Commission requires sufficient reliable evidence from the merging parties regarding the likely competitive effects of the merger.

This is particularly important when the parties wish to present merger defence arguments (i.e., arguments to counter competition concerns). The most common of such arguments include ease of entry, countervailing buyer power, efficiencies and the failing firm.”

See <<http://www.tca.ie/images/uploaded/documents/CCPC%20Merger%20Guidelines.pdf>>.



Qualitative

“Qualitative evidence relevant to merger analysis includes documents prepared by the merging parties in the ordinary course of business and information provided by third parties including competitors, customers, and independent bodies (regulators, industry experts, representative bodies, etc.).”

See <<http://www.tca.ie/images/uploaded/documents/CCPC%20Merger%20Guidelines.pdf>>.

Quantitative

“Quantitative analysis relevant to merger analysis includes, but is not limited to, calculation and review of concentration measures, diversion ratios, critical loss measures, measures of elasticities, and upward pricing pressure measures.”

See <<http://www.tca.ie/images/uploaded/documents/CCPC%20Merger%20Guidelines.pdf>>.



Oasis Dental / Smiles

- Global overlap – dental services
- No Overlap in State
 - Oasis Dental
 - Active in GB & NI
 - Not Active in State
 - Smiles
 - Active in GB & NI
 - Active in State
- No SLC
- Cleared



- Owners of Brown Thomas acquired 50% of Arnotts
- Apollo has the other 50%
- Overlap – Dublin Department Stores
- Intensive Investigation
 - RFI
 - Market Enquiries
 - Customer Survey

**Fitzwilliam /
Wittington
Canada / Arnotts**





MARKS &
SPENCER

- Competition Remains from Other Stores
- BT and Arnotts not close competitors
- No SLC
- Cleared



HOUSE OF FRASER



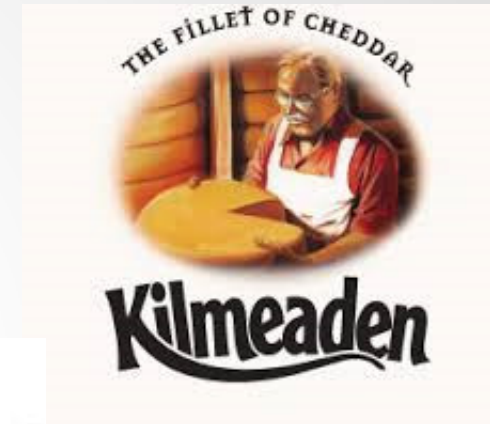
Glanbia / Wexford Creamery



- Large dairy processor
- Wide range of products
- Widely available in Ireland



- Small dairy processor
- Mainly milk and cheese
- Available mainly in County Wexford



Investigation

- RFIs
- Submissions
- Market Enquiries
- Site Visit
- External Expert Advice



Three Theories of Harm

- Local Retail Effects for Milk
 - Processor Entry Barriers
 - Procurement Monopsony
-
- **Ultimately Not Evidence of SLC**
 - **Cleared**

3/02



- **European Case**
 - **Authority - Member State**
 - **Comreg - Third Party**
- **SLC - Reduction from 4 to 3 Mobile Network Operators (MNOs)**

- **Remedies**
- **Proposals include 2 new Virtual Mobile Network Operators (MVNOs)**
- **Do Remedies Remove SLC?**



Mergers Research - Suggestions

- “Did we get it right?”
 - Ex post review of individual cases
- Effectiveness of Financial Thresholds
 - “are we catching the right transactions in the regulatory net?”
- Remedies - Very Hot Topic
 - e.g., telecommunications.
- Waterbed Effect
 - supply chain, monopsony



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Thank You

