CCPC Mergers & Acquisitions Report 2020

Details of the mergers and acquisitions in Ireland examined by the CCPC

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Introduction

Covid-19 has impacted nearly all areas of society and the merger notification and review processes have been no different. In March, the Competition and Consumer Protection Commission (CCPC), in response to Covid-19, put processes in place to ensure business continuity in the review of notified mergers and acquisitions while ensuring the wellbeing of staff and parties is maintained. These included the acceptance of merger notifications electronically, facilitation of remote reviewing of mergers and longer deadlines specified for RFI responses under formal powers. These decisions have been very effective and allowed us to continue to deliver a strong merger review regime in these times of the pandemic.

The total number of notified mergers in 2020 was 41, representing a reduction of 6 notifications or 13% from the 2019 level. The most prominent sectors in 2020 were information & communications and healthcare with nine and eight notifications respectively, while there was a reduction in notifications from the motor and real estate sectors compared with 2019. It may be that Covid -19 has had some impact in reducing the level of merger activity but we will get a better understanding of the longer-term impact as we work though 2021.

In 2020 the CCPC delivered 43 merger determinations of which 11 were in respect of proposed transactions notified towards the end of 2019 and carried over to 2020.

One key element of a merger regime is the need to ensure efficiency. It is important that businesses have the confidence that notifications will be dealt with effectively and in a timely manner, in particular where no significant competition issues arise. We are pleased to record that in 2020 non-extended Phase 1 investigations were completed in an average length of 22.9 working days, a significant decrease on the 2019 figure of 24.7 working days.

A key driver of this improvement was our introduction in July 2020 of the Simplified Merger Notification Procedure. The simplified merger notification procedure regime delivers efficiency benefits for businesses through reduced notification requirements and allows for speedier decision timelines. To date, seven mergers have been cleared under the Simplified Merger Notification Procedure, with an average time period for a decision of 13.4 working days.

There were 15 extended Phase 1 investigations in 2020, two of which require a Phase 2 investigation. Both of these Phase 2 investigations are ongoing. The number of extended Phase 1 investigations reflect the complex nature of some of the transactions which are notified to the CCPC.

Compliance with the merger regime is an important aspect of the work of the CCPC. It ensures consumers are protected from mergers that have considerable potential to harm the market and consumers. The CCPC, both proactively and reactively to third party concerns, monitors the market for mergers and acquisition which may fall under the merger regime but have not been notified.

The CCPC continued to engage with our European colleagues on developments within the European merger regime. There has been a considerable amount of work done to consider appropriate measures to deal with the fast moving digital sector and international competition issues, including what additional tools and powers could be useful to address these issues. The CCPC expects that the potential impact of some of these issues on the merger review regime will become clearer in 2021 and beyond.

In addition, there have been discussions regarding the potential impact of Covid-19 on the merger review regime. The CCPC will continue to monitor developments and consider if any changes to the merger regime are needed to ensure it continues to deliver a competitive market where consumers are protected from outcomes that could lead to higher prices or lower quality goods and services.

We have continued to work closely with the Department of Enterprise, Trade and Employment in 2020 so that we are prepared for the potential increase in complex mergers which Brexit may bring. As we begin to receive our first post-Brexit mergers in 2021 we will work with our European colleagues to ensure a smooth process in making merger determinations in this new environment.

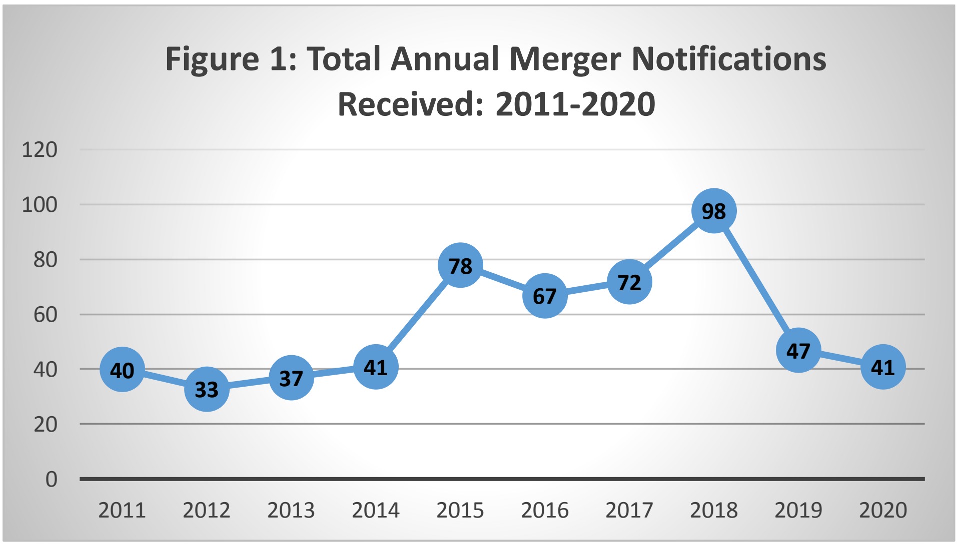
Finally I would like to thank all the CCPC staff and the co-operation of businesses and their legal representatives for contributing to this difficult but successful year.

1. 2020 Merger Notifications & Determinations

Notifications

1.1 Since March, in response to Covid-19, the CCPC put in place processes to ensure business continuity in the review of notified mergers and acquisitions. These measures include; the acceptance of electronic notification of mergers where notification forms can be completed and returned via email, the reviewing of mergers being delivered almost exclusively by remote working, longer deadlines specified for responses to RFIs under formal powers, and the CCPC has obtained designation as a statutory body that can conduct remote oral hearings in Phase 2 mergers.

1.2 For the 2020 calendar year, which saw significant distruptions to the operation of businesses globally and in the State[1], the CCPC received 41 merger notifications. This represents a decrease of approximately 13% on the number of mergers notified in 2019, which was 47. Figure 1 presents the trend in the number of merger notifications to the CCPC and formerly, the Competition Authority, for the period 2011 to 2020.



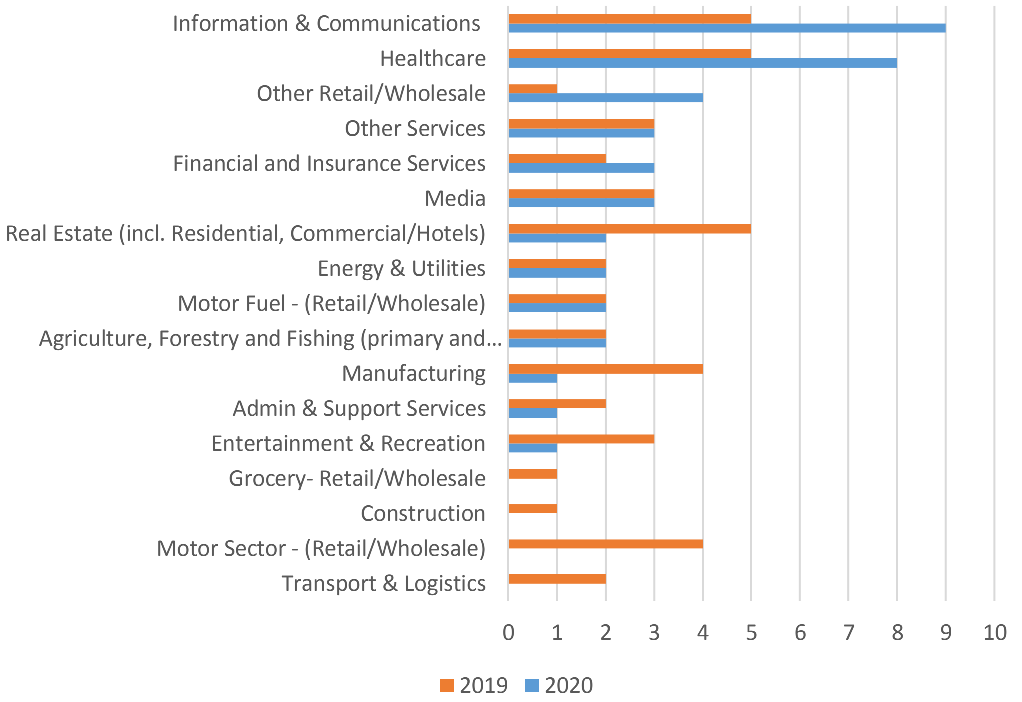
[1] According to Enterprise Ireland, 60% of companies who have engaged with Enterprise Ireland since March say that Covid-19 has had a very negative or critical impact on their business to date. https://enterprise-ireland.com/en/News/PressReleases/2020-Press-Releases/60-per-cent-of-Irish-Businesses-Negatively-Impacted-by-Covid-19.html

1.3 As was outlined in the 2019 report, on 1 January 2019 new financial thresholds[2] for the mandatory notification of proposed mergers or acquisitions to the CCPC came into effect. This change had the effect of reducing the number of mandatory notifiable mergers.

Sectoral Breakdown of Notified Mergers

1.4 The sectoral[3] breakdown of mergers received in 2019 and 2020 are presented in Figure 2 below. In 2020, information & communications and healthcare, were the most prominent sectors with nine and eight notifications received respectively. In 2019, the most prominent sectors were also healthcare and information & communications as well as real estate.

Figure 2: Number of Mergers by Sector: 2019 - 2020



[2] The new financial thresholds increased as follows: (i) the aggregate turnover in the State of the undertakings involved from being not less than €50,000,000 to being not less than €60,000,000 and (ii) the turnover in the State of each of 2 or more of the undertakings involved increased from not less than €3,000,000 is not less than €10,000,000.

[3] Sector description adapted from the CSO based on NACE classifications

Determinations

1.5 During the course of 2020, the CCPC issued 43 Determinations. 32 of the determinations were issued in respect of proposed transactions notified during 2020 and the remaining 11 were in respect of proposed transactions notified towards the end of 2019 which were carried over to 2020.

1.6 In 2020, 15 investigations involved an extended Phase 1 review, five of which were carried forward from 2019. Determinations have been made in respect of all investigations carried over from 2019. Of the 15 investigations, Phase 1 determinations were made in respect of 12; two of the extended Phase 1 reviews required a Phase 2 investigation which are still under consideration at the end of 2020; and the remaining extended Phase 1 investigation is also still under consideration at the end of 2020. Table 1 below presents a list of the mergers which required an extended Phase 1 investigation.

Table 1: - Extended Phase 1 and Phase 2 Investigations

M/19/032 – BoyleSports/GT Retail (Bruce Betting)
M/19/034 – CVC Funds/Celtic Rugby DAC
M/19/040 – DMG/JPI Media
M/19/042 – Portlon (Parma)/Galway Clinic
M/19/044 – Timac Agro (Holdings) (Groupe Roullier) / Grassland Agro
M/20/001 – Flutter/Stars
M/20/009 – Portlon (Parma)/Hermitage
M/20/010 – Portlon (Parma)/Blackrock
M/20/012 – Easons/Dubray Books
M/20/015 – Portlon/Blackrock (Tullycorbett/Xroon)
M/20/023 – United Molasses/Premier Molasses and Kruden
M/20/027 – Uniphar/Hickeys
***M/20/029 – Brookfield (Greenergy)/Amber Oil**
***M/20/003 – Link Group/Pepper (Phase 2 investigation)**
***M/20/005 – ESB/Coillte (JV) (Phase 2 investigation)**

*Ongoing investigations carried over to 2021

1.7 In 2020, formal commitments to alleviate competition concerns were required and obtained from notifying parties in respect of one case, M/19/034 – CVC

Funds/Celtic Rugby DAC, whereby a commitment was submitted by the acquirer and accepted by the CCPC, that if the acquirer directly or indirectly, enters a legally binding agreement to acquire control over the commercial activities of the Six Nations competition, it will voluntarily notify the possible transaction to the CCPC before it is put into effect, pursuant to Section 18(3) of the Act in the event the transaction does not meet the mandatory thresholds under section 18(a) of the Act.

1.8 Additionally, in 2020, the CCPC oversaw the implementation of divestment remedies in M/18/063 Berendsen/Kings Laundry and M/18/036 Enva/Rilta. In relation to M/18/063 Berendsen/Kings Laundry the determination subject to binding commitments was made in July 2019. The Commitments bound Berendsen to divest certain healthcare contracts to a suitable third party purchaser, the parties could only implement the proposed transaction subject to CCPC approval of the divestment package and also the approval of a suitable purchaser of the divestment package. In June 2020, the CCPC decided that, Elis/Berendsen has fulfilled the requirements set out in the commitments. Following the CCPC's decision, on 7 July 2020, the acquisition of Kings Laundry Limited by Berendsen Ireland limited was put into effect. In relation to M/18/036 Enva/Rilta, the determination, subject to binding commitments, was made in December 2018. These commitments involved both structural and behavioural type commitments. The structural commitment which involved a divestment of a business facility was completed in March 2020, the implementation of which was monitored and approved by the CCPC. The monitoring of the behavioural commitment is on-going.

1.9 In 2020 further work was done by the CCPC in relation to merger remedies. The CCPC completed an internal review of merger remedies from 2003 to 2020 and aspects of this review are presented in Section 3 below.

Timeframes

1.10 The CCPC aims at all times to make sure that it completes its merger review process in an efficient and effective manner so that mergers which do not raise competition concerns are not unduly delayed.

1.11 Between 1 January 2020 and 31 December 2020, the CCPC took an average of 22.9 working days to issue a Phase 1 decision which is less than the figure for 2019.[4] The timelines in individual cases that did not raise serious concerns varied from 10 to 29 working days depending, for example, on the complexity of the structure of the transaction and the nature of the competition issues involved.

1.12 Since our role is to actively protect the interests of consumers and businesses, there are some notified transactions which may need more intensive scrutiny and thus an extended review period was required to enable the CCPC to issue a robust Determination in Phase 1 or Phase 2 as appropriate.

[4] This excludes those merger reviews which required an extended Phase 1 Investigation.

2. Media & International Mergers

Media Mergers[5]

2.1 Under section 18(1)(b) of the Act (as amended by section 55(a) of the 2014 Act) and 18(5) of the Act, where a proposed merger or acquisition falls within a class of merger or acquisition specified in an order made by the Minister for Enterprise, Trade and Employment, it must be notified to the CCPC irrespective of the turnover of the undertakings involved. One such class of mergers that has been specified relates to media mergers.[6]

2.2 In 2020, the CCPC reviewed four media mergers as presented in Table 2 below; three were received in 2020 and one carried over from 2019. In 2020, the CCPC issued four media merger determinations, one of which involved an extended Phase 1 investigation, M/19/040 - DMG/JPIMedia.

Table 2: - Media mergers reviewed - 2020

M/19/040 - DMG/JPIMedia
M/20/021 - Reach/ISL
M/20/022 - Greencastle / Maximum Media Network
M/20/026 - Rocketsports/BenchWarmers

International Mergers

2.3 The CCPC is required to monitor EU merger activity and, when it considers there is a significant interest to Ireland the CCPC can attend and participate in EU merger advisory committees. Over the period 1 January 2020 to 31 December 2020, the

[5] Part 3A of the Competition Act 2002, as amended, introduced substantial changes to the review of media mergers in the State. In addition to the mandatory requirement to the CCPC, media mergers are also required to be notified to the Minister for Communications, Climate Action and Environment in order for the assessment of the impact of the merger on the plurality of the media in the State.

[6] A media merger is a merger or acquisition where (i) two or more of the undertakings involved carry on a media business in the State; one or more of the undertakings involved carries on a media business in the State and one or more of the undertakings involved carries on a media business elsewhere.

CCPC followed the European Commission's investigations into a number of proposed mergers including the following:

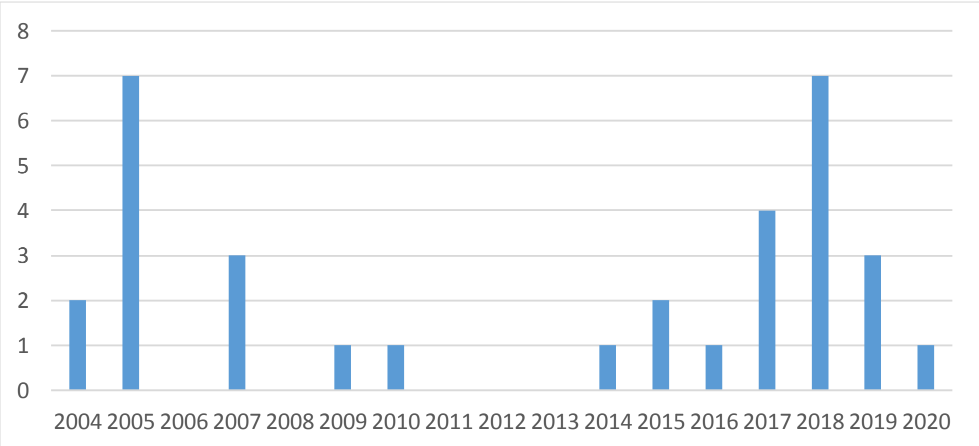
- M.9010 Grupa / Lotus
- M.9564 LSEG / Refinitiv Business
- M.9097 Boeing / Embraer
- M.9409 Aurubis / Metallo Group Holding
- M.9730 Peugeot S.A/ Fiat Chrysler Automobiles

3. Merger Remedies Review 2003 to 2020

3.1 The Competition Authority (TCA) commenced reviewing mergers in 2003 pursuant to Part 3 of the Competition Act 2002 (as amended). For the period 2003 to 2020, both the CCPC and TCA have approved 33 mergers with commitments to address potential substantial lessening of competition concerns. The acceptable commitments should prevent harm to competition resulting from the merger and should be appropriate, proportionate, time bound, capable of being implemented, monitored, enforced and should avoid any unintended anticompetitive outcomes.

3.2 The 33 mergers approved with commitments between 2003 and 2020 amounts to 3.21% of all decisions made over that time period. In comparison, between 2003 and November 2020, the European Commission approved 316 mergers with commitments which amounts to 5.6% of all Phase 1 and Phase 2 decisions over that time period. Figure 3 below shows the number of mergers approved with commitments by the CCPC and TCA by the year of the decision.

Figure 3: Number of merges approved with commitments by year



3.3 Table 3 below shows that of the 33 CCPC and TCA approvals with commitments, 66% involved behavioural remedies, 25% of the approvals involved commitments which were structural in nature and 9% required both structural and behavioural remedies.

Table 3: Mergers cleared with commitments by type of commitments and whether approved in Phase 1 or Phase 2

2002-2020	Phase 1/Phase 2	Behavioural	Structural	Mix Commitments
Phase 1: Commitments	58% (19)	79%	10.5%	10.5%
Phase 2: Commitments	42% (14)	50%	43%	7%

3.4 Structural remedies involve a remedy package which requires the sale of, for example, one or more businesses, physical assets or other rights to address the identified competitive harm.

3.5 Behavioural remedies involve remedies that are designed to modify or constrain the future conduct of merging firms. Behavioural commitments accepted by the CCPC and TCA have tended to primarily consist of "ring-fencing" commitments to prevent the flow of competitively sensitive information held by the target about its competitors in the context of post-merger management of the merged firm and/or in a joint venture situation. "Ring-fencing" commitments made up 50% of all behavioural remedies, followed by the obligation to notify the CCPC of future acquisitions, even if the transaction is not notifiable (17%), access remedies (12%) and other behavioural remedies (21%).

3.6 Mixed remedies involve a combination of behavioural and structural remedies, such as, for example, the sale of a standalone business and granting access to other facilities to third parties.

3.7 The majority of decisions involving commitments, 23 (69.7%), concerned mergers with horizontal overlaps, 5 (15.5%) had vertical overlaps, and 5 (15.5%) had both horizontal and vertical overlaps between the parties activities in the State.

3.8 Out of the 33 mergers approved with commitments, 20 commitments have expired, while 13 continue to apply. Six of these have defined expiry dates lasting up to a maximum of 5 years, and 7 will remain in force until certain ownership/shareholdings change to the extent that the CCPC considers that the commitments are no longer required. Table 4 below list the merger cases with active commitments.

Table 4: List of merger cases with active commitments

Merger	Commitment Type - Structural/Behavioural	Remarks
M/10/026 – ESB / Northern Ireland Electricity	Behavioural	Reporting obligation
*M/17/068/Irish Times/Sappho(Irish Examiner)	Behavioural	Reporting obligation- Radio business
M/16/040 – Bon Secours Health System/Barringtons Hospital	Behavioural	Reporting obligation
M/17/021 – Applegreen/JFT	Hybrid-Quasi structural and Behavioural	Reporting obligation
M-17-027 Dalata/Clarion Clayton	Behavioural	Reporting obligation
M-18-009 BWG/4 Aces	Structural and Behavioural	Structural part completed Reporting obligation
M/18/031 - Uniphar/Sisk Healthcare	Behavioural	Reporting obligation
M/18/036 Enva/Rilta	Structural and Behavioural	Structural part completed Reporting obligation
M/18/042 – Oaktree/Alanis/Lioncor (JV)	Behavioural	Reporting obligation
M/18/053 – Pandagreen/Knockharley Landfill and Natureford	Behavioural - Access	Reporting obligation
M/18/067 – LN Gaiety/MCD Productions	Behavioural	Reporting obligation
M/19/010 – FormPress Publishing (Iconic)/assets of Midland Tribune	Behavioural	Reporting obligation
M/19/034 - CVC Funds/ Celtic Rugby DAC	Behavioural	Reporting obligation

Source: The CCPC
*Note: Carried over from M/13/033 – Sappho/TCH following acquisition of Sappho by Irish Times in 2018.

3.9 In relation to sectors, for the period 2003 to 2020, the majority of commitments were required in media mergers (27% of all mergers approved with commitments), followed by mergers in the retail and wholesale sector (18%) and the energy and utilities sector (12%).

4. Merger Review Policy Developments - 2020

Simplified Merger Procedure

4.1 The simplified merger notification regime commenced on 1 July 2020, following the publication by the CCPC of its Simplified Merger Notification Procedure Guidelines ("SMNP Guidelines") on 7 May 2020.

4.2 The CCPC decided to introduce a simplified merger notification procedure following two separate public consultations in 2018 and 2019. The SMNP Guidelines[7] provide a detailed overview of criteria that must be satisfied for a merger or acquisition to fall within the scope of the SMNP. It also outlines the safeguards and exclusions in place regarding situations where mergers or acquisitions which, notwithstanding that they fulfil the criteria requirements, may require the more detailed approach that the Standard Merger Notification Procedure entails.

4.3 The SMNP currently has and will continue to have, a positive impact on businesses as review periods for mergers or acquisitions which do not raise significant competition concerns will be reduced and notifying parties will be exempt from providing certain information when filing mergers or acquisitions which do not raise significant competition concerns. To date the Commisssion has cleared seven mergers under the SMNP with an average time of 13.4 working days to issue a Phase 1 decision.

4.4 The new simplified merger notification procedure will not replace the current procedure, but will facilitate more efficient review of mergers that do not raise competition concerns.

[7] see https://www.ccpc.ie/business/wp-content/uploads/sites/3/2020/05/Simplified-Merger-Notification-Procedure-Guidelines.pdf

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Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí

Competition and Consumer Protection Commission