DETERMINATION OF MERGER NOTIFICATION
M/21/021
BANK OF IRELAND / CERTAIN ASSETS OF KBC

23 May 2022

CCPC

Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí

Competition and Consumer Protection Commission

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1. INTRODUCTION

Introduction

1.1 On 16 April 2021, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (the "Act"), the Competition and Consumer Protection Commission (the "Commission") received a merger notification form (the "Merger Notification Form") of a proposed transaction whereby The Governor and Company of the Bank of Ireland ("BOI") would acquire certain assets and liabilities (the "KBC Assets") from KBC Bank Ireland plc ("KBC"), an indirectly wholly-owned subsidiary of KBC Group N.V. ("KBC Group"), including KBC's performing mortgage loans, KBC's customer deposit accounts and certain other assets and liabilities (the "Proposed Transaction").

The Proposed Transaction

1.2 The Proposed Transaction was notified to the CCPC on 16 April 2021 on the basis of a Memorandum of Understanding (the "MOU") between BOI, KBC, and KBC Group, which was signed on 15 April 2021. The Commission considered that the MOU demonstrated evidence of a good faith intention to conclude an agreement between BOI, KBC and KBC Group, the result of which would be that BOI acquires the KBC Assets and to effect the Proposed Transaction, pursuant to section 18(1A)(b)(ii) of the Act.

1.3 The Proposed Transaction is to be implemented, in part, using the statutory transfer mechanism available for the transfer of a banking business under Part III of the Central Bank Act 1971.

1.4 The Proposed Transaction is to be implemented pursuant to a Transfer Agreement dated 22 October 2021 (the "Transfer Agreement") between BOI and KBC, a Transfer Scheme between BOI and KBC (together "the Parties") and a Transfer Order issued by the Minister for Finance. The Transfer Order will be issued by the Minister for Finance after the execution of the Transfer Agreement, which must be approved at least two months before the date upon which the Transfer Scheme is intended to take effect.

The Undertakings Involved

The Acquirer - BOI

1.5 The Bank of Ireland Group plc ("BOI Group"), a public limited company registered in the Republic of Ireland (the "State"), is a financial services group providing a range of banking and financial services in the State and the United Kingdom. BOI is the main operating entity and licensed bank of the BOI Group.

1.6 In the State, BOI is active in the provision of retail banking products and services to personal and business customers. As part of its retail banking activities in the State, BOI provides residential/owner occupier mortgages[1] and Buy-to-let mortgages[2] at a variety of fixed and variable rates. BOI also provides services including current and deposit accounts, associated services such as payment cards and overdraft facilities, and unsecured loans and credit facilities to personal and business customers in the State.

1.7 For the financial year ending 31 December 2020, BOI's worldwide turnover was approximately €3.35 billion, of which, approximately €2.24 billion was generated in the State.

The Seller - KBC

1.8 KBC Group is a limited liability company registered in Belgium, whose principal activity is the provision of integrated bank-insurance services. KBC Group provides banking, investment and insurance products and services worldwide.

1.9 In the State, KBC Group is active through its indirectly wholly-owned subsidiary KBC which provides retail banking products and services to personal and business customers through its branches and electronic channels. As part of its retail banking activities in the State, KBC provides residential mortgages and Buy-to-let mortgages at a variety of fixed and variable rates. KBC also provides services

[1] For the purposes of this Determination, residential mortgages are owner-occupied mortgages ("Residential mortgages").

[2] Buy-to-let mortgages are intended for landlords purchasing a property to be rented to tenants ("Buy-to-let").

including current and deposit accounts, associated services such as payment cards and overdraft facilities, unsecured loans and credit facilities to personal and business customers in the State. KBC Insurance NV (Irish branch), a subsidiary of KBC Group, provides insurance and pension products in the State and is regulated by the Central Bank of Ireland (the "CBI").

The Target Assets – KBC Assets

1.10 The Target Assets, as amended, include the following:[3]

(a) KBC's existing portfolio of performing mortgage loans;[4]

(b) KBC's deposit accounts and personal accounts for retail banking customers;

(c) KBC's deposit accounts and loans for small to medium sized entities ("SMEs");

(d) KBC's deposit accounts for corporate customers;

(e) KBC's credit and debit cards in the State;

(f) The Broker Clawback Right;

(g) Any and all of KBC's rights, title, interest, benefit, estate and entitlement (past, present and future except as otherwise expressly stated in the Transfer Agreement) in and to:

  (a) the Loan Offer Documents;

  (b) the Committed Credit Offer Document; and

  (c) the Credit Card Documents;

[3] See page 16 of the Merger Notification Form and page 115 of the Transfer Agreement dated 22 October 2021. Defined terms are as they appear in the Transfer Agreement.

[4] The existing portfolio of performing mortgage loans of a mortgage lender may be referred to as its "back book".

(h) The Ancillary Rights and Claims; and

(i) The benefit of each contract of employment in respect of the Employees.

1.11 The KBC Liabilities include the following:[5]

(a) All liabilities and obligations of KBC under the Finance Documents, the Deposit Agreements, the Loan Offer Documents, the Committed Credit Offer Documents, the Credit Card Documents but excluding, for the avoidance of doubt, the Excluded Liabilities;

(b) All liabilities and obligations arising out of the Existing Litigation Claims;

(c) Any and all Continuing Breaches;

(d) Deposit Balances;

(e) Broker Payment Obligation; and,

(f) Each contract of employment existing on the relevant Employee Transfer Date in respect of the Transferring Employees.

1.12 KBC's consumer and business current accounts are not part of the Proposed Transaction, and will instead be subject to a Current Account Switching Framework.[6]

1.13 Regarding KBC employees, BOI stated the following in the Merger Notification Form:

"[✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂]
[✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][

[5] See page 116 of the Transfer Agreement dated 22 October 2021. Defined terms are as they appear in the Transfer Agreement.

[6] See page 178 of the Transfer Agreement dated 22 October 2021. Current accounts were originally part of the KBC Assets as of page 16 of the Merger Notification Form, but were not included in the KBC Assets listed in the Transfer Agreement. Instead, current accounts will be subject to the Current Account Switching Framework.

*✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][
✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂]”.*[7]

1.14 The KBC Assets do not include the following:[8]

(a) KBC’s non-performing loan portfolio;[9]

(b) The KBC brand;

(c) KBC’s branches including properties and fixed assets;

(d) KBC’s mortgage broker channels;

(e) KBC’s mortgage origination business, including associated infrastructure;

(f) KBC’s IT systems and platform;

(g) KBC staff ([✂]);[10]

(h) KBC’s treasury assets;

(i) KBC’s minimum reserve account;

(j) Assets used in or relating to KBC’s investment distribution business or insurance intermediary business (including, the distribution of pension, life and non-life insurance products by KBC);

(k) Share capital in, and all capital reserves, treasury reserves and investments (including bonds) held by KBC and each of its subsidiaries; and,

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[7] See page 14 of the Merger Notification Form.

[8] See page 117 of the Transfer Agreement dated 22 October 2021. Defined terms are as they appear in the Transfer Agreement.

[9] KBC completed the sale of its non-performing loan book to CarVal on 4 February 2022. See https://www.kbc.ie/important-information-non-performing-loans.

[10] See paragraph 1.13.

(l) Any residual mortgage balances held by KBC whereby the underlying asset the subject of the security has been sold, the proceeds credited against the account balance in question but where a residual positive loan balance remains, excluding any Loan Portfolio Asset.

1.15 For the financial year ending 31 December 2020, the turnover associated with the Target Assets was approximately €[✂] million, the majority of which was generated in the State.

Rationale for the Proposed Transaction

1.16 The Parties have stated the following in the Merger Notification Form:

> *"BOI acknowledges and understands that a key driver of the Proposed Transaction envisaged is to facilitate KBC's exit from the Irish banking market, which requires the winding up of KBCI within a timely period. From BOI's perspective, the Proposed Transaction will enable BOI to achieve efficiencies that will support BOI's strategy which is focused on technology investments which drive process and pricing capability enhancements, and substantially improve the mortgage customer experience. For example [✂]".*[11]

Preliminary Investigation ("Phase 1")

Contacts with the Undertakings Involved

1.17 On 26 May 2021, the Commission served a Requirement for Information ("RFI") on BOI pursuant to section 20(2) of the Act (the "BOI Phase 1 RFI"). On 26 May 2021, the Commission also issued an information request to KBC (the "KBC Phase 1 Information Request"). The issuance of the BOI Phase 1 RFI adjusted the

[11] See page 11 of the Merger Notification Form.

deadline by which the Commission was required to conclude its assessment of the Proposed Transaction in Phase 1.

1.18 Upon receipt of all of the responses to the BOI Phase 1 RFI, the "appropriate date" (within the meaning of section 19(6)(b)(i) of the Act) became 10 September 2021.

1.19 During the Phase 1 investigation, the Commission requested and received, on an ongoing basis, further information and clarifications from the Parties.

Third Party Submissions

1.20 During the Phase 1 investigation, the Commission received submissions from 7 third parties in relation to the Proposed Transaction.[12] The submissions were fully considered by the Commission insofar as they expressed competition concerns.

Market Enquiries

1.21 During the Phase 1 investigation, the Commission sent questionnaires to various third parties, including:

- 18 mortgage brokers or brokers' associations active in the State;[13]
- 9 parties identified by BOI and KBC as their competitors[14] (the "Competitor Questionnaire").

1.22 The Commission received a response from less than half of the brokers to whom it sent a questionnaire (45%).[15] In the case of each broker who provided a

[12] These are: Irish Dental Association; Financial Services Union; Gerald Nash TD; Cedar Lending Services Limited ("MoCo"); Complainant 1; Complainant 2; and Complainant 3.

[13] These are: Association of Irish Mortgage Advisors ("AIMA"); Association of Insurance & Financial Brokers ("Brokers Ireland"); Churchfield Corporate Financial Solutions ("Churchfield"); Group Financial Services Ltd ("Cornmarket"); Michael Dowling Mortgage & Financial Services Limited ("Dowling Financial"); Kegra Ltd ("Finance Solutions"); Full Circle Financial Services Limited ("Full Circle"); General Mortgage Corp Irl Ltd ("GMC Mortgages"); Ambrose Financial Services Ltd ("JA Financial"); Park Mortgage Company Limited ("Leddin Finance"); Michael Cassidy Financial Services Limited ("Michael Cassidy Financial Services"); Irish Mortgage Corporation Ltd ("Irish Mortgage Corporation"); Mortgage Horizons Ltd ("Mortgage Horizons"); Stephen Hamilton Financial Services Ltd ("Mortgageline"); Oates Breheny Financial Services Ltd ("Oates Brehany"); PHD Financial Services Ltd ("Ocean Mortgages"); PFP Financial Services Limited ("PFP Financial Services"); and Mortgage Insight DAC ("Sherry Fitzgerald Financial Services").

[14] These are: Allied Irish Banks P.L.C. ("AIB"); An Post Designated Activity Company ("An Post"); Avantcard DAC ("Avant Money"); Capitalflow ("Capitalflow"); Credit Union Development Association ("Cuda"); Dilosk DAC trading as Dilosk and ICS Mortgages ("Dilosk"); Finance Ireland Credit Solutions D.A.C ("Finance Ireland"); Permanent TSB P.L.C. ("PTSB"); and Ulster Bank Ireland DAC ("Ulster Bank").

[15] 8 out of 18 third parties.

response, the Commission also contacted those brokers by telephone and/or email to clarify and/or seek further detail in relation to their responses.

1.23 The Commission received a response from the majority of the competitors to whom it sent a questionnaire (78%).[16] In each case, the Commission also contacted those competitors by telephone and/or email to clarify and/or seek further detail in relation to their responses.

1.24 During the Phase 1 investigation, the Commission arranged discussions with other competitors.[17] Additionally, the Commission engaged with several industry stakeholders including the CBI and the Department of Finance (the "DoF").

The Phase 1 Investigation

1.25 Having considered all the available information in its possession at the time, the Commission was unable to form the view, at the conclusion of the Phase 1 investigation, that the result of the Proposed Transaction would not be to substantially lessen competition in any market for goods or services in the State.

1.26 On 20 October 2021, the Commission determined, in accordance with section 21(2)(b) of the Act, to carry out a full investigation under section 22 of the Act.

Full Investigation ("Phase 2")

Third Party Submissions

1.27 During the Phase 2 investigation of the Proposed Transaction, the Commission received 14 third party submissions in relation to the Proposed Transaction.[18] The submissions were fully considered by the Commission insofar as they expressed competition concerns.

[16] 7 out of 9 third parties.

[17] These are: Revolut Ltd ("Revolut"); N26 GmBH ("N26"); and MoCo.

[18] The complainants whose submissions expressed competition concerns are: Complainant 2; Complainant 4; Complainant 5; Complainant 6; Complainant 7; Complainant 8; Complainant 9; Complainant 10; Complainant 11; Complainant 12; Complainant 13; Complainant 14; and Complainant 15.

Market Enquiries

1.28 During the Phase 2 investigation, the Commission sent a questionnaire to competitors[19] requesting copies of data they supply to the Banking & Payments Federation Ireland (the "BPFI").

1.29 The Commission received a response from all of the competitors to whom it sent a questionnaire (100%).[20] In each case, the Commission also contacted those competitors by telephone and/or email to clarify and/or seek further detail in relation to their responses.

Information Sources Relied Upon

1.30 During the Phase 2 investigation, the Commission continued the process initiated during the Phase 1 investigation of engaging with third parties in relation to their views of the competitive effects of the Proposed Transaction, including mortgage brokers, industry or sector competitors, industry stakeholders,[21] and other parties engaged in the Proposed Transaction.[22] Relevant third-party views are referenced throughout this Determination.

1.31 During its review of the Proposed Transaction, the Commission also sought expert economic advice and analysis from Dr Christian Koboldt of DotEcon Limited and Mr Pat Massey of Compecon Limited. Although the Commission benefitted from expert advice, the Commission alone is responsible for the views expressed in this Determination.

1.32 In forming its conclusions as set out in this Determination, the Commission has considered all the relevant information available to it at the time of making the Determination, including information provided by the Parties in response to the Commission's RFIs and Information Requests, information obtained from third parties and other information available in the public domain.

[19] These are: AIB, Avant Money, Dilosk, Finance Ireland, PTSB and Ulster Bank.

[20] 6 out of 6 third parties.

[21] This included the BPFI, in addition to stakeholders listed previously.

[22] Credit Suisse Group AG ("Credit Suisse").

Contacts with the Undertakings Involved

1.33 During the Phase 2 investigation, the Commission requested and received, on an ongoing basis, further information and clarifications from the Parties.

1.34 On 19 November 2021, the Parties submitted a response to the CCPC's Phase 1 determination and an economic assessment prepared by Frontier Economics (the "Phase 1 Determination Response").

1.35 On 22 November 2021, the Commission served a Requirement for Information on BOI pursuant to section 20(2) of the Act (the "BOI Phase 2 RFI"). On 3 December 2021, the Commission also served an information request to KBC (the "KBC Phase 2 Information Request"). The issuance of the BOI Phase 2 RFI adjusted the deadline by which the Commission was required to issue its Assessment of the Proposed Transaction in Phase 2.

1.36 KBC provided a full response to the KBC Phase 2 Information Request on 14 January 2022 (the "KBC Phase 2 Information Request Response"). BOI provided its response to the BOI Phase 2 RFI on 21 January 2022 (the "BOI Phase 2 RFI Response").

1.37 The Commission issued its Assessment to the Parties on 17 February 2022 in accordance with its Mergers and Acquisitions Procedures.[23]

1.38 The Parties requested access to the Commission's file. According to the Commission's procedures,[24] the Parties are to be given access to the Commission's file upon request, during the 15 working day period following their receipt of the Commission's Assessment. The Commission provided the Parties with a schedule of all of the third-party documents included in the file on 18 February 2022, a schedule of all of the KBC documents included in the file on 22 February 2022 and

[23] See the Commission's document titled "Mergers and Acquisitions Procedures", dated 31 October 2014 and in particular paragraph 3.8.

[24] Article 5.1, of the Commission's document titled "Access to the File in Merger Cases", dated 31 October 2014.

a schedule of all of the BOI documents included in the file on 23 February 2022. Access to the file was granted during the 15 working day period.[25]

1.39 During the Commission's access to the file process, the Parties identified several documents of interest to them to which they had been granted partial access and to which they requested full access. Information that was confidential to third parties had been redacted in the version of the documents provided to the Parties and could not be released without the consent of the relevant third party, which was not sought by the Commission. However, in order to ensure that the Parties had access to all the information they required to understand and address the concerns raised in the Commission's Assessment, the Commission issued non-confidential summaries of these confidential materials to the Parties. The Commission also provided non-confidential summaries of any other information on which it had relied in the Assessment and any information that could be exculpatory in the Parties' defence.

1.40 The Parties made a joint written submission on 11 March 2022 in response to the Commission's Assessment (the "Written Response"). The Parties' submission included a submission by Frontier Economics (the "Frontier Economics Report").

1.41 The Parties made a joint oral submission (the "Oral Response") to Commission Members on 13 April 2022.

1.42 Following the Oral Response, from 21 March 2022 to 1 April 2022 the Commission made additional market enquiries to address several points raised by the Parties in their written and oral submissions. The Parties were given access to all additional information gathered in this regard.

1.43 During the Phase 2 investigation, the Commission held various meetings and conference calls with the Parties and their advisors to discuss identified competition concerns and how they could potentially be addressed.

[25] BOI and KBC both made requests on 18 February 2022 to access third party documents included in the file. BOI made request on 22 February 2022 to access KBC documents file and KBC made request on 24 February 2022 to access BOI documents file.

Phase 2 Proposals

1.44 In issuing the Assessment, the Commission was of the preliminary view that the Proposed Transaction was likely to result in a substantial lessening of competition ("SLC") in the market for the provision of mortgages in the State.

1.45 BOI submitted draft proposals on 11 March 2022 pursuant to Section 20(3) of the Act. The submission of these draft proposals by BOI extended the deadline within which the Commission was required to make its determination of the Proposed Transaction in Phase 2. The extension added 15 working days to the Phase 2 period, bringing the review period to a total of 135 working days, in accordance with section 22(4B) of the Act. In the draft proposals, BOI committed to measures to protect KBC mortgage customers, including:

(a) honouring the fixed rate included in the existing terms and conditions of KBC fixed rate mortgages for the remainder of the fixed term;

(b) honouring the 0.2% discount in mortgage rate of every KBC customer eligible for that discount at the date of mortgage transfer to BOI, for as long as their transferred mortgage is held with BOI, without being required to hold a BOI current account; and

(c) offering the variable rate equivalent to that of KBC migrated variable rate customers, as well as BOI fixed rate options, to fixed rate KBC mortgage customers on their first roll over post migration (together, the "KBC Customer Measures").

1.46 On 5 April 2022 BOI and KBC, submitted additional draft proposals to the Commission. These additional draft proposals included commitments to:

(a) make up to €500m of funding available to one of Dilosk or Finance Ireland,[26] to be distributed over 3 years in a manner which would increase

[26] The Commission notes that Dilosk and Finance Ireland are the only non-bank lenders issuing RMBS securities in the State who in turn use the money raised from the issuing of RMBS to fund their mortgage business. Avant Money has a different funding model.

funding capacity, and / or all things being equal would reduce their cost of funding (the "RMBS Funding Proposal");

(b) make €1 million available in funding to companies (other than licenced retail banks and their subsidiaries) developing innovations relevant to the market for the provision of mortgages in the State (the "Mortgage Innovation Funding Proposal"); and,

(c) provide access to operational capability, from the resources used by the non-transferring KBC mortgage origination business, to mortgage lenders (excluding licensed retail banks or their subsidiaries) (the "KBC Proposal"). This includes introducing eligible lenders to:

   (a) relevant KBC employees with a view to having an opportunity to make offers of employment; and,

   (b) brokers with existing agreements/relationships with KBC with a view to having an opportunity to enter into agreements/relationships with those brokers.

1.47 Over the period 25 April to 28 April 2022, the Commission market tested the draft proposals. This is discussed in further detail in paragraphs 6.334 to 6.338.

1.48 The Commission engaged further with BOI and its legal advisors concerning the draft proposals. During the course of this engagement, the Commission proposed that the funding which would be made available by BOI under the RMBS Funding Proposal should be made available to both potential remedy-takers (Dilosk and Finance Ireland) and that both should avail of the potential cost-of-funding benefits resulting from this additional capacity for RMBS funding. BOI accepted that this meant that the total amount of funding required would be €1 billion - €500 million for each of Dilosk and Finance Ireland.

1.49 As will be discussed further in paragraph 6.333 below, based on all the information available to it, the Commission was not convinced that the KBC Proposal would be implementable or effective, and therefore, it could not be taken into account by the Commission in making its determination in respect of the Proposed

Transaction. The Commission communicated this position to the Parties, and on this basis, the Parties withdrew the KBC Proposal.

1.50 On 23 May 2022, BOI submitted to the Commission final proposals under section 20(3) of the Act (the "Proposals") with a view to the Proposals becoming binding on BOI if the Commission takes the Proposals into account and states in writing that the Proposals form the basis or part of the basis of its determination under section 22 of the Act in relation to the Proposed Transaction. The Proposals are appended to this determination.

2. INDUSTRY BACKGROUND

Introduction

2.1 The Parties are both active in the provision of banking services in the State. This section firstly provides an overview of the Irish retail banking sector including the role of the Irish Government and the relevant regulatory framework in which the providers of retail banking services in the State operate. The section then focuses specifically on the provision of mortgage lending in the State, describing in particular: (i) from where demand for mortgage lending arises; (ii) an overview of mortgage lending; (iii) the various mortgage lending distribution channels; (iv) the different elements of switching; (v) the competitors active in the provision of mortgage lending; and, (vi) potential barriers to entry.

Retail banking services

2.2 Retail banking comprises all banking services provided to private individuals and small enterprises, typically including:

(a) Deposit and account services: current accounts, savings accounts, cash deposits, cheque collection;

(b) Payment services: ATM services, payment card issuing, credit transfer, direct debit, standing orders and cheques;

(c) Lending: personal loans, small business loans, consumer credit, overdraft facilities, mortgages; and,

(d) Investment Products: mutual funds, pension funds and securities brokerage and custody services.

Providers of retail banking services in the State

2.3 At present, there are five full service retail banks operating in Ireland. AIB, BOI and PTSB are Irish incorporated banks, while Ulster Bank and KBC are subsidiaries of foreign banking groups, namely, NatWest Group plc and KBC Group N.V., respectively.

2.4 In addition to retail banks, a number of non-bank finance providers also operate in the State, including specialist lenders such as Avant Money, Dilosk and Finance Ireland, as well as An Post and the credit union network. Some retail banking services are provided, such as payment and transaction services, through fintech companies, such as Revolut and N26.

2.5 Figure 1 below sets out the different providers of a retail banking service(s) in the State.

Figure 1: A snapshot of providers of a Retail Banking Service(s) in the State, 2021

Source: BPFI "Future of Retail Banking in Ireland" Report (2021)[27]

Role of the Government in the Irish banking sector

2.6 In 2009, to assist in addressing the difficulties brought about by the financial crisis, the Government utilised the assets of the National Pension Reserve Fund to invest in Irish banks and contribute to the EU/IMF Programme of Financial Support for Ireland.[28] These include investments in AIB, BOI and PTSB.[29]

2.7 The State holds 70.97% of AIB's shares, an equity stake below 4% in BOI[30] and a 74.92% shareholding in PTSB as at 23 May 2022.[31] Government policy is to return the banking sector to private ownership in a phased manner that maximises the recovery value to the taxpayer. Each of the banks remain separate economic units with independent powers of decision and their respective boards and management teams retain responsibility and authority for determining strategy and commercial policies (including business plans and budgets) and conducting

[27] https://bpfi.ie/wp-content/uploads/2021/09/BPFI-Future-of-Retail-Banking-in-Ireland-Report.pdf.

[28] https://www.audit.gov.ie/en/find-report/publications/2011/2010-annual-report-chapter-08-national-pensions-reserve-fund.pdf.

[29] https://www.gov.ie/en/organisation-information/f95734-the-shareholding-and-financial-advisory-division/.

[30] https://www.irishtimes.com/business/financial-services/state-s-bank-of-ireland-stake-falls-below-6-1.4798784.

[31] https://www.gov.ie/en/publication/066a28-banks/.

day-to-day operations. In respect of the mortgage sector specifically, it is worth referring to the Government Shared Equity Scheme. Part of the Government's *Housing for All*[32] programme has seen the introduction of a shared equity scheme for First Time Buyers, the "First Homes Scheme." Under this scheme, the State and participating banks will pay up to 30% of the cost of a new home in return for a stake in the home, or a maximum of 20% if the borrower is availing of the Help-to-Buy incentive.[33] The borrower can buy back this stake at any time.[34]

2.8 The First Homes Scheme will open for applications in July 2022, and it is anticipated that the total amount of the funding that will be available to the special purpose vehicle funded by the State and participating mortgage lenders in the period from 2022 to 2025 will be in the region of €400 million.[35] At present, the First Homes Scheme is set to include retail banks only, and one non-bank lender informed the Commission that, as this shared equity scheme is open to banks only, it places non-bank lenders at a disadvantage.[36]

Regulatory framework

2.9 The CBI regulates more than 10,000 firms providing financial services in Ireland and overseas. The objective of the CBI's regulatory role is to safeguard financial and price stability, consumer protection, and market integrity. The financial crisis was caused by an excessive expansion of credit and of the financial system more broadly. Consequently, across the world authorities responsible for promoting financial stability took measures to reduce the risk of such systemic crises reoccurring through the enactment of macro-prudential policies. These regulatory policies are aimed at the promotion of the stability of the financial system as a

[32] Information on *Housing for All*, available at: https://www.gov.ie/en/publication/ef5ec-housing-for-all-a-new-housing-plan-for-ireland/.

[33] Information on the *Help-to-Buy* Scheme, available at: https://www.revenue.ie/en/property/help-to-buy-incentive/index.aspx.

[34] https://www.citizensinformation.ie/en/housing/owning_a_home/help_with_buying_a_home/affordable_housing.html#:~:text=The%20First%20Home%20scheme%20will,called%20the%20First%20Home%20Scheme.

[35] See the CBI's *Financial Stability Perspective on the First-Home Shared Equity Scheme,* available at: https://www.centralbank.ie/docs/default-source/publications/financial-stability-notes/a-financial-stability-perspective-on-the-first-home-shared-equity-scheme.pdf.

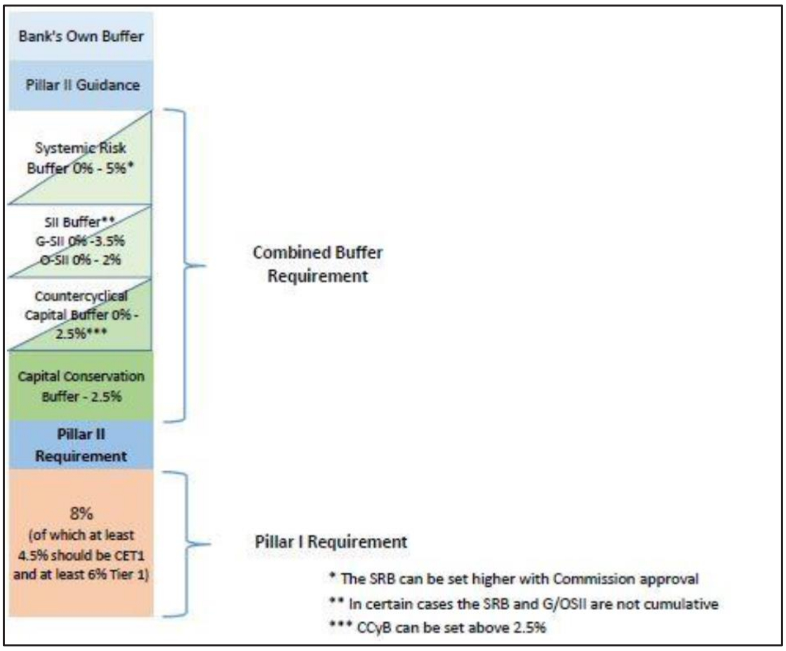
[36] See page 2 of the Avant Money Call Note, dated 6 December 2021.

whole.[37] However, the measures introduced to implement these policies impact on the ability and profitability of banks to engage in mortgage lending in the State.

Capital Requirements

2.10 Following the financial crisis, EU Member States implemented a framework for setting minimal capital requirements for banks. In 2013, the Capital Requirements Directive ("CRD") and the Capital Requirements Regulations were agreed.[38] Figure 2 below illustrates the range of requirements to which banks may be subject. These requirements are summarised below.

Figure 2: Illustrative Capital Requirements for Banks



Source: Department of Finance overview of Capital Requirements and Macro-prudential Policy[39]

<u>Pillar I Requirement</u>

[37] See the <u>CBI's macro-prudential policies</u>.

[38] As set out in Capital Requirements Directive IV (Directive (EU) 2013/36) and the Capital Requirements Regulation (Regulation (EU) 575/2013), as amended by the Capital Requirements Directive V (Directive (EU) 2019/878) available at: https://eur lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:176:0338:0436:En:PDF and the Capital Requirements Regulation II (Regulation (EU) 2019/876) available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0876&from=EN.

[39] Department of Finance overview of Capital Requirements and Macro-prudential Policy https://assets.gov.ie/6056/280119120125-51f2f5d31bb9471cb0ecb8c46ef5cb94.pdf.

2.11 The Pillar I Requirement is the regulatory minimum amount of capital which banks must hold. This is a total capital ratio of 8% of their risk weighted assets ("RWA"). A minimum of 4.5% of the RWAs must be Common Equity Tier 1 ("CET1") and at least 6% of RWAs should be met with Tier 1 capital. The Pillar 1 requirement applies to all banks uniformly.[40]

Pillar II Requirement

2.12 The Pillar II Requirement is an additional capital requirement that may be applied by competent authorities to banks on a case by case basis. It is based on a bank's specific risks and assesses whether it has sufficient capital to address them.[41]

Combined Buffer Requirements

2.13 The Combined Buffer Requirement is the collective term for the four capital buffers, these are:

(a) Capital Conversion Buffer: A uniform requirement applied to all banks fixed at 2.5% of a bank's total RWA; [42]

(b) Global/Other Systemically Important Institution ("O-SII"): The objective of the O-SSI Capital Buffer is to reduce the probability of a failure of a systemically important institution.[43]

(c) Countercyclical Capital Buffer: A time varying capital requirement designed to make the banking system more resilient and less pro-cyclical by requiring banks to hold more capital during periods of strong capital growth and growing systemic risk; and,

[40] Department of Finance overview of Capital Requirements and Macro-prudential Policy https://assets.gov.ie/6056/280119120125-51f2f5d31bb9471cb0ecb8c46ef5cb94.pdf.

[41] Department of Finance overview of Capital Requirements and Macro-prudential Policy https://assets.gov.ie/6056/280119120125-51f2f5d31bb9471cb0ecb8c46ef5cb94.pdf.

[42] RWA density measures how a bank's assets are adjusted for risks associated with those assets.

[43] See the CBI's Systemically Important Institutions.

(d) Systemic Risk Buffer: Designed to mitigate long-term, non-cyclical risks which may have serious negative consequences for the real economy.

2.14 The CBI may utilise the macro prudential policy instruments as outlined above to mitigate against the risk of a disruption to the provision of financial services, caused by an impairment of all or parts of the financial system. The CBI's mortgage measures were introduced to achieve the same objective.

CBI Mortgage Measures

2.15 The CBI's mortgage measures were introduced in 2015 in response to the financial crisis, when losses on residential mortgages, following a prolonged period of unsustainable lending standards, were a primary cause of the banking crisis.[44] The CBI's mortgage measures aim to increase both bank and borrower resilience and mitigate the risks of credit-house price spirals emerging, by limiting the Loan-to-Value ("LTV") and Loan-to-Income ("LTI") ratios that apply to new residential mortgage lending.

2.16 LTV limits require borrowers to have a deposit of a certain amount before they will be offered a mortgage. There are different limits in place for different types of borrower, with First Time Buyers required to have a 10% deposit; second-time and subsequent buyers required to a have a 20% deposit; and Buy-to-let buyers required to have a 30% deposit. An LTI limit of 3.5 times a borrower's gross annual income applies to applications for a mortgage for a principal dwelling home.

Measures relating to non-performing loans ("NPLs")

2.17 Following the financial crisis, there was a rapid increase in the number of NPLs held by European banks and financial institutions. A loan is considered non-performing when more than 90 days pass without the borrower paying the agreed instalments, or when there are indications that the borrower is unlikely to repay

[44] CBI explainer on the Mortgage Measures, available at: https://www.centralbank.ie/consumer-hub/explainers/what-are-the-mortgage-measures.

the loan without realisation of collateral.[45] The European Central Bank (the "ECB") has noted that high levels of NPLs negatively impact the economy[46] by, for example, holding up bank capital that could be used for lending, reducing bank profitability and raising funding costs.[47]

2.18 As part of its response to the crisis in the State, the Irish Government created the National Asset Management Agency in 2009, to reduce uncertainty over potential future losses on Irish banks' balance sheets. In 2014, the ECB through the 'ECB Banking Supervision' programme addressed issues concerning asset quality in European banks.[48] Subsequently, it became necessary for banks to deleverage risk and to reduce their levels of NPLs.[49] In order to do so, banks disposed of a large portion of NPLs through loan sales to unconnected third parties.

2.19 More recently, in July 2017, the Council of the European Union adopted an "Action Plan to Tackle Non-Performing Loans in Europe", combining various measures by national governments, bank supervisors and the EU institutions to improve the tools and incentives for banks to proactively address NPLs.[50] In October 2018, the EBA published its "Guidelines on management of non-performing loans" ("EBA Guidelines").[51] The EBA Guidelines set out the need for the development of a non-performing exposure ("NPE")[52] strategy for the reduction of the number of NPEs

[45] The European Banking Authority ("EBA") introduced a harmonised definition of NPLs across European countries in 2014. See page 14 of the Merger Notification Form.

[46] See page 4 of the EBA's *Guidance to Banks on non-performing loans,* available at: https://www.bankingsupervision.europa.eu/ecb/pub/pdf/guidance_on_npl.en.pdf.

[47] See the International Monetary Fund ("IMF") discussion *A Strategy for Resolving Europe's Problem Loans*: https://www.imf.org/external/pubs/ft/sdn/2015/sdn1519.pdf.

[48] See page 4 of the ECB's *to Banks on non-performing loans,* available at: https://www.bankingsupervision.europa.eu/ecb/pub/pdf/guidance_on_npl.en.pdf.

[49] See for example https://www.irishtimes.com/business/financial-services/ecb-target-impossible-without-loans-sale-ptsb-says-1.3435544.

[50] See press release from the Council of Europe titled *Council Conclusions on Action Plan to Tackle Non-Performing Loans in Europe*, available at: https://www.consilium.europa.eu/en/press/press-releases/2017/07/11/conclusions-non-performing-loans/

[51] See the EBA Guidelines at: https://eba.europa.eu/sites/default/documents/files/documents/10180/2425705/371ff4ba-d7db-4fa9-a3c7-231cb9c2a26a/Final%20Guidelines%20on%20management%20of%20non-performing%20and%20forborne%20exposures.pdf?retry=1.

[52] Non-performing exposures, as defined in Annex V to Commission Implementing Regulation (EU) 680/2014, are a credit institution's material exposures that are either more than 90 days past due, or where the debtor is assessed as unlikely to pay his or her credit obligations in full without realisation of collateral. Non-performing exposure is essentially an umbrella term which covers a credit institution's total risk positions, of which NPLs are only one example.

on a bank's balance sheet for banks with a high NPE level. The gross NPL ratio is used to determine whether a bank has a high NPE level, with a 5% NPL ratio triggering the need to develop NPE strategies.

Potential consequences of regulatory measures for banks and mortgage lending in Ireland

2.20 While the CBI's bank capital instruments and mortgage measures were introduced to ensure stability and resilience in the financial system, such requirements for Irish banks may have additional consequences.

2.21 A BPFI report based on information gathered from the five Irish banks, the ECB and EBA found that RWA density on mortgage loans in Ireland is significantly higher than the average for comparable European countries.[53] This requires Irish banks to hold more equity to issue a mortgage than other European banks, which in turn increases the price of the mortgage for the customer. The BPFI report noted at the end of 2019, Irish mortgage RWA was 37%, whereas the European average was around 13%, meaning that Irish banks are required to hold more capital than banks in other EU countries to counter the risk of unexpected losses.[54] Furthermore, research from the EBA suggests that a one percentage point increase in capital requirements may reduce bank lending by as much as 8%.[55]

2.22 At the Oireachtas Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach, on 23 February 2021, representatives from Ulster Bank stated that Irish banks are required to keep a higher level of capital reserves than is the case in the UK or elsewhere in Europe, and that this impacts on a shareholder's return on capital.[56] Reports from 2021 suggested that Ulster Bank is required to hold equity capital reserves equivalent to about 28% of RWA; this is more than double

[53] RWA density measures how a bank's assets are adjusted for risks associated with those assets.

[54] Page 5 of the BPFI's "*Irish Mortgage RWA Density Analysis Project*", dated January 2021, available at: https://bpfi.ie/wp-content/uploads/2021/02/Final-BPFI-RWA-Report.pdf.

[55] See page 30 of the EBA's working paper series "*The Real Effects of Bank Capital Requirements*", dated June 2017, available at: https://www.esrb.europa.eu/pub/pdf/wp/esrbwp47.en.pdf?28bb787723d7bf33c385ac16156e3a88.

[56] See page 22 of the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach on 23 February 2021, available at: https://data.oireachtas.ie/ie/oireachtas/debateRecord/joint_committee_on_finance_public_expenditure_and_reform_and_taoiseach/2021-02-23/debate/mul@/main.pdf.

both the EU average and what is required of Ulster Bank's UK shareholder, NatWest.[57] In its announcement in February 2021, NatWest cited the difficulties in generating long term sustainable returns as the rationale behind Ulster Bank's withdrawal from all banking activities in the State. In the Merger Notification Form, the Parties state that the rationale for the Proposed Transaction and the resulting withdrawal of KBC from the Irish banking sector concerns the challenge faced by KBC in achieving an acceptable level of return on investment and sustainable profitability within a reasonable timeframe.[58]

2.23 It has been reported that the average interest rate on a new mortgage in the State, 2.69% as of December 2021, is the highest in the euro zone and more than double the currency bloc's average rate.[59] An analysis by the stockbroking firm, Goodbody, said the capital charge[60] in the State on a bank home loan equates to 0.5 percentage points of a mortgage interest rate, 2.6 times the EU figure.[61] Irish funding costs, at 0.4 percentage points, are almost a third higher, while loan impairment charges account for 0.2 percentage points locally, compared to 0.12 across the EU.[62]

2.24 Aside from the difference in capital costs for Irish banks versus European banks, it has been observed that the most significant difference is in running costs, including staff, IT spending, levies and other general overheads. An analysis carried out by Goodbody estimated that operating costs account for 1.05 percentage points of the average Irish mortgage interest rate, compared to 0.65

[57] https://www.irishtimes.com/business/financial-services/ulster-bank-set-to-exit-irish-market-after-more-than-160-years-1.4487912.

[58] See section 1.1 of the Merger Notification Form.

[59] https://www.centralbank.ie/docs/default-source/statistics/data-and-analysis/credit-and-banking-statistics/retail-interest-rates/interest-rate-statistics-december-2021.pdf?sfvrsn=5

[60] Capital charge represents the cost in a bank's pricing resulting from capital holding requirements.

[61] https://www.irishtimes.com/business/financial-services/more-non-bank-lenders-will-enter-market-mortgage-chief-1.4741009

[62] *Ibid.*

percentage points across the EU.[63] Goodbody believes that the difference arises due to the scale of the Irish economy, rather than relative inefficiency.[64]

Regulatory framework for non-bank lenders

2.25 It worth noting that non-bank lenders are not subject to the same capital requirements as those faced by retail banks set out in paragraphs 2.10 to 2.24 above. Non-bank lenders such as Finance Ireland,[65] Dilosk[66] and Avant Money[67] are registered with the CBI as "retail credit firms," a firm that provides credit directly to individuals.[68] The CBI's retail credit firm authorisation process requires applicants to provide information to the CBI such as business plans, detail on sources of funding and the ability of a lender to withstand shocks to funding sources[69]

2.26 In addition, "*A Retail Credit Firm is required to have a documented credit risk strategy in place which must be approved by its management body and must take into account the Retail Credit Firm's:*

(a) *business model;*

(b) *overall risk appetite;*

(c) *financial condition and funding capacity;*

(d) *credit-granting activities as well as the management of non-performing loans; and*

[63] *Ibid.*

[64] "*The cynics might argue that the higher opex cost in Ireland is the result of a less efficient banking system, so is costing customers higher pricing of c.30-35bps, but the reality is that banking is a scale game with a lot of fixed costs (levies, infrastructure, regulatory costs, digital investment etc) which is shared over a smaller pool of assets in an Irish context as a smaller financial system/economy, driving up costs*". Goodbody equity and credit research note, dated 1 July 2021, 'Irish Banks'.

[65] Finance Ireland on the CBI register.

[66] Dilosk on the CBI register.

[67] Avant Money on the CBI register.

[68] See the CBI's description of retail credit firms, here.

[69] See paragraph 3.7 of the CBI's Authorisation Requirements and Standards for Retail Credit Firms.

(e) *activities where credit risk can be significant."*[70]

2.27 CBI oversight of retail credit firms is also concerned with the sales process, provision of information to consumers and complaints handling. Retail credit firms are subject to the Consumer Protection Code,[71] the Code of Conduct on Mortgage Arrears[72] and the Minimum Competency Code.[73] The CBI's Mortgage Measures, the lending rules relating to LTV and LTI, apply to both banks and non-bank lenders.

2.28 Non-bank lenders in the EU are subject to regulatory oversight from the Alternative Investment Fund Managers Directive[74] which ensures that non-bank lenders: (i) match the liquidity arrangements of their funds with the liquidity profile of their lending activity; (ii) undertake rigorous borrower due diligence and credit underwriting procedures on any loans they originate; (iii) implement risk management systems, including stress testing, to identify, monitor and manage risk arising from their lending activity; (iv) are transparent in their use of leverage to their investors and national competent authorities; and, (v) provide detailed reporting to investors and national competent authorities.[75]

2.29 The differing requirements in holding capital has a material impact on how banks and non-bank lenders operate in the State, with capital requirements estimated to account for an additional 0.5 percentage points on a mortgage interest rate.[76] It appears that some of the capital and operating costs incurred by Irish banks are not incurred by the non-bank lenders, although the latter will also have operating costs and funding costs and, as they operate on a much smaller scale, may also

[70] See paragraph 4.1 of the CBI's Authorisation Requirements and Standards for Retail Credit Firms.

[71] Consumer Protection Code 2012.

[72] Code of Conduct on Mortgage Arrears 2013.

[73] Minimum Competency Code 2011.

[74] Available at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:174:0001:0073:EN:PDF.

[75] See the AIMA's research on non-bank lending in Europe, available at: https://www.aima.org/educate/aima-research/non-bank-lending-in-the-european-union.html.

[76] https://www.irishtimes.com/business/financial-services/more-non-bank-lenders-will-enter-market-mortgage-chief-1.4741009.

face challenges in achieving sufficient economies of scale to be profitable and sustainable in the longer term.

2.30 It is worth noting, however, that at a European level and separate to the capital requirements imposed by the CBI, an international bank which owns or provides funding to a non-bank lender active in the State, is subject to the same capital requirements set by the EBA as an Irish retail bank. For example, the EBA sets capital requirements for each of AIB, BOI and Bankinter alike.[77]

Mortgage lending in the State

2.31 As set out in further detail in section 4 below, the Commission has taken the core area of overlap in the Parties' activities, the supply of mortgage products, as a starting point for its assessment of the Proposed Transaction. Therefore, the remainder of this section examines mortgage lending in the State, in particular: (i) types of mortgages; (ii) demand for mortgage lending; (iii) an overview of the mortgage lending process and distribution channels; (iv) mortgage switching; (v) an outline of competitors in the provision of mortgage lending; and, (vi) potential barriers to entry, including insights on consumer behaviour where appropriate.

(i) Types of Mortgages

2.32 Mortgage lending refers to the provision of a number of related products offered by mortgage lenders to customers[78] to purchase a property. Typically, as mortgage loans are secured against the value of a property and customers can borrow large sums, mortgages are provided over a longer duration than other personal loans.

2.33 There are several features of mortgage products that may be available to customers from mortgage lenders, including those listed below. However, these are not necessarily mutually exclusive and it is important to note that a borrower could obtain a mortgage from a lender that includes different elements of the features listed below:

[77] See page 3 of the Avant Money Call Note, dated 9 February 2022.

[78] The terms "customer" and "consumer" are used interchangeably in this Determination.

(a) Interest only mortgage customers only repay the interest on their outstanding mortgage balance every month, not the capital ("Interest Only");

(b) Repayment mortgage customers pay the interest on their outstanding mortgage balance every month as well as an additional amount representing a portion of the capital;

(c) Fixed rate mortgages keep the customer's monthly repayments at the same amount for a fixed term ("Fixed Rate"), although typically this is the case for introductory offers only beyond which customers may move to a variable rate mortgage. Of new mortgage lending in 2020, Fixed Rate products were selected by 90% of First Time Buyers and 74% of second and subsequent buyers[79];

(d) Variable rate mortgages charge an interest rate on the loan that varies over time ("Variable Rate"). Different types of Variable Rate mortgages include (i) standard variable rate ("SVR") mortgages which are linked to the rates of the ECB. SVRs are the most common Variable Rate product; (ii) tracker mortgages are mortgage loans which specify that the interest rate charged will be set at a specified margin, typically 1-1.3%, above the ECB base rate for the lifetime of the loan ("Tracker Mortgages")[80]; (iii) capped rate mortgages in which the interest rate is variable but cannot rise above a certain fixed rate; (iv) temporary discounted rates below the SVR offered as incentives to new customers ("Discounted Rate"); and, (v) a LTV rate which is determined by the size of the amount requested to be borrowed compared to the value of the property to be purchased;

(e) Split rate mortgages offer customers the option of splitting their mortgage into partially fixed and variable ("Split Rate");

[79] See the CBI's New Mortgage Lending - Data and Commentary, available at: https://www.centralbank.ie/financial-system/financial-stability/macro-prudential-policy/mortgage-measures/new-mortgage-lending-data-and-commentary.

[80] Tracker Mortgages are no longer offered to new customers by mortgage lenders. In this Determination, when referring to Variable Rate mortgages, Tracker Mortgages are excluded.

(f) Buy-to-let mortgages are intended for landlords purchasing a property to be rented out to tenants. Buy-to-let are offered in two forms, business Buy-to-let, aimed at professional landlords operating rental properties as a business; and consumer Buy-to-let, aimed at individual, part-time landlords. Buy-to-let mortgages may be more difficult to obtain than typical residential mortgages, as many lenders will typically offer a lower LTV rate than they may for a residential property, and they may also set stricter limits on the maximum value of the property;[81]

(g) Green mortgages offer a lower interest rate to purchasers of energy efficient homes ("Green Mortgages"). Green Mortgages are available from AIB, Haven[82] and BOI. In most cases, the home being purchased requires a building energy rating ("BER") of B3 or higher to qualify for a Green Mortgage; and,

(h) Some providers offer so-called "High Value Mortgages", where customers seeking to purchase a mortgage in excess of a certain value may be offered a different interest rate for certain fixed term periods. AIB and PTSB currently offer High Value Mortgages for mortgage amounts in excess of €250,000; and BOI currently offers High Value Mortgages for mortgage amounts in excess of €300,000. Typically, the interest rate charged on High Value Mortgages are less than those charged for the corresponding non-High Value Mortgage of the same fixed term.

(ii) Demand for mortgage lending

2.34 Mortgage lenders offer the products outlined in paragraph 2.33 above to different types of customers. For the purposes of this Determination, demand for mortgage lending can be understood to arise from three customer types in particular:

(a) First time buyers are defined by the CBI as "*a borrower to whom no housing loan has ever before been advanced. Where the borrower under*

[81] LTV limits as they relate to Buy-to-let mortgages are described in paragraph 2.16 above.

[82] Haven Mortgages Limited ("Haven") is a wholly owned subsidiary of AIB.

a housing loan is more than one person and one or more of those persons has previously been advanced a housing loan, none of those persons is a first-time buyer"[83] ("First Time Buyers");

(b) Customers that are in the process of relocating from one property to another may require a new mortgage to ensure that their mortgage is suitable for their new home ("Movers"); and,

(c) Customers that decide to refinance an existing mortgage from one financial institution to another ("Switchers"). Switchers may take this decision, for example, if they can switch to a lower interest rate. In general, switching in the State has tended to be relatively limited, for example, in 2019, less than 3% of mortgages in Ireland were switched, despite CBI estimates that as many as 3 in 5 mortgages could save €1000 within one year of switching.[84] Information gathered from the Parties provides an insight into the behaviour of customers when they reach the end of introductory mortgage interest rate offers.[85] On the basis of historic trends of its mortgage book, BOI estimates that on average around [✂]% of Fixed Rate customers reaching the end of their term fully redeem or switch mortgage, approximately [✂]% roll to a variable rate (neither leave nor re-fix but retain flexibility to leave) and around [✂]% of customers re-fix.[86] [✂].

2.35 It is worth noting that mortgage lenders compete not only for the origination of new customers, namely First Time Buyers, but also for existing mortgage customers, such as Movers and Switchers. The Commission notes that the transfer of stocks of existing mortgages (e.g., through re-fixing, moving, top-up,

[83] https://www.centralbank.ie/docs/default-source/news-and-media/press-releases/faq---new-regulations-on-residential-mortgage-lending.pdf?sfvrsn=2.

[84] See the CBI's review of switching activity in the mortgage market from 2020, available at: https://www.centralbank.ie/docs/default-source/publications/economic-letters/economic-letter-12-mortgage-switching.pdf?sfvrsn=4.

[85] See page 24 of the BOI document "[✂]", dated [✂] ([✂]) ("[✂]").

[86] See page 24 of [✂].

switching, etc.) is a really important feature of how the market operates and impacts greatly on the competitive dynamic in the market. With this in mind, the market is not just about the origination of brand-new mortgages.

2.36 However, across all three types of customer, demand for mortgage lending is influenced by common factors. Both the Commission in its 2017 Mortgage Options Paper[87] and the UK's Financial Conduct Authority[88] (the "FCA") in 2015 note that, for consumers, the most important consideration is how much credit they will be able to borrow, as this will determine the property they can purchase. The FCA found this to be the case for First Time Buyers and Movers in particular, whereby the focus on the property itself may inhibit a borrower from engaging fully with the implications of their decisions regarding mortgage features. Beyond this point, consumers' priority shifts to the initial monthly repayment amount. Consumers usually have a target level of repayment in mind which is based on their finances and lifestyle. It is within this context that consumers are concerned with mortgage repayments.

2.37 Because of this set of priorities, consumers may, in effect, exhibit high levels of time-discounting, focusing on up-front costs and benefits more than the lifetime implications of the mortgage. A 2019 ESRI study[89] found that consumers display steep time discounting and weight short-term financial outcomes substantially more strongly than long-term outcomes. Therefore, as consumers search for low interest rates initially, the length of the repayment term and the complexity of other mortgage product conditions can result in consumers paying more in the long run. This appears to have been confirmed by the Commission's market investigation which suggested that customers tend to focus on the headline rate more than the annual percentage rate of charge ("APRC"),[90] which is more

[87] See the Commission's Mortgage Options Paper, dated 15 June 2017, which can be accessed at: https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/06/CCPC-Mortgages-Options-Paper.pdf.

[88] See the ESRO report prepared for the FCA, dated July 2015, which can be accessed at: https://www.fca.org.uk/publication/research/understanding-consumer-expectations-of-the-mortgage-sales-process-esro.pdf.

[89] See the ESRI's paper into perceptions on switching, dated February 2019, which can be accessed at: https://www.esri.ie/system/files/publications/WP612_0.pdf.

[90] APRC calculates the total amount of interest that will be paid over the entire period of the loan.

important in terms of understanding the long-term cost of the mortgage.[91] This effect would seem likely to also apply with respect to cashback mortgages. As discussed further below, customers who avail of cashback tend to pay more over the lifetime of the mortgage, yet it remains a very popular choice among consumers.

2.38 Research undertaken by the Commission in 2016[92] found that, although only 52% of mortgage holders were aware of the interest rate they paid on their mortgage, 86% were aware of their monthly repayment amount. With such focus placed on the monthly repayment, consumers are often flexible on other conditions of a mortgage, such as the repayment term, for instance, in order to achieve a targeted monthly figure. Even though purchasing a home is likely the most important financial decision that most consumers will ever make, consumers' choices are nonetheless predominantly short-term, with behaviour driven by the search for the most favourable initial deal – consumers are focused on the property, not the mortgage.[93]

2.39 When it comes to mortgages:

> *"...Consumers often enter the market without knowing exactly what kind of mortgage they want or need, and therefore are susceptible to outside influence.*
>
> *... Given the complexity of loan pricing and the variation of loan features, consumers have difficulty understanding alternative mortgage products.*
>
> *... Given that the mortgage transaction has multiple time and cost dimensions, consumers often are unable to determine what actual risks they face over time.*

[91] See page 2 of Irish Mortgage Corporation Call Note, dated 21 December 2021.

[92] See the Commission's Mortgage Holding & Switching: Market Research Findings, conducted by Behaviour & Attitudes, dated 27 March 2017, which can be accessed at: https://www.ccpc.ie/business/research/market-research/mortgage-holding-switching-2016/.

[93] See page 4 of the ESRO report prepared for the FCA, dated July 2015, which can be accessed at: https://www.fca.org.uk/publication/research/understanding-consumer-expectations-of-the-mortgage-sales-process-esro.pdf.

... While standard economic theory assumes that consumers shop for the best available price and terms, even the most sophisticated borrowers often find it difficult to effectively shop for mortgages”.[94]

2.40 Understanding how the mortgage process works and identifying the most appropriate products can be difficult for consumers. This is exacerbated by the introduction of additional elements such as up-front cashback offers and loyalty discounts. The more product attributes that a consumer is required to consider when choosing between products, the more difficult it is for the consumer to accurately assess the options available. When it comes to sourcing a mortgage, the CBI’s 2017 Mortgage Switching Research paper[95] noted the general perception that getting a mortgage is a complex and confusing process, with issues such as the level of information required, technicalities, legal fees and stamp duty often cited as concerns.

2.41 Furthermore, consumers’ lack of understanding of mortgage products is clear from research surveys carried out by both the Commission and the CBI. In 2017, for the Commission, Amárach Research conducted focus groups examining mortgage switching and found one core theme to be that of consumers’ limited knowledge about mortgages and how they work, stating that:

“the lack of knowledge makes them risk averse… They fundamentally believe that mortgages and mortgage switching is complicated”.[96]

2.42 The Amárach Research study concluded that this lack of knowledge and confidence is further compounded by consumers’ inability to recognise their own power as consumers in the process:

[94] See pages 2-4 of Ren S. Essene and William Apgar “Understanding Mortgage Market Behaviour: Creating Good Mortgage Options for All Americans”, dated 25 April 2007 https://studylib.net/doc/14810795/understanding-mortgage-market-behavior--creating-good-mor

[95] See the CBI’s Mortgage Switching Research, dated April 2017, which can be accessed at: https://www.centralbank.ie/docs/default-source/publications/consumer-protection-research/mortgage-switching-research.pdf?sfvrsn=7.

[96] See Amárach Research’s Mortgage Switching Report for the Commission, dated February 2017, which can be accessed at: https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/06/Amarach-Mortgages-Study.pdf.

> *"They don't engage with the fact that the lender needs them as much as they need the lender, they don't understand how mortgages work and they seem to believe that the involvement of other players in the process, other than the borrower and lender creates an impenetrable complexity".*[97]

2.43 Research carried out in other jurisdictions produced similar findings. For example, the FCA noted that consumers appear unable to choose effectively between alternative products:

> *"Consumers' lack of understanding of the types of mortgage products available and reported absence of discussions with mortgage advisers around alternatives means that some consumers are finding themselves considering a particular product at the expense of others which may have been better suited to their needs and circumstances. Many found it difficult to fully explain what their chosen product offered ahead of others, and what the benefits of other mortgage products were".*[98]

2.44 While there are different types of customers such as First Time Buyers, Movers and Switchers, research findings consistently suggest that demand for mortgage lending is influenced by the fact that all customers regardless of type tend to be risk averse and require knowledge and capability to be able to correctly assess mortgage products. When the product set offered is further complicated by lenders through offers of cashback and loyalty discounts, consumers become even more unsure in their decision making.

(iii) Overview of mortgage lending and distribution channels

2.45 The following paragraphs outline key features of mortgage lending in the State. Beginning with a snapshot of the mortgage lenders that are active in the State, we then set out how mortgage interest rates are determined, followed by a

[97] *Ibid.*

[98] See page 22 of the ESRO report prepared for the FCA, dated July 2015, which can be accessed at: https://www.fca.org.uk/publication/research/understanding-consumer-expectations-of-the-mortgage-sales-process-esro.pdf.

description of the various features available in different mortgage products, including an illustrative summary of the products offered by lenders in the State. Finally, we look at the distribution channels used by mortgage lenders in the State.

Snapshot of mortgage lenders active in the State

2.46 In 2007, there were 10 mortgage lenders active in the State. Following the financial crisis, this fell to just 5 by 2013 with the merger of AIB and EBS,[99] the exit of Bank of Scotland (Ireland)[100] and Danske Bank,[101] the winding down of Anglo Irish Bank[102] and Irish Nationwide,[103] and the subsequent liquidation of the Irish Bank Resolution Corporation. Since then, there has been some limited new entry: Pepper,[104] an Australian firm which specialises in asset management and third party loan and servicing activities, began offering private dwelling home mortgages and Buy-to-let mortgages on a limited basis to Irish customers in 2016 before selling its mortgage origination platform to Finance Ireland in 2018;[105] Dilosk started offering Buy-to-let mortgage finance in the Irish market in 2017, having previously acquired the ICS Mortgage brand and portfolio in 2013 from BOI, following the European Commission's approval of a restructuring package for BOI;[106] and Avant Money entered in 2020.

2.47 At present there are 7 lenders offering mortgage products in the State. These lenders are AIB (including EBS and Haven), BOI, PTSB, KBC, Finance Ireland, Dilosk and Avant Money. On 29 October 2021, Ulster Bank ceased accepting mortgage applications from new customers. Ulster Bank has announced that it will no longer accept new mortgage applications from existing customers from close of business

[99] EBS d.a.c. ("EBS") is a wholly owned subsidiary of AIB.

[100] Bank of Scotland (Ireland) Limited.

[101] Danske Bank A/S ("Danske Bank").

[102] Anglo Irish Bank Corporation Limited.

[103] Irish Nationwide Building Society.

[104] Pepper Finance Corporation (Ireland) DAC trading as Pepper Money and Pepper Asset Servicing ("Pepper").

[105] See https://www.financeireland.ie/announcements/finance-ireland-announces-entry-into-irish-residential-mortgage-market/.

[106] See the European Commission's decision on the restructuring of BOI, dated 15 July 2010, available at: https://ec.europa.eu/competition/state_aid/cases/233382/233382_1163194_133_2.pdf.

on 10 June 2022, and it will no longer provide a mortgage approval in principle to new customers from 29 April 2022.[107]

How mortgage interest rates are determined

2.48 Mortgage interest rates are ostensibly the most important feature of a mortgage product. In 2015, the CBI published a report titled "*Influences on Standard Variable Mortgage Pricing in Ireland*"[108] which outlined the range of factors affecting the margin that banks charge on Variable Rate products and as a consequence the interest rate consumers pay. These factors include:

(a) The cost of funds – for banks, the gross return on lending must be higher than the cost of funding given the existence of operating costs and the risk of default. In the aftermath of the financial crisis, the predominant source of funding to Irish banks has been the retail channel through deposit funding. Non-bank lenders are funded through capital markets with costs linked to market rates;

(b) The credit risk associated with lending – the greater the scale of negative equity and indebtedness of borrowers, the higher the risk in lending;

(c) The operational costs of running a bank – outside of funding costs and asset performance, the efficiency with which the bank conducts its operations has a bearing on the overall level of profitability;

(d) The cost of capital – capital acts as a buffer to cover losses on a loan book. The cost of this capital had in the years prior to the 2015 CBI report significantly depended upon: (a) increased requirements in relation to the quality and amount of capital required to be held by banks; and (b) changes in the risk weighting applied to loans arising from loan losses. As this capital is invested by equity holders, a bank needs to generate some return to reward its owners for the risk that they have taken. The greater

[107] https://www.ulsterbank.ie/help-and-support/important-customer-notice.html

[108] https://www.centralbank.ie/docs/default-source/publications/correspondence/finance-reports/influences-on-svr-pricing-in-ireland.pdf?sfvrsn=2.

the amount of capital required, the higher the expected nominal return would be to cover its allocation; and,

(e) The market structure and competitive environment faced by each bank – simply put, the fewer the number of players, the more concentrated the market structure, which is an indicator of a less competitive market structure. Research indicates that less competitive markets are associated with higher lending margins.

2.49 While interest rates and the levels at which they are set are clearly an important feature of mortgage products, lenders have developed other features to try to make their mortgage product offerings more attractive.

Incentives Included in Mortgage Product offerings

2.50 We discuss here a number of product features that have been introduced by lenders in an effort to make their mortgage product offering more attractive. The most prominent of these in recent years has been cashback offers, which offer customers an upfront lump sum payment of cash based on the total value of their mortgage. There are other products which feature incentives that are not tied to the value of a customer's mortgage.

Percentage Cashback Mortgages

2.51 Percentage cashback mortgages are fixed or variable rate mortgages that pay out a cash lump sum at completion of drawdown of the mortgage ("cashback"), calculated as a percentage of the total value of the mortgage. Some cashback mortgages include additional cashback at later points in the mortgage term (BOI, for example, offer an additional 1% at the end of the fixed term to BOI current account customers[109]) or cashback on monthly payments (see PTSB's 2% cashback on monthly repayments offer[110]).

[109] https://personalbanking.bankofireland.com/borrow/mortgages/up-to-3-cashback-on-your-new-mortgage/

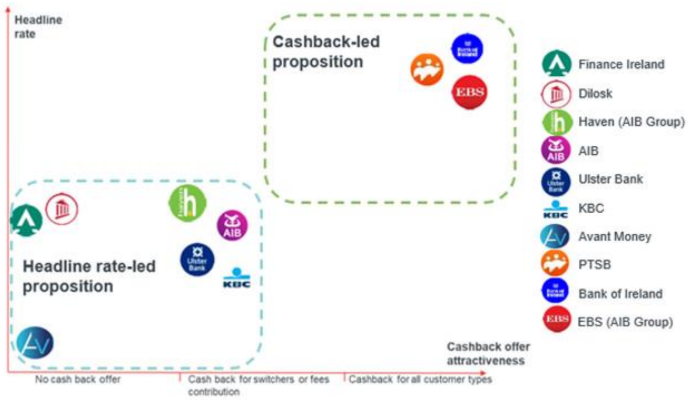
[110] https://www.permanenttsb.ie/mortgages/first-time-buyer-mortgage/

2.52 The first cashback mortgage offer was introduced in 2015 by BOI, with a 2% offer. PTSB and EBS introduced similar offers in 2016. Since then, BOI has introduced its 1% additional offer at the end of the fixed term offer, EBS has increased its offer to a flat 3% at drawdown, and PTSB has introduced its 2% cashback on repayments to First Time Buyers.

2.53 The benefits of cashback mortgages are up-front. Customers who choose to avail of cashback mortgages can receive a significant sum of money (2% cashback on a €300,000 mortgage is €6,000) immediately upon drawdown. These products may be particularly attractive to customers who may have low levels of funding after drawdown. The Commission's market investigation supports this, suggesting that cashback mortgages tend to be particularly popular with First Time Buyers, who may have used a significant portion or all of their savings to pay down the mortgage deposit.[111]

2.54 Cashback mortgages tend to have higher headline fixed rates than non-cashback mortgages. Figure 3, from the Parties' Phase 1 Determination Response, highlights this high-level grouping of cashback mortgages with higher headline rates, and non-cashback mortgages with lower headline rates.

Figure 3: Product Positioning in the Mortgage Market



Source: Phase 1 Determination Response, Figure 1

[111] See page 2 of the Irish Mortgage Corporation Call Note, dated 21 December 2021.

2.55 This does not mean, by itself, that cashback mortgages are worse value than non-cashback mortgages. By way of example, Table 1 shows the five-year and lifetime costs of a €300,000, 30-year, 5-year fixed term loan with an LTV of 75%. These costs are inclusive of all of offers (such as cashback or payments for legal fees) and ancillary costs (such as valuation fees).

Table 1: Five-year and lifetime mortgage costs (€300,000, 30-year, 5-year fixed term loan for a First Time Buyer with an LTV of 75%)[112]

	Five-year Cost		Lifetime Cost (re-fix after each 5-year term)		Lifetime Cost (SVR after 5-year term)	
	Cost	**Rank**	**Cost**	**Rank**	**Cost**	**Rank**
AIB	€70,805	8	€424,079	4	€444,281	4
Avant Money	€69,911	6	€418,221	2	€412,738	1
BOI	€67,039	3	€446,482	8	€498,277	9
Dilosk	€82,084	9	€491,266	9	€443,593	3
EBS	€64,633	1	€424,695	6	€471,955	7
Finance Ireland	€69,987	6	€418,617	1	€442,734	2
Haven	€66,741	2	€424,695	5	€449,220	6
KBC	€69,343	5	€422,617	3	€446,938	5
PTSB	€68,719	4	€440,573	7	€484,474	8

Source: CCPC website, 23 May 2022

2.56 However, Table 1 also shows that the three available cashback mortgages (BOI, PTSB, EBS, respectively) are the most expensive over the total lifetime of the mortgage, if the customer rolls off the fixed term onto that lender's SVR. If it is instead assumed that the customer continually re-fixes for five years at the end of the fixed terms, then Dilosk is the most expensive over the total lifetime[113], followed by BOI, PTSB and EBS, respectively. So, while the cashback may appear to compensate for the higher headline rate of the mortgage, cashback mortgages appear to offer significantly poorer value for money over the lifetime of the mortgage.

[112] This should not be interpreted as an overall summary of value for money of different lenders, as certain lenders compete more vigorously at specific term lengths or LTVs. This also excludes specific products such as High Value and Green mortgages, and Switcher incentives.

[113]

2.57 Switching mortgage providers at the end of the fixed term can make the SVR and the total lifetime cost of a mortgage irrelevant, from that customer's point of view. Customers can even switch from a cashback product to a cashback product and avail of cashback twice. However, due to combinations of switching barriers, consumer inertia or lack of understanding (see paragraphs 2.89 to 2.96) and the possibility of a customer's circumstances making it difficult or impossible to switch, a significant proportion of customers will not switch at the end of the fixed term of a cashback product. For example, within BOI's own mortgage customers, BOI has found that [✂]% re-fix their mortgage with BOI (with cashback not available to re-fixing customers); [✂]% leave BOI (redeem their mortgage); and [✂]% stay on BOI's variable rate.[114]

2.58 Therefore, an important difference between cashback products and non-cashback products is that cashback products can be very price-competitive in the short-term, such as over the duration of a fixed rate term. However, as they tend to incorporate higher interest rates (in particular, SVRs) than non-cashback products, they are considerably more expensive over the lifetime of the loan than non-cashback alternatives.

2.59 Cashback mortgages have been criticised recently:

(a) The Irish Independent reported on claims by a consumer advocate that "*[e]xisting customers of EBS are overpaying for their mortgages so the lender can offer cash-back incentives." The consumer advocate, Brendan Burgess, said that "cash-back deals were being used to distort the market*".[115]

(b) The Irish Times reported on a research paper which found that "*[cashback] mortgages might be more expensive than many believe*".[116]

[114] See page 25 of [✂].

[115] https://www.independent.ie/irish-news/ebs-accused-of-overcharging-existing-mortgage-holders-to-fund-cash-backs-40591501.html.

[116] https://www.irishtimes.com/business/personal-finance/cashback-mortgages-could-cost-borrowers-30-000-more-1.3734512.

The paper also noted that *"[n]ot only do cashback mortgages have higher interest rates in Ireland, but the differential between standard and cashback mortgages is significantly higher in Ireland than in either Canada or the UK."*

(c) In an appearance by AIB executives before the Oireachtas Finance Committee on June 30 2021, Deputy Jim O'Callaghan proposed that the "*purpose - whether it is intended or not - of cash-back mortgages appears to be to facilitate the application of higher mortgage rates?" In response to this, Mr Jim O'Keeffe of AIB responded that "a significant group of customers, probably 30% to 40% of the market, want cash-back as part of their solution. It works for them. They get it up front. They get the benefit of that. That is what they enjoy."*[117]

Other incentives

2.60 Some lenders offer financial incentives which are not tied to the value of the mortgage. For example, Haven, a subsidiary of AIB, offers €5,000 on mortgages over €250,000. KBC and Ulster Bank offer €1,500 towards professional fees for First Time Buyers.

2.61 A number of banks offer rewards to mortgage customers who have personal current accounts with them. BOI offers an additional 1% cashback at the end of the fixed term to current account customers. KBC offers a 0.2% discount on the interest rate to current account holders. AIB will waive the maintenance and transaction fees on current accounts used to pay an AIB mortgage.

2.62 EBS and KBC offer discounts on home insurance with the drawdown of mortgages on new homes.

2.63 Finally, some lenders offer specific financial incentives to Switcher customers. KBC offers €3,000 towards legal fees, which is double its offer to First Time Buyers. AIB

[117] https://www.oireachtas.ie/en/debates/debate/joint_committee_on_finance_public_expenditure_and_reform_and_taoiseach/2021-06-30/3/.

offers €2,000 towards legal fees. In December 2021, Finance Ireland and Avant Money both introduced a €1500 contribution to legal fees,[118] with Avant Money's incentive only being available to customers switching from Ulster Bank or KBC from January 1 2022 to March 31 2022.[119] These offers aim to attract Switchers by assisting with one of the main switching barriers, which is legal fees.

Illustrative Summary of Products Offered

2.64 Providers tend to focus on certain of the features outlined above in their mortgage offerings. This section seeks to give an illustration of the product features offered by each of the mortgage providers operating in the State.

2.65 The proposition offered by each lender can be broadly categorised as: AIB is offering attractive variable rates, BOI is offering attractive cashback mortgages, KBC is offering attractive deals to First Time Buyers and Switchers, Avant Money is offering attractive fixed rates, Dilosk is offering attractive overpay options (up to 20% of the value of the mortgage within a 12 month period) and Finance Ireland is offering very long fixed rates. Table 2 summarises each provider's offering for 5-year fixed term mortgages (60-80% LTV).

Table 2: Mortgage products offered in Ireland, 5-year fixed term (60-80% LTV) as of 17 February 2022

Lender	Headline Rate	SVR after the Fixed Term	Cashback	Fees or Switching Bonus	Overpay Facility
BOI	3%	4%	2% plus additional 1% after 5 years to remaining current account holders	No	Yes
PTSB	3%	3.85%	2% plus 2% of the mortgages payment for First Time Buyers	No	Yes

118 https://www.irishtimes.com/business/financial-services/non-bank-lenders-cut-mortgage-rates-in-face-of-kbc-and-ulster-exits-1.4744949

119 https://mortgage123.ie/switch-mortgage-avant-money/

EBS (AIB)	2.75%	3.7%	3% - 2% upfront and 1% in 5 years	4 months home insurance	Yes
Haven (AIB)	2.55%	3.15%	No	No	Yes
AIB	2.45%	2.95%	No	No	Yes
Ulster Bank	2.45%	3.7%	No	€1500 contribution to fees	Yes
KBC	2.45%	3.05%	No	€1500 contribution to professional fees, plus home insurance discount for Movers €3000 contribution to professional fees for Switchers	Yes
Finance Ireland	2.35%	2.95%	No	€1500 contribution to professional fees for Switchers	Yes
Dilosk	3.6%	2.7%	No	No	Yes
Avant Money	2.25%-2.35%	2.0%-2.2%	No	€1500 contribution for Switchers from KBC or Ulster Bank from 01/01/2022 to 31/03/2022	Yes

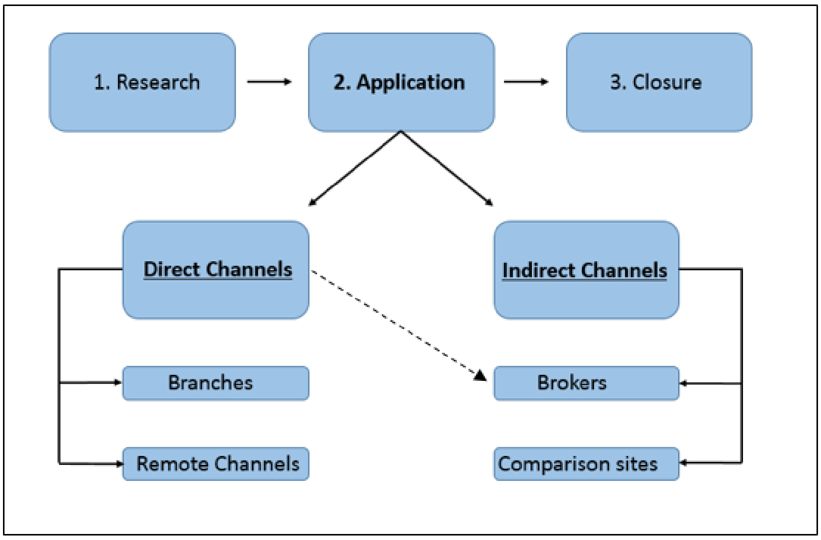
Source: The Commission Analysis

2.66 It is also worth noting that certain lenders may offer one rate for existing customers and a different rate for new customers. For example, KBC and AIB have one rate card for both new and existing customers, whereas PTSB has two rate cards, applying different mortgage interest rates across new and existing customers.

Mortgage Lending Channels

2.67 Mortgage products are supplied through a number of channels, though not every product is available through each of these channels. Figure 4 below presents an illustrative overview of the operation of the mortgage market. The market for mortgage lending includes not only lenders (either the traditional retail banks or non-bank lenders) and borrowers, but also independent financial advisors and intermediaries ("brokers"), which are described in further detail below.

Figure 4: Mortgage Product Distribution Channels



Source: The Commission's description of mortgage distribution.

2.68 Consumers will interact either directly with a lender, or indirectly through a broker with a number of mortgage lenders in order to obtain approval for the level of credit required to purchase a property. Lenders will compete for that consumer on the basis of price (i.e., the mortgage interest rate, fixed rates or cashback incentives) and non-price elements, for example, the speed of the approval process.

a) Direct Channels

2.69 When applying for a mortgage directly via lenders, it is up to customers to shop around and identify the various lenders and offers in the market, as well as choose the characteristics of mortgage which they intend to pursue. This can be a complex process as there are multiple lenders, offering multiple different types of product (e.g., cashback or non-cashback), with multiple different choices around elements such as length of fixed term, impact of LTV on rates offered, and more. There are tools available to these customers to assist in the process, including the CCPC's financial tools[120] as well as a number of independent comparison sites.[121]

2.70 In the direct channels such as in branch or online, traditional retail banks typically cross-sell by offering mortgage products to current customers of other retail banking products and customers of other lenders. For lenders without an established branch network, brokers act as an important distribution channel, as they reduce overheads for lenders by allowing them to avoid the set-up costs of their own branch network whilst still reaching potential customers.

b) Indirect Channels - Brokers

2.71 The other route that customers can take is to use the services of a mortgage broker. Mortgage brokers are regulated by the CBI[122] and authorised to: (i) offer a mortgage approval in principle to borrowers; (ii) provide advice to borrowers (including assistance with mortgage applications); and, (iii) conclude mortgage offers with borrowers on behalf of a mortgage lender. Customers may find a mortgage broker in several different ways, for instance, Brokers Ireland provide a search facility[123] of brokers available to customers; lenders may provide customers with a choice of brokers; and comparison websites may suggest products provided through a broker. There are over 400 independent brokers currently operating in the State.

2.72 Brokers have relationships with multiple, sometimes all, mortgage lenders in the State. When a customer comes to a broker seeking a mortgage, the broker will typically advise the customer based on that customer's criteria and the characteristics of mortgages available. Some of the criteria can include:

(a) the total sum of money required;

(b) the LTV;

[120] See https://www.ccpc.ie/consumers/money-tools/mortgage-comparisons/./.

[121] Such as bonkers.ie and switcher.ie.

[122] http://registers.centralbank.ie/DownloadsPage.aspx.

[123] Brokers Ireland search facility available at: https://brokersireland.ie/broker/?product=Mortgages&categories=All+Counties.

(c) whether cashback is desirable;

(d) whether they are interested in fixed rates and the potential length of fixed rate term; and,

(e) ability to overpay during the term of the loan and whether they have plans to move home during the term of the loan.

2.73 Brokers will also advise on the implications of different potential options. For example, if a customer is seeking a cashback mortgage, brokers will make them aware of the long-term implications of that in terms of the total cost of credit.[124]

2.74 Based on these and other criteria, mortgage brokers can recommend a number of options to the customer. If the customer wishes to proceed with any of these options, or with options not recommended, the broker will manage the mortgage application and advise the customer on the documentation required. Finally, the broker may conclude offers with the customer on behalf of the lender.

2.75 There are a number of reasons why a customer may wish to go to a broker. The Commission's market investigation during its review of the Proposed Transaction indicated that bad experiences with banks may be relevant, that the customer may want market-based advice or that they have been recommended to go to a broker.[125] Customers go to brokers to understand the market, including whether newer and non-bank lenders can be trusted. One broker said that customers rarely have issues with recommended lenders once they have discussed them with brokers.[126]

2.76 Brokers may receive a flat commission fee of 1% of the mortgage from the lender, with some mortgage brokers additionally charging borrowers a fee based on a percentage of the mortgage amount or charge at a flat rate. However, in order to be termed as "independent", a broker can only charge a fee to a customer and not accept commission from a lender. It is not the case that all mortgage products in the State are available through all mortgage brokers. Some brokers may be tied

[124] See page 1 of the Irish Mortgage Corporation Call Note, dated 21 December 2021.

[125] See page 1 of the AIMA Call Note, dated 22 December 2021.

[126] See page 1 of the AIMA Call Note, dated 22 December 2021.

to certain lenders and a given lender may not select certain brokers through which to distribute a mortgage product. Part 4.58A of the CBI's 2019 Addendum to the Consumer Protection Code requires mortgage brokers to make available in a manner that is easily accessible to consumers, a summary of the details of all arrangements for any fee, commission, other reward or remuneration paid or provided to the intermediary which it has agreed with product producers.[127]

2.77 All lenders in the market also make their mortgage products available through the broker network, however as noted above not all mortgage products are available to all mortgage brokers in the State. For lenders without an established branch network, brokers act as an important distribution channel, as they reduce overheads for lenders by allowing them to avoid the set-up costs of their own branch network whilst still reaching potential customers. Avant Money, Dilosk and Finance Ireland provide their entire mortgage offering through brokers. Retail banks also distribute mortgage products through brokers. AIB has a dedicated broker-facing subsidiary, Haven, which does not offer mortgages direct to customers. The other banks engage directly with brokers.

2.78 Figure 5 below sets out, for each lender, the percentage of their new mortgage lending which was originated via a mortgage broker. The non-bank lenders rely almost entirely on the broker channel for their lending. KBC originates [✂] through the broker channel, with [✂]% of mortgages lent in 2021 done so via a broker. While PTSB is also reliant on brokers for the majority of its lending, it is clear that AIB and BOI have not been. It is worth noting that BOI only began competing in the broker channel again in 2019.

Figure 5: Broker Channel as % of all new mortgage lending, 2017 – 2021

[✂][✂][✂][✂][✂][✂][✂][✂][✂][✂]

Source: The Commission analysis of lending data

[127] https://www.centralbank.ie/docs/default-source/regulation/consumer-protection/other-codes-of-conduct/addendum-to-the-consumer-protection-code-2012---september-2019.pdf.

2.79 Following the financial crisis, brokers accounted for minimal levels of new lending, but in 2021 H1, over 40% of mortgages in the State were sold through the brokers network,[128] with the remainder primarily distributed directly through banks (online, by phone or in branch) or non-bank mortgage lenders. This increased to 40.7% in 2021 Q3.[129] Recently, there has been a sharp growth in brokers' share of mortgage origination—by comparison, in 2019 brokers accounted for approximately 27.4% of mortgages.[130] This highlights the growing importance of the broker channel as a distribution network for mortgage providers, and coincides with increases in switching levels (see paragraph 2.83).

2.80 Studies suggest that consumers hold a positive view regarding the role played by mortgage brokers by those who had used them. In the Amárach Research survey, in particular, a view was expressed that brokers are on the side of the consumer more so than mortgage providers and that brokers had an expertise and insight that consumers lacked.[131] Research from the United Kingdom has also illustrated the favourable light in which consumers view brokers, with mortgage seekers perceiving brokers as experts with their best interests at heart and access to the best range of products.[132]

(iv) Switching

2.81 For most consumers, choosing a mortgage is the biggest credit decision they will make in their lifetime. The ability of customers to switch providers to avail of cheaper interest rates, or other incentives, during the lifetime of the mortgage is

[128] See Davy Analysis "*Irish Banks Back to the future –the changing banking landscape*", dated 29 April 2021 ([✂]) ("*Irish Banks Back to the future*").

[129] https://www.irishtimes.com/business/financial-services/more-non-bank-lenders-will-enter-market-mortgage-chief-1.4741009#:~:text=Share%20of%20mortgage%20drawdowns%20from,grown%20to%2040.7%25%2C%20AIMA%20says&text=In%20addition%2C%20Bank%20of%20Ireland,market%20share%20a%20year%20earlier.

[130] *Ibid.*

[131] See page 17 of Amárach Research's Mortgage Switching Report for the Commission dated February 2017, which can be accessed at: https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/06/Amarach-Mortgages-Study.pdf.

[132] See page 14 of the ESRO report prepared for the FCA, dated July 2015, which can be accessed at: https://www.fca.org.uk/publication/research/understanding-consumer-expectations-of-the-mortgage-sales-process-esro.pdf.

hence important for the welfare of consumers and to ensure competitive markets. This has been highlighted by the ESRI in its paper on perceptions on switching.[133]

2.82 In the CBI's review of switching activity in the Irish mortgage market, it was estimated that three in every five eligible[134] mortgages for private dwelling homes could save €1000 within the first year by switching, and more than €10,000 over the remaining term. However, in the last six months of 2019, only 2.9% of mortgage holders switched provider.[135] Similarly, a 2016 CCPC study found that only 6% of mortgage holders had considered switching their mortgage provider over the 5 years prior to January 2016; but only 2% had actually switched.[136]

2.83 Figure 6 below shows the Switcher share of total mortgages from 2016 to 2021. It shows that while the Switcher share of total mortgages has steadily increased in that timeframe, it remains low, having increased from around 9% in 2016 to around 15% in 2021.

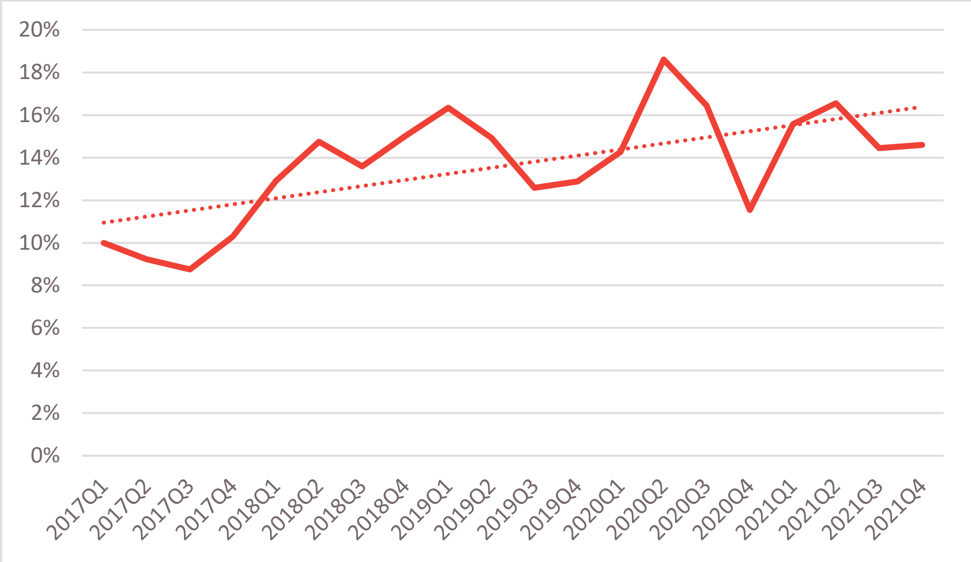
Figure 6: Switcher share of total mortgages, 2016-2021

[133] See page 2 of the ESRI's paper into perceptions on switching, dated February 2019, which can be accessed at: https://www.esri.ie/system/files/publications/WP612_0.pdf.

[134] Eligible mortgages considered were private dwelling home borrowers on a SVR (excluding trackers) or a FR with one year remaining on the mortgage term.

[135] See the CBI's 2020 review of switching activity in the Irish mortgage market, which can be accessed at: https://www.centralbank.ie/docs/default-source/publications/economic-letters/economic-letter-12-mortgage-switching.pdf?sfvrsn=4.

[136] See the Commission's Mortgage Holding & Switching: Market Research Findings, conducted by Behaviour & Attitudes, dated 2016, which can be accessed at: https://www.ccpc.ie/business/research/market-research/mortgage-holding-switching-2016/.



Source: The Commission analysis of lending data

2.84 There is a material cost to consumers' reluctance to switch mortgage providers more regularly, with the average interest rate payable among Switchers estimated to be a full percentage point lower than non-switchers.[137]

2.85 The issue of switching behaviour and consumers' attitudes to switching, both in general and with regard to mortgages, has been the focus of a number of research initiatives on behalf of the CCPC[138] and the CBI.[139]

2.86 As a core part of their financial management, consumers are generally comfortable with the process of switching providers or products in order to make a saving. However, that is generally not the case in respect of mortgages. In 2017, the Commission found switching rates to be much higher in respect of car

[137] See page 4 of the CBI's 2020 review of switching activity in the Irish mortgage market, which can be accessed at: https://www.centralbank.ie/docs/default-source/publications/economic-letters/economic-letter-12-mortgage-switching.pdf?sfvrsn=4.

[138] See https://www.ccpc.ie/business/research/market-research/consumer-switching-behaviour-2017 and https://www.ccpc.ie/consumers/money/mortgages/changing-yourmortgage/switching-lenders-or-mortgage and the CCPC study Mortgage Holding & Mortgage Switching Market Research Findings, conducted by B&A, January 2016.

[139] See https://www.centralbank.ie/docs/default-source/publications/consumer-protection-research/mortgage-switching-research.pdf?sfvrsn=7 and https://www.centralbank.ie/docs/default-source/publications/economic-letters/economic-letter-12-mortgage-switching.pdf?sfvrsn=4.

insurance (28%), electricity supply (15%), gas supply (15%) and broadband provider (14%)[140] compared to 6% in mortgages in 2016[141].

2.87 In its 2017 examination of mortgage switching, the CBI noted:

> *"there is little or no discussion amongst mortgage holders about switching mortgages. The very idea of mortgage switching seemed remote and those that did so may perhaps had[sic] been prompted by a change in circumstance, or by external events rather than by a positive choice or option".* [142]

2.88 Consumers' reluctance to switch mortgage providers may be explained to a great extent by the costs involved in switching, both real and perceived.

Switching costs

2.89 There are a number of real costs to switching mortgages, including legal fees, valuation fees and VAT. In total, these may amount to €2,000.[143] However, the savings from switching mortgage providers can be substantially more than this, and there are also several providers who will offer money (e.g., KBC offer €3,000) to Switchers to cover the costs of the switching fees.

2.90 In addition, as described from paragraphs 2.36 to 2.44, the mortgage market can be complex and consumers may find it difficult or time-consuming to identify the right mortgage, and go through the application process. This is an area in which brokers can be very helpful, if this is a switching barrier for specific consumers.

[140] See the Commission's Consumer Switching Behaviour Research Report, dated 17 March 2017, which is available at: https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/03/CCPC-Switching-Consumer-Behaviour-Research-2017.pdf.

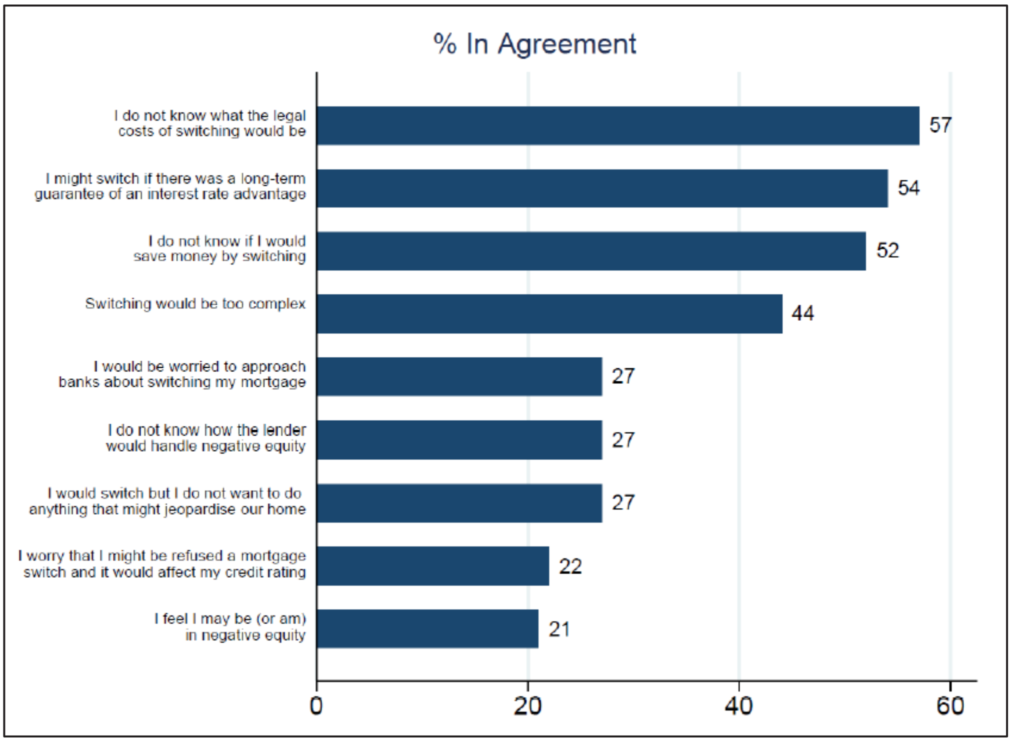
[141] See the Commission's Mortgage Holding & Switching: Market Research Findings, conducted by Behaviour & Attitudes, dated 2016, which can be accessed at: https://www.ccpc.ie/business/research/market-research/mortgage-holding-switching-2016/.

[142] See page 10 of the CBI's Mortgage Switching Research, dated April 2017, which can be accessed at: https://www.centralbank.ie/docs/default-source/publications/consumer-protection-research/mortgage-switching-research.pdf?sfvrsn=7.

[143] https://www.irishtimes.com/business/personal-finance/switching-your-mortgage-will-save-you-more-than-1-000-a-year-1.4484501

2.91 Recent research carried out by the CBI[144] into the attitudes of consumers to mortgage switching confirms the continued prevalence of perceived difficulties to switching among mortgage holders, many of which are linked to consumers' overall views of the mortgage market as discussed above. The CBI research findings are summarised in Figure 7 below. In particular, the following issues arise: a lack of knowledge of the costs or potential savings of mortgage switching; the perceived level of complexity of the process; and fear or uncertainty about the outcome of the process.

Figure 7: Attitudes to Mortgage Switching



Source: CBI, Room to improve: A review of switching activity in the Irish mortgage market, 2020.

2.92 Summarising these findings, we can see three broad categories of barriers, or perceived barriers, to switching:

(a) The first is around the **costs and the process of switching**. This is clearly significant with 57% of surveyed consumers citing "I do not know what

[144] See the CBI's 2020 review of switching activity in the Irish mortgage market, which can be accessed at: https://www.centralbank.ie/docs/default-source/publications/economic-letters/economic-letter-12-mortgage-switching.pdf?sfvrsn=4.

the legal costs of switching would be", 44% saying "switching would be too complex" and 27% saying "I would be worried to approach banks about switching my mortgage".

(b) The second is around **a lack of knowledge or understanding of the benefits** of switching, with 54% saying "I might switch if there was a long-term guarantee of an interest rate advantage" and 52% saying "I do not know if I would save money by switching".

(c) The third is about a **perceived or actual inability to be approved for a new mortgage**. 27% of consumers said "I do not know how the lender would handle negative equity", 27% said "I would switch but I do not want to do anything that might jeopardise my home", 22% said "I worry that I might be refused a mortgage switch and it would affect my credit rating" and 21% said "I feel I may be (or am) in negative equity".

2.93 It is therefore clear from this survey that a combination of consumer behavioural barriers and financial barriers contribute to the low levels of switching in Ireland.

2.94 These findings resonate with those of the Commission's research in 2017, which examined the issue of consumers' attitudes towards mortgage switching and found that, at the heart of the issue, there is a significant information gap creating fear and uncertainty among consumers which has limited the incidence of switching.[145] Again, this theme is consistent with a CBI summary of consumer views of barriers to mortgage switching from the same year, where the following were cited:[146]

(a) Lack of transparent information on the process or promotion of tools to aid comparison;

(b) The uncertainty around whether mortgage lenders will stay in the market;

145 See Amárach Research's Mortgage Switching Report for the Commission, dated February 2017, which can be accessed at: https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/06/Amarach-Mortgages-Study.pdf.

146 See page 11 of the CBI's Mortgage Switching Research, dated April 2017, which can be accessed at: https://www.centralbank.ie/docs/default-source/publications/consumer-protection-research/mortgage-switching-research.pdf?sfvrsn=7.

(c) The unknown cost of moving a mortgage;

(d) The unknown savings to be made over the long-term;

(e) The unknown cost of legal fees etc.;

(f) Implications a switch might have for their credit rating;

(g) The complexity of the process and the time involved;

(h) Potential difficulties in securing new finance; and,

(i) No long-term guarantee about the actual cost of the mortgage in the event of a switch.

2.95 In addition, the difficulties encountered by consumers in obtaining their first mortgage appears to have a negative impact on consumers' desire to switch, as they would rather avoid having to go through the mortgage application process again.[147]

2.96 It is clear that there is significant customer inertia as a result of the time, complexity and cost of switching. Therefore, mortgage customers are likely to require a significant benefit from switching in order to overcome such barriers. As illustrated in paragraph 6.178 below, when faced with a potential [✂] basis points ("bps") saving from switching, mortgage customers are content to accept a [✂] saving to avoid switching. In this instance it would appear that customers were willing to give up a benefit of between [✂] in order to avoid the burden of switching.

2.97 To counteract barriers to mortgage switching, since 1 January 2019, the CBI has implemented new measures[148] to make switching easier. Under the new measures, lenders must:

(a) Tell current customers about mortgage options available with the same lender and which offer lower pricing than the pricing the customer would

[147] See page 11 of the CBI's Mortgage Switching Research, dated April 2017, which can be accessed at: https://www.centralbank.ie/docs/default-source/publications/consumer-protection-research/mortgage-switching-research.pdf?sfvrsn=7.

[148] https://www.centralbank.ie/consumer-hub/explainers/how-is-the-central-bank-making-mortgage-switching-easier.

otherwise be on with their current mortgage. The lender must inform current customers of these alternative options no more than 60 days before the customer comes to the end of the introductory fixed rate period of their current mortgage;

(b) Tell customers if they can switch to a cheaper mortgage based on how much equity is in their home;

(c) Clearly explain the pros and cons of any mortgage incentives such as cashback offers;

(d) Give customers a comparison of how much their mortgage costs versus other options offered by their lender if requested;

(e) Give customers all the information needed to switch; and,

(f) Give customers a decision within ten business days of receiving a completed mortgage application.

Evidence since 2019 suggests that these measures have yet to have a significant impact in the mortgage market.

(v) Outline of Competitors

2.98 At present in the State, there are currently 7 lenders offering mortgage products. These lenders are AIB (including EBS and Haven), BOI, PTSB, KBC, Finance Ireland, Dilosk and Avant Money. On 29 October 2021, Ulster Bank ceased accepting mortgage applications from new customers. Ulster Bank has announced that it will no longer accept new mortgage applications from existing customers from close of business on 10 June 2022, and it will no longer provide a mortgage approval in principle to new customers from 29 April 2022.[149]

2.99 The section below provides an overview of each of these lenders, separated into: (a) bank lenders; and (b) non-bank lenders, followed by a consideration of

[149] https://www.ulsterbank.ie/help-and-support/important-customer-notice.html

potential new entrants to mortgage lending in the State. We then consider potential barriers to entry and expansion.

(a) Bank Lenders

BOI

2.100 BOI Group is one of the largest financial services groups in Ireland and provides a broad range of banking and other financial services. In the State, BOI is active in retail banking, wealth and insurance and corporate banking. BOI is the main operating entity and the licensed bank of the BOI Group. Its parent company, BOI Group, is listed on Euronext Dublin.[150]

2.101 BOI Group had gross lending of €5.3 billion to the Irish economy in 2020. BOI has 2 million consumer and business customers.[151] It its interim results for the half year to 30 June 2021, BOI reported profit before tax of €406m.[152] In 2020, BOI's total revenue was approximately €3.35 billion and, in the State, its total revenue was approximately €2.24 billion in 2020.[153]

2.102 The Government announced in June 2021 that it planned to sell down part of its 13.9% shareholding in BOI over the following six months. As of 23 May 2022, the Government's shareholding in BOI was below 4%.[154]

2.103 Following a review of its network, on 1 March 2021 BOI decided to close 103 branches in the Republic of Ireland and Northern Ireland.[155] BOI intends to continue to operate 182 branches across the island of Ireland.[156]

[150] See page 9 of the Merger Notification Form.

[151] See Bank of Ireland Overview – Investor Relations

[152] Page 3, https://investorrelations.bankofireland.com/app/uploads/HoldCo-Interim-Report-2021-Web.pdf.

[153] See page 1 of the Merger Notification Form.

[154] https://www.irishtimes.com/business/financial-services/state-s-bank-of-ireland-stake-falls-below-6-1.4798784.

[155] https://www.rte.ie/news/business/2021/0301/1199958-bank-of-ireland/#:~:text=Bank%20of%20Ireland%20said%20it,service%2C%20Bank%20of%20Ireland%20said.

[156] Page 4, https://investorrelations.bankofireland.com/app/uploads/BOI-Annual-Report-2020.pdf.

2.104 BOI notes that "*Customers are increasingly banking digitally and 2020 has seen an accelerated shift in this direction. At Bank of Ireland, c.70% of sales of key banking products are now originated digitally*".[157]

2.105 BOI is currently the second largest mortgage provider in the State, with a share of mortgage stock of [20-25]%[158] and share of flow[159] of [25-30]% in 2020.[160] As of 31 December 2020, BOI's mortgage book was €23 billion with more than 175,000 mortgages.[161]

2.106 BOI states that, in common with the other major banks, it focuses on selling direct to its customer base.[162] BOI reports that, in 2020, BOI's share of new business through the broker market was less than [✂]% and that it had relationships with approximately [✂] brokers.[163]

2.107 BOI operates through a number of distribution channels, including through brokers, its branch network, by telephone and online. BOI also serves mortgage customers through mobile mortgage managers, who arrange flexible appointments at the location of a customer's choosing.[164]

2.108 BOI's mortgage offering is primarily focussed on fixed rate mortgages with cashback incentives. The cashback offer comprises 2% cashback at drawdown of a mortgage and 1% cashback after five years. BOI also offers green mortgages, and offers a fixed payment of €2,000 to First Time Buyers once they have saved €5,000 in a BOI MortgageSaver account.

[157] Page 9, https://investorrelations.bankofireland.com/app/uploads/BOI-Annual-Report-2020.pdf.

[158] See page 31 of the Merger Notification Form.

[159] Mortgage flow refers to all new or additional mortgage lending originated over a given period.

[160] The Commission gathered the data each mortgage lender submitted to the BPFI in relation to new mortgage lending (the "BPFI data").

[161] See page 1 of the Merger Notification Form.

[162] See page 5 of the Merger Notification Form.

[163]See page 5 of the Merger Notification Form.

[164] https://personalbanking.bankofireland.com/borrow/mortgages/mobile-mortgage-manager/

2.109 The Parties stated that a lender's funding model is a key variable in its pricing strategy and competitive position in the market.[165] In relation to this, they stated that BOI is self-reliant and is funded entirely from its own customer base (with a loan/deposit ratio of 86% as at 31 December 2020).

KBC

2.110 KBC is an indirectly wholly owned subsidiary of KBC Group, a banking and insurance group headquartered in Belgium with 41,000 employees worldwide.

2.111 The approximate turnover attributable to the KBC Assets based on estimates in the most recent financial year was c.€[✂] million, predominantly all of which was generated in the State.[166] According to its most recent annual financial statements, KBC generated revenues of approximately €310.6 million in 2020.

2.112 In March 2021 (in KBC's 2020 Annual Report), the KBC Chairperson stated that:

> *"I am happy with the progress made to date against our 5-year strategic plan '[✂]'. The launch of KBC's insurance business, which is a branch of KBC Insurance NV Belgium, was a key milestone in 2020 and this coupled with the launch of a digital pension offering and upcoming launch of Life solutions for customers, highlights how we are bringing even more choice and competition to the Irish Market".*[167]

2.113 KBC is the fifth largest retail bank in the State, having entered the retail banking sector in 2012. The Parties stated that KBC is focussed on mortgages, while also offering other financial products, such as current, deposit accounts and consumer lending products. The Parties stated that KBC's mortgages are sold predominantly

[165] See page 5 of the Merger Notification Form.

[166] See page 15 of the Merger Notification Form.

[167] KBC Annual Report 2020.

through brokers (c. [✂]% plus of its annual new business acquisition through approximately [✂] brokers).[168]

2.114 KBC has a much smaller branch network than the other four retail banks in the State with 12 bank branches.[169] KBC's strategy is to be a digital-first, customer-centric bank.

2.115 KBC is the fifth-largest mortgage provider in the State with an estimated almost [5-10]% share by stock. KBC's share by flow in 2020 was [10-15]%, up from [10-15]% in 2019.[170] KBC accounted for new mortgage lending of €1.05 billion in 2020.[171]

2.116 KBC offers €1,500 cash support for First Time Buyers and Movers and €3,000 cash support for Switchers.

2.117 The KBC Chairperson noted, in March 2021, that:

> *"Our mortgage business had an exceptionally strong end to the year which confirms that our offer is indeed resonating with customers. We have seen a strong growth in current accounts of 16% year-on-year and we are now focused on continuing to bring the best in digital innovation to the Irish market".* [172]

2.118 In March 2021, the KBC Chief Executive stated that:

> *"Our fee-free banking proposition, market leading digital app and suite of digital wallets, has resonated with customers, with 34,000 new current accounts in 2020. In the last 12 months we have seen a 57% year-on-year increase in contactless payments as the trend towards digital and mobile*

[168] See page 18 of the Merger Notification Form.

[169] See page 18, of the Merger Notification Form.

[170] KBC Annual Report 2020.

[171] KBC Annual Report 2020.

[172] KBC Annual Report 2020

payment solutions accelerates. We are the only bank in Ireland to offer digital wallets from five of the world's leading technology companies; Apple Pay, Google Pay, Fitbit Pay, Garmin Pay and Wena Pay and we will continue to grow our contactless solutions in 2021". [173]

2.119 The KBC Chief Executive also added that:

> *"In 2020, we have seen an acceleration in digital adoption by consumers in Ireland and this is evidence of the relevance of our '[✂]' strategy. We have already made significant progress in this goal by completing a transformative upgrade of our core banking platform, laying the foundation for the next phase of digital products to become the most connected digital bank in Ireland".* [174]

AIB

2.120 AIB is a financial services group operating predominantly in the State. It was established in 1966 from the amalgamation of three Irish banks. In December 2010, the Irish government took a majority stake in the bank. As at 23 May 2022 the government's stake in AIB was 70.97%.

2.121 According to its annual report for 2020, AIB generated worldwide revenues of approximately €2.4 billion in 2020 (of which €2.1 billion was generated in the State). AIB provides retail banking products and services such as mortgages, consumer lending, certain business lending, asset-backed lending, wealth management, daily banking and general insurance.[175]

2.122 In the first half of 2021, AIB announced a profit after tax of €274m and operating profit of €373m.[176] AIB reports that it has a digitally active customer base of 1.78m

[173] KBC Annual Report 2020.

[174] KBC Annual Report 2020.

[175] See AIB's response to Question 1 of the Competitor Questionnaire.

[176] https://group.aib.ie/content/dam/aib/group/Docs/Press%20Releases/2021/aib-group-plc-AIB-announces-half-year-profit-afte-tax-of-%E2%82%AC274m.pdf.

customers.[177] AIB's products and services include retail banking services, mortgages, wealth management and insurance and corporate banking.[178]

2.123 In 2011, EBS, a major Irish building society, became a subsidiary of AIB. AIB has more than 200 AIB branches located throughout the State,[179] while EBS operates through 68 EBS branches nationwide.[180] AIB has noted that, before the pandemic, "*in the order of 50,000 customers would visit our branch network in the Republic of Ireland on an average day*" and that AIB's branch network is very important and "a key differentiator" for AIB.[181]

2.124 As well as offering mortgages through its AIB and EBS brands, AIB also supplies mortgages through its Haven brand. Through these brands AIB distributes mortgages through the broker network, and directly through its branches, digitally, and by telephone.

2.125 AIB is currently the single largest mortgage provider in the State, with a share of stock of almost [30-35]%[182] and a share of flow of [25-30]% in 2020.[183]

2.126 In August 2021, AIB reported that:

> *"The mortgage market in Ireland performed strongly in H1 2021 with total drawdowns of €4.4bn up 26% on H1 2020. A solid rise in mortgage lending is expected with market estimates revised to c. €10bn for 2021. New mortgage lending in our ROI business was €1.1bn in the first six months. With a strengthened proposition, momentum continues in our*

177 https://group.aib.ie/content/dam/aib/group/Docs/Press%20Releases/2021/aib-group-plc-AIB-announces-half-year-profit-afte-tax-of-%E2%82%AC274m.pdf.

178 See AIB's response to Question 1 of the Competitor Questionnaire.

179 Branch Locator (aib.ie).

180 https://offices.ebs.ie/index.html.

181 https://www.oireachtas.ie/en/debates/debate/joint_committee_on_finance_public_expenditure_and_reform_and_taoiseach/2021-06-30/3/.

182 See page 31 of the Merger Notification Form.

183 See BPFI data.

applications and approvals data, giving us confidence in our full year performance".[184]

2.127 AIB has noted how it provides advice to customers, including through its branches:

> *"When people come to the big financial decisions they will make in their lives such as the mortgage, life insurance and savings for the future, we will have people right across the group and across the country employed giving that advice. We will continue to have a really strong physical presence in branches that we serve. I believe that the very best brand ambassadors we have are, without question, the people who wear the AIB uniform and who serve on the front line in every single part of the country".*[185]

2.128 For its mortgage offer, the AIB brand appears to focus on headline rates, currently offering variable and fixed rate mortgages. AIB also offers a green mortgage with a lower fixed rate for a high energy rated home.[186] In August 2021, AIB reported that its "*green mortgage product represented 16% of new ROI mortgage lending*".[187] For Switchers, AIB offers to pay €2,000 to the customer within two months of switching.[188] AIB offers free banking for mortgage customers that have a current account with AIB.[189]

[184] https://group.aib.ie/content/dam/aib/group/Docs/Press%20Releases/2021/aib-group-plc-AIB-announces-half-year-profit-afte-tax-of-%E2%82%AC274m.pdf.

[185] https://www.oireachtas.ie/en/debates/debate/joint_committee_on_finance_public_expenditure_and_reform_and_taoiseach/2021-06-30/3/.

[186] https://aib.ie/our-products/mortgages/mortgage-interest-rates.

[187] https://group.aib.ie/content/dam/aib/group/Docs/Press%20Releases/2021/aib-group-plc-AIB-announces-half-year-profit-afte-tax-of-%E2%82%AC274m.pdf.

[188] https://aib.ie/our-products/mortgages/switcher-mortgage#accd-pane-1_vvavomiie.

[189] https://aib.ie/our-products/mortgages/switcher-mortgage#accd-pane-1_vvavomiie.

2.129 EBS's mortgage proposition primarily comprises a fixed rate and cashback offering. In particular, EBS offers a 3% cashback offering, with 2% cashback on drawdown and 1% cashback after five years.[190]

2.130 In July 2021, EBS announced that it would reduce its three and five-year fixed-rate mortgages by 0.15% to 2.75%. This change would apply to both new and existing customers; to First Time Buyers, Movers and Switchers; and to all LTV ratios.[191] This was the first rate cut by EBS since November 2019.[192]

2.131 As noted above, Haven operates exclusively through brokers. Haven offers a four-year fixed green mortgage, for properties with BER Rating of A1- B3, across all LTV bands with rates from 2.15%.[193]

2.132 Customers who switch their mortgage to Haven receive a €2,000 cash offer towards legal costs.[194] Haven has recently offered €5,000 cashback on certain fixed rate mortgages of €250,000 or more.[195]

2.133 In responding to questions from the Oireachtas Joint Committee on Finance, Public Expenditure, and Reform, Jim O'Keeffe, AIB CEO, explained the differentiation in pricing by AIB and EBS. He stated that:

> *"The AIB brand itself for a considerable number of years has laid out price as key. This is both for front book and back book[196] pricing and not just competitive pricing. Therefore, on the EBS side, we price differently and have always done so. This is not just because of the cash-back, but also because of the type of proposition we have there. Even within the grouping, when one compares others with AIB's front book and back book*

[190] 3% Back in Cash – Mortgage Cash Back – EBS

[191] https://www.bonkers.ie/blog/mortgages/ebs-cuts-its-fixed-mortgage-rates/.

[192] https://www.bonkers.ie/blog/mortgages/ebs-cuts-its-fixed-mortgage-rates/.

[193] https://www.havenmortgages.ie/mortgage-centre/haven-green.

[194] https://www.havenmortgages.ie/useful-information/why-choose-haven.

[195] https://www.havenmortgages.ie/useful-information/why-choose-haven.

[196] Front book refers to customers newly or recently acquired whereas back book refers to previously acquired customers.

pricing, we will find that AIB stacks up favourably. Looking at other cash-back providers, they go well beyond what EBS provides. It is not just an EBS issue in that regard. We are meeting the customer demands. Customers are looking for cash-back. EBS is our channel to market for cash-back. On the AIB side, that is where we come to market in terms of pricing, especially on the new to bank".[197]

PTSB

2.134 PTSB is a provider of retail and SME banking in the State. PTSB offers a range of banking products such as business and personal current accounts, overdrafts, mortgages, business and personal loans, credit cards and home insurance.

2.135 PTSB is wholly owned by PTSB Holdings plc ("PTSB Holdings"). The shares of PTSB Holdings are listed on the Euronext Dublin and London Stock Exchanges. The Government owns 74.92% of the Ordinary Shares of PTSB Holdings. The relationship between PTSB Holdings and the Minister for Finance is governed by a relationship agreement. PTSB has no activities outside of the State.

2.136 PTSB reported a loss of €162m in 2020.[198] According to its Chief Executive, PTSB

> *"saw a strong rebound in activity in the second half of 2020 and this momentum has continued into the first half of 2021. The Bank reported a loss after tax of €5 million in the first half of 2021, trending positively from a loss after tax of €54 million in the first half of 2020 at the beginning stages of the COVID-19 pandemic".*[199]

2.137 PTSB noted a reduction in its net interest margin, from 1.82% in June 2019 to 1.75% in June 2020 and to 1.5% in June 2020. It explained that the 25bpsdrop

[197] https://www.oireachtas.ie/en/debates/debate/joint_committee_on_finance_public_expenditure_and_reform_and_taoiseach/2021-06-30/3/.

[198] PTSB Annual Report 2020, https://www.permanenttsbgroup.ie/sites/tsb/files/TSB/21641-ptsb-group-holdings-ar-ye2020-v8.pdf.

[199] Page 8, 2021 PTSB Interim Results. https://www.permanenttsbgroup.ie/sites/tsb/files/TSB/ptsbgh-interim-report-2021.pdf.

between 2020 and 2021 was due to the low interest rate environment with lower yields on treasury assets and the cost of carrying excess liquidity.[200] PTSB also noted that the "[r]*eduction in interest income as a result of mortgage rate cuts*" resulted in €9m and 19bps on the net interest margin.[201]

2.138 PTSB is mainly funded by current accounts and retail deposits, which make up 88% of the total funding profile.

2.139 PTSB reported a "[s]*ignificant improvement in reputation score for the Bank, moving up 24 places to 69th position in the annual Ireland RepTrak Top 100 List*".[202,203]

2.140 PTSB is the third largest mortgage provider in the State, accounting for [15-20]% market share by the stock of mortgages in 2020.[204] PTSB provides current accounts, mortgages, term lending, credit cards, saving accounts, deposit accounts and home insurance through its partnership with Allianz[205], and 'bancassurance' (life assurance and pensions) to its personal banking customers through its partnership with Irish Life.[206] PTSB also provides some business banking products.

2.141 PTSB's home loan assets at the end of June 2021 were €12,272m while Buy-to-let assets accounted for €1,535m.[207]

[200] Pages 5 and 9, PTSB 2021 Interim Report. https://www.permanenttsbgroup.ie/sites/tsb/files/TSB/ptsbgh-interim-report-2021.pdf.

[201] Page 18, PTSB 2021 Interim Report.

[202] The annual Ireland Reptrak study is the largest and longest running study of reputation in Ireland and is based on the perceptions of over 6,500 members of the public. The study measures the level of trust, respect, admiration and esteem the public has for 100 organisations in Ireland, along with close to 100 other reputation and brand indicators. Page 7, PTSB 2021 Interim Report. https://www.permanenttsbgroup.ie/sites/tsb/files/TSB/ptsbgh-interim-report-2021.pdf

[203] According to PTSB, "*The annual Ireland Reptrak study is the largest and longest running study of reputation in Ireland and is based on the perceptions of over 6,500 members of the public. The study measures the level of trust, respect, admiration and esteem the public has for 100 organisations in Ireland, along with close to 100 other reputation and brand indicators*", see. Page 7, PTSB 2021 Interim Report. https://www.permanenttsbgroup.ie/sites/tsb/files/TSB/ptsbgh-interim-report-2021.pdf.

[204] See page 13 of the Merger Notification Form.

[205] Allianz p.l.c ("Allianz").

[206] See PTSB's response to Question 1 of the Competitor Questionnaire.

[207] Page 21, PTSB 2021 Interim Report.

2.142 In 2020, PTSB had an estimated share of mortgage flow of [15-20]%.[208]

2.143 In its Interim Report, of the first half of 2021, PTSB reported that:

> *"new mortgage lending, which represented 90% of total new lending, increased by 45% compared to 30 June 2020 and outperformed the mortgage market which grew by 26%. Mortgage pipeline remains strong and the Mortgage Drawdowns were €764 million in the first half of 2021, reflecting a 45% growth compared to the prior period. The year to date Mortgage Market Share was 17.5% representing year on year growth of 2.2% in the market share".*[209]

2.144 PTSB offers cashback in a similar way to BOI and AIB. PTSB launched its 2% cashback offer in 2016, after BOI first launched it in 2015.[210]

2.145 In 2021, PTSB introduced a new 4-year fixed rate mortgage product for new personal customers, with rates from 2.25%.[211]

2.146 PTSB does not currently offer a green mortgage product.

2.147 In 2021, PTSB announced plans to launch a new online based mortgage application service.[212]

<u>Ulster Bank</u>

2.148 Ulster Bank is a full-service retail and commercial bank and a wholly-owned subsidiary of NatWest. NatWest is a business and commercial bank headquartered in the UK.

[208] See BPFI data.

[209] Page 9, PTSB 2021 Interim Report. https://www.permanenttsbgroup.ie/sites/tsb/files/TSB/ptsbgh-interim-report-2021.pdf

[210] https://www.rte.ie/news/business/2016/0108/758535-ptsb-mortgage-offer/

[211] Page 10, PTSB 2021 Interim Report.

[212] "*We also recently announced a partnership with Irish fintech CreditLogic, which will see Permanent TSB provide a new digital application platform for mortgage applicants. This partnership with CreditLogic will allow our customers to complete their entire mortgage application process online through a special app designed for exceptional ease of use and security. This new online based mortgage application service will launch later this year*." Page 10, PTSB Interim Report 2021

2.149 On 19 February 2021, NatWest decided to begin a phased withdrawal from Ireland. NatWest will continue to operate the Ulster Bank brand in Northern Ireland.

> *"Following an extensive review and despite the progress that has been made, it has become clear Ulster Bank will not be able to generate sustainable long term returns for our shareholders. As a result, we are to begin a phased withdrawal from the Republic of Ireland over the coming years which will be undertaken with careful consideration of the impact on customers and our colleagues".*[213]

2.150 Ulster Bank and its parent NatWest Group have agreed a binding agreement with PTSB for the sale of: performing non-tracker mortgages; the performing loans in its micro-SME business; Ulster Bank's Lombard Asset Finance business, including the Lombard digital platform; and a subset of Ulster Bank branch locations. The proposed sale will include a total of approximately €7.6bn gross performing loans as at 30 June 2021, the majority relating to non-tracker mortgages, and 25 of Ulster Bank's 88 branch locations.[214]

2.151 Operating under the Ulster Bank and Lombard Ireland brands, Ulster Bank provides a comprehensive range of financial services through its personal and commercial banking divisions in the State. Ulster Bank reported total income of €574m in 2020, with an operating loss of €281m.[215]

2.152 In 2020, Ulster Bank's share of mortgage stock was 16%.[216] In 2020, Ulster Bank had an estimated share of mortgage flow of [10-15]%.[217]

[213] Page 7, NatWest Annual Report, 19 February 2021

https://investors.natwestgroup.com/~/media/Files/R/RBS-IR-V2/results-center/19022021/natwest-group-announcement-fy2020.pdf.

[214] https://www.ulsterbank.ie/help-and-support/important-customer-notice.html.

[215] Page 14, NatWest 2020 Annual Report.

[216] See page 31 of the Merger Notification Form.

[217] See BPFI data.

2.153 Ulster Bank offered a €1,500 contribution towards legal fees for new mortgage customers until 31st December 2019, but in general focused more on low rates rather than offering large cashback incentives.[218]

2.154 On 29 October 2021, Ulster Bank ceased accepting mortgage applications from new customers. Ulster Bank has announced that it will no longer accept new mortgage applications from existing customers from close of business on 10 June 2022, and it will no longer provide a mortgage approval in principle to new customers from 29 April 2022.[219]

2.155 For the reasons explained in Section 5, for the purposes of this Determination, Ulster Bank is not now considered as a competitor to either party in the provision of mortgages.

b) Non-bank Lenders

2.156 There are currently three non-bank lenders active in the provision of mortgages in the State – Dilosk (trading as ICS Mortgages), Finance Ireland and Avant Money. Each is a relatively recent entrant into the supply of residential mortgages in Ireland. In general, these lenders tend to focus on low headline rates, distribution through brokers, and a fast response on mortgage applications.[220] These providers do not supply the range of products offered by full-service banks (e.g., they do not offer current accounts); do not have physical branches; and have relatively new IT platforms.

2.157 The chart below shows the share of mortgage business by non-bank lenders. These providers collectively have very low shares of the stock of mortgages but they have seen substantial growth in the share of mortgage origination recently,

[218] https://www.bonkers.ie/blog/mortgages/ulster-bank-extends-its-1500-mortgage-cashback-offer/

[219] https://www.ulsterbank.ie/help-and-support/important-customer-notice.html

[220] According to AIMA, the non-bank lenders need to have these qualities to succeed as they either primarily or only distribute their products through the broker channel, so must be able to provide the best products, rates and service to receive business. See page 2 of the AIMA Call Note, dated 22 December 2021.

from a very low base. The total share of these lenders in mortgage origination was [15-20]% in 2021 Q4, compared to [0-5]% in 2020 Q1.[221]

Figure 8: Recent entrants' share of total lending, 2017 – 2021

[✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂]

Source: The Commission analysis of lending data

2.158 Some market participants expect this trend to continue – for example, one broker, Irish Mortgage Corporation, expects the collective share of the non-bank lenders to increase to 20% in 2022.[222] These lenders also appear to have few capacity constraints.

2.159 The increased market share of non-bank lenders may also be attributed to a growth in the broker market share, which made up 41% of the mortgage market in November 2021, up from 25% just two years prior.[223]

2.160 In certain markets abroad, non-bank lenders are commonplace in the supply of mortgages. For example, in the United States, non-bank lenders accounted for 68.1% of mortgage origination in 2020.[224] In Europe, non-bank lenders in the Netherlands have recently financed a significant portion of new mortgages, at 28%.[225]

2.161 Unlike retail banks, non-bank lenders typically do not rely directly on deposits to fund their lending services, instead seeking funding on capital markets from large institutional investors together with securitising the mortgages which they originate. For example, shareholders in Finance Ireland include investment management firm PIMCO[226] and the Ireland Strategic Investment Fund, which is

[221] See BPFI Data.

[222] See page 2 of the Irish Mortgage Corporation Call Note, dated 21 December 2021.

[223] See page 2 of the AIMA Call Note, dated 22 December 2021.

[224] https://www.wsj.com/articles/nonbank-lenders-are-dominating-the-mortgage-market-11624367460.

[225] https://www.ecb.europa.eu/pub/financial-stability/fsr/focus/2017/pdf/ecb~8341bea69d.fsrbox201705_07.pdf.

[226] PIMCO Europe GmbH Irish Branch, through its investment fund PIMCO BRAVO Fund II.

controlled by the National Treasury Management Agency.[227] Meanwhile, Dilosk is reported to have raised €1.3bn through five transactions issuing bonds on capital markets since it was established in 2013.[228] The most recent of such transactions was in October 2021, when Dilosk raised €325 million of funding across 20 institutional investors through the sale of bonds backed by its own owner-occupied and Buy-to-let mortgages assets.[229] In addition, some non-bank lenders may receive funding from an overseas parent company. For instance, Avant Money is a subsidiary of the Bankinter Group.

2.162 As securitisation markets can endure periods of interruption, such as at the beginning of the Covid-19 pandemic, non-bank lenders have looked to diversify their funding models. One way of doing so is through "forward flow funding". Forward flow funding arrangements may involve the outright purchase by a funder of loans originated by a mortgage provider. A non-bank lender may secure such funding from an international bank, which provides non-bank lenders with an additional line of credit. A forward flow funding arrangement provides a non-bank lender with access to liquidity as they build out a mortgage origination and underwriting process.

2.163 As non-bank lenders do not hold customer deposits, they typically rely on the residential mortgage-backed securitisation ("RMBS") market, where they issue bonds backed by income from mortgages, to fund their growth.[230]

2.164 Dilosk's Chief Executive, Fergal McGrath, said that:

> *"buyers of the bonds "take some comfort in" the Central Bank of Ireland's mortgage limits, which are under review, having been introduced in 2015, adding that they were "good for the long-term stability of the market".*

[227] See Finance Ireland's Investors.

[228] https://www.independent.ie/business/irish/dilosk-founders-lift-stake-above-50pc-as-lender-eyes-further-growth-41139877.html.

[229] See Dilosk news story dated 21 October 2021, available at: https://www.dilosk.com/news/dilosk-dac-raises-euro325-million-in-fifth-public-bond-issuance/.

[230] https://www.dilosk.com/news/dilosk-aims-to-double-mortgage-market-share-to-10/.

"My personal view is that house prices in Ireland would be higher if we hadn't the rules in place. They've created a level playing field among all lenders," he said, adding that the limits restricts (sic) lenders from loosening credit standards to grab market share".[231]

Dilosk

2.165 Dilosk DAC, trading as Dilosk and ICS Mortgages, is a specialist lender. It provides residential mortgage loans with a focus on Buy-to-let and owner-occupied mortgages.[232]

2.166 Dilosk reported that its consolidated loans rose to €566 million at the end of 2020 from €251 million a year earlier. Dilosk's group net profit fell to €672,822 in 2020 from €5.72 million in 2019.[233]

2.167 In September 2014, Dilosk acquired the ICS brand, mortgage distribution platform and a book of performing mortgages from BOI. Dilosk subsequently acquired €160 million of mortgages from GE Capital and acquired approximately €180 million of Irish loans from Leeds Building Society in 2018. It currently manages about €1.12 billion of mortgages.[234] It has been offering Buy-to-let loans since 2016. In October 2019, Dilosk entered into the market for owner-occupier mortgages. At the time of its entry, it offered the lowest variable rate in the market (2.70%) for properties with an LTV of less than 50%; and also offered 3 and 5 year fixed rates starting at 2.55% and 2.60%.[235]

2.168 In August 2021, Dilosk further reduced its fixed rates.[236] Currently, it offers variable rate mortgages from 2.45% and 3 year and 5 year fixed rate mortgages

[231] https://www.dilosk.com/news/dilosk-aims-to-double-mortgage-market-share-to-10/.

[232] See Dilosk's response to Question 1 of the Competitor Questionnaire.

[233] https://www.irishtimes.com/business/financial-services/first-citizen-reports-2020-loss-as-it-weighs-mortgage-market-entry-1.4752363?mode=sample&auth-failed=1&pw-origin=https%3A%2F%2Fwww.irishtimes.com%2Fbusiness%2Ffinancial-services%2Ffirst-citizen-reports-2020-loss-as-it-weighs-mortgage-market-entry-1.4752363.

[234] https://www.dilosk.com/news/dilosk-aims-to-double-mortgage-market-share-to-10/.

[235] https://www.dilosk.com/news/ics-mortgages-enter-the-owner-occupier-market/.

[236] https://www.dilosk.com/news/ics-mortgages-cuts-interest-rates/.

from 1.95%. In addition, Dilosk allows customers to overpay an additional 20% off their mortgage in any 12-month period without penalty.[237] According to the brokers, Full Circle, this may allow it to pick up some of KBC's available 2021 market share by attracting Switchers from KBC.[238] Dilosk is now looking to target First Time Buyers.[239]

2.169 Dilosk expects to write [✂] of mortgages in 2022, compared to about €530 million in 2021.[240] Dilosk has a share of about 5% of activity (mortgage origination) in the mortgage market.[241] It aims to double its share to 10% within three years.[242] Dilosk says that it saw an "instant uptick" in inquiries in early 2021 after Ulster Bank and KBC announced plans to withdraw from the State.[243] Dilosk raised €325 million in October 2021, refinancing a portfolio of mortgages on the international bond markets. This transaction was its fifth such deal and brings the level it has raised on bond markets since 2015 to more than €1.3 billion.[244]

2.170 Dilosk does not operate a branch network but is active through the broker channel and through its own direct-to-customer offering.

Avant Money

2.171 Avant Money is a new entrant into the Irish mortgage sector, having commenced mortgage operations in late 2020. It also offers personal loans and credit cards, having operated previously as MBNA and Avantcard in respect of these products. Avant Money It is not funded by retail deposits in the State. It is owned by Bankinter S.A. ("Bankinter"), a Spanish financial services company headquartered

237 https://www.icsmortgages.ie/mortgages.

238 See pages 1-2 of the Full Circle Call Note, dated 16 November 2021.

239 See page 2 of the Irish Mortgage Corporation Call Note, dated 21 December 2021.

240 See page 3 of the Dilosk Call Note, dated 31 January 2022.

241 https://www.dilosk.com/news/dilosk-aims-to-double-mortgage-market-share-to-10/.

242 https://www.irishtimes.com/business/financial-services/dilosk-aims-to-double-mortgage-market-share-to-10-1.4703892?mode=sample&auth-failed=1&pw-origin=https%3A%2F%2Fwww.irishtimes.com%2Fbusiness%2Ffinancial-services%2Fdilosk-aims-to-double-mortgage-market-share-to-10-1.4703892.

243 https://www.dilosk.com/news/dilosk-aims-to-double-mortgage-market-share-to-10/.

244 https://www.dilosk.com/news/dilosk-aims-to-double-mortgage-market-share-to-10/.

in Madrid, Spain. Bankinter is the fourth largest Spanish bank by market capitalisation and reported net interest income of €1.247 billion in 2020.[245]

2.172 Avant Money provides products to First Time Buyers, Switchers and Movers.[246] Avant Money operates through an online only model and does not have any branches in the State, offering mortgages to customers exclusively through brokers. However, it plans on introducing direct engagement with customers.[247] Similarly to other non-bank lenders, it offers lower rates than retail banks. Irish Mortgage Corporation, a broker, noted that Avant Money can approve a mortgage application very quickly, turning around an application in 2.2 days.[248]

2.173 Avant Money holds a 4% share in mortgage origination in the State.[249] Avant Money aims to achieve a 10% market share in the next 3-4 years.[250] It has told the Commission that it faces minimal capacity constraints in taking on new business[251] and plans to expand its broker network, operating in more locations nationally and allowing for more risk through reduced deposit requirements and CBI exceptions.[252]

2.174 Avant Money (together with Dilosk) is the market leader on fixed rates offering fixed rate mortgages from 1.95%. In April 2021 it introduced a 10-year fixed product and in June 2021 full fixed for life products.[253] Avant Money's One Mortgage product is the first and only product in the State to offer a fixed rate for the entire term of a 30-year mortgage. It also provides customers with the

[245] https://webcorporativa.bankinter.com/stf/traducciones/ingles/web_corporativa/accionistas_e_inversores/info_financiera/memoria/2020/iai_eng2020.pdf.

[246] See Avant Money's response to Question 1 of the Competitor Questionnaire.

[247] See page 2 of the Avant Money Call Note, dated 6 December 2021.

[248] See page 2 of the Irish Mortgage Corporation Call Note, dated 21 December 2021.

[249] See page 2 of Irish Mortgage Corporation Call Note, dated 21 December 2021.

[250] See page 2 of the Avant Money Call Note, dated 6 December 2021.

[251] See page 2 of the Avant Money Call Note, dated 6 December 2021.

[252] See page 2 of the Avant Money Call Note, dated 6 December 2021.

[253] See page 1 of the Avant Money Call Note, dated 6 December 2021.

flexibility to overpay up to 10% of the balance each year and potentially to move home without any early redemption fee.

2.175 In December 2021 Avant Money reduced the rates of its long-term fixed rate products and introduced a Switcher incentive of a €1500 contribution to professional fees, targeted at Switchers and First Time Buyers.[254] These two changes were part of Avant Money's multi-step plan when it entered the mortgage market in 2020, although the timing of the launch of its Switcher incentive was influenced by KBC's and Ulster Bank's withdrawal from the market[255] Avant Money is specifically targeting KBC and Ulster Bank customers with this incentive.[256]

Finance Ireland

2.176 Finance Ireland is another recent entrant into the Irish residential mortgage sector. It began offering commercial mortgages in 2013 but entered into the supply of residential mortgages when, in October 2018, it acquired the mortgage origination business of Pepper Money, including a c.€200M Irish residential mortgage loan portfolio, consisting of approximately 900 performing mortgage loans originated by Pepper Money.[257]

2.177 Finance Ireland, which was established in 2002, has market positions in Auto Finance, SME Finance, Agri Finance and Commercial Real Estate Finance.[258] It is owned primarily by two shareholders: PIMCO, an investment management firm; and Ireland Strategic Investment Fund, a sovereign investment fund with a mandate to invest on a commercial basis to support economic activity and

254 See page 1 of the Avant Money Call Note, dated 6 December 2021.

255 See page 2 of the Avant Money Call Note, dated 6 December 2021.

256 See page 2 of the Avant Money Call Note, dated 6 December 2021.

257 https://www.financeireland.ie/announcements/finance-ireland-announces-entry-into-irish-residential-mortgage-market/

258 https://www.financeireland.ie/announcements/finance-ireland-announces-entry-into-irish-residential-mortgage-market/.

employment in Ireland. According to its financial statements for 2020, Finance Ireland generated revenue of approximately €48.5 million.

2.178 Finance Ireland is an online-only mortgage provider and operates exclusively through the broker channel.[259] It offers a range of variable and fixed-rate mortgages. Variable rate mortgages range from 2.75% to 3.15% depending on the LTV. Finance Ireland's fixed rates include 2.25% for a three-year Fixed Rate with an LTV less than 50%.[260] In 2021 Finance Ireland introduced long-term Fixed Rates of 10, 15 and 20 years.[261]

2.179 In December 2021 Finance Ireland announced a reduction in its long-term Fixed Rates and a Switcher incentive of a €1500 contribution towards the legal fees incurred when switching.[262] Both of these changes were part of Finance Ireland's long-term plan when it entered the Irish market.[263] Although its new Switcher incentive is not a response to the planned exits of KBC or Ulster Bank, Finance Ireland is aiming to appeal to those AIB and Ulster Bank customers who received 3 year Fixed Rates in 2018 and whose fixed rate has ended, or is due to end soon.[264]

2.180 In its first full year of business in 2019, Finance Ireland's retail mortgage division saw new loans written rise from €219 million to €283 million. The figure for 2020 equated to about 3.3% of €8.4 billion of lending in the Irish home loans market.[265] It had a 3.5% market share in the provision of mortgages in the year ending 2020.[266] In October 2021, Finance Ireland's Chief Executive said that the group

[259] https://www.financeireland.ie/products/residential-mortgages/overview/.

[260] https://www.financeireland.ie/products/residential-mortgages/mortgage-rates/.

[261] See Finance Ireland's response to Question 2 of the Competitor Questionnaire.

[262] https://www.rte.ie/news/business/2021/1201/1264301-finance-ireland-mortgage/.

[263] See page 2 of the Finance Ireland Call Note, dated 13 December 2021.

[264] See page 2 of the Finance Ireland Call Note, dated 13 December 2021.

[265] https://www.irishtimes.com/business/financial-services/finance-ireland-profits-fell-in-2020-as-covid-triggered-13-7m-loans-charge-1.4689043?mode=sample&auth-failed=1&pw-origin=https%3A%2F%2Fwww.irishtimes.com%2Fbusiness%2Ffinancial-services%2Ffinance-ireland-profits-fell-in-2020-as-covid-triggered-13-7m-loans-charge-1.4689043

[266] See Finance Ireland's response to Question 24 of the Competitor Questionnaire.

currently had a 6% share of the Irish mortgage market, with strong underlying activity being helped by the decisions of Ulster Bank and KBC to withdraw from the State earlier in 2021.[267]

Potential Entrants

2.181 There are a number of providers of financial services who might be considered as well placed to enter the market for the provision of mortgage products.

<u>An Post</u>

2.182 An Post is authorised by the Minister for Finance to provide payment services and is regulated by the CBI in the provision of these services. An Post has a network of over 900 post offices offering a range of financial services, including cash lodgements and withdrawals as well as foreign exchange. An Post has typically taken a partnership approach in establishing financial products and services, for example, partnering with Mastercard[268] on foreign exchange services[269] and with AvantCard for credit cards and personal loans.[270]

2.183 An Post is planning on entering the mortgage market in 2022,[271] with aims to achieve up to [✂]% market share, with [✂]% from the outset.[272] In particular, An Post informed the Commission that it[✂] [✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂].[273] An Post also

[267] https://www.irishtimes.com/business/financial-services/finance-ireland-profits-fell-in-2020-as-covid-triggered-13-7m-loans-charge-1.4689043?mode=sample&auth-failed=1&pw-origin=https%3A%2F%2Fwww.irishtimes.com%2Fbusiness%2Ffinancial-services%2Ffinance-ireland-profits-fell-in-2020-as-covid-triggered-13-7m-loans-charge-1.4689043

[268] Mastercard International Incorporated ("Mastercard")

[269] https://www.anpost.com/Money/Foreign-Currency/Currency-Card.

[270] https://www.checkout.ie/a-brands/avantcard-post-partner-offer-personal-loans-credit-cards-65329.

[271] https://www.irishexaminer.com/business/companies/arid-40305410.html.

[272] See page 3 of the An Post Call Note, dated 10 November 2021.

[273] See page 2 of the An Post Call Note, dated 10 November 2021.

plans to launch green loans and expects to position itself as a strong market player.[274]

2.184 An Post is expected to partner with MoCo when entering the mortgage lending market.[275]

MoCo

2.185 MoCo,[276] is a new entrant to the Irish residential mortgage market. It is currently engaged in the CBI's retail credit firm authorisation process and informed the Commission it expected to receive authorisation in 2021 Q3.[277] As far as the Commission is aware, this authorisation is yet to be granted. [✂].[278]

2.186 Mortgages provided by MoCo will be underwritten, but users will be able to submit and complete the entire mortgage process digitally, without any physical paperwork and no branch network. Therefore, its business model differs somewhat from lenders such as AIB, PTSB, and BOI, and also from smaller market players like Avant Money, Finance Ireland and ICS/Dilosk.[279]

2.187 As illustrated in Table 3 below, MoCo provided the Commission with the following forecasts for its growth in the State:

Table 3: MoCo growth forecasts in the State, 2021-2025

	2022	**2023**	**2024**	**2025**
Number of mortgages	[✂]	[✂]	[✂]	[✂]

[274] See page 3 of the An Post Call Note, dated 10 November 2021.

[275] https://www.irishtimes.com/business/financial-services/an-post-in-talks-with-non-bank-start-up-moco-to-offer-mortgages-1.4664431.

[276] Trading as Cedar Lending Services Limited, as defined in paragraph 1.20.

[277] See Moco's response to Question 1 of the Commission's Questionnaire dated 29 June 2021.

[278] See pages 1-2 of the MoCo Call Note, dated 01 June 2021.

[279] See page 1 of the MoCo Call Note, dated 01 June 2021.

Volume of mortgages, €m	[✂]	[✂]	[✂]	[✂]
Market share	[✂]	[✂]	[✂]	[✂]

Source: Information provided to the Commission by MoCo. [280]

<u>Revolut</u>

2.188 Revolut is a financial technology company founded in 2015 based in the UK and received a full banking licence from the ECB in December 2021.[281] Revolut is authorised by the Bank of Lithuania.[282] Revolut offers personal and business accounts as well as foreign exchange services. Revolut has experienced rapid growth in the State in recent years, with a reported customer reach of 1.5 million users and further ambitions to reach 2 million.[283] Generally, although Revolut customers do have a personal IBAN, users tend to have a primary personal banking account alongside their Revolut account. From here, most users transfer certain amounts of money into their Revolut account to use for specific purposes.

2.189 Although Revolut plans to launch new products in the State such as credit cards and personal loans, Revolut informed the Commission [✂].[284]

2.190 [✂]. [✂][

[280] See Commission's Additional Questions to MoCo in an email dated 24 September 2021; and Moco's Responses, dated 30 September 2021.

[281] https://www.irishtimes.com/business/financial-services/revolut-to-use-ecb-banking-licence-to-offer-personal-loans-to-irish-customers-1.4790823

[282] *Ibid.*

[283] https://www.irishtimes.com/business/technology/revolut-valued-at-33bn-after-raising-800m-from-backers-1.4621242?mode=sample&auth-failed=1&pw-origin=https%3A%2F%2Fwww.irishtimes.com%2Fbusiness%2Ftechnology%2Frevolut-valued-at-33bn-after-raising-800m-from-backers-1.4621242.

[284] See page 2 of the Revolut Call Note, dated 19 July 2021.

✂][✂].[285] [✂].[286]

N26

2.191 N26 is a fully licenced digital bank launched in Germany in 2015, operating across Europe on a European Passport, a banking licence which allows a bank or financial institution which is licensed in one EU country to passport that licence to and operate in another country without having to get regulatory approval in that country[287]. N26 has over 200,000 customers based in Ireland.[288]

2.192 N26 does not currently offer its full product range in all EU Member States, although most services are available in Germany, France, Italy, Spain and Austria.[289] In the State, N26 offers a current account in partnership with MasterCard debit, and also N26 has an integrated partnership with TransferWise[290] to facilitate international transfers. N26 offers three premium accounts with a range of benefits such as phone insurance and travel insurance, but also offers a standard free account.[291] N26 noted that it is [✂].[292]

[285] [✂][✂][✂][✂][✂][✂][✂][✂][✂][✂].

[286] See page 3 of the Revolut Call Note, dated 19 July 2021.

[287] See the CBI's notice on passporting, available at: https://www.centralbank.ie/regulation/industry-market-sectors/credit-institutions/authorisation-process/passporting.

[288] https://www.bonkers.ie/blog/banking/n26-versus-revolut-how-do-they-compare/.

[289] See page 1 of the N26 Call Note, dated 5 August 2021.

[290] Wise Europe SA ("TransferWise")

[291] See page 2 of the N26 Call Note, dated 5 August 2021.

[292] See page 2 of the N26 Call Note, dated 5 August 2021.

2.193 Furthermore, N26 does not currently offer loans in the State. N26 informed the Commission that at the beginning of 2022, it plans to offer loans as part of partnership arrangements with selected companies. N26 is hoping to expand its presence in the State over the next two to three years, with no express plans to enter the residential mortgage market.[293]

Potential Barriers to Entry and Expansion

2.194 In this section, the Commission assesses potential barriers to entry or expansion in the supply of mortgage lending in the State. Research, as well as evidence provided to the CCPC by third parties, indicates that there are high barriers to entry and expansion in the mortgage market. Such barriers may include regulatory requirements; low profitability; product distribution issues; data inequality; and balance sheet exploitation. Each of these is discussed in greater detail below. Firstly, however, we provide a brief overview of findings on barriers to entry from the Commission's 2017 research into the mortgage market. The Commission's conclusions on potential barriers to entry and expansion in the mortgage market are outlined in Section 5.

Findings of the Commission's Mortgage Market Options Paper

2.195 As part of the Commission's 2017 mortgage study, a public consultation sought views on perceived barriers to entry into the Irish market and enquired whether there are any unique features of the Irish context that make entry less attractive and what could be done to attract and facilitate entry. Most respondents to the consultation identified lack of scale, legacy issues of NPLs and poor access to collateral (i.e., the difficulties and timelines faced by lenders when attempting to repossess properties on which mortgages are not being, nor are likely to be, repaid) as unique barriers to entry in the State. Other issues raised included the conveyancing process and the extent of current regulation.[294]

[293] See page 3 of the N26 Call Note, dated 5 August 2021.

[294] See page 38 of the Commission's Mortgage Market Options Paper, available here.

2.196 Dr Edward Shinnick's contribution to the Commission's public consultation[295] offered a comprehensive summary of the various views offered by several respondents:

> *"In addition to the potential barriers to entry posed by regulation, other forms of non-regulatory entry barriers and sunk costs may also exist. These include:*
>
> - *Access to finance*
> - *Consumer inertia resulting in low switching rates*
> - *Information asymmetries and high switching costs*
> - *Size of the domestic market*
> - *Costs of establishing a branch network for retail banking, and*
> - *Legal and institutional barriers."*

2.197 This section considers some of the potential barriers to entry raised above, in addition to issues that came to the attention of the Commission in correspondence with third parties in assessing the Proposed Transaction.

State Involvement in the Banking Sector

2.198 As summarised in paragraphs 2.6 and 2.7 above, following the financial crisis the Irish Government became and continues to be a shareholder in each of AIB, BOI and PTSB. Government involvement in the banking sector could be considered a negative feature from the perspective of new entry into the Irish market. However, respondents to the Commission's 2017 public consultation noted that while it may be a challenge, it was not a significant barrier to entry because of the

[295] See page 2 of Dr Edward Shinnick's response to the public consultation, available here.

Government's commitment to unwind its shareholding and because the Government's bailouts were seen as a necessary response to the financial crisis.[296]

Regulatory Environment

2.199 With regard to the current regulatory regime and its impact on the functioning of the market and on potential entry as a whole, respondents to the public consultation provided mixed views. While there appears to be general support for the idea that robust regulation is required and that conduct regulation and the macro-prudential measures are necessary, there are some differences regarding the impact that regulation is having on lenders. PTSB and BOI support the current regulatory regime while two lenders (anonymised in the Commission's paper) responded expressing the view the regulatory regime is more onerous in Ireland compared to other jurisdictions.[297]

2.200 Both Dilosk and Finance Ireland informed the Commission that there is a perception that the regulatory process of applying for a banking licence is both a lengthy and onerous one.[298]

2.201 One of the anonymous lenders noted that:

> *"regulatory policies and practices in Ireland are more onerous due to proprietary Irish mortgage regulation, specifically:*
>
> *• Macro-prudential Measures;*
>
> *• Code of Conduct on Mortgage Arrears;*
>
> *• S149 of CCA 1995 - this is also unique to the Irish market.*

[296] See page 41 of the Commission's Mortgage Market Options Paper, available here.

[297] See page 44 of the Commission's Mortgage Market Options Paper, available here.

[298] See Dilosk's response to Question 11 of the Competitor Questionnaire, dated 12 July 2021 and Finance Ireland's response to Question 13 of the Competitor Questionnaire, dated 12 July 2021.

Additionally, the small nature of the Irish market and its highly contended nature means that regulatory costs which are relatively fixed are significant relative to income."[299]

Operating Costs

2.202 Paragraphs 2.20 to 2.24 above highlighted the potential consequences for retail banking providers in the State of regulatory requirements such as the CBI's bank capital instruments and mortgage measures. In summarising the previous discussion, operating costs such as requirements on retail banks to hold capital may impact on potential new entrants in the following manner:

- *"Retail banks operating in the State are required to hold more capital than counterparts in Europe, for example, as demonstrated by the proportion of RWA;*
- *The capital charge on a bank home loan in the State is 2.6 times higher than in the EU; and*
- *Aside from capital requirements, operating costs for retail banks in the State are higher than elsewhere, accounting for 1.05 points of the average Irish mortgage rate, compared to 0.65 points across the EU".*[300]

Low profitability

2.203 In the Merger Notification Form, the Parties stated that the rationale for the Proposed Transaction and ultimately KBC's withdrawal from the Irish banking sector concerns the challenge faced by KBC in achieving an acceptable level of return on investment and sustainable profitability within a reasonable timeframe.[301]

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[299] See page 45 of the Commission's Mortgage Market Options Paper, available here.

[300] https://www.irishtimes.com/business/financial-services/more-non-bank-lenders-will-enter-market-mortgage-chief-1.4741009

[301] See section 1.1 of the Merger Notification Form.

2.204 Market participants may encounter difficulty in generating sustainable returns upon entry for a number of reasons, including regulatory and legal costs, origination costs and commission paid to brokers. Additionally, third parties expressed to the Commission the importance of purchasing a back book of mortgages when entering the market, in order to quickly establish a flow of income. As noted in paragraph 2.167 above, Dilosk acquired a back book of mortgages from BOI in 2014. Dilosk did so after entering the market in order to provide itself with immediate income, as generating income from originating new mortgages takes time.[302] Similarly, [✂].[303]

2.205 In the absence of a back book of mortgages, new entrants may encounter difficulties in covering their costs in the short to medium term before generating a profit. For example, one non-bank lender, Dilosk, informed the case team that it took approximately [✂] years for Dilosk to get a positive cash flow upon entry, and that this required a back book acquisition of €225 million.[304]

Repossession Policies

2.206 Uncertainty over repossession policies were cited as a potential barrier to entry in response to the Commission's 2017 public consultation. One lender stated that:

> *"repossession policies and practices are a barrier to entry to the Irish market for the following reasons: access to loan security is uncertain; the timing to security realisation is protracted; associated capital and operating costs are significant. … The time to resolution in Ireland is also typically much more protracted than elsewhere. In Ireland, this ranges*

[302] See page 2 of the Dilosk Call Note, dated 4 November 2021.

[303] See page 3 of the MoCo Call Note, dated 1 June 2021.

[304] See page 2 of the Dilosk Call Note, dated 4 November 2021.

from 18 to 72 months. By contrast, the UK range is 9 to 12 months, with Northern Ireland and Denmark at 6 months."[305]

2.207 Similarly, in response to the Competitor Questionnaire, Dilosk informed the Commission that the length of time to foreclose on a borrower in arrears acts as a potential barrier to new entrants.[306]

Barriers to Switching

2.208 As discussed in paragraphs 2.89 to 2.96 above, mortgage holders face significant barriers to switching mortgage products. These barriers can be broadly summarised as (i) the cost and process of switching; (ii) lack of knowledge or understanding of benefits of switching; and, (iii) perceived or actual inability to be approved for a new mortgage. The reluctance or inability of consumers to switch mortgage products may place new entrants at a material disadvantage to incumbent lenders.

2.209 A new entrant offering mortgage products may find customers via two routes. Firstly, a new entrant can generate customers by originating new mortgage lending, for example to First Time Buyers. Secondly, a new entrant can build its customer base through second-time and subsequent borrowers that switch from their mortgage provider to the new entrant. However, with low rates of switching, as has historically been the case in the State, a new entrant may face difficulty in growing its customer base and thereby generating a sustainable return on its investment.

Data Inequality

2.210 Incumbent banks with substantial back books of loans have access to large volumes of data on customers. The data includes information on customer history of loan repayments, credit conditions, income and property valuations. The greater volumes of this data that a lender can generate and analyse, the more

[305] See page 57 of the Commission's Mortgage Market Options Paper, available here.

[306] See Dilosk's response to Question 11 of the Competitor Questionnaire, dated 12 July 2021.

accurate a lender may be in calculating risk. As noted in paragraph 6.308, lower risk lending may lead to lower pricing by lenders. For new entrants, MoCo noted that lenders without access to this data experience an operational risk in the credit and underwriting function and, as a result, suffer an increased cost of capital which may then be passed on to customers.[307]

IBAN Discrimination

2.211 N26 informed the Commission that its product offering in the State is currently limited as many Irish companies and utilities are reluctant to accept a German registered IBAN number.[308] As noted above, N26 operates its financial services across the EU using a European Passport. N26 stated that if actions against IBAN discrimination could be taken by regulators, there would be greater incentive for banks from abroad to enter the market in the State.[309]

[307] See MoCo response to Question 2 of the Phase 1 Questionnaire, dated 29 June 2021.

[308] See page 2 of the N26 Call Note, dated 5 August 2021.

[309] See page 2-3 of the N26 Call Note, dated 5 August 2021.

3. OVERVIEW OF LEGISTLATIVE FRAMEWORK AND RELEVANT CASE LAW / GUIDELINES

Introduction

3.1 This section of the Determination sets out the legislative framework within which the Commission conducts its review of mergers notified pursuant to section 18 of the Act and includes a summary of relevant guidelines published by the Commission and relevant case law. All statutory references in this section are to the Act, unless otherwise stated.

Legislative Framework

3.2 When a merger or acquisition within the meaning of Section 16 is notified to the Commission pursuant to section 18 (the "Notified Transaction") the Commission is required to assess the impact that the Notified Transaction will have on competition in the State, pursuant to section 20. The applicable legal test at that stage is set out in section 20(1)(c) which provides that the Commission:

"*shall form a view as to whether the result of the merger or acquisition would be to substantially lessen competition in markets for goods or services in the State*."

3.3 Following notification, the Commission has 30 working days after the appropriate date within which to decide whether it can clear a Notified Transaction without having to carry out a full investigation under section 22, known as a "Phase 2 Investigation". This decision is taken on the basis of the evidence available to it, including the submissions of the parties to the Notified Transaction and third parties.[310] A Phase 2 Investigation is opened under section 22[311] if the Commission has been unable, on the basis of the information before it, to form the view that the result of the Notified Transaction will not be to substantially lessen competition in in markets for goods or services in the State.

[310] Section 21(2)(a) of the Act and paragraph 2.11 of the Mergers and Acquisitions Procedures.

[311] Section 21(2)(b) of the Act and paragraph 3.1 of the Mergers and Acquisitions Procedures.

3.4 Where the Commission has initiated a Phase 2 Investigation, it must make a determination within 120 working days of the appropriate date[312]. Upon completion of a Phase 2 Investigation, the Commission must make a determination that the merger may be:

(a) *put into effect;*

(b) *may not be put into effect; or*

(c) *may be put into effect subject to conditions specified by it being complied with,*

on the ground that the result of the merger or acquisition will or will not, as the case may be, be to substantially lessen competition in markets for goods or services in the State, or, as appropriate, will not be to substantially lessen such competition if conditions so specified are complied with."[313] (emphasis added)

The Commission's approach to the SLC test

3.5 Under the Act, the Oireachtas has entrusted to the Commission the task of investigating competition issues raised by Notified Transactions. The Act imposes on the Commission a duty to act, but has set the terms upon which the Commission must act in such a way as to afford the Commission a wide latitude in its assessment of the competition issues upon which it is required to report as well as in relation to the remedial decisions it must take.

3.6 Each stage in the Commission's decision-making process (i.e., is there a merger or acquisition within the meaning of section 16; whether the merger will or will not result in a substantial lessening of competition ("SLC") under section 22(3); and what remedies will ameliorate any effects of the merger on competition in markets for goods or services under section 20) necessarily involves a predictive

[312] The term "*appropriate date*" is defined in section 19 of the Act. Section 22(4A) of the Act suspends the 120 working day timeframe referred to in section 22 where the Commission has issued a requirement to provide information pursuant to section 20(2) of the Act. Section 22(4B) provides that the Commission shall furnish a copy of the written determination to the notifying parties within 135 working days after the appropriate date where the notifying parties submit proposals to the Commission in accordance with section 20(3) of the Act.

[313] Section 22(3) of the Act.

exercise and involves an important element of judgement. Thus, in carrying out its duties to assess whether there is a merger, to identify any SLC and to remedy it, the Commission has a wide margin of appreciation.

3.7 In this regard, the Commission refers to the judgment of Cooke J in *Rye Investments Ltd. V Competition Authority* who held*:*

"…where the Authority has, without committing significant error, exercised its specialist expertise in making judgments as to the prospective consequences of the economic and commercial factors which govern or influence competition in the relevant market, this Court should not intervene even if it is demonstrated that an opposite conclusion might plausibly have been reached by placing weight on different aspects of the available evidence or data or by attributing different or greater significance to other pertinent factors in the economic assessment."

…

"Accordingly, the Court considers that even if it might be said that the Authority is taking the most favourable view of the information at its disposal, the Court does not consider that it has gone beyond the margin of judgment which it is accorded in such matters and has not committed any obvious or significant error of assessment in respect of the material before it."[314]

3.8 The Commission considers that, in the test set out in section 22(3) quoted above, the relevant standard of proof is the ordinary civil standard, i.e., the balance of probabilities. In other words, in order to decide whether the result of the merger or acquisition will (or will not) be an SLC, the Commission must decide that an SLC is more likely than not to occur.[315]

3.9 The application of the balance of probabilities (or more likely than not) test is also recognised in the Commission's Guidelines on Merger Analysis: for example, paragraph 1.6 explains that in applying the SLC test, the Commission investigates

[314] Paragraphs 5.21 and 8.21 of *Rye Investments Ltd. V Competition Authority* [2009] IEHC 140 ("Rye Investments").

[315] Paragraph 9.19 of *Rye Investments*, cited above.

the *likely* effect of a merger not only by reference to current competitors, but also by reference to potential competitors. Similarly, paragraph 1.19 provides that the Commission requires sufficient reliable evidence from the merging parties regarding the *likely* competitive effects of the merger.

3.10 Furthermore, it is important to recognise that the concept of a standard of proof provides a framework within which, for example, the Commission conducts its assessment of the likely effects of a merger. Such an assessment is, however, a matter of judgement and evaluation and an unduly technical or rigid approach to the application of the standard of proof is not of particular assistance.

3.11 Where the range of ways in which an SLC could be made manifest is wide and, indeed, necessarily unpredictable, the Commission's assessment must be carried out in the round by looking at all the relevant factual material, including the incentives which those involved might have to act to reduce competition, and then making an overall assessment of the likelihood of the merger resulting in an SLC.

3.12 Accordingly, any Commission finding in relation to the presence or absence of an SLC will be based on all available information to the Commission considered in light of all credible theories of consumer harm arising from possible adverse competition effects.[316]

3.13 As set out in the remainder of this determination, the Commission has in mind the relevant civil standard in considering the statutory question of whether the result of the merger will be an SLC, and it applies that standard in reaching a judgement as to the likelihood of possible outcomes. While the Commission may use quantitative measures to assist in analysing whether a merger is likely to result in an SLC, the Commission will assess each merger on its merits. Paragraph 1.8 of the Merger Guidelines states as follows:

"*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*

[316] See paragraph 1.7 of the Merger Guidelines.

likely to have such an effect. Each proposed merger needs to be assessed on its merits and in its own particular circumstances."

3.14 Paragraph 1.9 of the Merger Guidelines goes on to make the important point that, in applying the SLC test, the Commission analyses not only the effect on the price of affected products but also other effects that can impact on consumers, such as changes to output (quantity), quality, consumer choice and innovation (e.g., development of new products or enhancements to existing products).

3.15 Chapters 2 to 9 of the Merger Guidelines set out the Commission's approach to the key elements of merger review function, such as market definition, horizontal merger effects, barriers to entry and expansion, countervailing buyer power, efficiencies and failing firm arguments. The remainder of this determination will summarise the applicable principles when the Commission considers the relevant element of the analysis.

Commission's View on the Position of the Parties

3.16 Much weight is placed by the Written Response of the Parties upon the linked notions of the burden and standard of proof. In outline, the Parties contend that the Commission has failed to discharge the relevant burden which must be met before the Commission can conclude, in particular, that the result of a merger will be an SLC. The particular points raised by the Parties are dealt with below. There is, however, a general point to be made in relation to the relevance of EU case-law on the standard of proof[317] and in particular the test set out by the General Court of the EU (the "General Court") in *CK Telecoms*,[318] so-called "CK Telecoms Test".

3.17 The judgment of the General Court in *CK Telecoms* applies a somewhat higher standard of proof than the balance of probabilities test under the EU Merger Regulation. In particular, the General Court states that:

[317] Sections 2.3 and 2.4.

[318] Case T-399/16, *CK Telecoms UK Investments Ltd v European Commission* ("CK Telecoms").

"In the context of an analysis of a significant impediment to effective competition the existence of which is inferred from a body of evidence and indicia, and which is based on several theories of harm, the Commission is required to produce sufficient evidence to demonstrate with a strong probability the existence of significant impediments following the concentration. Thus, the standard of proof applicable in the present case is therefore stricter than that under which a significant impediment to effective competition is 'more likely than not', on the basis of a 'balance of probabilities', as the Commission maintains. By contrast, it is less strict than a standard of proof based on 'being beyond all reasonable doubt'"[319].

3.18 While the *CK Telecoms* test, like any relevant decisions in other jurisdictions, especially the European Union, is of interest to the Commission, the approach taken by the General Court in *CK Telecoms* is no more than a persuasive authority for the interpretation and application of the Act. However, for a number of reasons, the Commission considers that it would not be appropriate to apply the heightened standard of proof applied in *CK Telecoms*.

3.19 Firstly, as noted above, the ordinary civil standard of proof applies to the discharge of the Commission's functions under Part 3 of the Act. EU law and the EU Merger Regulation do not affect national rules on the standard of proof nor the obligations of the Commission under domestic merger control.

3.20 Secondly, the Commission has followed the approach adopted by the High Court in *Rye Investments v Competition Authority* rather than that of the EU General Court under different legislation. For example, in *Rye Investments* the High Court asked whether the Authority had available to it a sufficient extent of evidence and data upon which it could reasonably base a judgment and provide adequate reasons for the conclusion it reached on market definition.[320] Similarly, in assessing the closeness of competition between the branded products and private label as a realistic future competitive force in reaction to the acquisition in that

[319] *CK Telecoms*, at paragraph 118.

[320] Paragraph 8.13 of *Rye Investments*, cited at paragraph 3.7 above.

case, the High Court asked "*whether it can be predicted as a matter of reasonable probability that a sustained price increase by the merged entity in either of these markets will be defeated by a sufficient switch on the part of consumers to the private label products on the assumption that they continue to be marketed as at present and according to the existing business or marketing models*".[321] The Commission considers that the judgment in *Rye* is an example of the application of the balance of probabilities test under the Act.

3.21 Thirdly, the Commission notes that the European Commission has appealed the General Court's judgment in *CK Telecom* to the EU Court of Justice (the "CJEU"). The European Commission's first ground of appeal is that the General Court's judgment in *CK Telecom* applies a standard of proof for the existence of a "*significant impediment to effective competition*" ('strong probability') that is stricter than the test set out in the case law of the CJEU and in the EUMR, which requires the European Commission to identify the 'most likely' outcome. Accordingly, the Commission does not consider that it is appropriate to follow the approach in *CK Telecoms*.[322]

3.22 For all of these reasons, the Commission considers that it should apply the ordinary civil standard of balance of probabilities.

[321] Paragraph 9.19 of *Rye Investments*, cited at paragraph 3.7 above.

[322] Case C-376/20 P, not yet decided; the grounds of appeal are set out at OJ [2020] C 390/20.

4. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

Introduction

4.1 In this section, the Commission identifies the potential product and geographic markets that are relevant for the assessment of the likely effects of the Proposed Transaction. It summarises the general principles that apply to market definition, the activities of the notifying parties, the views of the notifying parties and third parties and then sets out the Commission's view of the potential relevant product and geographic markets.

4.2 Market definition provides a framework for assessing the competitive effects of a merger; it is a means to an end. The boundaries of a market do not determine the outcome of the analysis of the competitive effects of the merger, as there can be constraints on the merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints will be more significant than others.[323] The Commission expects to take such factors into account in its assessment of competitive effects.

Horizontal Overlap

4.3 In the Merger Notification Form, the Parties have submitted[324] that there is a horizontal overlap between BOI and KBC in the State with respect to the provision of the following products:

(a) Mortgages;

(b) Other products:

(a) Personal deposit accounts;

(b) Personal loans;

(c) Personal current accounts;

[323] See paragraph 2.3 of the Guidelines for Merger Analysis, adopted by the Commission on 31 October 2014 (the "Merger Guidelines").

[324] See page of 17 the Merger Notification Form.

(d) SME deposit accounts;

(e) SME loans;

(f) SME current accounts;

(g) Corporate deposit accounts; and,

(h) Credit and debit cards (together the "Other Products").

4.4 According to the Parties, the accretion to BOI's share of the market for Other Products[325] (i.e., all products that form part of the Proposed Transaction except for mortgages) is less than 3%.

4.5 The Commission's assessment of data obtained from the Parties and from other sources is consistent with the Parties' assessment with respect to the minimal significance of overlaps in the provision of the Other Products. Given the very limited overlaps between BOI and KBC in the Other Products that form part of the Proposed Transaction, the Commission does not propose to come to a definitive view on the definition of these other potential product markets. The analysis of other product markets is not considered further in this Determination. However, in Section 5 there is a further analysis of the potential situation where other financial products impact on the provision of mortgages and may contribute to a competitive constraint.

Relevant principles

4.6 The role of market definition is explained in the Commission's Merger Guidelines. Market definition is a conceptual framework within which relevant information can be organised for the purpose of assessing the competitive effects of a merger.[326]

4.7 According to the Merger Guidelines:

[325] See page 178 of the Transfer Agreement dated 22 October 2021. Current accounts were originally part of the KBC Assets as of page 16 of the Merger Notification Form, but were not included in the KBC Assets listed in the Transfer Agreement. Instead, current accounts will be subject to the Current Account Switching Framework.

[326] See paragraph 2.1 of the Merger Guidelines.

"The relevant product market is defined in terms of products rather than producers. It is the set of products that customers consider to be close substitutes. In identifying the relevant product market, the Commission will pay particular attention to the behaviour of customers, i.e., demand-side substitution. Supply-side substitution (i.e., the behaviour of existing and/or potential suppliers in the short term) may also be considered".[327]

4.8 The relevant market contains the most significant alternatives available to the customers or consumers of the merging parties. Identifying the precise relevant market involves an element of judgement, with appropriate weight being given to factors on both the demand and supply side.[328]

4.9 The Merger Guidelines note that:

"Whether or not a product is a close substitute of a product supplied by one or more of the merging parties will depend on the willingness of customers to switch from one product to the other in response to a small but significant and non-transitory increase in price (or an equivalent decrease in quality). This will involve an assessment of the characteristics and functions of the products in question".[329]

4.10 The standard economic test for defining the relevant market is the small but significant non-transitory increase in price (''SSNIP'') test. The SSNIP test seeks to identify the smallest group of products and geographic areas within which a hypothetical monopolist could profitably impose a SSNIP without a sufficient number of consumers/service purchasers switching to alternative products to render the price increase non-profitable. However, the Commission notes that the SSNIP test is just one of the tools used in defining the relevant product market. A substantial emphasis should also be placed on product characteristics, price and

[327] See paragraph 2.8 of the Merger Guidelines.

[328] See paragraph 2.2 of the Merger Guidelines.

[329] See paragraph 2.9 of the Merger Guidelines.

intended use as well as observed substitution patterns between various products that can potentially be included in the same product market.

4.11 It may not be possible to draw a clear line around the fields of rivalry. That being so, it is fallacious to regard as relevant to the competition analysis only those products defined as falling within the relevant market and to disregard any competitive pressure from those products defined as falling outside it. The Commission may therefore consider segmentation within the relevant market or factors outside the relevant market that impose competitive constraints on firms in the relevant market.[330]

4.12 Ultimately, the Commission's definition of the relevant market or markets depends on the specific facts, circumstances, and evidence of the merger under investigation.[331]

Relevant Product Markets

Previous decisions

4.13 The Commission has recently considered several mergers in the financial sector.[332] These previous merger determinations concerned various segments of the financial sector, including investment and wealth management services, corporate finance advisory services, and capital market services. The Commission has not specifically considered the provision of mortgages in previous merger determinations. Outside its merger review remit, the Commission carried out a review of the Irish mortgage market in 2017.[333]

4.14 The European Commission has considered mergers in the financial sector in several Member States. Generally, the European Commission has left the precise definition of relevant financial sector markets open in its merger considerations.

[330] See paragraph 2.1 of the Merger Guidelines.

[331] See paragraph 2.6 of the Merger Guidelines.

[332] See for example M/21/046 – Bank of Ireland/Davy (Wealth Management and Capital Markets) and M/21/012 – AIB/Goodbody.

[333] See the Commission's Mortgage Options paper, dated 15 June 2017, available at: https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/06/CCPC-Mortgages-Options-Paper.pdf.

For example, it has considered whether individual retail banking products represent separate relevant product markets or whether several retail banking products may form part of a single relevant product market, and in both cases did not come to a definitive conclusion.[334]

4.15 In considering the provision of mortgages, the European Commission has recognised that the weakness or absence of demand-side substitution suggests that mortgages should be treated separately from other financial products. However, the exact product market definition has generally been left open.[335]

Views of the Parties

4.16 In the Merger Notification Form, BOI proposed the following with respect to product markets:

> *"As regards retail loans, BOI notes the EC decisional practice in which the EC has explained that, while there may be some supply-side substitutability for a given category of customers, the individual product categories such as consumer loans and mortgages serve different purposes and have distinctive features and may therefore be considered separately albeit without reaching a definitive view on the exact approach.*
>
> *As regards mortgages specifically, while acknowledging that the EC decisional practice suggests mortgages may be considered separately, BOI considers there would be no basis to segment the mortgage category further given the significant degree of supply-side substitutability and the fact that all providers can and do offer the full range of mortgage products to the full spectrum of customers".*[336]

[334] See for example Case M.3894 – Unicredit / HVB and Case M.4844 – Fortis / ABN Amro.

[335] See for example Case M.7007 - RZB/ RBSPK/ RWBB and case COMP/M.3894 - UNICREDITO / HVB.

[336] See page 29 of the Merger Notification Form.

4.17 KBC has not provided a view on the definition of the relevant product or geographic market.

4.18 In their Written Response, the Parties agreed with the Commission's views in relation to market definition as set out in paragraph 3.45 of the Assessment. The Parties also agreed with the Commission's view that "*the relevant market includes all types of mortgages*" without further segmentation by customer type.[337] However, the Parties disagreed with the Commission's view that it is not necessary to differentiate tracker mortgages from non-tracker mortgages with regard to the analysis of competitive effects. The Parties argued that tracker mortgage customers are very unlikely to switch their mortgage, "and therefore cannot be seen as contestable now or in the future", thus should not be included in any analysis of competitive effects.

Views of the Commission

4.19 The Commission has taken the Parties' core overlap in the provision of mortgages as the starting point for its assessment of the relevant product market(s) and has considered whether this definition should be:

(a) **Wider** to include other banking products, including those products that form part of the Proposed Transaction; or

(b) **Narrower** to distinguish between:

   (a) Different types of mortgage.

   (b) Different customer groups.

   (c) Different sales channels.

*(a) Should the market be **wider** than the provision of mortgages?*

4.20 The market would be wider than the provision of mortgages if it could be shown that there are demand side substitutes for a mortgage, such that a customer

[337] See paragraph 4.2(a) of the Written Response.

would consider other products to have sufficiently similar functionality to constitute a significant alternative to a mortgage.

4.21 The Commission's view is that other financial products cannot be seen as functional substitutes for a mortgage; a small but significant change in the price of other financial products would not result in customers switching from mortgages to other financial products to fund property purchases, as a mortgage customer would be unlikely to find other sources of funding to be a substitute for a mortgage. This is due to the characteristics of a mortgage as a loan secured on a property, such as the duration and terms and conditions of the loan, compared with alternative sources of funding that are typically shorter term and of smaller value. Therefore, there is not demand-side substitutability between mortgages and other financial products.

4.22 Although other financial products cannot act as a substitute for mortgages, the Commission has considered whether the purchase of a range of financial products from the same provider might suggest that there is a wider market for general financial or banking services. The Commission notes that customers will often seek a basket of financial products from the same provider. This may include a range of products such as current and deposit accounts, mortgages, credit card and insurance products.

4.23 There is considerable cross-selling in the financial sector. Being a customer's main current account provider is often an advantage when seeking to sell other financial products to that customer, including mortgages and deposit accounts. As discussed in Section 2, all of the full service retail banks have mortgage offers that link to other banking products. For example, KBC offers a discount of 0.2% on a mortgage for a customer who also has a current account with KBC. This is an example of bundling, where distinct products may be purchased together at a discount, rather than tying, where distinct products must be purchased together.[338]

[338] See paragraphs 5.20 to 5.24 of the Merger Guidelines for discussion of the possible competition effects of tying and bundling.

4.24 The Commission's view is that while cross-selling between mortgages and other products takes place, particularly where a customer buys a mortgage from a full-service bank, this is not sufficient to suggest a wider product market of a basket of financial services. Customers can and do purchase standalone mortgages, and all providers offer standalone mortgages that are not linked to other financial products. However, the Commission does recognise potential linkages between various financial products falling outside the market for the supply of mortgages, and will consider the extent to which this poses a constraint in its assessment of competitive effects.

4.25 The Commission has considered the extent to which a supplier of other financial products would switch to supply mortgages, such that supply-side substitutability would suggest a wider product market. The Commission's view is that a supplier of other financial products would not be able to switch to supply mortgages quickly and at minimal cost. The Commission notes, amongst other factors, high barriers to entry (including regulatory barriers) that would make switching of supply unlikely. The reactions and behaviour of actual and potential competitors will be considered in the analysis of competitive effects in Section 5 rather than as part of the market definition.

4.26 On the basis of the information provided above, the Commission's view is that the relevant product market is not wider than the supply of mortgages. The Commission's view is consistent with the Parties' view and precedent from EU decisional practice discussed above.

*(b) Should the market be **narrower** than the provision of mortgages?*

4.27 The Commission has noted in paragraphs 4.16 to 4.17 the Parties' view that there is no basis for segmenting the mortgage category further. However, the Commission has carried out its own analysis and has considered whether the market for the provision of mortgages should be further segmented by:

(a) Different types of mortgage;

(b) Different customer groups; and

(c) Different sales channels;

(a) Different types of mortgage

4.28 In Section 2, the Commission has described the various types of mortgage available in the State.

4.29 In summary, types of mortgage can be categorised as:

(a) Interest only;

(b) Repayment;

(c) Fixed rate;

(d) Variable rate;

(e) Split rate; and,

(f) Cashback.

4.30 In examining types of mortgage available from a demand-side perspective, the Commission's view is that a small but significant change in the price of one type of mortgage could result in customers switching to a different type of mortgage. Where customers switch mortgage, they can and do switch between different types of mortgage.

4.31 The possible exception to this is the case of tracker mortgages. Tracker mortgages are linked to the ECB's interest rate, and as a result, have substantially lower interest rates than other mortgage products. However, tracker mortgages are no longer sold in the State. Customers with existing tracker mortgages have little incentive to switch to variable or fixed rate mortgage products, as they would be subject to higher rates. Customers with a variable or fixed rate mortgage cannot switch to a tracker mortgage, as they are no longer available. Similarly, new customers seeking to secure a mortgage cannot opt for a tracker mortgage.

4.32 With regard to the Parties' view that the provision of tracker mortgages should not be considered in the analysis of competitive affects, the Commission considers that there is no need to come to a definitive view on whether tracker mortgages belong in the same product market as all other types of mortgage. Tracker mortgages are legacy products and are no longer offered to customers in the State.

4.33 From a supply-side perspective, all mortgage lenders offer a range of different types of mortgage. The Commission outlined in Section 2 the propensity for some lenders to prioritise certain types of offer. For instance, cashback offers are primarily (but not always) offered by the retail banks and not by non-bank lenders. While some lenders may focus on the provision of one type of mortgage rather than another, there is no evidence that would suggest that particular types of mortgage would constitute separate product markets.

(b) Different customer groups

4.34 The Commission has considered whether the mortgage market should be segmented by type of customer.

4.35 The Commission has considered whether different customer types require different mortgage products, and the extent to which this indicates separate markets defined by customer type. In Section 2, the Commission noted different regulatory requirements that are applied to different types of customer. For example, the level of deposit required differs according to whether the customer is a First Time Buyer, a second or subsequent time buyer, or is purchasing a Buy-to-let mortgage. The Commission also noted in Section 2 that market research findings describe some differences in the characteristics of different types of mortgage seeker which may impact on their choice of mortgage. For instance, there is some evidence that cashback mortgages are particularly popular with First Time Buyers.

4.36 Demand may also differ between business customers acquiring Buy-to-let mortgages in order to offer rental properties as a business, and consumer Buy-to-let mortgages which are aimed at individual consumers. Typically, a business customer seeking funding to offer rental properties as a business would not be likely to find a residential mortgage to be a good substitute because the characteristics, terms and pricing of the loan product would be significantly different. Business Buy-to-let mortgages are generally not available to residential mortgage-seekers. There may be limited substitutability at the margins, if for example a consumer started to acquire mortgages for a number of properties.

4.37 The Commission has considered whether the market should be segmented in terms of new customers (which would correspond to mortgage origination, or the front book) and existing customers (which would correspond to mortgage stock or the back book). The Commission's view is that the products demanded by each type of customer would be similar, and would be unlikely to warrant the finding of separate markets.

4.38 The Commission's view is that there is limited or no demand-side substitutability between customer types. A First Time Buyer clearly cannot switch to become a second time buyer, and a purchaser of an owner-occupier mortgage cannot switch to become a Buy-to-let purchaser.

4.39 However, from a supply-side perspective, the Commission notes that almost all mortgage lenders offer almost all types of mortgage to all types of customer. The exception to this is in the provision of Buy-to-let mortgages to business customers, where the mortgage is sought as an input to a property rental business. The Commission's view is that business Buy-to-let is functionally different to the provision of other types of mortgage and is akin to an investment product. This functional difference on the demand side is also evident on the supply side. A supplier of residential Buy-to-let mortgages would not necessarily be able to switch to supply business Buy-to-let mortgages. This is supported by the presence in the market of specialist providers such as Capitalflow who offer business Buy-to-let mortgages alongside other business lending products, and do not offer mortgages to other customer groups. Amongst other mortgage providers, only those that offer a range of investment products to large corporate clients will offer both business Buy-to-let and consumer Buy-to-let. In the State, mortgage providers offering both business Buy-to-let and residential mortgages are BOI and AIB.

4.40 The Commission's view is that the product market includes the provision of mortgages to all types of customer with the exception of customers purchasing business Buy-to-let mortgages.

(c) Different sales channels

4.41 The Commission has considered whether it is appropriate to segment the mortgage market by distribution channel, particularly in relation to mortgage products which can be sold either directly to customers by retail banks or non-bank providers, or through mortgage brokers or white label offerings.[339] Mortgage brokers typically offer mortgages from a range of providers and offer customers independent advice on suitable mortgages, which is required by law to be impartial. Mortgage brokers may receive commission from mortgage providers for each product sold.

4.42 The Commission's investigation has shown that there is no distinction between the mortgage products available to customers based on the distribution channel used by the customer to secure their mortgage. From a demand side perspective, there are little to no barriers to customers' ability to substitute between mortgage brokers and direct providers when securing a mortgage. Similarly, the distribution channel does not affect the range and cost of products available to customers seeking to secure a mortgage, as the vast majority of products offered directly by retail banks and non-bank providers to customers are also available through mortgage brokers.

4.43 While non-bank mortgage providers access the mortgage market primarily or, in some cases, exclusively through the mortgage broker channel, rather than by directly selling to customers, there is no evidence of a demand-side distinction that supports the assessment of the provision of mortgage products via the broker channel as a distinct customer segment from the provision of mortgage products directly by retail banks and non-bank providers to customers.

4.44 The Commission has also considered whether mortgage lending by bank and non-bank lenders would be likely to constitute separate product markets. For example, the Commission noted in Section 2 that consumer research indicated that some customers would choose to acquire a mortgage only from a bank. The

[339] White label mortgages are those offered by a mortgage lender using the name and brand of another company.

Commission's view is that the mortgage products offered by bank and non-bank lenders are sufficiently similar to suggest that they belong in the same product market. As noted above, bank and non-bank lenders offer a similar range of mortgage products. While bank and non-bank lenders may place a different emphasis on aspects of their offer – for example, offering cashback – the underlying offers are similar. A customer acquiring a mortgage from a bank could readily switch that mortgage to a non-bank lender and, vice versa. The Commission's view is that mortgages provided by bank and non-bank lenders are in the same relevant product market.

4.45 The Commission's view is that there is no need to further segment the market by type of mortgage; customer group; sales channel; or lender.

Conclusion on relevant product markets

4.46 The Commission's view is that the relevant product market is that for the provision of mortgages to all types of customer (with the exception of customers purchasing business Buy-to-let mortgages), and that there is no reason to find a wider product market, nor to further segment the market. The Commission notes that this is consistent with the Parties' view in the Merger Notification Form, and that it is aligned with EU decisional practice.

Relevant Geographic Markets

Views of the Parties

4.47 In the Merger Notification Form, the Parties stated that:

> *"In its previous decisions, the EC has considered that, with regard to retail banking services, the relevant geographic market is national in scope due to the different competitive conditions within individual Member States and the importance of a network of branches. While recognising that innovation in electronic communications has reduced the importance of having a well-developed network of branches, the EC has noted that remaining differences in the competitive environment within individual Member States may continue to support the conclusion that the markets*

are national in scope.[340] *In some cases the EC considered a subnational/regional scope of the banking market, depending on the characteristics of the countries concerned, but left it open whether the market should be considered national or subnational.*[341]

In the context of the Irish retail banking market, BOI considers the exact geographic scope of the market can be left open at present".[342]

Views of the Commission

4.48 The Commission's view is that the market is national in scope. The Commission has seen no evidence to suggest that a finding of narrower, subnational markets would be warranted. No mortgage provider has claimed to the Commission that it operates at a regional or sub-national level. The branch networks of pillar banks cover all sections of the State, while mortgage brokers provide widespread geographic access to non-bank lenders. Furthermore, mortgage products are being increasingly accessed online with BOI noting that "*c.70% of* [BOI] *sales of key banking products are now originated digitally*".[343] Online access is available across all of the State.

4.49 Given differences in competitive conditions between jurisdictions, the Commission considers that a finding of a wider cross-border market would not be appropriate. Providers of mortgages in the State must follow proprietary Irish mortgage regulation.[344] This prevents mortgage providers without established Irish operations from selling mortgage products in the State.

Overall conclusion on relevant market definition

[340] See Case M.8414 – DNB / Nordea /Luminor, at paragraph 22.

[341] See for example Cases M.8414 – DNB /Nordea/Luminor; M.2578 Banco Santander Central Hispano / AKB; M.3894 – Unicredit / HVB; M.4356 – Deutsche Bank / Berliner Bank; M.4844 – Fortis / ABN AMRO Assets; M.5384 – BNP Paribas / Fortis; and M.5811 – Erste Bank / ASK.

[342] See page 29 of the Merger Notification Form.

[343] Page 9, https://investorrelations.bankofireland.com/app/uploads/BOI-Annual-Report-2020.pdf.

[344] Such as Macro-prudential Measures, the Code of Conduct on Mortgage Arrears, and S149 of CCA 1995.

4.50 Having regard to the evidence available to it, the Commission considers that the relevant market for the competitive assessment of the Proposed Transaction is the market for the provision of mortgages to all types of customer (with the exception of customers purchasing business Buy-to-let mortgages) in the State.

5. RELEVANT COUNTERFACTUAL

Introduction

5.1 The SLC test in section 22(3) of the Act requires an assessment of the effects of a merger or acquisition on the state of competition in a relevant market. In assessing the likely effects of a merger on competition, the Commission, as in the present case, typically compares the situation that may be expected to arise following the merger with that which would have prevailed without the merger. The market situation without the merger is often referred to as the "counterfactual".

5.2 The Commission's Merger Guidelines state that:

> *"The term 'counterfactual' refers to the state of competition without the merger or acquisition. In other words the "*actual*" situation is the merger being put into effect and the "counterfactual" is the situation in the absence of the merger being put into effect. The counterfactual provides the reference point, or the point of comparison, for assessing competitive effects arising from a merger".*[345]

5.3 In other words, a counterfactual is a hypothesis as regards the facts by reference to which an alleged effect on competition is to be tested. It involves considering what would have happened if the proposed merger had not taken place.

5.4 Paragraph 1.15 of the Commission's Merger Guidelines states the following:

> *"the Commission will expect the merging parties to substantiate any counterfactual they propose with objective evidence supported, where necessary, by independent expert analysis. Such evidence and analysis should obviously be consistent with the parties' own internal pre-merger assessments of the likely counterfactual."*

[345] See paragraph 1.12 of the Commission's Merger Guidelines.

5.5 Inevitably there is a degree of uncertainty as regards hypothetical future events, and the Commission will consider all the evidence adduced by the parties in the context of an assessment as to whether there is likely to be an SLC in the future. The Commission must ultimately ask itself whether it is satisfied on the balance of probabilities that there will be an SLC caused by the merger. The Commission is, however, not under an obligation to make findings of fact (whether on a balance of probabilities or otherwise) in respect of each item of evidence. Nor is it obliged to find that any particular potential event is more likely than not to occur before it can take it into account in its overall assessment of the probability of SLC.

5.6 Paragraph 9.8 of the Commission's Merger Guidelines states *"[i]n particular, documents prepared prior to, or unrelated to, the proposed transaction will provide useful evidence of intentions to exit."* That is, the Commission places more weight on documents produced prior to the merger being in contemplation. This is because such documents could indicate an intention to exit regardless of any particular asset sale being achieved. However, once the merger or a proposed transaction is under contemplation, it becomes very difficult for the Commission to separate out an intention to exit in the absence of the merger from an intention to exit due to the merger.

The Assessment and Written and Oral Response

5.7 The Commission set out its provisional counterfactual in the Assessment. Its provisional finding was that, absent the Proposed Transaction, KBC would remain active in the market for the provision of mortgages in the State, and would continue to implement its [✂] Strategy and remain an important competitive force in the market. The Commission's preliminary view was that the Parties had not substantiated, with sufficient evidence, an alternative counterfactual of KBC exiting the State. Alternatively, in the event that KBC were to exit the market in Ireland in the absence of the Proposed Transaction, at the time of the Assessment the KBC Assets could have been sold to a potentially less anti-competitive alternative purchaser.

5.8 The Parties, in their Written Response and Oral Response, disagreed with the Commission’s provisional analysis of the counterfactual. The Parties submitted that:

> *“[✂]”*[346]

Proper approach to the counterfactual in the present case

5.9 The Parties have argued that in its counterfactual, the Commission is obliged to take into account the extent to which KBC’s plans and capabilities have changed since the time of entering into the MOU. They argue that the counterfactual should be dynamic and take account of events that occurred since the MOU was signed in April 2021. In particular they state:

> *“In the Parties’ view, the Assessment should not consider an ossified counterfactual that, in the absence of the Proposed Transaction, [✂]. By contrast, in line with the BSkyB/ITV case, the counterfactual is dynamic and should take into consideration profound changes for the prospects of KBC's business continuing in the State and that, in the absence of the Proposed Transaction, [✂]”.*[347]

5.10 The Commission recognises that competitive conditions can and do change over time. The Commission accepts that *“[t]he identification of the counterfactual does not ossify the SLC analysis”*[348], that is to say, it is important to take into account the potential for change in the market in order to consider as fully as possible the level and intensity of competition without the merger.

[346] See paragraph 1.4(i) of the Written Response.

[347] See paragraph 3.2.20 of the Written Response.

[348] See paragraph 91 of the judgment of the UK Competition Appeal Tribunal in *British Sky Broadcasting Group Plc v The Competition Commission* (the BskyB/ITV case) [2008] CAT 25, upheld on appeal to the Court of Appeal of England and Wales [2010] EWCA Civ 2.

5.11 It is equally important, however, to distinguish between competitive conditions and other developments that would have happened irrespective of the Proposed Transaction (which should be taken into account as part of any counterfactual analysis) and those which are directly related to or the result of the Proposed Transaction (which are irrelevant to the counterfactual analysis).

5.12 Actions that are either directly related to or the result of a merger are disregarded for the following reasons:

5.13 First, as already noted, the identification of a counterfactual involves a comparison between the competitive conditions that would result from the notified merger with the conditions that would have prevailed in the absence of the merger. Actions that are directly related to a merger or arise as a consequence of a merger would not have occurred in the absence of the merger. They are therefore irrelevant to the counterfactual assessment.

5.14 Second, in principle, actions taken by a merging party post-notification should not have the effect of altering the counterfactual or the assessment of an SLC. In particular, it is not open to any party to make decisions or take actions after notification, for example, altering the target undertaking's business, assets, or market strategy,[349] and then to argue that competition would be lessened regardless of the merger. Were it otherwise, a party would be able to take actions after notification that affect, or even determine, the outcome of the substantive assessment. As a matter of policy, the Commission considers that cannot be right.

5.15 Third, the Commission considers that its approach to the identification of a counterfactual is consistent with the decisional practice of the European Commission. For instance, in *GE/Alstom*, the Commission found that a *'recent deterioration of Alstom's financial situation in so far as it would not have occurred in the absence of the proposed merger cannot be taken into account'.*[350] The European Commission did not take into account the post-notification decline of

[349] The Commission's view in this regard are consistent with those of the Chief Competition Economist's team at the Directorate General for Competition of the European Commission. See in particular, *Recent Developments at DG Competition: 2017/2018*, Review of Industrial Organization (2018) 53:653–679, pp. 672 – 678.

[350] Case M.7278—General Electric/Alstom (Commission decision of 8 September 2015, Sect. 8.10.3.6).

the target as part of its counterfactual analysis in *GE/Alstom* because the decline was causally attributed to the merger.

5.16 Finally, there is a material difference between actions that are directly related to a merger and cases in which one of the parties to a merger is already failing. In the latter situation (which does not arise in the case of the Proposed Transaction), the pre-merger conditions of competition might not prevail regardless of the merger and so the counterfactual should reflect the expected failure of one of the parties regardless of the merger. The same is not true of the former situation.

5.17 For these reasons, the Commission has taken into account competitive conditions and other developments post-notification of the Proposed Transaction insofar as they are unrelated to the Proposed Transaction and, in the Commission's view, would have happened in any event. Conversely, post-notification developments that are directly related or attributable to the Proposed Transaction have not been taken into account in the identification of the counterfactual.

The appropriate counterfactual

5.18 In coming to its view of the appropriate counterfactual in this case, the Commission has fully considered the available evidence and taken into account the Parties' views. It is for the Commission to determine whether a counterfactual is sufficiently realistic to be useful, and to decide how much weight to place on it.

5.19 The competitive conditions existing at the time of the notification of the Proposed Transaction constitute the starting point for identifying the appropriate counterfactual. The Commission now proceeds to examine the following matters raised in the Assessment and Written Response and Oral Response:

(a) The intention of KBC to exit the State prior to the announcement and notification of the Proposed Transaction;

(b) Changing market circumstances, in particular KBC's conduct following the announcement and notification of the Proposed Transaction; and

(c) The possibility that the assets could have been sold to a potentially less anti-competitive alternative purchaser.

(a) The intention of KBC to exit the State prior to the announcement and notification of the Proposed Transaction

The Parties' views of KBC's intention to leave the State

5.20 The Parties have addressed KBC's future intentions in the Merger Notification Form, responses to the BOI Phase 1 RFI and the BOI Phase 2 RFI, the KBC Phase 1 Information Request and the KBC Phase 2 Information Request, and in their Written Response and Oral Response.

5.21 In response to the KBC Phase 1 Information Request, KBC stated the following:

> *"Based on developments in the Irish banking sector, including in particular the announcement of NatWest regarding the intended withdrawal of Ulster Bank from the State, KBC has been open to discussions in order to determine its options with regard to Ireland, including potentially an exit, and [✂].*
>
> *However, given discussions with BOI as outlined in further detail in response to Question 3 above, KBC made the decision that an exit through a sale of substantially all assets and liabilities of KBCI to BOI, together with the sale of other assets, in particular non-performing loans, to third parties unrelated to BOI, would constitute the best option for KBC (i.e., preferable to remaining in Ireland or other potential exit options). This led to the execution of the MOU pursuant to which it is KBC's intention to exit the Irish market in an orderly fashion respecting its obligations and providing for an orderly withdrawal taking into account the best interests of KBCI's customers.*
>
> *Therefore, [✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂]".*[351]

[351] See page 54 of response to the KBC Phase 1 Information Request, dated 17 September 2021.

5.22 BOI provided the following view in its response to the BOI Phase 1 RFI:

> *"On the basis of information before it, and as set out in the Notification, BOI considers that the relevant counterfactual is that:*
>
> *[✂];*
>
> *[…]*
>
> *BOI's understanding is that – [✂].*
>
> *[…] BOI was informed by [✂] that [✂[✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂]].*
>
> *Therefore, it is BOI's view that, [✂][✂][✂][✂][✂][✂][✂][✂][✂]".*[352]

5.23 In a letter to the Commission dated 21 January 2022, the Parties provided further information and views in respect of the relevant counterfactual:

> *"The Appropriate counterfactual is KBC's exit: In our view, the appropriate counterfactual to the CCPC's assessment of the Proposed Transaction remains KBC's exit. […] in particular, we note:*
>
> *(1) [✂]].*
>
> *(2) KBC has [✂].*

[352] See page 42 of the response to BOI Phase 1 RFI, dated 30 July 2021.

(3) For example, KBC considered [✂].

(4) KBC had preliminary and exploratory discussions with [✂].

(5) Ultimately, having considered its options, KBC ultimately concluded that the Proposed Transaction was the best option available in the circumstances".[353]

5.24 In the Written Response, the Parties stated that:

"In this context and light of KBCI's poor financial performance, KBC [✂] prior to discussions with BOI were [sic] commenced in relation to the Proposed Transaction, which [✂]."[354]

5.25 The Parties stated that:

"Therefore, prior to discussions with BOI commencing in December 2020, [✂]. In addition, due to KBCI's inability to generate an acceptable level of return on investment and sustainable profitability in Ireland on a par with KBC's operations in other countries, [✂]. Taking into account these factors, [✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂].

In this context, while certain actions were taken by KBC to preserve the value of its business in Ireland in order to maximise the return on a potential sale and certain factors made exit more challenging in the short term (e.g. the investigation into tracker mortgages), KBC [✂][✂][✂][✂]

[353] See page 2 of the letter from BOI to the Commission, dated 21 January 2022.

[354] See paragraph 3.2.8 of the Written Response.

[✂]".[355]

The Commission's findings in relation to KBC's intention to leave the State

5.26 The Commission considers that the Parties' evidence shows that [✂] KBC Group had been [✂][✂][✂][✂][✂][✂][✂][✂][✂][✂]. KBC Group attributes these internal deliberations to KBC's financial performance in the State. The fact that KBC Group was dissatisfied with KBC's financial performance in Ireland and was, as a corollary, considering its options does not establish that KBC had made a firm decision to exit the market before the announcement of the Proposed Transaction in April 2021 (or even BOI's first contact with KBC in December 2020). The Commission does not consider that there is sufficient evidence that KBC had taken a firm decision to leave the State prior to the announcement of the Proposed Transaction.

5.27 In order to assess KBC's intentions and conduct prior to the Proposed Transaction, the Commission sets out below:

- The timeline of events leading up to the Proposed Transaction; and
- The Commission's analysis of KBC's intentions, prior to the announcement and notification of the Proposed Transaction.

The timeline of events leading up to the Proposed Transaction

5.28 In order to provide context for considering KBC's intentions prior to the Proposed Transaction, the Commission sets out a timeline below of events leading up the announcement of the Proposed Transaction. The Commission notes that, while the Parties have disputed the interpretation of certain events (and this is discussed below) they have not disputed the accuracy of the timeline.

[355] See paragraph 3.2.12 – 3.2.13 of the Written Response.

5.29 In [✂], KBC started to implement [✂] Strategy (which was the strategy to continue investing and growing organically in the State).[356]

5.30 The Commission has been informed that on 25 November 2020, a call was held between [✂], and [✂]. According to [✂],[357] [✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂].[358]

5.31 [an investment bank] [✂] contacted BOI on 3 December 2020 to understand whether BOI may be interested in purchasing KBC.[359] BOI confirms that it was contacted by [an investment bank] and this appears to the Commission to have taken place [✂][✂][✂][✂][✂].[360]

5.32 In its responses to the KBC Phase 1 Information Request and KBC Phase 2 Information Request, KBC [✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂] [✂] [✂] [✂] [✂] [✂] [✂] [✂][✂][✂]. KBC stated that it was contacted by [an investment bank], on [✂], with *"a view to understanding whether KBC would consider a potential transaction involving its Irish operations."*[361] KBC stated that, "*the discussions regarding the Proposed Transaction were initiated following unsolicited contact from a third party, [an investment bank] in circumstances where KBC was exploring its options (including exit) with regard to its Irish operations.*"[362] KBC appears to understand that BOI was contacted on the same day by [an investment bank] about the potential for the Proposed Transaction. Further, KBC stated internally that [✂].[363]

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[356] See KBC Document "[✂]", dated [✂] ([✂]) ("[✂]").

[357] [✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂]. [✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂].

[358] [✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂].

[359] [✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂].

[360] A BOI internal document states that "[✂]". See BOI Document "[✂]", dated [✂] ([✂]).

[361] Question 3(a), paragraph 3.2 M 21 021 - Bank of Ireland Certain Assets of KBC - Response dated 17.09.21.

[362] Question 3(a), paragraph 3.4 M 21 021 - Bank of Ireland Certain Assets of KBC - Response dated 17.09.21.

[363] See page 7 of KBC Document "[✂]", dated [✂] ([✂]).

5.33 KBC's stated understanding is that, based on these initial approaches to both BOI and KBC by [an investment bank], both of the Parties indicated that they were willing to have an initial discussion regarding a potential transaction.[364] Following this, KBC and BOI had a preliminary discussion on 18 December 2020, and the CEO of BOI and the CEO of KBC Group had further discussions on 29 January 2021.

5.34 On 19 February 2021, Ulster Bank announced its phased withdrawal from the Republic of Ireland.[365] KBC noted this as a reason for its openness to "*discussions in order to determine its options with regard to Ireland, including potentially an exit*."[366] KBC cited the reasons for this as "*developments in the Irish banking sector, including in particular the announcement of NatWest regarding the intended withdrawal of Ulster Bank from the State*".[367]

5.35 On 3 March 2021, KBC received a letter of interest from BOI, setting out BOI's "[✂]*, or, alternatively,* [✂]." This was followed by further engagement between BOI and KBC regarding this possible offer.

5.36 On 13 April 2021, memos were provided to the KBC Board of Directors and KBC Group Executive Committee outlining options for a potential transaction with BOI.[368] The transaction with BOI (code-named project [✂]) was classed as [✂]. The memo to the KBC Group Executive Committee presented two options: [✂][369] The Memo for the Board of Directors also stated that "*initial analysis indicated that* [✂] *would provide a materially higher value to the shareholder than further investment under the* [✂] *plan*".[370]

[364] Question 3(a), paragraph 3.3 M 21 021 - Bank of Ireland Certain Assets of KBC - Response dated 17.09.21.

[365] See here: https://www.ulsterbank.ie/globals/about-us/media-relations/press-releases.html .

[366] Question 3(a), paragraph 3.2, Question 4(a), paragraph 4.2, and Question 64, paragraph 64.1 M 21 021 - Bank of Ireland Certain Assets of KBC - Response dated 17.09.21.

[367] Question 64, paragraph 64.1, M 21 021 - Bank of Ireland Certain Assets of KBC - Response dated 17.09.21.

[368] Question 3(f), paragraph 3.10 M 21 021 - Bank of Ireland Certain Assets of KBC - Response dated 17.09.21.

[369] See [✂].

[370] See KBC Document "[✂]", dated [✂] ([✂]) ("[✂]").

5.37 The KBC Group Executive Committee decided on 13 April 2021 to advise the KBC Group Board of Directors to proceed with the projects which KBC had been progressing in order to sell assets to BOI and sell non-performing loans to other undertakings.[371] A 13 April 2021 memo by KBC's CEO also recognised that, if the various transactions (i.e., the Proposed Transaction and the sale of KBC's non-performing loans) are successful, this would "*ultimately lead to the liquidation of KBC Bank Ireland. There is the risk that project [✂] [the Proposed Transaction] would ultimately not succeed: in this case KBCI* [✂]".

5.38 The KBC Group Board of Directors formally agreed to pursue KBC's withdrawal from the State and approved the signing of the MOU on 15 April 2021.[372] It was at this point that KBC decided to sell the KBC Assets to BOI and withdraw from the State. The evidence shows that KBC had not decided, until the point of entering the MOU, to cease activities in the State.[373]

5.39 On 16 April 2021, a public announcement of the MOU was made.[374] On the same day, the Proposed Transaction was notified to the Commission.

The Commission's analysis of KBC's intentions prior to the announcement and notification of the Proposed Transaction

5.40 The Commission is not satisfied that, in the absence of the Proposed Transaction, KBC would have ultimately exited the State for strategic reasons unrelated to the Proposed Transaction. The Commission's view is based on the following reasons.

5.41 First, as noted above, the fact that KBC Group was not satisfied with the financial performance of KBC in the State and doubted that KBC could provide the level of return desired by KBC Group does not establish a firm intention to exit the market.

[371] See [✂].

[372] Question 4(a), paragraph 4.5 and 4.6 M 21 021 - Bank of Ireland Certain Assets of KBC - Response dated 17.09.21. See also KBC Document "[✂]", dated [✂] ([✂]).

[373] "[✂]". Question 64, paragraph 64.1 M 21 021 - Bank of Ireland Certain Assets of KBC - Response dated 17.09.21.

[374] Question 3(f), paragraph 3.10 M 21 021 - Bank of Ireland Certain Assets of KBC - Response dated 17.09.21; https://www.kbc.ie/w/kbc-bank-ireland-enters-into-a-memorandum-of-understanding-with-bank-of-ireland-group.

5.42 Second, the Commission considers that, prior to engaging in discussions with BOI on the Proposed Transaction and the signing of the MOU in April 2021, evidence from the Parties' internal documents indicates that: (i) KBC Group had not settled on any particular course of action with regard to its operations in the State; and, (ii) was still considering a number of options, including [✂][✂][✂][✂].

5.43 Third, the Parties' Written and Oral Responses show that the KBC Group was dissatisfied with KBC's financial performance in Ireland. The evidence does not, however, establish the Parties' contention that KBC had made a firm decision to exit the State prior to the Proposed Transaction.

5.44 Finally, the Commission accepts that exiting the State was an option that was seriously considered by KBC Group [✂] prior to the Proposed Transaction. However, as set out in paragraph 5.36 above, [✂]"[375]

5.45 The Parties contend that "[✂][✂][✂][✂][✂]".[376] In the Written Response, the Parties have claimed that [✂][✂][✂][✂][✂][✂]". [377]

5.46 The Commission does not accept that all options considered by KBC prior to the Proposed Transaction would have led to exit from the market. In the Commission's view, recognising the risks that may arise from poor financial performance is not the same as taking a firm decision to address this risk by ceasing operations. In fact, quite the contrary, companies including banks regularly re-assess their business and consider various options in the ordinary course of business. In this regard, it is noteworthy that KBC Group had previously made similar assessments in 2018 when it considered [✂].[378] [✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂].

[375] See [✂].

[376] See BOI letter to the Commission, dated 21 January 2022.

[377] See paragraph 3.2.16 of the Written Response.

[378] See [✂] dated [✂]which notes "[✂]".

5.47 The evidence provided by the Parties demonstrates KBC Group's concern about the [financial performance] of KBC's business in Ireland and the associated risks. It does not, however, establish that a firm decision had been taken to exit the State prior to the contemplation of the Proposed Transaction. Nor has the Commission obtained any evidence of a finalised corporate strategy for exit from the State prior to the announcement of the Proposed Transaction.

5.48 It appears from KBC Group internal documents[379] that, once KBC Group had signed and announced the MOU with BOI, KBC Group believed that, if the Proposed Transaction were not to proceed, then [✂].[380] In assessing the probative value of these documents, it is important to note that they were prepared *after* the notification of the Proposed Transaction. To the extent that internal deliberations imply that KBC Group would [✂], they took place in light of (and no doubt in response to) that deal. Accordingly, the Commission does not consider that KBC Group would have resolved to wind-up KBC come what may in the absence of the Proposed Transaction. Nor have the Parties shown that the internal deliberations would have occurred regardless of the announcement of the Proposed Transaction.

5.49 The Commission's Merger Guidelines recognise (at paragraphs 1.15 and 9.8) that pre-merger documents will be more probative and relevant for the Commission's consideration of the relevant counterfactual. The evidence before the Commission shows that, prior to the initial engagement between KBC Group and BOI, the future of KBC's activities in the State had not been determined definitively. Indeed, KBC was continuing to carry on its normal course of business and to implement its [✂] investment programme. The consideration of such an exit as an inevitability only arose in light of the announcement of the Proposed Transaction and appears to have been a direct result of that transaction.[381]

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[379] KBC also stated, "[✂]". See page 24 of the KBC Document "[✂]", dated [✂] ([✂]).

[380] A KBC Board paper stated that, if the various transactions (under [✂]) are successful, this would "*ultimately lead to the liquidation of KBC Bank Ireland. There is the risk that project [✂] [the Proposed Transaction with BOI] would ultimately not succeed: in this case* [✂]*".* The paper also states that*, "*[✂]". See [✂]

[381] See paragraphs 5.40 to 5.48 above.

(b) Changing market circumstances, in particular KBC's conduct following the announcement and notification of the Proposed Transaction

The Parties' views on changing market circumstances post-announcement and notification of the Proposed Transaction

5.50 In their Written Response, the Parties set out their view of "KBC's degrading competitive position" as follows:

> *"Looking over a longer time horizon and more recent share data, it is clear that the announcement has had a significant effect, with KBCI's market share of new originations having declined substantially to [5-10]% in Q4 2021 (c.[✂]% decline). [sic] In December 2021, KBCI's share of new completions was just [5-10]% and in January 2022 this has fallen again to [5-10]%. In terms of market share of new applications, which is the strongest leading indicator of future originations, KBCI market share of applications has declined to just [5-10]% in December 2021 compared to [15-20]% in Dec 2020 (i.e. a decline of [✂]%). This share has fallen further still in January 2022 to [0-5]%. KBCI expects this trend to continue, based on BPFI reports and KBC originations and applications".*[382]

5.51 In their Written Response and Oral Response, explaining why KBC has continued to advertise and offer mortgages following the announcement and notification of the Proposed Transaction, the Parties stated that KBC's actions are not inconsistent with a decision to exit the State. The Parties noted:

> *"[✂] [✂]".*[383]

[382] See paragraph 3.2.27 of the Written Response.

[383] See paragraph 3.2.21(a) of the Written Response.

5.52 In the Written Response and Oral Response, the Parties set out their view that KBC's actions in respect of maintaining resources have not been inconsistent with a decision to exit. In particular:

> *"…a [✂] was put in place to ensure that key resources were retained to ensure that the Proposed Transaction can be completed successfully given the complex migration process involved in transferring a portfolio of mortgages and other products and to facilitate an orderly wind-down of KBCI."*[384]

5.53 The Parties explained that KBC's online advertising is continuing, but that:

> *"This monthly spend level is [✂]% less than average monthly spend in 2020 and [✂]% less than 2019."*[385]

The Commission's findings on changing market circumstances post-announcement and notification of the Proposed Transaction

5.54 The Commission has set out its approach in paragraphs 5.9 to 5.17 above as to how it treats events which have occurred following the notification of the Proposed Transaction.

5.55 It is clear that KBC has continued, and is continuing, to sell mortgages in the State. The Parties do not dispute this, and, as quoted in paragraph 5.51 have explained their rationale for this.

5.56 As the Parties have noted, KBC's market share has declined in 2021 Q4, and continued to decline in early 2022. The Commission's view is that actions and/or inaction on the part of KBC following the announcement and notification of the Proposed Transaction are likely to have directly contributed to this apparent decline in KBC's competitiveness and market share:

384 See paragraph 3.2.21(c) of the Written Response.

385 See paragraph 3.2.21(d) of the Written Response.

(a) First, KBC has chosen not to implement elements of its [✂] strategy following the announcement of the Proposed Transaction, such as offering [✂] rates to customers. This decision would immediately make KBC a less attractive option for customers.

(b) Second, KBC is spending [✂] on marketing and promoting its mortgages following the announcement of the Proposed Transaction, and this may mean that KBC will sell fewer mortgages.

(c) Third, the Commission considers, [✂],[386] that consumer decisions will have been influenced by the announcement of the Proposed Transaction such that potential customers would be less likely to take out a mortgage with KBC, and some existing KBC mortgage holders would be likely to switch in circumstances where they would otherwise not have done so.[387]

5.57 Since the announcement and notification of the Proposed Transaction, KBC has not been as aggressive a competitor in the market for the provision of mortgages in the State as it had been prior to the announcement. KBC has gone from offering some of the most competitively-priced mortgages in 2020 to being one of the most expensive providers in 2022. The reasons for this decline appear to include a failure to implement planned [✂], and [✂] advertising spend. These actions, in turn, appear to have been taken in light of (and in response to) the Proposed Transaction. Therefore, these actions would not have occurred absent the Proposed Transaction and should not be taken into account in the counterfactual.

5.58 Separately, the Commission has considered the Parties' contention that KBC has sold its non-performing loan portfolio to a third party, and has recently announced an intention to take steps to close customers' current accounts as evidence that KBC is taking steps to leave the market in the State. While these examples may

[386] See footnote 34 above, in particular KBC's view that publicity of the Proposed Transaction "[✂]". Page 24 of the KBC Document "[✂]", dated [✂].

[387] For instance, the Commission notes that Avant Money offered specific incentives to KBC (and Ulster Bank) customers to encourage them to switch their mortgage to Avant Money from KBC (and Ulster Bank). See: https://www.bonkers.ie/blog/mortgages/avant-money-offering-1-500-cashback-to-ulster-bank-and-kbc-switchers/.

support KBC's intention to ultimately leave the State, they are not directly relevant for the analysis of KBC's actions in the market under consideration – that is, the market for the provision of mortgages in the State. The Commission finds that KBC had not made a firm decision to leave the market for the provision of mortgages in the State *before* the Proposed Transaction.

(c) The possibility that the KBC Assets could have been sold to a potentially less anti-competitive alternative purchaser

The Parties' views on whether the KBC Assets could have been sold to a potentially less anti-competitive purchaser

5.59 In the Written Response, the Parties stated that:

> *"…KBC has considered a range of options in relation to its operations in Ireland, including different means of winding down its business in the State, and ultimately concluded that the Proposed Transaction was the best option available in the circumstances.*
>
> *One possible alternative option considered by KBC was [✂] [✂][✂][✂] [✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂].*
>
> *In addition, [✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂] [✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂] [✂][✂][✂][✂][✂][✂]".*[388]

The Commission's findings on whether the KBC Assets could have been sold to a potentially less anti-competitive purchaser

5.60 In light of its findings above, this limb of the counterfactual analysis does not arise in the present case. This is because the Commission does not accept the Parties' contention that the appropriate counterfactual is KBC's exit from the State. The Commission's view is that the evidence in this case demonstrates that, in the absence of the Proposed Transaction, KBC would remain active in the market for

[388] See paragraphs 3.2.23 – 3.2.24 of the Written Response.

the provision of mortgages in the State and continue to exert a competitive constraint in that market, at least in the short to medium term.

5.61 The appropriate counterfactual is therefore KBC remaining active in the market. Accordingly, for the purposes of its analysis, it is not necessary for the Commission in this case to consider whether the KBC Assets could have been sold to a potentially less anti-competitive alternative purchaser. The possibility of a sale to a potentially less anti-competitive alternative purchaser will, however, be considered briefly for completeness.

5.62 In general terms, when considering if there were alternative less anti-competitive purchasers, the Commission seeks to identify who the alternative purchaser(s) might have been and take this into account when determining the counterfactual. The Commission does not restrict its analysis to alternative purchasers who were willing to pay the same or similar price that was agreed in the merger, but rather if there was an alternative purchaser willing to acquire the firm at any price above liquidation value.

5.63 The Commission accepts that KBC considered winding down its business in the State as one of a number of options. KBC has provided sufficient evidence to the Commission of steps that it took when considering its position in the State. Once the Proposed Transaction was identified, it appears that KBC pursued the Proposed Transaction and no longer considered alternatives. This was the case even when [✂].

5.64 On the basis of the available evidence, even if it were to accept that KBC would have exited the market absent the Proposed Transaction (which it does not), the Commission considers that a realistic counterfactual may have involved an alternative less anticompetitive purchaser for the KBC Assets than BOI. The Parties told the Commission that KBC [✂]. KBC did not, however, [✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂]. As a result, it appears to the Commission that no serious attempts were made by KBC to seek alternatives for the newly-limited sale of assets. Instead, it would appear from the information in the possession of the Commission that KBC limited its own sales options when it was considering the sale of its business in the State.

5.65 Had it been necessary to do so, the Commission would have sought further information on the alternative purchasers of the KBC Assets. It is sufficient for present purposes that there could have been alternative purchasers, which may have been potentially less anti-competitive purchaser for the KBC Assets.

Conclusion

5.66 For the purposes of examining the competitive effects of the Proposed Transaction, the Commission considers that the relevant counterfactual is that, absent the Proposed Transaction, KBC would continue to exert a competitive constraint in the market for the provision of mortgages in the State, at least in the short to medium term.

6. COMPETITIVE ASSESSMENT – UNILATERAL EFFECTS

Introduction

6.1 In this section, the Commission sets out its analysis of the likelihood of unilateral effects arising from the implementation of the Proposed Transaction in the market for the provision of mortgages in the State.

6.2 The Commission has identified two potential unilateral effects theories of harm:

- **Theory of harm 1** – The loss of an important competitive force in a highly concentrated market will likely result in an increase in mortgage interest rates to customers.
- **Theory of harm 2** – A larger back book will likely increase the incentives of BOI to maintain or raise mortgage interest rates to the detriment of customers.

6.3 Before considering each potential theory of harm, the Commission sets out how it considers the position of Ulster Bank in its competitive assessment.

How the Commission considers Ulster Bank in its competitive assessment of the Proposed Transaction

6.4 On the date the Proposed Transaction was notified to the Commission, Ulster Bank was active in the supply of personal and business banking products in the State. During the Commission's assessment of the Proposed Transaction, Ulster Bank has made a series of public announcements and has initiated and implemented irrevocable changes in its service provision with a view to withdrawing from the State.

6.5 During the Commission's assessment of the Proposed Transaction, on 30 July 2021, Ulster Bank announced the following changes to its service provision in the State to take effect from 29 October 2021:

> *"[Ulster Bank] will not accept any new application requests with effect from close of business 29 October 2021. However, there are some exceptions to this change for existing customers.*

Mortgages: we will continue to accept applications from all existing customers for new mortgage lending after close of business 29 October 2021. It is important to understand that, should your mortgage be fully approved and offer letter issued, it will transfer to a new provider in the future. […]

Overdrafts: we will accept overdraft applications for both new and increased limits from existing current account customers in limited circumstances to provide customers access to short term emergency funds".[389]

6.6 On 29 October 2021, Ulster Bank announced that the above-mentioned changes had come into effect and that "[Ulster Bank] is no longer accepting any new application requests from personal customers."[390] On 16 February 2022, Ulster Bank stated that it would begin writing to Ulster Bank customers "shortly" to give notice of account closures.[391] Ulster Bank also announced that it will begin to set deadlines for mortgage drawdowns for certain customers.[392] Ulster Bank has announced that it will no longer accept new mortgage applications from existing customers from close of business on 10 June 2022, and it will no longer provide a mortgage approval in principle to new customers from 29 April 2022.[393]

6.7 On 30 July 2021, the Commission was notified of a proposed transaction between AIB and Ulster Bank pursuant to which it is proposed that AIB would acquire certain assets of Ulster Bank which was cleared by the Commission on 28 April 2022. A further proposed transaction[394] regarding Ulster Bank's mortgage business

[389] Please see Ulster Bank's announcement of 30 July 2021, which is available at: https://www.ulsterbank.ie/help-and-support/important-customer-notice/announcement-30th-july-2021.html.

[390] Please see Ulster Bank's announcement of 29 October 2021, which is available at: https://www.ulsterbank.ie/help-and-support/important-customer-notice.html.

[391] https://www.rte.ie/news/business/2022/0216/1281211-ulster-bank-to-start-contacting-customers-shortly/.

[392] https://www.independent.ie/business/personal-finance/property-mortgages/ulster-bank-sets-final-deadline-for-those-with-new-build-mortgage-approval-to-complete-drawdown-41352899.html.

[393] https://www.ulsterbank.ie/help-and-support/important-customer-notice.html

[394] *M/21/076 – PTSB/Certain Assets of Ulster Bank*.

in the State was made to the Commission on 22 December 2021. This transaction is still under investigation by the Commission.

6.8 The Commission agrees that it should apply the priority rule to the Proposed Transaction and subsequent potential transactions in the same markets in accordance with their date of notification to the Commission. This is based on the Commission's previous practice[395], which is consistent with the practice of the European Commission[396], and which has the benefit of legal certainty due to a clear and objective approach.

6.9 In accordance with the priority rule, the Commission considers that the appropriate point in time to begin the assessment of the Proposed Transaction is the market situation that existed at the time of notification of the Proposed Transaction. However, in some circumstances (for example, where one or more of the parties to a merger is a "failing firm", which for the avoidance of doubt is not the case here), the Commission may take into account future changes to the market that can reasonably be predicted.[397]

6.10 Broadly, the Commission's approach, which is consistent with that of the European Commission, is as follows: (i) the competitive effects of the second notified merger are not taken into account when assessing the first notified merger; and, (ii) the effects of the first notified merger can be taken into account in assessing the second notified merger. In practice, this means that the undertakings involved in the second notified merger are considered to be independent undertakings active on the market when assessing the first notified merger.

[395] See, for example, the Commission's determination in M/20/015, *Portlon-Parma-Blackrock,*, 29 July 2020.

[396] See, for example, M.6214 *Seagate Technology/The HDD Business of Samsung Electronics*, 19 October 2011 and M.6203 *Western Digital Ireland/Viviti Technologies*, 23 November 2011.

[397] See paragraph 1.14 of the Commission's Merger Guidelines, which are consistent with point 9 of the European Commission's Horizontal Merger Guidelines.

6.11 The European Commission has applied the 'priority rule' in a number of cases[398] and it has done so precisely because the effect on the market of the second notified merger is dependent on the European Commission's determination in that second case and/or the parties in fact going through with the second notified merger, whether as a result of the merger determination or not. Therefore, it would be inappropriate to prejudge this second notified merger by considering the undertakings to be merged when assessing the market in the first notified merger.

6.12 In the present case, it is the fact that Ulster Bank no longer accepts mortgage applications from new customers that is relevant to the Commission's consideration of the competitive effects of the Proposed Transaction, rather than to which entity, or entities, it may transfer its business. That Ulster Bank has ceased to accept mortgage applications from new customers is a fact of the current market conditions, which the Commission is of the view would be inappropriate to ignore in purported reliance on the priority rule. This actual market development is, in the Commission's view, independent of the outcome of any merger review process by the Commission in respect of the sale of Ulster Bank's business to other undertakings in the context of notified merger transactions.[399]

6.13 This is not speculation about Ulster Bank's intentions or forecasting what may happen if a subsequent merger were to be put into effect. This is a reality of the market that the Commission must assess during its review of the Proposed Transaction. To do otherwise would be to conduct a competitive assessment of the Proposed Transaction ignoring the actual competitive conditions of the market, which could lead to an incorrect assessment in a material respect.

6.14 In the Written Response, the Parties noted the following:

[398] See, for example, M.6214 *Seagate Technology/The HDD Business of Samsung Electronics*, 19 October 2011 and M.6203 *Western Digital Ireland/Viviti Technologies*, 23 November 2011.

[399] See M/21/040 *AIB / Certain Assets of Ulster Bank*, 28 April 2022, where the Commission accepted, based on the evidence provided to it, that Ulster Bank would, absent the notified transaction, have exited the State and ceased to provide commercial loans to businesses in the State with turnover greater than €2 million, available at https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m-21-040-aib-certain-assets-of-ulster-bank/.

"The position in the Assessment is that Ulster Bank has already exited from the mortgage market, despite evidence from Ulster Bank that this is not the case. In terms of timing, this is also contrary to public statements by NatWest on 18 February 2022 that it envisages their being in Ireland through until 2024 with investors being told to view "closure of Ulster Bank and exit from the Irish market as a "multiyear" process" (noting the recent public statements of its holding company confirming its commitment to presence in Ireland to 2024). Given the typical time horizon of two to three years in forward-looking merger assessments, and given the CCPC and ICN Guidelines that refer to the ability to take account only of "likely and imminent changes in the nature of competition", there is no strong evidence to justify a preliminary finding that the current presence of Ulster Bank in the mortgage market can be disregarded."

"The Assessment states…that Ulster Bank has "significantly narrowed the availability of its products to such an extent as to no longer represent a material competitive constraint in the mortgage market"…This is notwithstanding the fact that Ulster Bank offers mortgage products to its 1.1 million customers i.e. more than 25% of the adult population, and that no other lender can possibly know that an actual or potential customer of it is not an actual customer of Ulster Bank [sic] such players have to take the constraint from Ulster Bank into account in setting rates for new customers (noting that customers can have multiple banking relationships, e.g. with Ulster Bank and one or more other banks, so no lender can exclude that its customers may also be an Ulster Bank customer and have access to Ulster Bank mortgage products). Therefore, the non-evidenced preliminary finding that "other mortgage customers no longer have to consider the risk that their customers may switch to Ulster Bank" is not factually accurate".[400]

[400] See paragraphs 3.3.6 and 3.3.8 of the Written Response.

6.15 The Commission, based on evidence in its possession, does not accept the Parties' view and does not consider that these points set out by the Parties represent Ulster Bank's competitive position in the market. The Commission has not "disregarded" the presence of Ulster Bank in the mortgage market. Rather, the Commission's competitive assessment of the Proposed Transaction has taken into account the extent to which Ulster Bank may pose an ongoing competitive constraint in light of its withdrawal from the State. In this regard, the Commission notes, first, Ulster Bank's market share of new lending has been falling quarter-on-quarter throughout 2021 and, as of January 2022, was at [0-5]%.[401] Second, Ulster Bank has announced that it will no longer accept new mortgage applications from existing customers from close of business on 10 June 2022, and it will no longer provide a mortgage approval in principle to new customers from 29 April 2022.[402]

6.16 On this basis, the Commission considers that Ulster Bank is in the process of withdrawing from the State and has significantly narrowed the availability of its products to such an extent as to no longer represent a material competitive constraint in the mortgage market. This consideration does not extend to assessing the competitive effects of any potential sale of Ulster Bank's business or assets to another undertaking in the State.

6.17 The Commission notes that Ulster Bank's actions mean that other mortgage providers no longer have to consider the risk that their customers may switch to Ulster Bank, and this is particularly important given the role of switching as a competitive constraint in the market for the provision of mortgages in the State.

The Likelihood of Unilateral Effects

6.18 The theories of harm considered by the Commission broadly concern the potential for the Proposed Transaction to result in unilateral effects. Unilateral effects, as explained in paragraph 4.8 of the Commission's Merger Guidelines, occur when

[401] Source: BPFI data.

[402] https://www.ulsterbank.ie/help-and-support/important-customer-notice.html.

“*a merger results in the merged entity having the ability and the incentive to raise prices at its own initiative and without coordinating with its competitors.*”

6.19 The Commission considers that concerns that the Proposed Transaction would likely result in reduced competitive pressure on other remaining mortgage providers in the market, in addition to BOI, should be included in the examination of unilateral effects.

6.20 The Commission’s Merger Guidelines note the following:

> *“Competitive constraints on a merged entity will be weaker to the extent that (i) there is an absence of substantial competition from other firms in the market or firms likely to enter in a timely manner, (ii) competitors have insufficient productive capacity to increase output, or (iii) competitors do not have a strong incentive to compete (for example, if they might also benefit from increased prices), also referred to as price accommodation”.* [403]

6.21 The potential responses of other mortgage providers in the market are also relevant in evaluating BOI’s pricing incentives following implementation of the Proposed Transaction. Where a proposed transaction materially changes the market structure and eliminates an important competitive force from the market, it will reduce the competitive pressure faced by both the merged/post-transaction entity and other competing suppliers. Competing suppliers may respond to a price rise by the merged/post-transaction firm by raising their own prices. Therefore, the more concentrated a market is and the fewer effective competitors that remain to constrain one another, the more likely it is that a proposed transaction will enable the merged entity to raise prices.

6.22 In addition, the EC Horizontal Merger Guidelines state the following in respect of *“Non-coordinated effects”*:

[403] See paragraph 4.11 of the Commission’s Merger Guidelines.

> *"A merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers, who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of the merging firms had raised its price, it would have lost some sales to the other merging firm. The merger removes this particular constraint. Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market.*
>
> …….
>
> *A number of factors, which taken separately are not necessarily decisive, may influence whether significant non-coordinated effects are likely to result from a merger. Not all of these factors need to be present for such effects to be likely".*[404]

6.23 The Commission has identified two unilateral effects theories of harm that, in its view, raise concerns in relation to the Proposed Transaction.

Theory of harm 1 – The loss of an important competitive force in a highly concentrated market which will likely result in an increase in mortgage interest rates to customers

6.24 The Proposed Transaction will lead to a reduction in the number of full-service retail banks providing mortgages from four (BOI, AIB, PTSB and KBC) to three, given that Ulster Bank is in the process of withdrawing from the mortgage market and has significantly limited the availability of its products.[405] The increase in concentration and the reduction in choice of mortgage providers available to consumers, particularly for those preferring to source a mortgage from a full-service retail bank, as noted in Section 2, may reduce the competitive pressure on

[404] See paragraphs 24, 25, and 26 of the EC Horizontal Merger Guidelines

[405] See paragraphs 6.56.5 – 6.6.

these providers. This, in turn, could lead to higher prices, such as higher mortgage interest rates, lower quality, or reduced innovation in areas such as customer service, the application process, or the types of products offered by mortgage providers.

6.25 The Commission assesses this theory of harm in detail in paragraphs 6.108 to 6.330 below.

Theory of harm 2 – A larger back book will likely increase the incentives of BOI to maintain or raise mortgage interest rates to the detriment of customers

6.26 The Commission's second theory of harm relates to a reduction of BOI's incentive to compete on the basis of price and innovation following implementation of the Proposed Transaction. BOI and KBC have argued, at various times during the Commission's review of the Proposed Transaction,[406] that undertakings holding large mortgage back books are 'constrained' with regards to pricing due to concerns of 'disrupting' their back book.

6.27 In the Assessment, the Commission raised preliminary competition concerns that, as the Proposed Transaction will result in a substantial increase to BOI's back book, BOI may be even more motivated to avoid 'disruption' to its back book and accordingly less incentivised to compete for new customers on the basis of price and innovation following implementation of the Proposed Transaction.

6.28 In particular, the Commission's preliminary concern was that the Proposed Transaction would be likely to result in a higher cost, in terms of a loss of net income, to BOI if it were to decrease mortgage interest rates, due to greater loss of revenue from a larger mortgage back book as it does not typically price discriminate between its mortgage customers. Therefore, the Commission had preliminary concerns that the Proposed Transaction may lead to BOI having an incentive to maintain or raise mortgage interest rates or a reduced incentive to lower them than it would otherwise have absent the Proposed Transaction.

[406] See, for example, Letter from BOI to the Commission, dated 21 January 2022, and paragraph 6.2.6 of the Phase 1 Determination Response, dated November 19, 2021.

6.29 Since issuing the Assessment, the Commission has engaged further with the Parties on their ability and incentive to price discriminate between the front and back books. BOI has demonstrated that it can, and does, price discriminate between its mortgage customers. The Commission has therefore decided not to pursue this second theory of harm in this case.

6.30 In considering the extent to which the Proposed Transaction is likely to raise unilateral effects concerns, the Commission sets out below:

(a) Views of the Parties prior to the Assessment;

(b) Views of third parties;

(c) Impact of the Proposed Transaction on market structure and concentration;

(d) Assessment of unilateral effects;

(e) Proposals; and,

(f) Conclusion in respect of unilateral effects.

(a) Views of the Parties Prior to the Assessment[407]

6.31 In the Merger Notification Form, BOI expressed its view that the Proposed Transaction will not lead to an SLC in markets for goods or services in the State for several reasons.

6.32 **First,** BOI stated the following in the Merger Notification Form:

> *"With respect to mortgages, the accretion to BOI of stock on the market is likely less than (and possibly significantly less than) 10% and does not raise prima facie competition concerns in respect of the flow of mortgage business ("new mortgage origination")".*[408]

As the basis for this statement, BOI highlighted the following information:

[407] The Parties made subsequent written and oral submissions following the issuing of the Assessment. As these submissions respond to the Commission's assessment of unilateral effects, these will be discussed in the relevant parts of Sections (c)-(f).]

[408] See page 3 of the Merger Notification Form.

> *"Regarding mortgages the Proposed Transaction is limited to the transfer of a portion of the back book of KBCI mortgages, as at the date of completion of the Proposed Transaction, and as such could reasonably be characterised as the acquisition of financial assets. The acquisition does not in any way impact the rights or option for mortgage customers within the KBCI Mortgage Back Book to choose an alternative mortgage provider to BOI if they so wish, either in advance or post the Proposed Transaction. Indeed, it is reasonable to expect that the Proposed Transaction may alert some customers to review their existing mortgage arrangements and potentially lead to heightened switching activity."*
>
> *"**The Proposed Transaction will involve the transfer of less than 10% of all mortgage stock to BOI**: Currently, KBC holds approximately €10.2 billion of mortgages out of a total of €94.3 billion mortgages in the State (ie 11% of all mortgage stock). BOI will not acquire c. €1.1 billion of non-performing mortgage loans and so the actual stock that could be transferred is approximately €8.8 billion (ie less than 10% of all mortgage stock). In addition, some customers are expected to choose to switch away from KBCI between deal announcement and completion (and will likely not be recouped by new business). Therefore, the actual accretion by BOI in terms of mortgage 'stock' is likely to be less than 10% of all mortgage stock in the State."*
>
> *"**The Proposed Transaction does not in itself affect the competitive conditions for mortgage origination in Ireland, as it does not involve the acquisition by BOI of the constituent elements making up KBCI's mortgage origination 'business' (ie the brand, branches, channels, product development, sales, marketing, underwriting, etc.)**".*[409]

6.33 BOI additionally noted that, while the Proposed Transaction increases the number of mortgages held by BOI, it:

[409] See pages 3-4 of the Merger Notification Form.

"does not lead to BOI 'replacing' KBCI's footprint in terms of competition for new mortgage business. While it increases the number of mortgages held by BOI, it does not increase its ability (compared to its position pre-Transaction) to win new mortgage business and will not give BOI any additional market power or influence in mortgage origination (eg BOI will not gain any goodwill associated with the KBC brand, which [sic] *on its exit from the market nor will BOI gain access to a new channel or capability)."*

"Conversely, all players (including more recent entrants like Dilosk, Finance Ireland and Avant Money) will have an opportunity to significantly grow their share of new business (including through the broker channel, which is KBCI's key route to market) as a result of the exit of the KBC brand from the market and as an option for customers seeking a mortgage. Of note is that the majority of available new business is likely to be customers who prefer to engage via the broker channel".[410]

6.34 Finally, BOI stated that the Proposed Transaction is "*limited to the acquisition of the 'back book' of the assets and liabilities*" and "*critically, does not involve the acquisition of the other core parts of KBCI's existing business; in particular, KBCI's existing mortgage origination business*".[411]

6.35 **Second,** BOI stated the following in the Merger Notification Form:

"[S]ignificant competition will continue to exist in the mortgage origination market, with BOI continuing to be constrained by the seven mortgage providers currently present in the market."

"The Parties are not close competitors with each other. BOI focuses on selling through its direct channels/customer base while KBCI sells predominately through brokers. The Parties' business models are also

[410] See page 4 of the Merger Notification Form.

[411] See page 2 of the Merger Notification Form.

notably different with respect to product and service offerings and funding sources".[412]

6.36 As the basis for this statement, BOI highlighted the following information:

"BOI focusses on providing all retail financial products and services…whereas KBCI focusses primarily on mortgages similar to recent entrants Avant Money and Dilosk. Other new entrants include Finance Ireland."

"KBCI sells predominantly through brokers ([✂]%) of its mortgage stock were sold via brokers and it currently has relationships with approximately [✂] brokers). In contrast, c. [✂]% of BOI new lending was via brokers."

"KBCI's funding model [✂]. BOI is self-reliant and is funded entirely from its own customer base (loan/deposit ratio of 86% as at 31 December 2020). A lender's funding model is a key variable in the pricing strategy and competitive position in the market".[413]

6.37 In BOI's submission of 19 November 2021, it further stated the following:

"BOI and KBC are not close competitors. They have different business models and customer propositions. BOI focusses largely on its own direct offering to existing customers and offers cash-back incentives with relatively higher interest rates whereas KBC targets all customers, sells largely through the broker channel and focuses on offering relatively lower interest rates".[414]

6.38 **Third,** BOI stated the following in the Merger Notification Form:

[412] See page 5 of the Merger Notification Form.

[413] See page 5 of the Merger Notification Form.

[414] See page 3 of the Phase 1 Determination Response.

"BOI competes more closely with other traditional banks such as AIB, PTSB and Ulster Bank. It has much less of a presence through brokers, with relationships with only approximately [✄] brokers. BOI focuses on selling direct to its customer base, in common with the other major banks".[415]

6.39 In their Phase 1 Determination Response, the Parties pointed out that BOI competes much more closely with AIB while KBC competes with the smaller, more recent entrants.

"BOI…competes more closely with lenders that credibly offer all banking services (such as AIB, PTSB and Ulster Bank) whereas KBC competes in an increasingly crowded space with recent entrants such as Avant Money, Dilosk and Finance Ireland where the focus is primarily on mortgage products".[416]

"[W]hen KBC's mortgage origination business exits the market, other players with propositions more closely aligned to KBC pre-transaction are likely to make greater gains from KBC's exit than BOI".[417]

"Similarly, KBC's documents show that KBC considers all competitors and does not consider BOI more closely than any other provider. Furthermore, a recent paper prepared for the executive committee shows KBC focussing on Ulster Bank, Avant Money, AIB (Haven) and PTSB noting "significant moves" from these providers".[418]

6.40 In a letter sent to the Commission on 21 January 2022, BOI made the following further points:

"The Proposed Transaction is predominantly back book only and does not enhance BOI's position in the mortgage market";

[415] See page 5 of the Merger Notification Form.

[416] See page 3 of the Phase 1 Determination Response.

[417] See page 6 of the Phase 1 Determination Response.

[418] See page 18 of the Phase 1 Determination Response.

> *"KBC is a weakening player in the market and does not exert a significant competitive constraint when compared to recent entrants…recent entrants such as Finance Ireland, Avant Money and Dilosk – and not KBC – have been leading competition on headline mortgage rates since 2019 in the space that KBC competes which is further evidence that KBC is not a 'maverick' or [Important Competitive Force]";].";*

> *"The Irish mortgage market is growing and other players have and are poised to continue to make significant gains";*

> *"Entry and expansion will continue to be facilitated by low barriers to entry evidenced by the strong and growing broker channel and the lean business models and cost advantages of recent and new entrants".*[419]

6.41 The Commission sets out its views in respect of these submissions in the following subsection.

Views of the Commission on the Parties' submissions

6.42 For the reasons outlined below, the Commission does not agree with the views of BOI set out above that the Proposed Transaction does not raise prima facie competition concerns.

6.43 **First**, if the Proposed Transaction were to be implemented, BOI would acquire substantially all of KBC's stock of existing mortgages, and, in particular, almost the entirety of KBC's stock of existing performing mortgages. KBC, in its response to the KBC Phase 2 Information Request, states that:

> *"if both the Proposed Transaction and [✂] (i.e. the sale of KBCI's NPLs) are implemented by KBC and the respective counter parties, the activities of KBCI will have largely ceased. On this basis, there would be no economic reason for KBC to continue operating in the Irish mortgage sector".*

[419] See Letter from BOI to the Commission, dated 21 January 2022.

6.44 There is therefore a direct link between the Proposed Transaction and an effect on the structure of the mortgage market in the State in respect of new mortgage origination since the Proposed Transaction would remove the *"economic reason for KBC to continue operating"* in the mortgage market. The Proposed Transaction and the likely exit of KBC from the mortgage market are intrinsically linked. As set out in Section 5 above, the Commission has concluded that, absent the Proposed Transaction, KBC would have continued to compete and exert a competitive constraint in the mortgage market in the State. The option presented to, and approved by, the KBC Group board was: *"to sign the Memorandum of Understanding [with BOI] …"* and *"… to agree with the steps to withdrawal of the Irish market".*[420]

6.45 **Second**, the Commission does not consider that existing mortgages are inert financial assets. They are consumer contracts which embody a probable future commercial benefit that, whether individually or collectively, and in combination with other assets, contribute directly or indirectly to the net cashflow of the owner of these assets. The likelihood of KBC leaving the mortgage market in the State is also relevant as the Proposed Transaction would effectively amount to the transfer to BOI of KBC's market position in the mortgage market, as opposed to the transfer of pure financial assets alone.

6.46 The transfer of stocks of existing mortgages is of relevance for the Commission's assessment of the likely competitive effects of the Proposed Transaction since existing mortgage customers can change the product they consume from their current mortgage provider (through re-fixing), move home, top up their mortgage, or switch their mortgage from one provider to another. Therefore, undertakings active in the provision of mortgages in the State compete for existing mortgage customers.

6.47 Furthermore, interest rates charged to existing mortgage customers are not static. These rates can change as a provider alters its variable rate mortgage products, or can change for a customer as they come to the end of a fixed-rate term and are

[420] See pages 1 and 2 of [✂].

faced with the choice of rolling on to the relevant variable rate or re-fixing their mortgage at the fixed-term rates available at this time.

6.48 In this regard, the Commission notes that the vast majority of BOI and KBC customers tend to remain with their mortgage provider at the conclusion of the fixed rate period.

6.49 Within BOI's own mortgage customers, BOI has identified that [✂]% of its customers on fixed rates will stay with BOI at the end of their introductory fixed rate period:

> *"Historic trends of the BOI mortgage book show that on average c. [✂]% of fixed rate rollers (FRR, those reaching fixed rate maturity) fully redeem (switch / own fund redemption), c. [✂]% roll to a variable rate (neither leave or re-fix but retain flexibility to leave) and c. [✂]% re-fix".*[421]

6.50 A 2019 internal KBC document noted that, of KBC's back book customers rolling off fixed rates, "[✂]*% roll to default (variable)* [✂]*% Choose an alternative offer through existing customer offer (*[✂]*% of these customers choose another fixed rate)* [✂]*% Redeem*".[422]

6.51 **Third,** the view expressed in paragraph 6.39 that BOI competes closely with AIB, PTSB, and Ulster Bank whilst KBC competes more closely with Dilosk, Finance Ireland, and Avant Money does not appear to be supported by the evidence. The Commission's findings in respect of closeness of competition are set out in detail in paragraphs 6.137 to 6.160 below.

(b) Views of third parties

Competitors in the Mortgage Sector

[421] See page 24 of [✂].

[422] See KBC document ([✂]) ([✂]).

6.52 Five competitors active in the mortgage market in the State and Ulster Bank, as an undertaking which is in the process of withdrawing from the market and has significantly limited its product availability, responded to the Commission's Competitor Questionnaire regarding the competitive effects of the Proposed Transaction.[423] These undertakings contacted by the Commission provided the following views on the impact of the Proposed Transaction in relation to the supply of mortgages in the State.

6.53 Three retail banks expressed views that competition was unlikely to be harmed as a result of the Proposed Transaction, and may even increase as a result of new and recent entry.

- AIB did not express a view on the impact of the Proposed Transaction on either the stock of existing mortgages in the State, or the mortgage origination business in the State. It noted it considered it likely that "*competition between mortgage providers* [will]*] increase with new entry, particularly from niche mortgage providers*".[424]

- PTSB is of the view that there is *"an active mortgage switching market*" and that customers are "*able to "shop around" for the best mortgage offer available to them*".[425] With respect to mortgage origination, PTSB believes the Proposed Transaction will "*intensify activity and competitive offerings put forward by non-traditional bank providers*" and that, as a result*, "[BOI] are unlikely to obtain the full per centage of new originations that KBC previously lent to the market*".[426]

[423] See paragraph 1.21.

[424] See AIB's response to Question 6 of the Competitor Questionnaire.

[425] See PTSB's response to Question 2(e) of the Competitor Questionnaire.

[426] See PTSB's response to Question 2(f) of the Competitor Questionnaire.

- Ulster Bank pointed out that "*in addition to the main retail banks, non-bank providers of mortgages including Avant Money, Finance Ireland and Dilosk are all making competitive initiatives to grow market share*".[427]

6.54 Three non-retail banks expressed concerns that there would be less choice in the mortgage market as a result of the Proposed Transaction.

- Avant Money noted that the Proposed Transaction would lead to the combination of two of the larger lenders which "*may potentially reduce the product choice for consumers and result in lower levels of price competition generally*" and could lead "*larger players [to] have greater influence on the broker channel and the levels of mortgage switching in the market may be negatively impacted*".[428]

- Dilosk expressed a view that *"[t]he Proposed Transaction will result in less choice for residential mortgage products*".[429]

- Finance Ireland noted that customers would have less choice on the market as a result of the Proposed Transaction and noted that "*[t]here is a disproportionate impact on the mortgage intermediary market where KBC have held a stronger position than Bank of Ireland*".[430]

6.55 Competitors contacted by the Commission provided the following views on the closeness of competition between the Parties in relation to the supply of mortgages in the State.

6.56 Competitors contacted by the Commission were asked to list each Party's top five closest competitors in relation to mortgage supply. Of the six competitors contacted, two expressed no view. The other four broadly considered that each Party competes more strongly with traditional banks than the non-bank lenders, though had differing views on the rankings of the top five competitors. One

[427] See Ulster Bank's response to Question 2 of the Competitor Questionnaire.

[428] See Avant Money's response to Question 4 of the Competitor Questionnaire.

[429] See Dilosk's response to Question 3(f) of the Competitor Questionnaire.

[430] See Finance Ireland's response to Question 5(f) of the Competitor Questionnaire.

competitor made a distinction between "*those who focus on offering a percentage cashback (such as Bank of Ireland) and those who aim to provide lower rates (potentially with a fixed sum paid to the borrower to assist with mortgage costs) such as KBC.*"

Other third parties in the Mortgage Sector

6.57 The Commission received 21 third-party submissions. It received 7 in Phase 1 and 14 in Phase 2. These third parties included mortgage customers, trade organisations, a TD, and the founder of a consumer forum. Issues raised in these submissions include: concerns that the 0.2% discount which KBC's current account holders receive on mortgage interest rates would not be honoured following the Proposed Transaction; concerns about the interest rates which customers may face at the end of the fixed term of a KBC mortgage; concerns about the impact on competition which the Proposed Transaction could result in; and concerns about who an alternative purchaser of KBC's assets may be in the absence of the Proposed Transaction and the impact that may have on existing KBC customers. Table 4 below lists each of these concerns and the number of submissions which raised them.

Table 4: Concerns Raised in Third Party Submissions

Concern	Number of times raised
Potential impact of the Proposed Transaction on banking competition	9
Potential loss of 0.2% mortgage rate discount for KBC current account holders	6
Impact on mortgage interest rates at the end of KBC mortgage holders' fixed terms	2
In favour of the Proposed Transaction, rather than a KBC sale to private equity	2

In favour of the Proposed Transaction, subject to certain conditions to protect KBC customers	2

Source: The Commission based on third party submission

Intermediaries in the Mortgage Sector

6.58 The Commission circulated questionnaires to mortgage intermediaries in the State and received views from eight mortgage intermediaries. All eight responses expressed concerns that the Proposed Transaction would have a negative impact on the market, specifically in terms of customer choice and the level of interest rates. One intermediary noted that KBC is a significant player in the switching market, which is growing. Another noted that BOI, AIB and PTSB could control between 70% and 80% of new lending following the Proposed Transaction.[431]

Views of market analysts in the Mortgage Market

6.59 In addition to direct submissions from third parties, the Commission has also reviewed external analyses of the mortgage market in the State and the potential impact of the Proposed Transaction. Some relevant views include:

(a) In an analysis of AIB's performance and prospects, UBS noted an upside from Irish banking consolidation, specifically noting that "*greater consolidation implies an improved outlook for the Irish majors AIB and BOI.*"[432]

(b) In an analysis of BOI's performance and prospects, HSBC noted that "*the Irish market is already 'highly concentrated'*". It suggested that, even if the Proposed Transaction were to be blocked by the Commission, KBC leaving the market "*may just be a matter of time*" and that this "*should improve*

[431] This was based on the premise that Ulster Bank would also have left the market.

[432] See page 4 of UBS Analysis "*Allied Irish Banks Upside from consolidation and macro recovery*", dated 12 May 2021 (MD5 Hash: 6a29a4b57a81939ca1da59f4d267b76a).

performance and the Irish banking market to acceptable levels*" for investors given that the conclusion was *"[m]aintain Buy rating"* for BOI.[433]

(c) In a report assessing the Irish banking market, Davy noted the CBI assessment that the Irish mortgage lending market is highly concentrated while noting that market share may not equate to market power as "*mortgages in Ireland are increasingly originated and distributed via broker and intermediary channels where market share has grown from minimal levels immediately post crisis to c.40% of the market today.*" It goes on to suggest that "*while AIB, BOI and PTSB are all acquiring an increasing stock share of lending, it is not necessarily the case that the market share of new lending will naturally follow*", due to the higher reliance of KBC and Ulster Bank on broker channels.[434]

(d) In a report assessing the Irish banking market, BofA Global Research noted that "[w]*e expect pricing power (Exhibit 12 and Exhibit 15) in a highly concentrated market (after the exit of Ulster Bank and KBC), the economic recovery and the banks' ongoing efficiency plans to boost returns to >8-10% by 2023E*."[435]

(e) In a report assessing the Irish banking market, Davy noted that "*Non-bank lenders have become an increasingly important part of the market, with Dilosk, Finance Ireland and Avant Money originating mortgages. All three target niche areas of the market. Dilosk targets buy-to-let and civil service owner-occupiers; Finance Ireland targets the self-employed; and Avant Money targets low loan-to-value urban switchers*".[436]

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[433] See page 1 of HSBC Global Research Analysis "*Bank of Ireland (BIRG ID) Buy: We expect KBC deal to be blocked*", dated 25 May 2021 (MD5 Hash: d3cc0e3727e7d08fec69d629b8b9806c).

[434] See page 6 of *Irish Banks Back to the future*.

[435] See page 1 of BofA Global Research Analysis "*Irish Banks Concentrated & attractive market*", dated 13 May 2021 (MD5 Hash: dbcc188069c1304bbb7e7169c4ca0ecc).

[436] See page 6 of *Irish Banks Back to the future.*

(f) In a report shared by the Parties in the Phase 1 Determination Response, Goodbody stated that "*the large banks are not getting a free run on the structural change enveloping the market through the exits, with the "new challengers" filling some of the gap as the "old challengers" depart (UB and KBC). But with c.25% of market up for grabs with the exits, there is still plenty to go around for everyone*".[437]

(c) The likely effect of the Proposed Transaction on market structure and concentration

Market structure

6.60 Paragraph 3.1 of the Commission's Merger Guidelines states that "*A central element in assessing the competitive impact of a merger is identifying its effect on market structure.*" Market structure can be characterised by the number, size and distribution of firms in a market. A merger or acquisition will have an impact on market structure as the merging parties which were two firms pre-acquisition become one firm post-acquisition.

6.61 The Commission has used two ways to measure the structure of the market. Mortgage 'stock' measures the number of existing mortgage customers of each provider. Mortgage 'flow'[438], on the other hand, measures new business acquisition by mortgage providers. Mortgage stocks and mortgage flows are not different markets. They are different ways of measuring the same market. Today's mortgage flow is tomorrow's mortgage stock. As explained in paragraph 6.45 above, mortgages are not inert financial assets but rather active consumer contracts and so these two aspects are intrinsically linked.

As noted in paragraph 6.45 above, the Commission's view is that the Proposed Transaction effectively amounts to the transfer to BOI of KBC's market position in the mortgage market, as opposed to the transfer of pure financial assets alone.

[437] See Goodbody Analysis "*Irish Banks - Avant launches new suite of 15-30 year fixed rate mortgages*", dated 18 June 2021 (MD5 Hash: 23e04102d51f49b237dd525ef0140542). This is an independent Goodbody report and not prepared on behalf of the Parties.

[438] In this determination, the Commission uses the terms *"mortgage flow"* and *"mortgage origination"* interchangeably.

and that this to likely have an effect on the structure of and competition in the market for the provision of mortgages in the State. With this in mind, the Commission has measured the HHI[439] (see the section on "Market Concentration" below) in terms of both mortgage stocks and mortgage origination.

6.62 Table 5[440] below sets out the estimated shares of existing mortgage stock held by each of the mortgage providers in the State as of 2020, both prior to implementation of the Proposed Transaction and after implementation of the Proposed Transaction.[441] BOI currently has 24% of the stock of existing mortgages in the State, and KBC's share of the stock of existing mortgages in the State is 11%. Following implementation of the Proposed Transaction, if one assumes that all KBC's share of the stock of existing performing mortgages in the State will transfer to BOI, BOI's share of the stock of existing mortgages will rise to 35%.

Table 5: Stock of existing mortgages in the State, 2020

	AIB	BOI	PTSB	Ulster Bank	KBC	Dilosk	Avant Money	Finance Ireland
Pre-Proposed Transaction	[30-35]%	[20-25]%	[10-15]%	[10-15]%	[10-15]%	[0-5]%	[0-5]%	[0-5]%
Post Proposed Transaction	[30-35]%	[30-35]%	[10-15]%	[10-15]%	0%	[0-5]%	[0-5]%	[0-5]%

Source: The Commission, based on information provided by the Parties and third parties

6.63 As can be seen in Table 5, following implementation of the Proposed Transaction, BOI ([30-35]%) would hold the largest proportion of stock of existing mortgages in the State, followed closely by AIB ([30-35]%). There would be a relatively large gap

[439] The Herfindahl-Hirschman Index, or "HHI", is a measure of market concentration that takes account of the differences in sizes of firms in the market. It is calculated by summing the squares of the shares of each firm in the market.

[440] Note, consistent with the position set out in paragraphs 6.5– 6.19, the Commission considers the stock of mortgages held by Ulster Bank to continue to be attributable to Ulster Bank despite Ulster Bank's decision to stop accepting mortgage applications from new customers and the Commission's consideration that Ulster Bank is no longer a material competitive constraint in the provision of new mortgages in the State. The Commission has not taken into account any potential transaction regarding Ulster Bank's stock of mortgages.

[441] This is the most recent complete data available to the Commission. In the Written Response, the Parties claim that BOI's share of stock is [15-20]% with KBC's share being [5-10]%, which would give BOI a Post-Transaction Stock of [25-30]%. The Commission will consider these alternative shares when assessing market concentration later in this section.

between the leading two mortgage providers and the third and fourth ranked mortgage providers (PTSB and Ulster Bank) holding existing mortgage stock. The combined share of the three largest suppliers will increase from [70-75]% to [80-85]%. The non-bank lenders (Dilosk, Avant Money and Finance Ireland) would continue to hold a minimal proportion of the stock of existing mortgages in the State, of only [0-5]% each.

Mortgage lending - flows

6.64 In respect of new mortgage origination, Table 6 below sets out the estimated shares of mortgage origination in the State, broken down by customer type.

Table 6: New mortgage lending by customer type, 2021 Q4

	First Time Buyer	Mover	Switcher	Buy-to-let	Top-up
By Volume	54.4%	23.5%	14.6%	1.9%	5.5%
By Value	54.2%	27.1%	15.4%	1.1%	2.2%

Source: The Commission analysis of lending data

6.65 First Time Buyers made up just over half of mortgage lending in 2021 Q3 (54.4% by volume, 54,2% by value). This is followed by Movers (23.5% by volume and 27.1% by value) and Switchers (14.6% by volume and 15.4% by value). Buy-to-let and Top-up make up the remainder of new mortgage lending, with 7.4%, combined, by volume and 3.4% by value. While the shares for First Time Buyer and Switcher are very similar by volume and by value, Mover has a higher share by value, reflecting a higher average mortgage value in this segment. Buy-to-let and Top-up each have a lower share by value than by volume, reflecting lower average mortgage values in these segments.

6.66 Tables 7, 8, 9, 10, 11 and 12 below set out estimated shares of mortgage origination in the State, on the basis of information provided by mortgage providers in the State to the BPFI in respect of:

CCPC

(a) All mortgage origination in the State (for each quarter over the period 2017 H1 to 2021 H2);

(b) First Time Buyers (for 2021 Q1 and Q4);

(c) Movers (for 2021 Q1 and Q4);

(d) Switchers (for 2021 Q1 and Q4);

(e) Buy-to-let (for 2021 Q1 and Q4); and,

(f) Top-ups (for 2021 Q1 and Q4).

(a) All mortgage origination in the State

6.67 Category (a) i.e. "All mortgage origination in the State" refers to any new mortgage business acquired by a lender. This includes: (b) First Time Buyers; (c) Movers; (d) Switchers; (e) Buy-to-let; and, (f) Top-ups.

Table 7: Market Shares, total value, new mortgage lending, 2017 H1 – 2021 H2

Half Year	AIB	BOI	KBC	PTSB	Ulster Bank	Dilosk	Finance Ireland	Avant Money
2017 H1	[35-40]%	[25-30]%	[10-15]%	[10-15]%	[10-15]%			
2017 H2	[30-35]%	[25-30]%	[10-15]%	[10-15]%	[10-15]%			
2018 H1	[30-35]%	[25-30]%	[10-15]%	[10-15]%	[10-15]%	[0-5]%		
2018 H2	[30-35]%	[25-30]%	[10-15]%	[15-20]%	[10-15]%	[0-5]%		
2019 H1	[30-35]%	[20-25]%	[10-15]%	[10-15]%	[15-20]%	[0-5]%	[0-5]%	
2019 H2	[30-35]%	[20-25]%	[10-15]%	[15-20]%	[10-15]%	[0-5]%	[0-5]%	

2020 H1	[30-35]%	[25-30]%	[10-15]%	[15-20]%	[10-15]%	[0-5]%	[0-5]%	
2020 H2	[25-30]%	[25-30]%	[10-15]%	[15-20]%	[10-15]%	[0-5]%	[0-5]%	[0-5]%
2021 H1	[25-30]%	[20-25]%	[10-15]%	[15-20]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%
2021 H2	[30-35]%	[20-25]%	[5-10]%	[15-20]%	[0-5]%	[5-10]%	[5-10]%	[0-5]%

Source: The Commission analysis of lending data

6.68 As can be seen in Table 7, BOI has, over the relevant period, consistently held the second-largest share (after AIB) of all mortgage origination in the State. KBC, on the other hand, has held the fourth or fifth largest share of all mortgage origination in the State over this same period. AIB has been the largest originator of mortgages in the State over the relevant period[442], with PTSB and Ulster Bank's share of all mortgage origination being closer to that of KBC than BOI or AIB until 2021 H2. The non-bank lenders (Dilosk, Finance Ireland, and Avant Money) have been gradually growing their market share.

6.69 In considering the shares set out in Table 7 above, the Commission has had regard to NatWest's announcement of 18 February 2021 regarding the imminent withdrawal from the State of Ulster Bank; Ulster Bank's decision to stop accepting mortgage applications from customers who are not existing Ulster Bank customers as of 29 October 2021; and the announcement of the Proposed Transaction by BOI and KBC on 15 April 2021, all of which may have had an effect on the shares of all mortgage origination of these suppliers over the period from February 2021 (for Ulster Bank) and April 2021 (for KBC).

[442] AIB's share is inclusive of subsidiaries EBS and Haven, given that these entities can be considered a single economic unit.

6.70 KBC's share of all mortgage origination in the first half of 2021 was almost unchanged from its share in the second half of 2020, but then decreased considerably in the second half of 2021. It appears, therefore, that the announcement of the Proposed Transaction was followed by, in the timeframe for which the Commission has data, a decrease in KBC's share of all mortgage origination in the State.

6.71 While the Commission's view (as set out in Section 4 above) is that there is no evidence to indicate that the market for the provision of mortgages should be further segmented, the Commission has used various indicators to measure the structure of the market and to assess a more detailed view of the market dynamic.

6.72 The most recent quarter for which market shares are available to the Commission is 2021 Q4. KBC's market share has fallen considerably since the announcement of the Proposed Transaction. The Commission considers that this fall is at least partly as a result of the Proposed Transaction.

6.73 In respect of the different segments of customer in the overall mortgage market (e.g., First Time Buyers, Movers, and Switchers), different trends can be seen, as described further below.[443]

<u>(b) First Time Buyers</u>

Table 8: Shares, First Time Buyer mortgage lending, by value

	AIB	**BOI**	**KBC**	**PTSB**	**Ulster Bank**	**Dilosk**	**Finance Ireland**	**Avant Money Money**
2021 Q1	[25-30]%	[25-30]%	[10-15]%	[15-20]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%

[443] The Commission notes that irrespective of the temporal period used to calculate these share figures (i.e., 2021 Q3 or 2020) the Commission's preliminary conclusion that the mortgage market in the State (or the different customer segments therein) is highly concentrated remains unchanged.

2021 Q4	[30-35]%	[25-30]%	[5-10]%	[15-20]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%

Source: The Commission analysis of lending data

6.74 When looking at mortgage lending to First Time Buyers, the mortgage providers hold broadly similar proportions of mortgage origination to First Time Buyers as their proportions of all mortgage origination, with the main difference being that Avant Money's share of mortgage origination to First Time Buyers is much lower ([0-5]% by value) than its share of all mortgage origination ([0-5]% for 2021 H2).

6.75 The Commission notes that it is expected that the mortgage providers' shares of mortgage origination to First Time Buyers would closely resemble their shares of all mortgage origination. Over the relevant period, First Time Buyers have represented the largest proportion of customers within the overall market for mortgage origination, representing 47% to 55%. As indicated by that range, this proportion has been very stable over the relevant period.

<u>(c) Movers</u>

Table 9: Shares, Mover mortgage lending, 2021 Q4

	AIB	**BOI**	**KBC**	**PTSB**	**Ulster Bank**	**Dilosk**	**Finance Ireland**	**Avant Money**
2021 Q1	[25-30]%	[20-25]%	[5-10]%	[20-25]%	[10-15]%	[0-5]%	[5-10]%	[0-5]%
2021 Q4	[30-35]%	[20-25]%	[5-10]%	[20-25]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%

Source: The Commission analysis of lending data

6.76 In relation to mortgage origination to Movers, KBC's share ([5-10]% by value in 2021 Q4) is lower than its share of overall mortgage origination, i.e., [5-10]%.

6.77 BOI, PTSB, Ulster Bank and Finance Ireland have shares of mortgage origination to Movers ([20-25]% by value, [20-25]% by value, [5-10]% by value, and [5-10]% by value, respectively, in 2021 Q4) that are above their shares of overall mortgage origination ([20-25]%, [15-20]%, [0-5]%, and [5-10]%, respectively, in 2021 Q4). The three remaining bank lenders (excluding Ulster Bank) account for [75-80]% while the non-bank lenders account for [10-15]%.

(d) Switchers

Table 10: Shares, Switcher mortgage lending, 2021 Q4

	AIB	BOI	KBC	PTSB	Ulster Bank	Dilosk	Finance Ireland	Avant Money Money
2021 Q1	[10-15]%	[5-10]%	[25-30]%	[15-20]%	[10-15]%	[0-5]%	[5-10]%	[10-15]%
2021 Q4	[25-30]%	[5-10]%	[5-10]%	[20-25]%	[0-5]%	[5-10]%	[5-10]%	[15-20]%

Source: The Commission analysis of lending data

6.78 KBC was the largest lender and held the greatest proportion of lending in this segment up until 2021 Q3 ([20-25]% by value). However, KBC's share of Switchers decreased to [5-10]% in 2021 Q4. BOI has been relatively weak in terms of market share of Switchers, and in 2021 Q4 held the fifth largest share behind KBC, AIB, PTSB and Avant Money.[444]

(e) Buy-to-let[445]

Table 11: Shares, Buy-to-let mortgage lending, 2021 Q4

	AIB	BOI	KBC	PTSB	Ulster Bank	Dilosk	Finance Ireland	Avant Money

[444] The Commission notes that, prior to 2021, Ulster Bank played an important role in switching. It ranked second in each of 2018, 2019 and 2020 with around [15-20]% market share in each year. Source: Commission analysis of lending data.

[445] This is for information, because not all lenders distinguish between business Buy-to-let and consumer Buy-to-let in their data. As set out in paragraph 4.46, the Commission's view is that the relevant product market does not include customers purchasing business Buy-to-let mortgages. However, the overall share of Buy-to-let mortgages within the mortgage market is very low and the impact is not material.

2021 Q1	[20-25]%	[15-20]%	[0-5]%	[15-20]%	[5-10]%	[20-25]%	[20-25]%	[0-5]%
2021 Q4	[25-30]%	[25-30]%	[0-5]%	[10-15]%	[0-5]%	[15-20]%	[15-20]%	[0-5]%

Source: The Commission analysis of lending data

6.79 The Buy-to-let share of the value of total mortgages originated was just under 1.5% in 2021. KBC has a minimal presence in this segment ([0-5]% by value). AIB, BOI, Dilosk, Finance Ireland and PTSB are the main players in this very small segment of the mortgage market.

6.80 Given the small size of this segment and minimal role that KBC plays in providing mortgages to real estate investment, the likely competitive impact of the Proposed Transaction on this segment will be limited regardless of which lenders would pick up KBC's market share, albeit again in a highly concentrated market.

(f) Top-ups

Table 12: Shares, Top-up mortgage lending, 2021 Q4

	AIB	BOI	KBC	PTSB	Ulster Bank	Dilosk	Finance Ireland	Avant Money
2021 Q1	[25-30]%	[40-45]%	[0-5]%	[0-5]%	[10-15]%	[10-15]%	[0-5]%	[0-5]%
2021 Q4	[35-40]%	[40-45]%	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%

Source: Commission analysis of lending data

6.81 Top-up mortgage lending represents a small share of the value of total mortgages originated (just over 2% in 2021). Top-up mortgage lending is heavily concentrated amongst AIB and BOI. AIB and BOI are the main providers in this segment followed by Ulster Bank which is in the process of withdrawing from the market. KBC's market share has been small ([0-5]% by value in 2021 Q4) and consequently the

Proposed Transaction would have a limited impact on competition with respect to this segment.

The likely effect of the Proposed Transaction on the market structure

6.82 The Commission now sets out the likely effect of the Proposed Transaction on the structure of the market for mortgages in the State.

6.83 The Commission has taken, as a starting point, the shares of all mortgage origination as of 2021 H2 (see Table 7 above).[446] The Commission has set out how it considers Ulster Bank in this Determination in paragraphs 6.4 to 6.17 above. Consistent with this, Ulster Bank's share of new mortgage origination has been re-assigned on a pro-rata basis amongst all of the remaining providers. The resulting shares are set out in Table 13 below.

6.84 Therefore, for the purposes of analysing the market structure following implementation of the Proposed Transaction, the Commission has set out the following illustrative scenario whereby KBC's share of new mortgage origination is shared amongst the remaining providers of mortgages on a pro-rata basis. The market shares presented in Tables 13 to 16 below are based on value, and not volume.[447]

Table 13: Market Shares, new mortgages in the State following exit of KBC and excluding Ulster Bank 2021 Q4

		AIB	BOI	KBC	PTSB	Dilosk	Finance Ireland	Avant Money
2021 Q1	**Pre-Proposed Transaction**	[25-30]%	[25-30]%	[15-20]%	[15-20]%	[0-5]%	[5-10]%	[0-5]%

[446] As noted previously, irrespective of the temporal period used to calculate these share figures (i.e., 2021 Q1 or 2021 Q4) the Commission's conclusion that the mortgage market in the State (or the different customer segments therein) is highly concentrated remains unchanged.

[447] The Commission's conclusions remain unchanged irrespective of whether value or volume is used to calculate these figures. The Commission considers that value may represent a more instructive measure given that value represents the overall size of the market and recognises that some customers purchase mortgages of a greater value than others.

	All providers increase flow pro-rata	[30-35]%	[30-35]%	0.0%	[20-25]%	[5-10]%	[5-10]%	[0-5]%
2021 Q4	**Pre-Proposed Transaction**	[30-35]%	[20-25]%	[5-10]%	[15-20]%	[5-10]%	[5-10]%	[5-10]%
	All providers increase flow pro-rata	[35-40]%	[25-30]%	0.0%	[20-25]%	[5-10]%	[5-10]%	[5-10]%

Source: The Commission analysis of lending data

6.85 These scenarios are also set out in respect of: (i) First Time Buyers; (ii) Mover purchase; and (iii) Switchers.

Table 14: Market Shares, First Time Buyer mortgages in the State following exit of KBC and excluding Ulster Bank 2021 Q4

		AIB	BOI	KBC	PTSB	Dilosk	Finance Ireland	Avant Money
2021 Q1	**Pre-Proposed Transaction**	[25-30]%	[25-30]%	[10-15]%	[15-20]%	[0-5]%	[0-5]%	[0-5]%
	All providers increase flow pro-rata	[30-35]%	[30-35]%	0.0%	[20-25]%	[0-5]%	[0-5]%	[0-5]%
2021 Q4	**Pre-Proposed Transaction**	[30-35]%	[25-30]%	[5-10]%	[15-20]%	[5-10]%	[0-5]%	[0-5]%
	All providers increase	[35-40]%	[25-30]%	0.0%	[15-20]%	[5-10]%	[5-10]%	[0-5]%

	flow pro-rata							

Source: The Commission analysis of lending data

Table 15: Market Shares, Mover mortgages in the State following exit of KBC and excluding Ulster Bank 2021 Q4

		AIB	BOI	KBC	PTSB	Dilosk	Finance Ireland	Avant Money
2021 Q1	**Pre-Proposed Transaction**	[25-30]%	[25-30]%	[10-15]%	[20-25]%	[0-5]%	[5-10]%	[0-5]%
	All providers increase flow pro-rata	[30-35]%	[30-35]%	0.0%	[25-30]%	[0-5]%	[5-10]%	[0-5]%
2021 Q4	**Pre-Proposed Transaction**	[30-35]%	[25-30]%	[5-10]%	[20-25]%	[0-5]%	[5-10]%	[5-10]%
	All providers increase flow pro-rata	[30-35]%	[25-30]%	0.0%	[20-25]%	[0-5]%	[5-10]%	[5-10]%

Source: The Commission analysis of lending data

Table 16: Market Shares, Switcher mortgages in the State following exit of KBC and excluding Ulster Bank 2021 Q4

		AIB	BOI	KBC	PTSB	Dilosk	Finance Ireland	Avant Money
2021 Q1	**Pre-Proposed Transaction**	[10-15]%	[10-15]%	[30-35]%	[15-20]%	[0-5]%	[5-10]%	[10-15]%

	All providers increase flow pro-rata	[20-25]%	[15-20]%	0.0%	[25-30]%	[5-10]%	[5-10]%	[15-20]%
2021 Q4	**Pre-Proposed Transaction**	[25-30]%	[5-10]%	[5-10]%	[20-25]%	[5-10]%	[5-10]%	[15-20]%
	All providers increase flow pro-rata	[25-30]%	[5-10]%	0.0%	[20-25]%	[5-10]%	[5-10]%	[20-25]%

Source: The Commission analysis of lending data

6.86 These market shares will be discussed further in the next section on market concentration. Notably, regardless of whether 2021 Q1 or Q4 is looked at, the share of the biggest three competitors in the market will be greater than [80-85]% following the Proposed Transaction.

Market concentration

6.87 Market concentration refers to the degree to which production or supply in a particular market is concentrated in the hands of a few large firms. The Commission's Merger Guidelines state, at paragraphs 3.2 to 3.4, the following:

> *"Market concentration provides a snapshot of market structure and is often a useful indicator of the likely competitive impact of a merger. It is of particular relevance to the assessment of horizontal mergers. A horizontal merger that has little impact on the level of concentration in the market under consideration is unlikely to lead to an SLC.*
>
> *Market concentration, however, is not determinative in itself. A high level of market concentration post-merger is not sufficient, in and of itself, to conclude that a merger is likely to lead to an SLC. Other relevant factors (such as, for example, the closeness of competition between the merging parties, market dynamics, barriers to entry and expansion, etc.) will be*

examined by the Commission before any conclusion is reached concerning the likely competitive impact of a merger.

Market shares are important when measuring concentration. The market shares of firms in the market can give an indication of the extent of a firm's market power. The combined market share of the merging parties, when compared with their respective market shares pre-merger, can provide an indication of the change in market power resulting from the merger. Competition concerns are more likely to arise when the merger creates a merged entity with a large market share."

6.88 Paragraphs 3.9 to 3.10 of the Commission's Merger Guidelines set out that the Commission utilises HHI as a measure of market concentration. The Commission's Merger Guidelines state that the Commission will have regard to the following HHI thresholds:

"A post-merger HHI below 1,000 is unlikely to cause concern.

Any market with a post-merger HHI greater than 1,000 may be regarded as concentrated and highly concentrated if greater than 2,000.

Except as noted below, in a concentrated market a delta of less than 250 is unlikely to cause concern and in a highly concentrated market a delta of less than 150 is unlikely to cause concern."

6.89 The Commission's Merger Guidelines explain, at paragraph 3.11 that:

"the purpose of the HHI thresholds is not to provide a rigid screen in order to determine whether or not a merger is likely to result in an SLC. Rather, the HHI is a screening device for deciding whether the Commission should intensify its analysis of the competitive impact of a merger."

6.90 Based on the market share estimates set out in Table 17 below, the Commission is of the view that there is high concentration in the stock of mortgages in the State. Table 17 illustrates that the HHI in respect of mortgage stock following implementation of the Proposed Transaction would be 2,702. Furthermore, the change in the HHI would be 528 which, as set out in paragraph 3.10 of the Commission's Merger Guidelines, means that the Commission could not conclude that the Proposed Transaction is unlikely to cause concern without intensifying its analysis of the competitive impact of the Proposed Transaction.[448]

Table 17: The HHI in the mortgage market (stock), 2020

	HHI
Pre-Proposed Transaction	2,174
Post-Proposed Transaction	2,702
HHI delta	528

Source: The Commission analysis of lending data

6.91 The Commission next sets out the HHI in respect of mortgage flows, (i.e., new business acquisition by mortgage providers), based on the scenario that KBC's share of new mortgage origination is shared amongst the remaining providers of mortgages on a pro-rata basis. These HHIs are based on value, and not volume.[449]

6.92 Based on the market share estimates set out in Table 17 above, the Commission is of the view that there is high concentration in the provision of new mortgages in the State. This is the case considering market shares from 2021 in Q1 or Q4. Table 18 below illustrates that the Proposed Transaction will increase the HHI in respect of mortgage origination by 476 (based on 2021 Q1 shares) or 303 (based on 2021 Q4 shares) if KBC's share were to be distributed across all lenders on a pro-rata basis. Based on these, as with mortgage stock, the Commission could not

[448] If the Commission were to take the shares for BOI and KBC set out in the Written Response which are set out in footnote 49 above, the HHI delta would be 341. This does not change the Commission's analysis of the impact of the Proposed Transaction on market concentration.

[449] As previously noted, the Commission's conclusions are unchanged irrespective of whether value or volume is used to calculate these figures. The Commission considers that value may represent a more instructive measure given that value represents the overall size of the market and recognises that some customers purchases mortgages of a greater value than others.

conclude that the Proposed Transaction is unlikely to cause concern without intensifying its analysis of the competitive impact of the Proposed Transaction.

Table 18: The HHI in the mortgage market (flow), 2021 Q4

		HHI	HHI delta
2021 Q1	**Pre-Proposed Transaction**	2,060	
	All providers increase flow pro-rata	2,536	476
2021 Q4	**Pre-Proposed Transaction**	2,138	
	All providers increase flow pro-rata	2,441	303

Source: The Commission analysis of lending data

Concerns that arise with high levels of concentration in the mortgage market and likely impact on prices as a result of the Proposed Transaction

6.93 Ireland already has higher mortgage interest rates relative to its Eurozone peers. The CBI has identified that "The spread between official ECB interest rates and the standard variable mortgage rate is relatively high in Ireland, both by historical standards and compared to European peers".[450] This was the situation in 2015 and it continues to be the case.[451] As of December 2021 (the most recently published figures), the State has the highest mortgage interest rates in the euro area.[452]

6.94 The CBI identified three factors explaining the relatively higher standard variable mortgage rate in the State. One of these factors was that "*competition is weak*".[453]

[450] https://www.centralbank.ie/docs/default-source/publications/correspondence/finance-reports/influences-on-svr-pricing-in-ireland.pdf?sfvrsn=2

[451] https://www.bonkers.ie/blog/mortgages/heres-why-mortgage-rates-in-ireland-are-so-high/

[452] https://www.centralbank.ie/docs/default-source/statistics/data-and-analysis/credit-and-banking-statistics/retail-interest-rates/interest-rate-statistics-december-2021.pdf?sfvrsn=5

[453] https://www.centralbank.ie/docs/default-source/publications/correspondence/finance-reports/influences-on-svr-pricing-in-ireland.pdf?sfvrsn=2.

Indeed, research presented by the CBI "*indicates that less competitive markets are associated with higher lending margins*".[454] Additionally, as a second factor, the CBI noted that the price of loans must reflect associated credit risks. In the State, "*these risks are elevated due to high levels of non-performing loans and the lengthy and uncertain process around collateral recovery*".[455] The third factor is bank profitability, which is constrained by legacy issues. Furthermore, the CBI noted that *"profitability is essential to ensure banks build up adequate capital buffers to meet increasing regulatory requirements and to withstand future adverse shocks"*.[456]

6.95 The CBI further notes that:

> *"There are undoubtedly influences from a range of factors that impact bank lending margins as discussed in this note. However, given the reductions in competition in Ireland, the potential for margins to be affected by market power is clear. To foster competition, attracting new foreign entrants may be difficult in an environment which has seen financial fragmentation and a retrenchment towards national banking markets"*.[457]

6.96 More recently, commentators have identified a lack of competition as again being one of the factors contributing to higher mortgage interest rates in Ireland relative to other Eurozone countries.[458] The Commission considers that the Proposed Transaction is likely to further reduce competition in the provision of mortgages in the State which may result in higher mortgage rates.

[454] Page 17, and Annex A. https://www.centralbank.ie/docs/default-source/publications/correspondence/finance-reports/influences-on-svr-pricing-in-ireland.pdf?sfvrsn=2.

[455] Page 17, and Annex A. https://www.centralbank.ie/docs/default-source/publications/correspondence/finance-reports/influences-on-svr-pricing-in-ireland.pdf?sfvrsn=2.

[456] Page 17, and Annex A. https://www.centralbank.ie/docs/default-source/publications/correspondence/finance-reports/influences-on-svr-pricing-in-ireland.pdf?sfvrsn=2.

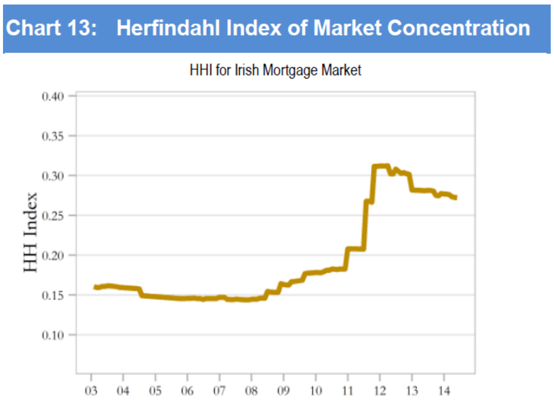
[457] Page 19, https://www.centralbank.ie/docs/default-source/publications/correspondence/finance-reports/influences-on-svr-pricing-in-ireland.pdf?sfvrsn=2.

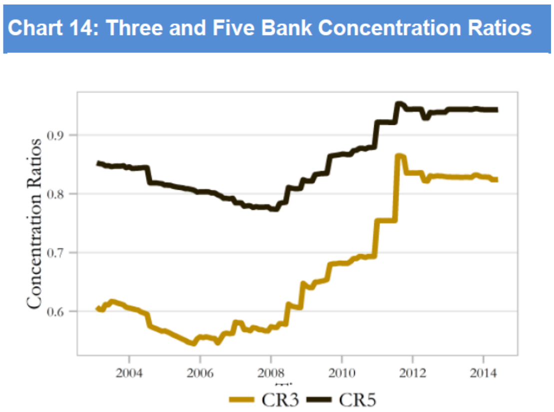
[458] https://www.bonkers.ie/blog/mortgages/heres-why-mortgage-rates-in-ireland-are-so-high/.

6.97 The CBI has pointed to how "*the Irish banking landscape has become more concentrated with a number of structural changes. These structural changes include the merger of AIB and EBS, the market exits of Bank of Scotland Ireland and Danske Bank, the winding down of Anglo Irish Bank and Irish Nationwide as well as the liquidation of the Irish Bank Resolution Corporation*".[459] The Proposed Transaction, along with Ulster Bank ceasing to offer mortgages to new customers, appears likely to exacerbate this situation.

6.98 The CBI also measured the increase in concentration following the financial crisis through changes in the HHI and the three and five bank concentration ratios.[460] These measures increased considerably after the onset of the crisis, reflecting the market exits and mergers noted above. "*Such developments indicate a less competitive market structure*".[461] The graphical representations of the CBI's measures are presented below.

Figure 9: HHI and Concentration Ratios in the market for new mortgage lending, 2003 - 2014





Source: Central Bank of Ireland

[459] Page 17, https://www.centralbank.ie/docs/default-source/publications/correspondence/finance-reports/influences-on-svr-pricing-in-ireland.pdf?sfvrsn=2.

[460] The HHI is "*The measure is the sum of the squares of each institution's market share and is a generally accepted measure of concentration. It lies between zero and one, with zero indicating perfect competition and one a monopoly situation*". Page 17, CBI report on Standard Variable Rates.

[461] Page 17, CBI report on Standard Variable Rates.

6.99 High levels of concentration have raised competition concerns previously when the market for the supply of mortgages has been considered by other competition authorities in Europe. For example, the UK's Office of Fair Trading (the "OFT") considered the proposed merger between Lloyds TSB Group plc ("Lloyds") and HBOS plc ("HBOS") at the height of the financial crisis in 2008.

6.100 The OFT reported that:

> *"Lloyds estimated that the merging parties' combined market share is [20-30] per cent (increment [5-15] per cent)[…] The HHI is at around [500-1000] premerger and [1000-1500] post-merger, which indicates that this is a concentrated market".*[462]

6.101 The OFT found that, "*the combination of the largest and third largest mortgage providers is significant enough to cause concern*", given the impact of the financial crisis on mortgage markets.[463] This led the OFT to conclude that, at a Phase I standard, the Lloyds/HBOS merger would lead to a "*realistic prospect*" of a substantial lessening of competition.[464]

6.102 A report by the CBI considered the net interest margin ("NIM") of banks in the State, relative to a comparison group of a sample of 39 other EU banks, in the post financial crisis period of 2013-2017.[465] This study did not consider only mortgages, but looked at this key margin measure across the banks' activities in Ireland.[466] The study shows that the NIM of banks in the State increased while that of the

[462] See paragraph 180, https://assets.publishing.service.gov.uk/media/5592bba440f0b6156400000c/LLloydstsb.pdf_jsessionid_4EBCDA0A4B36535AF8355B90D18E00A2.pdf.

[463] *Ibid*, paragraph 203.

[464] The OFT concluded that the Lloyds/HBOS transaction "*may be expected to result in a substantial lessening of competition (SLC) within a market or markets in the United Kingdom for goods or services, including personal current accounts, banking services to small and medium enterprises (SMEs), and mortgages, such that further inquiry by the Competition Commission (CC) is warranted*". The Commission notes that the UK Secretary of State for Business, Enterprise & Regulatory Reform ultimately decided on 31 October 2008, on public interest grounds relating to ensuring the stability of the UK financial system, not to make such a referral and so that transaction was put into effect. See: https://www.gov.uk/cma-cases/lloyds-tsb-plc-hbos-plc and http://data.parliament.uk/DepositedPapers/Files/DEP2008-2685/DEP2008-2685.pdf.

[465] Page 8, Irish retail bank profitability 2003 – 2018, https://www.centralbank.ie/docs/default-source/publications/financial-stability-notes/no-10-irish-retail-bank-profitability-2003---2018-(nevin).pdf?sfvrsn=4.

[466] A discussion on the recent impact of low and/or negative interest rate on the NIM of banks is included in paragraphs 6.292 to 6.293 below.

comparison group declined and finds that there are low levels of competition in the State. It is also notable that the NIM was increasing for banks in the State as concentration levels increased, as shown by the charts earlier.

> *"In the post-Crisis period, the NIM of Irish banks has increased significantly while the NIM for the other group has declined. This may be a result of greater competition for deposits in the rest of the euro area, pushing deposit rates up and as a result reducing the positive contribution of liabilities in the low-interest rate environment. This competition is also likely to reduce the interest income on loans, further compressing margins. Conversely, Irish banks were in a position to benefit from low funding costs combined with historically low levels of competition to increase their margins substantially over the period".*[467]

6.103 The report additionally noted that: "The retail banking sector in Ireland became much more concentrated during the Crisis and remains so (Central Bank of Ireland, Household Credit Market Report, (2017)). More market power allows for wider margins – greater profits".[468]

Conclusion on market structure and concentration

6.104 The Commission is of the view that market shares are relevant for an understanding of the existing structure of the mortgage market and market dynamics in the State. The Commission's investigation revealed that, following the implementation of the Proposed Transaction, BOI would become the largest holder of existing mortgage stock in the State, with a share of approximately 35%. Even if the Commission took the partial data provided by the parties in the Written Response into account (as described in footnote 49), BOI would account for approximately 28% of stock, which would still make it either the largest or second largest holder of stock in the State. In respect of new mortgage origination, following completion of the Proposed Transaction, the market structure would be

[467] Page 8, Irish retail bank profitability 2003 – 2018, https://www.centralbank.ie/docs/default-source/publications/financial-stability-notes/no-10-irish-retail-bank-profitability-2003---2018-(nevin).pdf?sfvrsn=4.

[468]*Ibid* at page 9.

one where the leading two undertakings (AIB and BOI), will collectively have a share in excess of [60-65]%, and the third largest undertaking (PTSB), will have a share of approximately [15-20]%.

6.105 On the basis of the HHI calculations set out in Tables 17 and 18 above, and consistent with the Commission's Merger Guidelines, the Commission is of the view that the Proposed Transaction is happening in a highly concentrated market and that the implementation of the Proposed Transaction is likely to result in the mortgage market in the State becoming more concentrated. High concentration can be observed irrespective of whether one views the market in terms of mortgage stock (existing customers) or mortgage flows (customer acquisition).

6.106 Further, the Commission has had regard to the European Commission's "Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings" (the "EC Horizontal Merger Guidelines")[469] regarding the relationship between high market shares and market power which states that:

> *"The larger the market share, the more likely a firm is to possess market power. And the larger the addition of market share, the more likely it is that a merger will lead to a significant increase in market power. The larger the increase in the sales base on which to enjoy higher margins after a price increase, the more likely it is that the merging firms will find such a price increase profitable despite the accompanying reduction in output. Although market shares and additions of market shares only provide first indications of market power and increases in market power, they are normally important factors in the assessment".*

6.107 The findings above indicate that, even before the imminent withdrawal from the market by Ulster Bank, and prior to the Proposed Transaction, Ireland already had a concentrated market for the provision of mortgages;[470] that the market will

[469] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004XC0205(02)&from=EN.

[470] See also: 'The Irish Mortgage Market – 2018 and beyond', a speech on 6 June 2018, in which these views are echoes by - Deputy Governor Ed Sibley of the Central Bank of Ireland.

become more concentrated following implementation of the Proposed Transaction; and that a high level of concentration is associated with less competition, potentially leading to higher mortgage interest rates and higher margins for mortgage providers.

(d) Assessment of unilateral effects

6.108 The Commission has set out its framework for the assessment of unilateral effects in paragraphs 6.18 to 6.23 above. The Commission's theory of harm is that KBC has placed an important competitive constraint on BOI and other suppliers in the market for the provision of mortgages in the State through offering lower prices and by competing particularly strongly in the switching segment. The Commission has explored the extent to which other lenders may be in a position to replace this important competitive force which is likely to be lost as a result of the Proposed Transaction.

6.109 In assessing the theory of harm and whether the Proposed Transaction is likely to result in SLC, the Commission has considered the following:

A. Examination of the extent to which KBC provides an important competitive constraint in the market for the provision of mortgages;

B. Examination of the extent to which other lenders are likely to replace the competitive constraint provided currently by KBC; and

C. Consideration of BOI's Proposals

A. Examination of the extent to which KBC provides an important competitive constraint in the market for the provision of mortgages

6.110 The Commission has structured its analysis in this section as follows:

(i) Examination of whether, as a result of the Proposed Transaction, the loss of KBC as an important competitive force will lead to a reduction of competitive pressure on all competitors in the market;

(ii) Assessment of the extent to which KBC was an important competitive constraint on BOI - closeness of competition;

(iii) Analysis of KBC's role in the switching segment, and of whether the Proposed Transaction will lead to a reduction of competitive pressure on competitors for back book customers;

(iv) Concerns raised by consumers regarding the Proposed Transaction; and,

(v) Assessment of the likelihood that KBC would continue to be an important competitive force in the absence of the Proposed Transaction.

A.(i) Examination of whether, as the result of the Proposed Transaction, the loss of KBC as an important competitive force will lead to a reduction of competitive pressure on all competitors in the market

Evidence that KBC has provided leadership in pricing relative to other bank lenders

6.111 KBC has placed an important constraint in the market for mortgages through offering lower prices.

6.112 Although banks and non-bank lenders are considered by the Commission to be in the same relevant market, the Commission considers it notable that c. [80-85]% of new mortgage business is attributable to retail banks, with the leading three banks (AIB, BOI, and PTSB) accounting for approximately [70-75]% of the entire market in 2021 Q3.[471,472] The Commission further recalls that non-bank lenders are a relatively recent feature of the mortgage market, with minimal activity until 2019 H2.[473]

6.113 In light of this, the Commission first considers the important competitive force represented by KBC in the market, primarily in respect of retail banks, before considering whether recent entrants (i.e., non-bank lenders) could, as contended by the Parties, represent, individually and collectively, the same important competitive force.

[471] See Table 7 above.

[472] KBC accounted for approximately [10-15]% of mortgage flow in this period, with Ulster Bank accounting for [5-10]%.

[473] See Table 7 above.

6.114 As set out in Section 2, interest rates charged by mortgage providers differ on the basis of many factors.[474] As a result, mortgage providers charge a panoply of interest rates. However, most mortgage providers offer a set of mortgage products which encompass some or all of these factors. Therefore, the Commission is able to assess and compare these prices across these common products.

6.115 In assessing the evidence that KBC has provided leadership in pricing in the mortgage market, the Commission has analysed the interest rates charged by KBC and other mortgage providers over the period 1 January 2017 to 1 July 2021.

6.116 The Commission, as part of its financial education function, provides various "*Money Tools*" on its website, one of which is a mortgage comparison tool.[475] The mortgage comparison tool allows consumers to compare mortgages (based on the required term and value of the mortgage), according to whether the consumer is a First Time Buyer, Switcher or Mover. As part of its database supporting the mortgage money tool, the Commission has collected reports of the interest rates charged for their various mortgage products by mortgage providers on a quarterly basis and has used such reports to assess the historical trends of interest rates charged by various lenders.

6.117 In the Assessment, the Commission found that, "[o]n a historical basis, there is evidence that KBC has consistently priced its mortgage products lower than most other competing banks on an aggregate basis across all mortgage products". In the Written Response, the Parties highlight a lack of "any actual quantitative analysis supporting this view".[476] The Written Response further made a number of specific criticisms of the Commission's assessment of pricing. These are set out below, followed by the Commission's response to those criticisms, and then the Commission's analysis of market prices.

[474] See paragraph 2.48 above.

[475] https://www.Commission.ie/consumers/money-tools/mortgage-comparisons/.

[476] Paragraph 5.135.

6.118 In paragraph 4.46 of the Written Response, the Parties argued that:

> *"[f]irstly, the analysis appears to focus on banks and thereby ignore that rate competition takes place between all lenders, not just banks. Secondly, Ulster Bank is excluded from the CCPC's analysis even though it is continuing to offer mortgages to its 1.1 million customers. Thirdly, the CCPC's analysis does not appear to compare like with like, in that it includes KBC's discounts but excludes the discounts of other providers, and it takes no account of cashback."*

6.119 The Commission's responses to these criticisms individually are:

- In response to the assertion that the Assessment lacked quantitative analysis, Table 19 below sets out the Commission's analysis of historical pricing in the market.

- The Commission has not ignored non-bank lenders in its analysis. This suggestion by the Parties appears to be based on paragraph 5.137 of the Assessment, which stated that, *"On a forward-facing basis, there is evidence that KBC represents the lowest headline-rate offer of all the banks currently active in the market"*. As the more detailed analysis set out below in Table 19 shows, the assessment of historical pricing includes non-bank lenders. On a forward-looking basis, section A.(iv) considers this in more detail.

- Ulster Bank has not been excluded from the historical analysis.[477]

- In terms of the inclusion of KBC discounts and exclusion of other types of discount, the Commission considers it appropriate to include the KBC customer discount as it is potentially available to all KBC mortgage customers if they open a KBC current account. On the other hand, discounts such as Green mortgages and products such as High Value mortgages are not offered by KBC and are, by their nature, available only

[477] See paragraphs 6.5 - 6.17.

to specific customer cohorts. The Commission's analysis seeks to compare KBC products against comparable products offered by other lenders or those products which are available substitutes for their mortgages.

- Cashback, and other discounts such as switching incentives, are not included in this analysis. The Commission considers that these are important parts of the product offering, which reduce the overall cost of mortgages. They also may be particularly attractive to specific customers—cashback, for example, may particularly benefit customers who need to draw on most or all of their savings to pay down a mortgage deposit. However, the Commission's analysis was specifically in relation to interest rates, which are a very important competitive parameter and the primary factor in differences in the overall cost of the mortgages between lenders. KBC has clearly been a leader on that very important competitive parameter, offering market-leading products with respect to price, and has therefore been an important competitive constraint, particularly on lenders competing for those customers for whom this is the most important factor.

- Table 19 sets out historical price-ranking comparisons for fixed term mortgage products, between 60-80% LTV, for each of the fixed term lengths offered by KBC, over the period 1 January 2017 to 1 July 2021.

Table 19: Comparison of price ranking for fixed rates, 60-80% LTV, 1, 2 ,3 ,5, 10 year fixed rate terms, Jan 17 – July 21

1 Year Fixed	Jan-17	Apr-17	Jul-17	Nov-17	Jan-18	Apr-18	Jul-18	Oct-18	Jan-19	Sep-19	Mar-20	Jun-20	Apr-21	Jul-21
AIB		4	5	3	4	4	4	4	4	4	4	4	4	4
Avant Money														
Bank of Ireland	3	3	3	3	2	2	2	2	2	2	2	2	2	2
EBS	4	4	2	2	3	3	2	3	3	3	2	2	2	2
Finance Ireland														
Haven	4	4	5	3	4	4	4	4	4	4	4	4	5	5
Dilosk														
KBC	1	1	1	1	1	1	1	1	1	1	1	1	1	1
MortgageStore														
Pepper														
Permanent TSB	2	2	3	3	4	4	4	4	4	6	6	6		
Ulster Bank														

2 Year Fixed	Jan-17	Apr-17	Jul-17	Nov-17	Jan-18	Apr-18	Jul-18	Oct-18	Jan-19	Sep-19	Mar-20	Jun-20	Apr-21	Jul-21
AIB	5	5	6	4	4	4	5	5	5	5	5	5	5	5
Avant Money														
Bank of Ireland	2	2	2	2	2	2	3	3	3	3	3	3	3	3
EBS	5	5	3	3	3	3	3	4	4	4	3	3	3	3
Finance Ireland														

Haven	5	5	6	4	4	4	5	5	5	5	5	5	7	7
Dilosk														
KBC	1	1	1	1	1	1	2	2	2	1	1	1	2	2
MortgageStore	2	2	4	6	6	6								
Pepper														
Permanent TSB	4	4	5	7	7	7	7	7	7	7	7	7	6	6
Ulster Bank							1	1	1	1	1	1	1	1

3 Year Fixed	**Jan-17**	**Apr-17**	**Jul-17**	**Nov-17**	**Jan-18**	**Apr-18**	**Jul-18**	**Oct-18**	**Jan-19**	**Sep-19**	**Mar-20**	**Jun-20**	**Apr-21**	**Jul-21**
AIB	5	5	6	5	5	6	6	6	6	3	3	4	4	4
Avant Money													1	1
Bank of Ireland	3	3	3	3	3	3	3	4	4	6	7	8	9	9
EBS	5	5	4	4	4	5	3	4	4	6	6	7	7	7
Finance Ireland										1	2	2	3	2
Haven	5	5	6	5	5	6	6	6	6	3	3	4	6	6
Dilosk												3	4	4
KBC	1	1	1	1	2	2	2	1	1	1	1	1	2	2
MortgageStore														
Pepper														
Permanent TSB	4	4	5	7	7	4	5	3	3	3	5	6	8	8
Ulster Bank	1	1	1	1	1	1	1	2	2					

5 Year Fixed	**Jan-17**	**Apr-17**	**Jul-17**	**Nov-17**	**Jan-18**	**Apr-18**	**Jul-18**	**Oct-18**	**Jan-19**	**Sep-19**	**Mar-20**	**Jun-20**	**Apr-21**	**Jul-21**
AIB	6	6	7	5	5	6	6	6	6	4	3	4	3	4
Avant Money													1	1
Bank of Ireland	2	3	3	3	2	2	2	5	5	7	8	9	9	9

EBS	6	6	4	4	4	5	2	3	3	7	6	7	8	8
Finance Ireland										2	1	1	3	2
Haven	6	6	7	5	5	6	6	6	6	4	3	4	7	7
Dilosk												1	2	3
KBC	1	1	1	1	3	3	4	1	1	2	1	1	3	4
MortgageStore	2	3	5	5	5	6								
Pepper														
Permanent TSB	5	5	6	8	8	4	5	3	3	6	7	8	9	9
Ulster Bank	4	2	2	2	1	1	1	2	2	1	5	6	3	4

10 Year Fixed	**Jan-17**	**Apr-17**	**Jul-17**	**Nov-17**	**Jan-18**	**Apr-18**	**Jul-18**	**Oct-18**	**Jan-19**	**Sep-19**	**Mar-20**	**Jun-20**	**Apr-21**	**Jul-21**
AIB										2	3	3	3	5
Avant Money														1
Bank of Ireland	1	1	1	2	2	2	2	2	2	2	3	3	4	6
EBS														
Finance Ireland														2
Haven										2	3	3	4	6
Dilosk														
KBC				1	1	1	1	1	1	1	2	2	2	4
MortgageStore														
Pepper														
Permanent TSB														
Ulster Bank											1	1	1	3

Variable[478]	Jan-17	Apr-17	Jul-17	Nov-17	Jan-18	Apr-18	Jul-18	Oct-18	Jan-19	Sep-19	Mar-20	Jun-20	Apr-21	Jul-21
AIB	2	3	3	4	1	1	1	1	1	1	1	2	2	2
Avant Money														
Bank of Ireland	8		8	8	8	8	7	7	7	8	8	9	9	9
EBS	6	5	5	5	5	5	5	5	5	6	7	8	8	8
Finance Ireland										1	1	2	2	2
Haven	2	3	3	1	1	1	1	1	1	1	1	2	2	2
Dilosk												1	1	1
KBC	1	1	1	2	3	3	3	3	3	4	4	5	5	5
MortgageStore	7	7	7	7	7	7								
Pepper														
Permanent TSB	5	6	6	6	6	6	6	6	6	7	6	7	6	6
Ulster Bank	2	1	1	2	4	4	4	4	4	5	5	6	6	6

[478] This captures the lowest variable rate offered by that lender at this date.

6.120 As shown in Table 19, prior to the Proposed Transaction, KBC had either the lowest or second-lowest fixed rate across the different fixed rate terms, with the exception of a period in 2018 when they were 3rd and then 4th for five-year fixed terms.[479] With respect to variable rates, KBC has ranked behind AIB and Haven since 2018 Q1 and 2017 Q4, respectively, and each of the non-bank lenders since they entered the market.[480]

6.121 In considering more recent price comparisons, the Commission notes the Written Response's comparison of recent (February 2022) prices, in which the Parties highlight that KBC does not offer any of the lowest rate products currently. The Commission notes the following issues with this analysis:

- The Parties have not differentiated by product types (i.e., LTV% or fixed term duration) which can be misleading given certain lenders focus on low interest rates in specific low LTV segments;
- The Parties have included Green and High Value products, which the Commission believes to be inappropriate for the reasons set out in paragraph 6.119 above; and,
- KBC has not adjusted its interest rates since 2020, prior to the Proposed Transaction. Since then, a number of competitors have reduced their rates significantly, meaning KBC's current relative ranking is not reflective of its competitive position prior to contemplation of the Proposed Transaction.[481]

6.122 On a historical basis, prior to the announcement and notification of the Proposed Transaction, there is evidence that KBC has consistently priced its mortgage

[479] The same analysis broadly holds for the <60% and > 80% LTVS segments with the following differences: for <60% LTV there is no period when KBC is not lowest or second lowest, and for >80% KBC drops to third lowest at the beginning of 2018 for 3 year fixed terms and is 5th-7th lowest in 2018 for 5 year fixed terms.

[480] While this analysis does not capture Avant Money, Avant Money offers a market-leading variable rate.

[481] See paragraphs 5.56-5.57.

products lower than most other competing lenders on an aggregate basis across all mortgage products. The Commission also notes that this analysis directly contradicts the analysis set out in Table 7 of the Written Response. KBC has consistently provided either the lowest or second-lowest interest rates before accounting for cashback or similar mortgage features. In respect of those periods when KBC did not represent the lowest interest rate provider of those products, that position was frequently held by Ulster Bank, a provider which is withdrawing from the market.

6.123 Since the announcement and notification of the Proposed Transaction, KBC has chosen not to reduce its rates. As a result, given significant rate reductions by a number of competitors over that period, it is no longer pricing among the lowest rates in the market. However, KBC made a decision not to implement planned [✂], which cannot be separated from the decision to agree the Proposed Transaction.[482]

6.124 Information provided to the Commission by KBC in responses to the KBC Phase 1 Information Request and the KBC Phase 2 Information Request indicates that, absent the Proposed Transaction, KBC intended to continue to play a leading role in pricing in the mortgage market in the State.

6.125 Prior to the advent of the Proposed Transaction, KBC had developed, and was in the process of implementing, an innovation and investment strategy entitled *[✂]*.[483]

6.126 In its response to the KBC Phase 2 Information Request, KBC stated the following about KBC's [✂] strategy:

> *"[✂]*
>
> *(a) [✂];*

[482] See paragraph 5.56-5.57.

[483] *Ibid.*

(b) [✂]); and

(c) [✂]”.[484]

6.127 An internal KBC document entitled “[✂]” and dated [✂]suggests that KBC would have [✂] further in 2021:

“[✂]”.[485]

6.128 This same document also notes that, prior to [✂] and the contemplation of the Proposed Transaction, KBC would have introduced new products to the market. Slides 32 and 37 of that document note the anticipated introduction of [✂] by KBC.

6.129 Furthermore, the [✂] Strategy also states KBC’s intention to continuously develop and implement innovations, including:

(a) establishing “[✂]” which KBC saw as necessary to address “*paper heavy*” processes;[486]

(b) “*process enhancements*” “*from [*[✂]”, with a graph indicating that [✂];[487]

(c) launching a [✂], which [✂];[488]

(d) a stated objective to [✂]”, envisaging “[✂]” which, in the Commission’s view, demonstrates that KBC would continue to be actively innovative and seek to introduce new features to the market.[489]

6.130 As noted in paragraph 6.235, prior to the Proposed Transaction, where KBC did not offer the lowest headline rates, Ulster Bank did. The Commission therefore considers it important to recall that Ulster Bank is in the process of withdrawing

[484] See pages 3-4 of the KBC Phase 2 Information Request Response.

[485] See slides 28 of the KBC document “[✂]”, dated [✂] ([✂]) (“[✂]”).

[486] See slide 11 of [✂].

[487] See slide 16 of [✂].

[488] https://newsroom.kbc.com/kbc-shifts-digital-transformation-and-customer-experience-up-a-gear-with-differently-the-next-level.

[489] See slides 12 and 13 of [✂].

from the market[490] and has significantly limited availability of its products. Thus, the effect of the Proposed Transaction is likely to remove KBC as the only remaining bank which has been a significant competitive force in terms of pricing, from the market.

6.131 Additionally, BOI, across this time period, appears to have had the highest interest rates in respect of certain fixed term mortgage products and the variable rate mortgage product across all LTV bands. BOI's variable rate mortgage product is consistently the most expensive mortgage product in the market, and has been priced significantly higher than variable rate products offered by other banks.

6.132 In considering pricing since the announcement of the Proposed Transaction, the Commission notes that Avant Money has, across the fixed terms and LTV bands it offers products for, been the leader in headline prices. Finance Ireland and Dilosk have also competed strongly on pricing. The Commission considers that this is not necessarily simply a result of KBC competing less strongly after the announcement of the Proposed Transaction. For example, when Avant Money entered in late 2020, its headline rates immediately led the market.

6.133 The Commission therefore recognises the potential for one or more of the non-bank lenders, each of whom have recently entered the market, to replace the important competitive constraint KBC has been exerting on the market. However, the Commission has concerns about the likelihood that this will be sustainable in the medium to long-term. Indeed, Dilosk[491] and Avant Money[492] have recently announced increases to their headline rates, and both noted these increases were as a result of funding cost pressures. The Commission's concerns in relation to the competitive position of non-bank lenders will be discussed further in paragraphs 6.270 to 6.319.

[490] See paragraphs 6.4 to 6.6 above.

[491] https://www.irishtimes.com/business/financial-services/ics-mortgages-increases-its-fixed-interest-rate-for-homeowners-1.4826223.

[492] https://www.rte.ie/news/business/2022/0506/1296524-avant-money-to-increase-some-mortgage-rates/.

6.134 In the Assessment, the Commission highlighted a number of examples, provided by KBC in the Phase 2 RFI Response, of KBC being innovative in the introduction of new products, services and features in the mortgage market. In the Written Response, the Parties provided evidence that the examples cited in the Assessment had, in fact, been introduced earlier by other lenders in the market. The Parties also provided evidence of recent innovations introduced by other lenders.

6.135 In addition, the Assessment set out that KBC has a reputation which distinguishes it from other banks, citing the examples of National Consumer Awards won by KBC in recent years. In the Written Response, the Parties noted that other lenders, including banks, had also won awards in the same categories in recent years.

6.136 In summary, the Commission finds that further evidence provided by the Parties on KBC's innovation in the market reduces but does not remove the effect of KBC as an innovative force in the market for the provision of mortgages in the State. With regard to price leadership, the Commission finds the evidence of KBC's price leadership relative to other bank lenders prior to the announcement and notification of the Proposed Transaction to be compelling. The Commission finds that, particularly in the last year, non-bank lenders have competed vigorously on price. However, while this suggests that non-bank lenders may have the potential to replace KBC as a competitive constraint in the future, the Commission has considered further in paragraphs 6.251 to 6.319 below the extent to which any competitive constraint imposed by the non-bank lenders may be sustainable in the medium to long-term.

A.(ii) Assessment of the extent to which KBC was an important competitive constraint on BOI - closeness of competition between BOI and KBC

6.137 In considering the extent to which KBC has been an important competitive constraint in the market for mortgages the Commission has had regard to its the Merger Guidelines, the European Commission's Guidelines on the assessment of horizontal mergers and case law, including the EU General Court's judgment in *CK*

Telecoms[493], to which the Parties refer extensively in their Written Response and Oral Response.

6.138 It is clear that the concept of an "important competitive force" does not lend itself to a bright-line test pursuant to which it can be determined as a matter of law whether a particular firm does or does not amount to an important competitive force. Rather it is a highly fact-sensitive matter and dependent upon an evaluation of a wide range of factors.

6.139 In this regard, factors that may be relevant to such an assessment include:

(a) A firm may compete more vigorously relative to other firms (for example, as a price leader or innovator) and, consequently, have a disproportionately large impact on competition;

(b) A firm may exert more of an influence on the competitive process than their market shares would suggest;

(c) A firm may change the competitive dynamics in a significant way.

6.140 In considering closeness of competition between BOI and KBC, the Commission is not required to demonstrate that KBC is a particularly close competitor of BOI and in particular, that it constrained BOI from otherwise raising prices or lowering quality profitably. Rather, in determining whether the Proposed Transaction will lead to unilateral effects, the correct question is whether the merged entity will be able, as a result of the merger, to exercise market power. The Commission's assessment of unilateral effects must be carried out in the round by looking at all the relevant factual material, including, but not limited to, closeness of competition.

6.141 In its assessment of closeness of competition between BOI and KBC, the Commission has considered the following:

- The Parties' internal views on each other
- Differentiation in distribution channels

[493] See paragraph 3.16.

- Product differentiation

The Parties' internal views on each other

6.142 BOI's internal documents indicate that BOI considers all other providers and monitors their activities on the mortgage market. BOI's internal documents show that BOI perceives KBC to be one of its main competitors in the market.

6.143 In particular, internal BOI documents appear to show that BOI was consciously monitoring the mortgage rates charged by other banks and that rate cuts by other retail banks, including KBC, may necessitate a response from BOI. An internal BOI document entitled [✂] also indicates that lower pricing by KBC contributes to BOI's own interest rate decisions, stating the following:

> *"[✂]".*[494]

6.144 An internal BOI document, specifically, an email entitled "[✂]", states as follows: *"[✂]"*(sic).[495]

6.145 An internal KBC document entitled "[✂]" sets out that KBC "[✂]" and that it had [✂]" and that it was "[✂]".[496]

6.146 This demonstrates that KBC's competitive strategy online factored in its key competitors, which included Ulster Bank (which is in the process of withdrawing from the market) and BOI.

6.147 In the Written Response, the Parties assert that the above analysis, which was set out in the Assessment, is *"not consistent with the view that KBC is a close or closest competitor to BOI, which is a pre-requisite for a finding of unilateral effects"*, further noting that the *"limited evidence put forward in the Assessment…simply*

[494] See page 2 of the BOI document "[✂]", dated [✂] ([✂]) ("*[✂]*").

[495] See [BOI] document "[✂]", dated [✂] ([✂]).

[496] See page 15 of KBC document "[✂]", dated [✂] ([✂]) ("[✂]").

shows that BOI monitors KBC's offerings alongside others".[497] The Parties also assert that the Commission "*must demonstrate that a merger will remove a player that was a "particularly close" competitor of BOI (per CK Telecoms Test) and, in particular, constrained BOI from otherwise raising prices / lowering quality profitably*".[498] The Commission has explained its approach to the analysis of closeness of competition in paragraphs 6.140 - 6.141, such that its assessment of unilateral effects should consider more broadly whether the merged entity will be able, as a result of the merger, to exercise market power. The consideration of closeness of competition is one element of this analysis, and the Commission is not required to demonstrate that KBC was a "particularly close" competitor of BOI.

6.148 In the Written Response BOI also refers the CCPC to *"examples of it monitoring and discussing competitive position of each of the players in the market"*, noting that *"*[✂]*"*. While noting again that the Commission does not necessarily consider that KBC and BOI are each other's *closest* competitors, the vast majority of the examples listed demonstrate that BOI monitors KBC alongside the other lenders. Though the examples indicate that [✂].

6.149 The Commission concludes that evidence from the Parties' internal documents indicates that BOI did consider KBC to be a close competitor. This gives rise to concern regarding the removal of KBC as a competitive constraint, if the constraint exerted by KBC were not to be replaced.

Differentiation in distribution channels

6.150 The Commission does not agree with the Parties that BOI and KBC are not close competitors because they favour different distribution channels. The Parties have argued that BOI competes more closely with providers who also focus on direct distribution while KBC competes more closely with providers, particularly non-bank lenders, which focus on the broker channel.

[497] See paragraph 4.83 of the Written Response.

[498] See paragraph 4.73 of the Written Response.

6.151 Figure 5 above sets out, for each lender for the period 2017 to 2021, the percentage of their new mortgage lending which was originated via a mortgage broker. KBC originates [✂] of its mortgages, with [✂]% of mortgages lent in 2021 done so via a broker. While PTSB is also reliant on brokers for [✂] of its lending, it is clear that AIB and BOI have not been. It is worth noting, however, that BOI was not offering mortgages via the broker channel between 2013 and 2019.[499]

6.152 There is evidence that there is competition between KBC and BOI within the broker channels. In response to Commission requests, both Parties submitted lists of the top 10 brokers by the total number of mortgages brokered in the State with that respective Party for 2019 and 2020. 7 brokers appeared in both banks' brokers lists. This indicates that, within the broker channel, there is significant competition between the two Parties.

6.153 It is worth noting the increasing importance of the broker channel in the retail mortgage market. As Davy notes in Irish Banks Back to the future, "*mortgages in Ireland are increasingly originated and distributed via broker and intermediary channels where market share has grown from minimal levels immediately post crisis to c.40% of the market today*."[500] The Commission's own analysis indicates that 40% of lending in 2021 was done via a broker.

6.154 Both Parties make substantial use of the broker channel, and more than half of each Party's top ten brokers demonstrably offer products from both banks. In summary, the Commission's evidence is that there is close competition between BOI and KBC in the broker channel.

Product Differentiation

[499] BOI was precluded from the broker channel during this period due to measures imposed by the European Commission in 2013 (updating and revising those imposed in 2011) which required BOI to, *inter alia, "exit from the origination of new mortgages through its intermediary channel"* to *"address the appropriate level of burden-sharing and to limit competition distortions resulting from any State aid received*" during the financial crisis. See: https://www.bankofireland.com/about-bank-of-ireland/press-releases/2013/eu-restructuring-plan-update/.

[500] See page 6 of *Irish Banks Back to the future.*

6.155 The Commission does not agree with the Parties' view that differentiation in the products offered by BOI and KBC indicates that they are not close competitors.

6.156 In the Written Response, the Parties argued that:

> *"the Assessment does not appear to take into account that BOI and KBC have very different product features, including as regards KBC's focus on low headline rates vs BOI's cash-back led proposition, noting that cashback and low headline rate (ie, non-cashback) products offer different value propositions to customers depending on where they are on their mortgage journey."*

6.157 The Parties proposed that there is significant product differentiation in the market between those competitors (such as BOI) which offer percentage-based cash-back and relatively higher headline rates, and those competitors (such as KBC) which offer either no cash-back or smaller, fixed, amounts of cash:

> *"The difference in the Parties' pricing propositions is evidence that other players such as PTSB and EBS represent more significant competitive constraints for BOI than KBC. By contrast, AIB, Ulster Bank and the non-bank lenders have a similar product proposition to KBC, based on low rates, no cash-back and limited additional incentives, and thus these remaining competitors are better positioned than BOI to compete for KBC's customers once KBC exits from the Irish market."*

6.158 The Commission has acknowledged that differentiation exists. However, the Parties have not substantiated the point with evidence that this differentiation is material in demonstrating that BOI and KBC are not close competitors, for example by showing that BOI and KBC compete for different customer types or customer segments.

6.159 In summary, the Commission has considered evidence provided in the Parties' internal documents regarding their views of how closely they compete against each other. The Commission has also considered points raised by the Parties with respect to differences in their product distribution channels and in their product offerings.

6.160 In reaching its view that KBC was an important competitive force prior to the Parties entering into the Proposed Transaction, the Commission assessed the extent to which KBC made a particularly significant or unusually valuable contribution to the process of rivalry which is above and beyond the firm's market share. In doing so, the Commission has weighed a number of factors including: (a) KBC's pricing; (b) KBC's distinctive or innovative products or services; (c) other lenders' experience and perception of the competitive pressure exerted by KBC; and (d) KBC's internal strategy documents prior to the Proposed Transaction. Taking into account all of these factors, the Commission is of the view that BOI and KBC compete closely in the market for the provision mortgages in the State. This market is highly concentrated, and it is evident that the competitive impact of KBC (and other bank lenders) is taken into account by BOI.

A.(iii) Analysis of KBC's role in the switching segment, and of whether the Proposed Transaction will lead to a reduction of competitive pressure on competitors for back book customers

6.161 Mortgage switching between providers is an important factor to consider in the assessment of unilateral effects. It is important in a number of ways:

(a) There is evidence indicating that KBC has played a particularly key competitive role in competing for Switchers;

(b) Switchers account for a material volume of all mortgages; and,

(c) Evidence on switching may indicate how closely certain providers compete against each other.

The importance of switching in competitive markets

6.162 Customers switching from one competitor to another, and more generally the ability and willingness of consumers to switch, is an important feature of a competitive market. Paragraph 1.4 of the Commission's Merger Guidelines sets out that:

> *"Rivalry between businesses, together with the credible prospect of consumers switching from one business to another, provides an incentive for businesses to compete with each other to the benefit of consumers."*

6.163 Furthermore, if there are barriers or high costs associated with switching, this may indicate that competition is not working well in the market. Paragraph 4.12 of the Commission's Merger Guidelines sets out that:

> *"In addition, competitive constraints will be weakened to the extent that customers are not willing and/or able to switch from one competitor to another. This might occur for example in the case of strong consumer preferences (including brand loyalty) and/or non-trivial switching costs."*

6.164 The UK's Competition Commission (the "CC") noted, in the context of personal current accounts in the Lloyds /Abbey National plc merger, that:

> *"… the existence of barriers to switching makes it difficult for entrants to acquire customers at a rapid rate and exacerbates the problem of diseconomies of scale in branch networks, marketing and other costs which entrants suffer in comparison with incumbents".* [501]

Switching in the mortgage market

6.165 The paragraphs below consider the extent to which KBC has been, and continues to be, an important competitive force in switching in the mortgage market. As set out in Section 2, switching in the mortgage market in the State has tended to be relatively limited. Section 2 further finds that low levels of switching may be explained by the process being costly, complex, and time consuming. Very low levels of switching are a significant barrier to competition. However, switching does occur, and mortgage providers who activate consumers to switch play a particularly important role and have a significant impact on the degree of competition in the market.

[501] See paragraph 2.111, https://webarchive.nationalarchives.gov.uk/ukgwa/20111203063316mp_/http://www.competition-commission.org.uk//rep_pub/reports/2001/fulltext/458c2.pdf.

KBC is an important competitive force in switching in the market

6.166 Evidence available to the Commission strongly suggests that KBC is an important competitor to BOI, and in the market more generally, in respect of mortgage switching.

6.167 To assess the competitive dynamics of the mortgage market, the Commission sought to understand not just aggregate switching levels and the number of Switchers drawing down mortgages with each lender, but also from which lenders Switchers are coming. The Parties informed the Commission that they do not, and cannot, gather exact and specific data which would allow a mortgage provider to determine the destination of a customer who switches away from that mortgage provider. According to the Parties, from a mortgage provider's point of view, a customer 'switching out' is recorded as a mortgage redemption.[502] Therefore, it is difficult for them to 'match' a customer 'switching out' from one mortgage provider with a customer 'switching in' to another.

6.168 Nonetheless, the evidence available to the Commission strongly indicates that KBC is an important competitor which attracts customers switching from one mortgage provider to another. Table 10 above shows the value shares of switching drawdowns for each bank. It shows that switching has been an important source of new mortgage business for KBC, relative to its total share of the market. As recently as 2021 Q3, KBC accounted for the largest share of the total value of the switching segment, [20-25]%, compared to approximately [10-15]% of the market as a whole.

6.169 Indeed, prior to the Proposed Transaction, KBC consistently had among the highest shares in the switching segment, as shown in Table 10, and the highest quarterly shares from 2019 Q4 to 2021 Q3.

[502] Alternative possible explanations for a mortgage redemption (from a provider's point of view) is that the mortgage customer completed payment on the mortgage entirely and did not purchase a new mortgage (for example, from their savings, from a retirement lump sum, or from some other monetary windfall).

6.170 In addition, internal KBC documents indicate that KBC considers itself to be particularly strong in respect of attracting mortgage Switchers. An internal KBC document entitled "[✂]" noted that "*switching is a key focus for us* [KBC] *in the mortgage market now*" and noted a KBC promotional campaign aimed at "*mortgage switching over the phone*".[503]

6.171 An additional internal KBC document entitled "[✂]" singled out switching as a focus in respect of online advertising, stating:

> *"[✂]*
>
> *[…]*
>
> *[✂].*
>
> *[…]*
>
> *[✂]".*[504]

6.172 This document also indicated that KBC has been actively monitoring its share of 'Switchers in' and provides KBC's share estimates for its share of 'Switchers in' in 2020.[505] The document notes an action point stating "[✂]".[506]

6.173 The Commission notes that, since KBC's share in the segment began to fall (along with Ulster Bank's), two of the non-bank lenders have grown their market shares significantly, as has AIB (including EBS and Haven). It is difficult to draw strong conclusions on recent developments in this segment, as not only must they be viewed in light of the Proposed Transaction, but demand itself may not be reflective of medium to long-term conditions, if substantial numbers of KBC and Ulster Bank have been recently looking to switch. Other factors may also play a

[503] See page 7 of the KBC document "[✂]", dated [✂] ([✂]).

[504] See Page 15 of [✂].

[505] See Page 23 of [✂].

[506] See Page 26 of [✂].

part. For example, in December 2021, Avant Money began offering €1,500 cashback to switching customers specifically switching from KBC or Ulster Bank.[507]

6.174 Furthermore, as is discussed above in relation to price competition, while the Commission recognises that, recently, non-bank lenders have been competing vigorously for Switchers, it is concerned that this may not be sustainable in the medium to long-term.

6.175 In the light of the above, the Commission considers that KBC is an important competitor in respect of Switchers and considers this customer segment to be a "[✂]" of its competitive strategy in the mortgage market. The Commission now assesses whether KBC is an important competitive constraint on BOI in particular as regards switching.

BOI's internal views and KBC's share of Switchers away from BOI

6.176 BOI's internal documents strongly indicate that BOI considers KBC to be an important competitor for existing BOI customers and that, consequently, BOI must compete with KBC to retain these customers.

6.177 An internal BOI presentation entitled '[✂]' reviewing BOI's mortgage pricing noted that [✂], saying [✂]".[508]

6.178 Another internal BOI document entitled "[✂]" elaborates on this point, stating the following:

> *"[✂]*
>
> *[✂]*
>
> *[✂]*

[507] https://www.bonkers.ie/blog/mortgages/avant-money-offering-1-500-cashback-to-ulster-bank-and-kbc-switchers/.

[508] See slide 13 of the BOI document "[✂]", dated [✂] ([✂]) ("*[✂]*").

> *[✂]”.*[509]

6.179 This document also indicates that of the “[✂]” that [✂] and [✂].

6.180 In addition, internal BOI documents indicate that BOI considers that it could respond to and mitigate customers switching to other mortgage providers (of which it notes [✂]% switch to KBC) through reducing mortgage interest rates.

6.181 For instance, an internal BOI document entitled “[✂]” states the following:

> *“[…] [✂]*
>
> *[…]*
>
> *c. [✂]”.*[510]

6.182 In the Written Response, the Parties argued that:

> *“[✂][✂][✂][✂][✂][✂][✂][✂][✂][✂]*
> *[✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂]*
> *[✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂]*
> *[✂][✂][✂][✂][✂][✂][✂][✂][✂]”.*

6.183 The Commission accepts that it relates only to existing BOI customers, but this is the intention of this analysis. The aim was to examine existing BOI customers who chose to switch away. As regards the Parties’ argument that it does not cover all BOI customers who switched or all who may have considered switching, the Commission notes that this data was requested from the Parties who responded that they did not collect such data and so it could not be provided. However, based on the data that has been provided to the Commission (i.e., contained in internal BOI documents), it is nonetheless useful evidence that KBC has been an important competitor with BOI for its back book customers. Furthermore, the Commission

[509] See BOI document “[✂]”, dated [✂] ([✂]).

[510] See BOI document “[✂]”, dated [✂]0 ([✂]).

refers to Figure 5 from the Frontier Economics report, 'Assessment of Certain Potential Issues Relating to Proposed Acquisition of KBC Assets by BOI' ("Frontier Assessment Response"), which was prepared on behalf of the Parties.

Figure 10: Phone Records of Switching from BOI by Lender

[✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂][✂]

Source: Frontier Assessment Response

6.184 Figure 10 is consistent with the internal documents referenced above that [✂]. The data on customers switching away from BOI (which is contained in the Frontier Assessment Response and was not previously provided to the Commission) clearly shows the importance of KBC as a destination for Switchers up until the time when the Proposed Transaction was announced and notified in 2021. The data shows KBC and Ulster Bank [✂] from 2017 to 2020.

6.185 This evidence strongly suggests that KBC has posed an important competitive constraint on both the market and on BOI in particular in respect of Switchers. BOI considered that it could [✂].[511] In addition, BOI may consider [✂].[512]

6.186 The Commission is concerned that following implementation of the Proposed Transaction, this important competitive constraint exerted by KBC would be lost. The number of customers who benefit from switching is not just those customers who switch to a better deal. It also includes all those customers whose mortgage providers react to the competitive threat and improve their offerings to retain existing customers. The latter group do not appear in origination/switching figures[513] but are nonetheless a very significant group who benefit from competition. This group may also suffer if an important competitive force in the switching market is removed from the mortgage market.

Conclusion on competitive constraint posed by KBC in respect of mortgage switching

[511] See [✂].

[512] *Ibid.*

[513] See paragraph 6.75.

6.187 The above evidence indicates that KBC competes actively and vigorously for Switchers, and has therefore been an important competitive constraint on BOI and other providers active in the market. KBC has made attracting switching customers a "[✂]" of its mortgage business, and has thereby placed a constraint on all providers in the market.

6.188 In respect of BOI in particular, the above evidence demonstrates that BOI considered an appropriate competitive response to the competitive pressure posed by KBC in respect of switching would be to reduce the mortgage interest rate it charges to retain its customers.

6.189 In the Written Response, the Parties argued that *"BOI is not an important competitor in respect of switchers and therefore this does not represent a basis to support an assertion that BOI and KBC are close competitors."* The Commission is not arguing that BOI and KBC compete vigorously with one another for the same switching customers from other lenders. Indeed, the evidence from BOI's share in the segment is that BOI does not compete vigorously for Switchers. Rather, the Commission's view is that:

(a) switching itself is a very important element of a competitive mortgage market, as it means lenders must compete for their own and other lenders' back books, as well as for new mortgages. Therefore, the loss of an important competitor in that segment is likely to weaken competition as a whole; and,

(b) KBC has applied an important competitive constraint on BOI (see Figure 10), which would be lost if the Proposed Transaction were to be put into effect.

6.190 The Commission notes that [✂]% of customers who switched away from BOI in 2020 went to KBC ([✂]%) and Ulster Bank ([✂]%), neither of which will likely remain in the market following implementation of the Proposed Transaction. The Commission is, therefore, concerned that this important competitive constraint on BOI would be lost if the Proposed Transaction were to be put into effect.[514]

[514] See paragraph 6.179.

6.191 As discussed in Section A.(ii) there is evidence that some smaller non-bank lenders, in particular Avant Money, have competed strongly in the switching segment recently, and may have the potential to replace the competitive constraint exerted by KBC. However, the Commission is concerned that this competitive constraint may not be sustainable in the medium to long-term.

A.(iv) Concerns raised by consumers regarding the Proposed Transaction

6.192 In the course of its review of the Proposed Transaction, the Commission has received a number of submissions from KBC customers and from consumer advocates expressing particular concerns about the effect on KBC customers of their mortgages being transferred to BOI. The Commission sets out below a summary of the concerns that have been raised, and explains the Commission's views.

Summary of concerns expressed by consumers

6.193 The Commission received a number of complaints directly from 8 KBC customers regarding the effect on them of their mortgages being transferred to BOI. There were two broad areas of concern. First, customers referred to the immediate effect of the transfer of mortgages should the Proposed Transaction be put into effect. These immediate concerns included uncertainty about the maintenance of terms and conditions. Second, broader concerns were raised by customers about possible effects in the future, on the basis that KBC customers had actively chosen not to acquire a mortgage from BOI.

6.194 The **first** concern around the immediate effect of customer mortgages being transferred to BOI is about a specific KBC discount offer. KBC currently offers a discount of 0.20 percentage points off the "*prevailing new business fixed or variable rate*" to KBC mortgage customers who also have a KBC current account and where those KBC customers: (i) receive their salary into their KBC current account; and (ii) pay their mortgage from their KBC current account.[515] There are some further conditions for this account.[516]

6.195 It is clear that the discounted mortgage for current account holders has been popular with KBC customers. The Parties have indicated that [✂]KBC customers, accounting for €[✂] billion KBC mortgage volumes, currently benefit from the 0.2% discount.[517]

6.196 These customers are concerned that they will either have to pay for a current account with BOI, or lose this lower interest rate if they switch their current account to a different provider.

6.197 The Commission raised this particular issue with the Parties through questions in the BOI Phase 2 RFI. BOI responded by indicating that these customers would not be made worse-off by the Proposed Transaction. In particular, BOI stated that, "*KBC customers will receive the 0.20 percentage point discount provided they continue to comply with the existing terms and conditions of their mortgage product – apart from the provisions as regards the opening/maintenance of a current account*".[518] "*No conditions are required in addition to a customer's existing terms and conditions at the time of transfer. There will be no requirement to open a BOI current account or to pay their mortgage from a BOI current account*".[519] The Parties estimated that continuing to provide this 0.2% discount, while making no requirement to switch current account provision to BOI, implies that BOI will forego revenue of roughly € *[✂]* per annum.[520]

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[515] See KBC's website here: https://www.kbc.ie/web/guest/current-account/current-account-mortgage-bonus.

[516] "*To avail of the optional extra Mortgage Discounted Rate (KBC's applicable fixed or variable rate with a discount of 0.20%), you must mandate your salary to your KBC Current Account (self-employed customers must establish and maintain a monthly transfer to the Current Account that is at least equal to the monthly mortgage repayment). You must also pay your KBC Mortgage by Direct Debit from your KBC Current Account*". https://www.kbc.ie/mortgages/existing-customers/pdh-offer/fixed-rates.

[517] Response to question 3(b), BOI Phase 2 RFI response, 17 December 2021.

[518] Response to question 3(a), BOI Phase 2 RFI response, 17 December 2021.

[519] Response to question 3(a), BOI Phase 2 RFI response, 17 December 2021.

[520] Response to question 3(b), BOI Phase 2 RFI response, 17 December 2021.

6.198 In addition, on 6 February 2022, the Sunday Times reported that BOI has pledged to allow KBC customers to retain the 0.2% discount currently afforded to KBC current account customers for the remainder of the fixed rate term. Customers will keep this discount "*even if they refuse to switch their current accounts to Bank of Ireland when it buys their loans*".[521] The Commission considers that BOI's response in the BOI Phase 2 RFI partially addresses the first area of consumer complaint, that regarding the maintenance of KBC terms and conditions. However, the Commission notes that BOI's response in the Phase 2 RFI does not indicate whether and to what extent BOI's honouring of this 0.2% discount is binding upon BOI or could be unilaterally withdrawn by BOI.

6.199 The **second** area of customer concern is about BOI's likely future treatment of the KBC customers it would acquire should the Proposed Transaction be put into effect.

6.200 The following extract from The Irish Times discusses the types of concern expressed by customers:

> *"When KBC first announced their intention to leave the market, we received a raft of calls from affected fixed rate mortgage holders, concerned as to what the sale would mean for them", Joey Sheahan, head of credit with MyMortgages.ie, said.*
>
> *"We have assured them that consumer protection laws mean that their current agreement will have to be honoured by Bank of Ireland, but that once their fixed rate term ends, they could face much higher interest rates and repayments if they remain with Bank of Ireland – who are currently not the most competitive lender in the market", he said.*
>
> *"Those on variable rates are in a more precarious position as Bank of Ireland are free to increase their rate as soon as they move across and,*

[521] https://www.thetimes.co.uk/article/kbc-clients-to-keep-cheap-mortgages-kx22wbvw7.

while this may change, BoI are currently offering some of the highest SVRs on the market," he said.

"What we are telling people is that they should really use this as an opportunity to conduct a full mortgage review with a view to switching to the best value provider," Mr Sheahan said".[522]

6.201 Further, the Commission received a submission from [✂✂✂✂✂], consumer advocate and founder of the consumer forum Askaboutmoney.com. This submission made the following argument:

"KBC competes for new business on mortgage rate alone and does not use cashback incentives to attract new business. It also offers existing customers the same rates on offer to new customers."

"BoI has very high rates. At these rates, it would get little or no new business, so it attracts new business by giving cashback. This enables them to maintain very high rates for existing customers."

"For example: A typical KBC customer who is on a <80% LTV whose fixed rate is due to expire today, could fix again for 3 years at 2.3%. It would cost them a full 0.7% extra if their loan is bought by Bank of Ireland. That would cost them €2,100 in additional interest each year or €24,757 in additional interest if there are 20 years remaining on the loan."

"When these KBC customers chose KBC for their mortgage, they chose a low mortgage rate rather than cashback in exchange for higher rates. They will now have the worst of both worlds. They did not get cash back, but they will end up paying higher rates."

"Of course, some will switch to a cheaper lender, but those with a restructured mortgage or those whose financial position has changed since they took out their mortgage will not be able to switch and will be

[522] https://www.irishtimes.com/business/financial-services/kbc-mortgage-holders-could-face-higher-repayments-from-boi-deal-1.4734670.

stuck with BoI's high rates. For those with a small balance or short remaining term, the savings might not justify the costs of switching."

"KBC customers will get the worst of both worlds. They won't get cashback, but they will pay higher mortgage rates as if they had got cashback."

"It will be in the interests of these customers to switch to a non-cashback lender like AIB or Avant Money." However, "This is a time-consuming process and costs about €1,500".[523]

Assessment of customer concerns

6.202 In order to fully consider customer concerns, the Commission has examined the Parties' views of the effect of the Proposed Transaction on KBC's existing customers. The Commission has then taken the Parties' views into account in assessing the submissions that the Commission has received from customers and consumer advocates.

Parties' views of the effect of the Proposed Transaction on KBC's customers

6.203 BOI has identified that [✂]% of its customers on fixed rates will stay with BOI at the end of their introductory fixed rate period.[524] As described below in internal documents from BOI and KBC in paragraphs 6.204 –6.206, respectively, less than *[✂]*% of customers of either bank redeem their mortgages at the end of a fixed term. However, BOI identified factors which meant that [✂].[525]

6.204 From this analysis, BOI has then identified the propensity of KBC customers to prepay their mortgage once their mortgages have been transferred across to BOI. BOI notes that:

[523] Submission of 8 November 2021.

[524] See paragraph 6.49 above.

[525] "[✂]." See *[✂]*.

"[✂]".[526]

6.205 In relation to those KBC customers on variable rate mortgages, BOI has assumed that [✂].[527]

6.206 A BOI internal document recognises the potential for KBC customers to switch, post-transaction, to one of the smaller non-bank mortgage providers. However, the BOI document also notes that [✂]. The BOI internal document states that: "[✂]".[528]

6.207 The foregoing indicates that only [✂] of KBC customers are likely to prepay their mortgage, whether by switching or funding the outstanding balance themselves. This suggests [✂].[529]

Overall conclusions on whether, as the result of the Proposed Transaction, the exit of KBC will result in the loss of an important competitive force, which will lead to a reduction of competitive pressure on all competitors in the market

6.208 The Commission has considered various factors in determining whether the Proposed Transaction would lead to the loss of KBC as an important competitive force. The Commission's view is that KBC has provided leadership in pricing relative to other lenders. While this has not been the case most recently, the Commission is of the view that KBC's degraded performance is likely to be a direct result of the Proposed Transaction. Therefore, the Commission considers that KBC would continue to compete on price absent the Proposed Transaction. The loss of this pricing leadership could affect all competitors in the market.

6.209 The Commission notes that there is evidence that KBC's price leadership in the market may be replaced over time by non-bank lenders. Recently, non-bank lenders have been offering market leading rates. However, the Commission is concerned that the emerging competitive constraint imposed by the non-bank

[526] See page 24 of *[✂].*

[527] More precisely, BOI has "[✂]." BOI has also identified that, [✂]. See pages 24 and 5 of *[✂].*

[528] See page 24 of *[✂].*

[529] *Ibid.*

lenders may not be sustainable in the medium to long-term, and this concern is explored further in the next section.

6.210 Further, the Commission's view is that the competitive effects of the exit of KBC, which would be brought about by the Proposed Transaction, would be particularly acute in respect of mortgage switching. This significant loss of competitive constraint will have an impact on all providers in the market, and on BOI in particular. The Commission notes that the role of mortgage providers who motivate consumers to switch play a particularly important role in the competitive dynamic of the market.

6.211 The Commission's analysis indicates that BOI and KBC are close competitors in a highly-concentrated market. It is evident that the competitive impact of KBC and other lenders are taken into account by BOI.

6.212 The Commission is concerned that, if the important competitive constraint which KBC imposes on the market were not to be replaced, the PT could lead to an SLC in the mortgage market.

B. Examination of the extent to which other lenders would replace the competitive constraint provided currently by KBC

6.213 The Commission has structured its analysis of this section as follows:

(i) Whether other bank lenders would replace the competitive constraint provided currently by KBC;

(ii) The similarities and differences between the non-bank lenders;

(iii) Non-bank lending in other countries;

(iv) The factors suggesting that the non-bank lenders <u>could</u> replace the loss in competitive constraint that is likely to result from the Proposed Transaction;

(v) The factors suggesting that the non-bank lenders <u>are not</u> likely to effectively replace the competitive constraint lost by the Proposed Transaction; and

(vi) Barriers to entry / expansion in the mortgage market.

B.(i) Whether the other bank lenders would replace the competitive constraint provided currently by KBC

6.214 As discussed in Section 2, and further below at paragraphs 6.238 to 6.245, there appear to be important distinctions between bank and non-bank lenders in the provision of mortgages. Therefore, the Commission has considered separately the competitive constraint from each of these types of lenders, beginning with assessing the likely post-Proposed Transaction constraint from banks. The Commission now examines the competitive constraint exerted by each of AIB, PTSB and Ulster Bank, followed by a discussion of the non-bank lenders.

Constraints exerted by AIB

6.215 The Industry Background, in Section 2 above, sets out relevant information about AIB in the provision of mortgages, but the Commission repeats some of that here and builds on it. AIB, across its three brands (AIB, EBS and Haven), is the largest lender in the mortgage market. On the basis of the Commission's market share calculations, AIB accounted for [25-30]% of mortgage flows in 2021.[530] This means AIB is the largest lender in the market, and has been since at least 2017, although its market share has gradually fallen since then, from [30-35]% in 2017.

6.216 As set out in Tables 8, 9 and 10, AIB has a strong presence across all customer segments, accounting for [30-35]% of First Time Buyers (ranked first), [30-35]% of Movers (ranked first), and [25-30]% of Switchers (ranked first), in 2021 Q4.

6.217 As set out in Section 2, AIB offers a range of different products, with both cashback and non-cashback products on the market. Via its EBS brand, AIB offers cashback mortgage products which are competitive in terms of interest rates and cashback percentage, with BOI and PTSB. The AIB and Haven brands offer non-cashback products, although Haven has recently started offering a flat €5,000 cashback to

[530] This includes EBS and Haven.

new customers, and €2,000 to Switchers. Like BOI, AIB is a full-service bank offering the full range of banking services.

6.218 AIB offers mortgages directly to customers and via brokers—Haven is a broker-only brand. As of 2021 Q4, as shown in Figure 5, AIB has originated [10-15]% of its mortgage lending via brokers, ranked last among lenders in the market.

6.219 As noted in paragraph 6.168, KBC has been particularly popular among mortgage Switchers, while being relatively less popular among other cohorts such as First Time Buyers. AIB has, since 2017, consistently had a smaller share of this segment than its overall market share. It has been, however, through its own brand as well as Haven, also competing specifically for switching customers, offering a €2,000 contribution to legal fees for Switchers, and as of 2021 Q4, has the largest share of this cohort.

6.220 In the Phase 1 Determination Response, the Parties proposed that AIB is [✂] because "[i]*t has a similar 'relationship' business model with the EBS mortgage offerings competing closely with BOI's fixed rate, cashback led offerings. It also has the same distribution model as BOI ie via branches, direct and via brokers through its Haven brand*".[531] At the same time they note that "*AIB (through its AIB and Haven brands) offers low headline rate mortgages that compete most closely with KBC, Ulster Bank and more recent entrants such as Avant Money, Finance Ireland and Dilosk*".[532]

6.221 AIB has been an active competitor in the market. It pivoted its own brand from a variable-led offer to a fixed-rate led offer and has competed for Switchers. It has introduced its €5,000 cashback offer from Haven. There is evidence of it responding to price changes made by competitors. In a draft 2019 internal BOI document entitled "[✂]", BOI notes that "[✂]".[533]

[531] See Paragraph 5.1(a) of the Phase 1 Determination Response.

[532] See Paragraph 5.3(b)(ii) of the Phase 1 Determination Response.

[533] See page 2 of the BOI document "[✂]", dated [✂] ([✂]) ("[✂]").

6.222 In a draft 2019 internal KBC document entitled "[✂]" it was noted that the Irish mortgage market is *"[✂]"*.[534]

6.223 In the Written Response, the Parties argue that AIB has been a greater source of innovation in the market than KBC, noting that *"For example, AIB was the first player to introduce a targeted cash incentive for switchers in 2016, offering a €2,000 contribution for customers who switch their mortgage to AIB. KBC replicated this offer in 2017, raising the cash contribution to €3,000"*.[535]

6.224 The Commission has observed that AIB has, on occasion, been innovative in the mortgage market. For example, AIB claimed to introduce "*the first straight through digitised end-to-end eMortgage proposition to the Irish Market*" in 2014.[536] This offered customers the opportunity to complete a full mortgage application online and receive mortgage approval online, an innovation which was recognised with an industry award.[537] However, the Commission has not observed similar innovations more recently. Haven recently introduced a green mortgage, and more recently cut mortgage interest rates on this product.[538] In 2016, EBS introduced a cashback offer.[539] However, the Commission understands that this followed a similar offer being launched by BOI. It also appears that AIB has not received awards in any category from the National Consumer Awards.[540] The Commission's research indicates that, although AIB has introduced some changes in its product offerings, it does not appear to have led in terms of bringing material innovations to the mortgage market in the State.

[534] See KBC document "[✂]", dated [✂] ([✂]).

[535] See paragraph 5.10 of the Written Response.

[536] https://www.efma.com/article/46-innovation-of-the-month-aib-emortgage.

[537] https://group.aib.ie/content/dam/aib/group/Docs/Press%20Releases/2015/02-11-2015-aib-recognised-at-global-banking-innovation-awards.pdf.

[538] https://www.independent.ie/business/personal-finance/property-mortgages/haven-launches-new-green-mortgage-with-low-rate-40601637.html.

[539] https://www.ebs.ie/content/dam/ebs/press-releases/2016/ebs-announces-2-percent-back-in-cash-for-new-mortgage-customers-23-06-2016.pdf.

[540] https://bonkers.secure-platform.com/a/page/about.

6.225 It is clear that, as the largest player in the market with the broadest product offering, AIB has historically competed in multiple dimensions in the mortgage lending market. AIB should, then, be well positioned to continue to compete in the market if the Proposed Transaction were to be implemented. However, this will not address the increase in concentration of the market that is likely to be brought about by the Proposed Transaction and replace the competitive constraints that KBC exerts on the mortgage market.

6.226 In the Written Response, the Parties respond to this point noting that *"it is not sufficient to establish a theory of harm based on unilateral effects to show that an individual lender on its own would not replace the competitive constraints that KBC exerts. The analysis must take account of the competitive constraints provided by all providers in the round."*[541]

6.227 AIB is the largest mortgage provider in the State and is relatively similar to BOI in terms of scale, brand, and being a full-service bank. It will continue to compete, through its three brands, at all levels of the market. The Commission is, however, not satisfied that AIB's position in the market will likely address the increase in concentration of the market that would be brought about by the Proposed Transaction and replace the competitive constraints that KBC exerts on the mortgage market in the State.

Constraints exerted by PTSB

6.228 PTSB is the third-largest lender in the mortgage market, after AIB and BOI. Like BOI and AIB, PTSB is a full-service bank offering the full range of banking services. In 2021 Q4, PTSB originated just under [60-65]% of its mortgage lending via brokers.

6.229 On the basis of the Commission's market share calculations, PTSB accounted for [15-20]% of mortgage flow in 2021 Q4. This means PTSB is the third-largest lender in the market, and has been since 2018, with Ulster Bank leading it in 2017, along

[541] See paragraph 5.12 of the Written Response.

with AIB and BOI. Its market share has grown in 2021, with Ulster Bank in the process of withdrawing from the market, up from [10-15]% in 2020.

6.230 As set out in Tables 8, 9 and 10, PTSB does not appear to be particularly strong or weak across particular customer segments, accounting for [15-20]% of First Time Buyers (ranked third), [20-25]% of Movers (ranked third), and [20-25]% of Switchers (ranked third). However, it is worth noting that PTSB has been voted 'Best First Time Buyer Mortgage' four years in a row from 2018-2021 at the Bonkers.ie National Consumer Awards.[542]

6.231 As set out in Section 2, PTSB is a cashback-focused lender.[543] While EBS and BOI offer up to 3% cashback, PTSB's cashback offer is 2% plus 2% cashback on each mortgage payment. PTSB's products are not, and have not in recent years been, among the market leaders in terms of price, even among cashback-focused products (EBS and BOI are both better value over the course of the fixed term).

6.232 As noted in paragraph 6.168, KBC has been particularly strong among mortgage Switchers, while being relatively less popular among other cohorts such as First Time Buyers. PTSB's share of the Switcher segment has been very similar to its share of the market as a whole, with a [15-20]% share of Switchers in the first three quarters of 2021, up from [10-15]% in 2020.

6.233 PTSB does not appear to have presented, or to be likely to present, a particularly important source of innovation in the provision of mortgages. The Commission has looked for instances of announcements of new products, services, or other innovations and has not found PTSB to have published many. In the Written Response, the Parties noted a number of product innovations which have been introduced since 2015, none of which were introduced by PTSB. However, there is some indication that PTSB may be seeking to improve its record on innovation. In the Written Response, the Parties noted that PTSB is working on the launch of a new platform to include the provision of digital markets with CreditLogic, a

[542] https://bonkers.secure-platform.com/a.

[543] Although it does offer a 4-year non-cashback fixed term mortgage with fixed rates of 2.25%-2.55% depending on LTV.

fintech provider.[544] PTSB has also announced that it is investing further in its technology infrastructure and digital services.[545]

6.234 PTSB will continue to compete, through its three brands, at all levels of the market. However, for the reasons outlined above, the Commission is not satisfied that PTSB's position in the market will address the increase in concentration of the market that would to be brought about by the Proposed Transaction and replace the competitive constraints that KBC exerts on the mortgage market in the State.

Constraints exerted by Ulster Bank

6.235 The Commission notes that Ulster Bank has, at times, led, along with KBC, in terms of headline mortgage interest rates. In addition, Ulster Bank has been seen as an important alternative for Switchers. For example, it was awarded 'best mortgage for Switchers' in the 2020 National Consumer Awards.[546]

6.236 In the Written Response, the Parties argue that the Commission should consider in its analysis of competitive constraints the fact that Ulster Bank continues to offer mortgages to its 1.1 million existing customers in the State.[547]

6.237 However, as set out in paragraphs 6.4 to 6.6, Ulster Bank is in the process of withdrawing from the mortgage market in the State and has significantly limited the availability of its products. While the evidence above indicates that Ulster Bank has previously been a strong presence in the Switcher segment, Ulster Bank has announced that it will no longer provide a mortgage approval in principle to new customers from 29 April 2022 and it will no longer accept new mortgage applications from existing customers from close of business on 10 June 2022.[548] Consequently, the Commission is of the view that Ulster Bank is highly likely to

[544] See paragraph 5.17 of the Written Response.

[545] https://www.permanenttsbgroup.ie/permanent-tsb-commits-further-eu50-million-investment-technology-infrastructure-and-digital.

[546] https://www.bonkers.ie/blog/personal-finance/announcing-the-2021-bonkers-ie-national-consumer-awards/.

[547] See paragraph 5.19 of the Written Response.

[548] https://www.ulsterbank.ie/help-and-support/important-customer-notice.html

exert little or no competitive constraint in the mortgage market following implementation of the Proposed Transaction.

B.(ii) The similarities and differences between the non-bank lenders

6.238 There are three non-bank lenders currently active in the market: Dilosk (which operates the ICS Mortgages brand), Finance Ireland, and Avant Money. Dilosk began providing residential, owner-occupier mortgages in 2018. Finance Ireland entered the market in 2019. Avant Money entered the market in early 2020. These three providers have been the smallest providers in the market, with 2020 shares of new mortgage origination of [0-5]%, [0-5]% and [0-5]%, respectively. In 2021, each of Dilosk, Finance Ireland and Avant Money grew its market share significantly to [0-5]%, [5-10]% and [0-5]%, respectively, as KBC and Ulster Bank's shares fell.[549] Over the same period, BOI's share of new lending fell, while AIB's (including Haven and EBS) and PTSB's grew.

6.239 The recent growth in the position of the non-bank lenders suggests to the Commission that they could arguably play a role in replacing the competitive constraint which will be eliminated by the Proposed Transaction. In particular, there is evidence that the non-bank lenders have recently competed keenly on price, particularly on mortgage interest rates. There is also some evidence that they have good service standards, at least in terms of the time taken to respond to mortgage applications. However, the Commission notes a number of challenges faced by non-bank lenders in providing an effective competitive constraint in the market.

6.240 In the mortgage market, the range of products offered by non-bank lenders is comparable to the banks, with each non-bank lender focusing on fixed-rate-led products, with different offers depending on, e.g., length of fixed-rate term and LTV. Each of the non-bank lenders offers fixed rate-led, non-cashback products. While none of them offers a headline percentage cashback, Avant Money has

[549] Source: Commission analysis of lending data.

recently introduced a €1,500 cash switching incentive, similar to the offers already made by Ulster Bank, KBC and AIB's own brand.[550]

6.241 Non-bank lenders offer a narrower range of products and services than traditional banks. As noted in Section 2, these providers do not supply the range of products offered by full-service banks (e.g., they do not offer current accounts) and they do not have physical branches. This may reduce their attractiveness to some customers if those customers place a high value on receiving a variety or all of their banking services from a single provider, or if they place a value on a provider having physical branches.

6.242 As non-banks, these lenders do not have a branch channel, existing customer relationships, or a well-known brand via which to engage with those potential customers whose preference is for a mortgage provider which has these attributes. As such, each of these lenders is highly reliant on mortgage brokers to generate business, with Finance Ireland and Avant Money operating exclusively through brokers.

6.243 Furthermore, the non-bank lenders have mainly competed for certain customer segments. Per the Davy Research report Irish Banks Back to the future, "[a]*ll three target niche areas of the market. Dilosk targets buy-to-let and civil service owner-occupiers; Finance Ireland targets the self-employed; and Avant Money targets low loan-to-value urban switchers*".[551] However, Avant Money has plans to expand their broker network, offer mortgages on properties in more locations across the country, and allow for more risk around LTVs and CBI exceptions.[552]

6.244 Each of the Parties' competitors contacted by the Commission was asked to identify each of the Parties' closest competitors. Of the four which fully answered

[550] This switching incentive is available as a cashback payment to those customers of Ulster Bank and KBC switching to Avant Money before then end of March 2022.

https://www.bonkers.ie/blog/mortgages/avant-money-offering-1-500-cashback-to-ulster-bank-and-kbc-switchers/.

[551] See *Irish Banks Back to the Future*.

[552] See page 2 of the Avant Money Call Note, dated 6 December 2021.

CCPC

this question,[553] three did not include the non-bank lenders at all as close competitors to either BOI or KBC, and the other one listed them after the bank competitors for both BOI and KBC. This indicates to the Commission that competitors in the market do not see the non-bank lenders as being as close competitors to the bank lenders as the other banks.

6.245 In general, neither BOI's nor KBC's internal documents have focused in particular on the non-bank lenders as close competitors, in contrast to references made to other banks. Market assessments note their activities, market shares and products, but do not consider them strategically to the same extent as was set out above with respect to AIB and PTSB. It is worth keeping in mind, though, that each of the new entrants have only entered the market within the last three years and until recently had minimal market shares as measured by flow. For example, [✂].

B.(iii) Non-bank lending in other countries

6.246 In seeking to establish the likelihood of non-bank lenders sustaining their recent growth in the Irish mortgage market, the Commission has considered the position of non-bank lenders in the mortgage markets in other countries.

6.247 In the Netherlands, non-bank lenders have accounted for a material share of mortgage lending – for example, accounting for 28% of new mortgage lending in the Netherlands in 2016;[554] and they appear to have accounted for almost half of new mortgages recently.[555]

6.248 However, the shares have been substantially lower in other countries. In the United Kingdom, the proportion of the market split between bank and non-bank lenders has remained consistent over the last decade, with non-bank lenders accounting for around a 10% share of mortgage lending.[556] In Belgium, non-bank

[553] These four were Dilosk, Finance Ireland, PTSB and Ulster Bank. AIB did not comment on the Parties' closest competitors but did note that it considers both BOI and KBC to be close competitors of AIB.

[554] https://www.ecb.europa.eu/pub/financial-stability/fsr/focus/2017/pdf/ecb~8341bea69d.fsrbox201705_07.pdf.

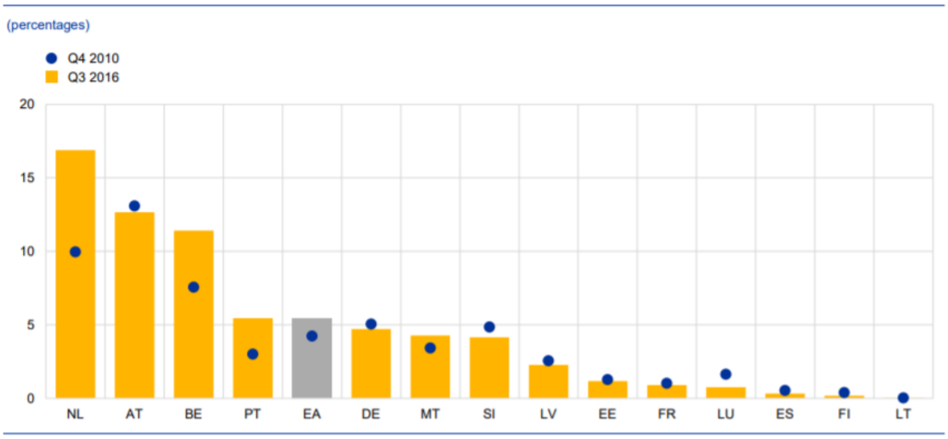
[555] https://www.statista.com/statistics/605733/leading-mortgage-providers-in-the-netherlands-by-market-share/.

[556] https://www.fca.org.uk/data/mortgage-lending-statistics.

lenders account for 10% of mortgages. Similarly, in Sweden, between 2020 and 2021 non-bank lenders represented 4.9% of new mortgage lending.[557]

6.249 The chart below, produced by the ECB, shows the share of non-bank lenders in mortgage lending in 2010 and 2016.[558] The chart shows that, between 2010 and 2016, there had been only a small increase in the share of mortgage lending by non-bank lenders in the Euro Area and the share had only reached just over 5% in 2016.

Figure 11: Share of non-bank lenders in domestic long-term household lending in selected euro area countries



Source: ECB quarterly sector accounts.
Notes: Non-bank lending refers to total economy lending minus loans from MFIs and OFIs (except investment funds). In the case of Austria, the high share of non-bank lending refers to the state and not to insurance companies.

6.250 The evidence shows that, across the Euro Area, the relative strength of non-bank lenders in mortgage lending has been mixed. These lenders have not grown in any Euro Area country to the extent of dominating mortgage lending. While, in some countries, there has been growth over time by non-bank lenders, there has also been decline of these lenders in other countries. This suggests that, while they appear to play an important role in countries such as the Netherlands, the sustained growth of such lenders cannot be assured.

B(iv) The factors suggesting that the non-bank lenders could replace the loss in competitive constraint that is likely to result from the Proposed Transaction

[557] https://www.swedishbankers.se/media/5084/1407-sbf-rapport-bolaanemarknad-2021_en02.pdf.

[558] https://www.ecb.europa.eu/pub/financial-stability/fsr/focus/2017/pdf/ecb~8341bea69d.fsrbox201705_07.pdf.

6.251 The Commission has next considered the factors which suggest that the non-bank lenders could replace the loss in competitive constraint which is likely to result from the Proposed Transaction.

Strong Recent Growth

6.252 Dilosk, Avant Money and Finance Ireland have performed relatively strongly in the Irish mortgage market in 2021 with their collective share of mortgage origination increasing from [5-10]% in 2020, to [15-20]% in 2021 Q4.[559]

6.253 As of 19 May 2022, the following represented the lowest initial rate products in the market:

(a) **in respect of an LTV in excess of 80%:** Avant Money's 4 year fixed rate mortgage (2.15%). However, BOI (4 year, 1.9%) offers a lower rate for its Green, High Value mortgage products, and both Haven (4 year, 2%) and EBS (4 year 2.1%) offer lower rates for their Green mortgage products.

(b) **in respect of an LTV in excess of 70% but less than 80%:** PTSB's 4 year fixed rate mortgage (2.05%). However, BOI (4 year, 1.9%), and Haven (4 year, 2%) offer lower rates on their Green High Value and Green mortgage products, respectively.

(c) **in respect of an LTV in excess of 60% but less than 70%**: Avant Money's 3 and 4 year fixed rate mortgages (all charging 2.05%). However, BOI (4 year, 1.9%), and Haven (4 year, 2%) offer lower rates on their Green High Value and Green mortgage products, respectively.

(d) **in respect of an LTV less than 60%**: Avant Money's 3 and 4 year fixed rate mortgage (each charging 1.95%). However, BOI (4 year, 1.9%) offers a lower rate for its Green, High Value mortgage products.

6.254 The situation at the end of 2021 when the non-bank lenders, and Avant Money in particular, were the cheapest in close to all segments of the market, is no longer the case. AIB (including Haven and EBS) and PTSB are now offering cheaper rates in certain segments.[560] It is worth noting that many of the banks' cheapest rates

[559] Source: Commission analysis of lending data.

[560] It should be noted that this does not account for payment to mortgage customers such as cashback or contribution to legal and professional fees.

(with the exception of PTSB's 4 year fixed for <80% LTV) are available only to a subset of customers, such as with Green Mortgages. While the three non-bank lenders continue to offer among the lowest rates in all segments, the Commission also notes that, in March, Dilosk was the first lender in recent times to increase its fixed term rates, when it increased rates by 45 basis points in March 2022.[561] Avant Money has recently followed with a 20 bps increase to its five-year fixed rates, and 30 bps increases to its seven and 10-year fixed rates.[562]

6.255 In addition, non-bank lenders have been innovative in introducing new products to the market. For example, Finance Ireland offers 10, 15, 20, and 25-year fixed rate mortgages. Avant Money similarly offers fixed rate mortgages of up-to 30 years term and has recently introduced a €1,500 switching incentive for current mortgage holders with KBC or Ulster Bank, similar to the offers already made by Ulster Bank, KBC and AIB's own brand.

6.256 It is apparent that there has been substantial recent growth, in the last 12-24 months, in the share of new lending originating via brokers. This indicates that, at least recently, non-bank lenders are competing for mortgage business against the traditional banks.

6.257 Table 10 above showed that the non-bank lenders appear to be very active in the Switcher segment of the mortgage market. Each of these lenders performed better within this segment compared to other market segments. Avant Money, in particular, performed well, with a share of [15-20]% in 2021 Q4.

6.258 An internal KBC document from January 2021 evaluated the Irish mortgage market and KBC's relative position in it.[563] It noted [✂].[564] In that same document,

[561] ICS Mortgages increases its fixed interest rate for homeowners (irishtimes.com).

[562] https://www.rte.ie/news/business/2022/0506/1296524-avant-money-to-increase-some-mortgage-rates/.

[563] See KBC document "*[✂]*", dated *[✂]* (*[✂]*) ("*[✂]*").

[564] See slide 3 of *[✂]*.

[✂][✂][✂][✂][✂][✂][✂].[565] The Commission has not seen evidence, from internal documents, of BOI [✂].[566]

6.259 Some analysis from market analysts was summarised in paragraph 6.59. In those summaries, Davy noted that each non-bank lender operated in niche segments of the market,[567] but separately that banks' likely inability to replicate the long-term fixed rates offered by Finance Ireland and Avant Money could give the non-bank lenders some competitive advantage. Goodbody noted that "*new challengers*" would fill some of the gap left by Ulster Bank and KBC leaving, while noting that there was a significant share of the market to "*go around*" with those exits.

6.260 In the Written Response, the Parties highlighted further market analysts' reports on the Irish residential market which considered the non-bank lenders:

> *"(a) An EY article on the Irish residential mortgage market from July 2021 noted that "nonbank lenders, in particular, have been able to show considerable resilience during the pandemic" due to (i) "credit support received", (ii) "robust underwriting" and (iii) "strong portfolio and relationship management". On this basis, EY considered that there is "a growing opportunity" for non-bank lenders in the Irish residential mortgage market.*
>
> *(b) Trevor Grant, chairman of the Association of Irish Mortgage Advisors, also responded positively to the recent developments: "From a consumer perspective, it is extremely positive to see non-bank lenders so committed to the mortgage market at a time when some banks have decided to exit … Non-bank lenders have lower costs, are agile, and have clearly demonstrated that they are capable of delivering product development and innovation. This can only be viewed as good news for consumers."*

[565] See slide 20 of [✂].

[566] https://www.bankofireland.com/about-bank-of-ireland/press-releases/2022/bank-of-ireland-announces-changes-to-fixed-mortgage-interest-rates-3/.

[567] All three non-bank lenders have indicated that they are broadening their target markets as their market shares have grown.

(c) A Davy Research report dated 1 March 2022, which is provided in Annex 1, states that "the rise of non-bank lenders, together with the increasing role of intermediaries, results in a new lending market that will continue to be competitive". The report also finds that recent entrants have demonstrated "an ability to fill the gap previously occupied by both Ulster Bank Ireland and KBC Bank Ireland" and concludes that:

"Therefore, cumulatively, the challenger non-bank lenders account for almost all the initial declines in share for the exiting lenders. All three continue to discuss expansion in the coming years, with Dilosk seeking to double [its] shares to 10% in the coming years."

Lack of capacity constraints (and financial backing)

6.261 In terms of capacity, two of the non-bank lenders told the Commission that they do not consider that they face significant capacity constraints.[568] One of these lenders noted it had strong funding lines and that the only constraints to expansion were credit risk appetite and macroprudential rules.[569] The other noted that the level of funding it can get from its parent bank is the only constraint, it believes that it has strong backing from its parents, and that it is targeting a significant increase in market share over the next 3-4 years.[570] The Commission discusses the potential implications of the non-bank lenders' different funding models further below.

6.262 The Commission notes the Davy analysis above that Dilosk is seeking to double its shares to 10% in the coming years, which would indicate that it does not necessarily consider itself to have immediate capacity constraints.

Low cost base

[568] See page 2 of the Avant Money Call Note, dated 6 December 2021 and page 2 of the Finance Ireland Call Note, dated 13 December 2021.

[569] See page 2 of the Finance Ireland Call Note, dated 13 December 2021.

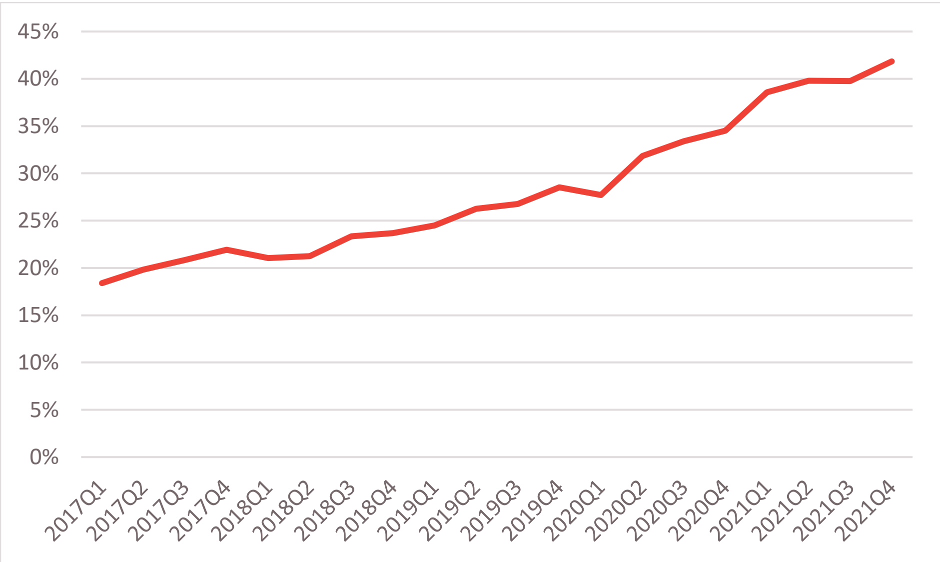
[570] See page 2 of the Avant Money Call Note, dated 6 December 2021.

6.263 As noted in Section 2, non-bank lenders do not supply the range of products offered by full-service banks (e.g., they do not offer current accounts); do not have physical branches; and have relatively new IT platforms. This allows them to limit the fixed costs that they incur;[571] and to be flexible in their product offering.[572]

Growth of broker channel

6.264 Figure 5 sets out that the non-bank lenders almost exclusively originate mortgages via brokers (Dilosk originates a small proportion directly). Brokers accounted for 40.2% of all new mortgages in 2021. The broker channel's share of mortgage lending has increased steadily over the past several years.

Figure 12: Brokers' share of new mortgages, 2017 – 2021 Q3



Source: Commission analysis of lending data

6.265 Increased use of brokers among mortgage customers is likely to be beneficial for lenders, including non-bank lenders, which have no or limited access to other

[571] The AIMA noted that non-bank lenders have some advantages over banks as, although they do not have large customer bases, they are not weighed down by legacy IT systems and have lower overheads. See page 2 of AIMA Call Note, dated 22 December 2021.

In addition, Trevor Grant, Chairperson of AIMA, has commented on the significance of reduced costs for non-bank lenders noting that: "*These guys are smaller and more agile than banks. They don't have the same overheads, branch networks and staff levels. Their distributors, the brokers, only get paid when they place business with them*". https://www.irishtimes.com/business/financial-services/more-non-bank-lenders-will-enter-market-mortgage-chief-1.4741009.

[572] See page 2 of AIMA Call Note, dated 22 December 2021.

origination channels. In addition, paragraph 6.314 below highlights that brokers may also help customers to overcome any biases or distrust of non-bank lenders, and therefore make them more likely to borrow from non-bank lenders.

6.266 In the Written Response, the Parties claim that *"growth in the broker channel has itself been facilitated by improvements in technology, which have enabled brokers to submit applications straight through to lenders who have the appropriate integrations"* and notes a number of such innovations.[573] The Parties also note advantages of brokers to consumers *"including minimising the information burden…and time investment…facilitating access to multiple mortgage providers, [and] managing the application…"*.[574]

Inferences that may be drawn from CBI authorisation or other approvals

6.267 The Commission considered a number of sources of evidence to assess the likely sustainability of the non-bank lenders. One source of evidence was to consider what could potentially be inferred about the sustainability of non-bank lenders during the CBI's retail credit firm authorisation process.[575] However, multiple non-bank lenders informed the Commission that this authorisation process focuses to a greater extent on consumer protection issues, rather than on the sustainability and competitiveness of an applicant's business model. Therefore, the Commission did not consider that the CBI retail credit firm authorisation process is informative about the sustainability and competitiveness of non-bank lenders.

[573] See paragraph 5.36 of the Written Response.

[574] See paragraph 5.37 of the Written Response.

[575] The non-bank lenders are authorised by the CBI as Retail Credit Firms. Among the requirements on a Retail Credit Firm is that "*A Retail Credit Firm is required to: (a) demonstrate that it has sufficient resources, including financial resources, to conduct its business in the manner provided for in its application for authorisation and in accordance with financial services legislation, including the capacity to withstand potential shocks such as the loss of a key funding source or the occurrence of a significant business continuity event*". In addition, A Retail Credit Firm is required to have a documented credit risk strategy in place which must be approved by its management body and must take into account the Retail Credit Firm's: (i) business model; (ii) overall risk appetite; (iii) financial condition and funding capacity; (iv) credit-granting activities as well as the management of non-performing loans; and (v) activities where credit risk can be significant.

https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/retail-credit-home-reversion-firms/authorisation-process/rcf-requirements-and-standards.pdf?sfvrsn=4 .

6.268 The Commission also considered whether Dilosk's acquisition of mortgages from BOI in 2014 provides some indication of the sustainability of its business model. The sale was part of BOI's EU restructuring plan[576] and was mandated by the European Commission to ensure increased competition within the Irish mortgage market.[577] Dilosk told the Commission that the European Commission wanted the ICS mortgages, owned by BOI, to be sold off to a new competitor in the market.[578] The assessment of a suitable purchaser was undertaken by Grant Thornton. Dilosk told the Commission that the assessment conducted by Grant Thornton was more significant than that of the CBI as regards the issue of ensuring sustainability, as Grant Thornton looked at Dilosk's business model to ensure it was achievable (for example, Dilosk's business plan, what type of products it intended to supply, whether there was demand for these products and whether revenues would be sufficient to cover fixed costs, which are quite significant at the start).[579] The Commission notes that this assessment of Dilosk took place eight years ago and Dilosk have only recently achieved a more significant presence in mortgage origination, currently holding 5% market share.[580]

Conclusion on the factors suggesting that the non-bank lenders could replace the loss in competitive constraint that is likely to result from the Proposed Transaction

6.269 The Commission has considered the non-bank lenders which have recently entered the market, and the factors which suggest they could to some extent replace the competitive constraint which would be lost as a result of the Proposed Transaction. The Commission notes that its consideration is specific to this case. Each case is treated on its own facts and merit, and the likely competition concerns are assessed in the context of a particular case. However, given the concerns raised in paragraphs 6.251 to 6.268, which the Commission has

[576] See the European Commission's decision text on the restructuring of BOI, dated 15 July 2010, available at https://ec.europa.eu/competition/state_aid/cases/233382/233382_1163194_133_2.pdf.

[577] https://www.dilosk.com/news/dilosk-enters-into-an-agreement-to-acquire-ics-mortgage-distribution-platform-and-mortgage-pool/

[578] See paragraph 2.167 for discussion of Dilosk's acquisition of ICS.

[579] See page 3 of the Dilosk Call Note, dated 31 January 2022.

[580] See Table 7.

regarding the medium to long-term sustainability of these non-bank lenders as significant competitors in the market, the Commission now considers the factors suggesting that the non-bank lenders are not likely to replace the loss of competitive constraint that is likely to result from the Proposed Transaction.

B.(v) The factors suggesting that the non-bank lenders are not likely to replace the loss of competitive constraint that is likely to result from the Proposed Transaction

6.270 At the outset, the Commission recalls that all three of the non-bank lenders expressed concerns that there would be less choice in the mortgage market in the State.[581]

Funding arrangements in place for selected non-bank lenders

6.271 Non-bank lenders may raise funds through capital markets, such as through the securitisation of mortgages (known as residential mortgage-backed securities ("RMBS")) which they originate on international bond markets;[582] while others may receive funds via an overseas parent.[583] Forward flow funding arrangements as described in paragraph 2.162 above are another means by which non-bank lenders may diversify their funding models. However, what non-bank lenders have in common is that their cost of funding is linked to capital market rates.

6.272 Although bank lenders utilise capital markets to generate funding, as is the case with non-bank lenders, banks also have access to the deposits of their customers which fund a large proportion of their mortgage lending. This is not the case for non-bank lenders.

6.273 Given the difference in funding models of non-bank lenders from banks, it is important to consider what role this difference might play in their relative competitive position. In particular the Commission considers this issue in the context of the unusually low market interest rates of recent years and how the

[581] See paragraph 6.54 above.

[582] For example Dilosk, https://www.irishtimes.com/business/financial-services/dilosk-aims-to-double-mortgage-market-share-to-10-1.4703892.

[583] For example, Avant Money receives funding from Bankinter, a major Spanish bank which issued €5.9bn in mortgages across the group last year.

relative competitive position of banks and non-bank lenders might be affected by increases in market rates.

6.274 The link between a lender's funding model and how it prices is an important one in banking. As noted by the Parties in the Merger Notification Form, "*A lender's funding model is a key variable in the pricing strategy and competitive position in the market*".[584]

6.275 Similarly, research undertaken by the Bank of England outlines that in general terms, deposit funding may be cheaper than wholesale funding. In its Q4 bulletin of 2014, the Bank of England noted that, "*In many instances, deposits provide a relatively cheap source of funding for banks because, unlike wholesale investors, households and companies do not just hold deposits at banks to gain a return on these funds… Depositors demand less compensation (that is, lower interest rates) in exchange for leaving their money in these accounts than the amount banks need to pay out for other sources of funding"*. In the same paper, it was noted further that an additional factor pushing down the retail funding cost is deposit guarantees.[585] However, as noted in the Written Response, the report goes on to note that *"[a]s with wholesale funding, however, there are other, indirect costs that feed in to the overall cost of retail funding. In part, these are the costs associated with providing the safe-keeping and payments services that banks provide to retail customers, such as the fixed cost to a bank of maintaining its branch and ATM network. While it is difficult to measure these additional costs precisely, they are likely to make the overall cost of deposits, particularly longer-term deposits, more comparable to that of other sources of funding."*

6.276 The Commission recognises that non-bank lenders have recently set market leading headline rates on mortgages and, as a result, have seen growth in their volumes and shares of mortgage origination. However, the Commission notes that this period of market leading rates and growth in volumes for non-bank lenders

[584] See page 5 of the Merger Notification Form.

[585] See page 11 of the Bank of England's Quarterly Bulletin, dates 2014 Q4, available at: https://www.bankofengland.co.uk/-/media/boe/files/quarterly-bulletin/2014/bank-funding-costs-what-are-they-what-determines-them-and-why-do-they-matter.pdf.

corresponds with the recent unusually low interest rate environment, reflected in the negative ECB interest rates (highlighted in Figure 13 below), and the until recently negative rates in 10-year swap markets (highlighted in Figure 13 below).

6.277 The Commission's investigation indicates that rates in wholesale markets have been rising.[586] Avant Money had told the Commission that "*The market has been pricing in an expectation that the ECB base rates will increase later this year, and that the ECB are signalling this. Rates have also increased in the USA and in the UK, through the Bank of England*".[587] As Figure 14 shows, the 10-year swap rate has increased by nearly 200bps since its recent low point around January 2021.

Figure 13: 3 months EURIBOR rate, April 2017 – April 2022

Source: Euribor-rates.eu, 27 April 2022

[586] *"Head of mortgages at fast-growing Avant Money, Brian Lande, said it looks like we are at the bottom of the mortgage rates cycle. "We look to be at the bottom of the market, so now is the time to lock into a longer-term fixed rate. With rising inflation, the funding markets are pricing in a future ECB rate increase and we have seen market funding costs rise by an average of 20 basis points since December." Avant Money, which offers rates fixed for the life of a mortgage, said wholesale money markets had already seen funding costs rise by 20 basis points across the board since December, an indication of mortgage rates rising. Mr Lande said that in five years' time we are likely to look back at current fixed rates as being the "deal of century". And the head of Irish mortgage provider ICS has said home loan interest rate rises this year cannot be ruled out, given the inflationary backdrop that exists".* Irish Independent, 8 February 2022, https://www.independent.ie/business/personal-finance/property-mortgages/mortgage-rates-are-at-rock-bottom-so-expect-your-costs-to-rise-homeowners-warned-41323197.html

[587] See page 2 of the Avant Money Call Note, dated 9 February 2022.

Figure 14: Euro 10-year swap rate, April 2017-April 2022

Source: Financial Time Markets Data, 27 April 2022

6.278 Furthermore, there is reason to suggest that the funding model of non-bank lenders has provided them with a competitive advantage relative to banks during this period of low rates. As noted above, the funding costs for non-bank lenders are linked to these benchmark market rates. As those rates have fallen in recent years, the funding costs of non-bank lenders have fallen accordingly. However, banks funded through deposits face a different dynamic in recent years. Their funding costs are linked to the rates they offer on deposit accounts and normally follow a similar dynamic with the deposit rate falling in line with market rates, e.g., ECB base rates. As rates fell, many banks reduced deposit rates to zero. But as rates kept falling, banks struggled to reduce deposit rates below zero for a significant proportion of their accounts. And so, even though market rates were falling, banks' funding costs did not reduce accordingly. Their funding costs became sticky.

6.279 It has been noted by many commentators including the ECB that retail banks pass through little or no negative interest to their customers:

> *"Since banks are generally reluctant to pass on negative rates to their retail clients, mainly for competitive, but also for legal reasons, the funding conditions of deposit-taking institutions typically fail to drop in tandem*

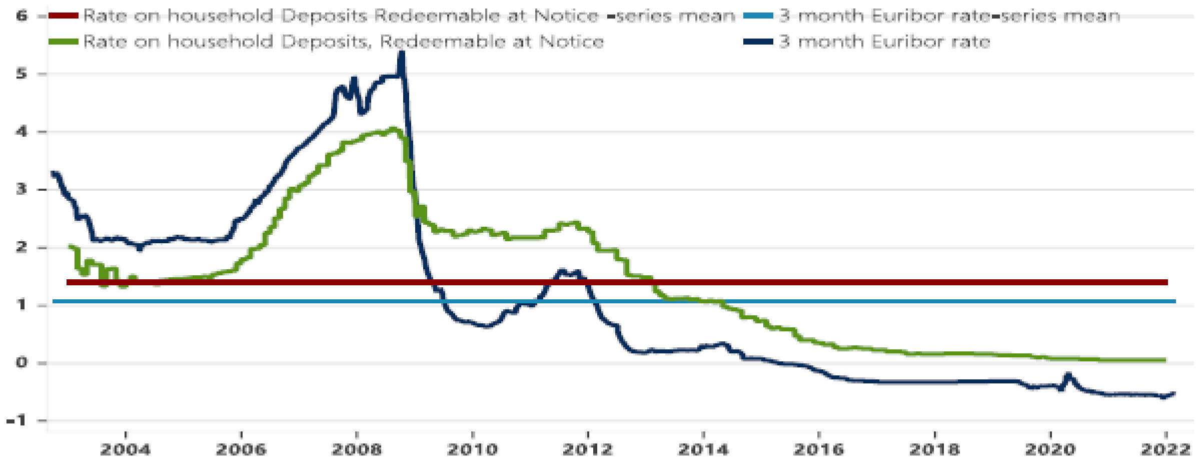
with the decline in lending rates. This affects banks' interest margins and hence profitability. This effect is particularly pronounced for banks with a high deposit-to-asset ratio".[588]

6.280 This period of low interest rates has meant that banks relying on deposit funding have faced a relative competitive disadvantage to non-bank lenders relying on market funding. Should market rates return to higher levels the converse situation would apply. Non-bank lenders would face increasing funding costs as the benchmark market rates rise. In contrast, banks would benefit from sticky deposit rates and would not see the same increase in their funding costs. This does not necessarily mean that all non-bank lenders would have higher funding costs than all banks. But it would mean that the tail wind non-bank lenders benefited from in recent years as rates fell would be replaced with a head wind as rates increase. This may undermine the ability for non-bank lenders to price as competitively against bank lenders as they do now.

6.281 In the Written Response, the Parties set out that *"the potential issue raised in relation to non-bank lenders' funding only relates to that part of the interest rate cycle in which expectations build in financial markets that policy rates will rise"* They go onto note that *"Over the 19 year period from February 2003, the Euro area 3 month interbank rate has averaged 1.07% while Irish retail 'notice' deposit account rates averaged 1.39%. Over the 11 and a half year period prior to the introduction of negative rates (ie, between 2003 and May 2013), the 3 month wholesale rate averaged 2.17% compared to a retail 'notice' deposit rate average of 2.26%."* They include a time series graph of both rates over this time period, which the Commission reproduces in Figure 15.

[588] https://www.ecb.europa.eu/press/key/date/2020/html/ecb.sp200826~77ce66626c.en.html

Figure 15: Deposit vs Wholesale Rates, 2004-2022



Source: Written Response

6.282 Figure 15 does show that, on average, wholesale rates have been slightly higher than retail 'notice' deposit rates.[589] It also shows that wholesale rates have tended to be lower than deposit rates in low/negative interest rate environments, and higher in high interest rate environments. This is consistent with the above analysis that banks' funding costs tend to be stickier, and that non-bank lenders' competitive advantages in low interest rate environments may become competitive disadvantages in higher rate environments.

6.283 The Commission then considered the likely impact of increases in wholesale market rates on the funding costs of non-bank lenders.

6.284 Dilosk told the Commission that it had absorbed the recent increases in wholesale rates, in order to maintain competitive pricing, and that its margins had reduced.[590] Dilosk also recognised that retail banks had access to cheap sources of funding relative to the cost of funding in wholesale markets.[591] While increases in

[589] The Commission notes that these deposit rates do not include current accounts, which would be lower than 'notice' deposit account rates in higher interest rate environments.

[590] See page 1 of the Dilosk Call Note, dated 31 January 2022.

[591] In response to being asked "*whether pillar banks have an advantage due to their use of deposit funding and this potentially providing them with a cheaper funding source*", Dilosk noted that "*banks accessing deposits is an advantage, but in a negative rate environment (as it has been recently) deposits can be a liability*" and that it was expected that there will be a move away from negative rates soon. In addition, "*The pillar banks also use covered bond funding to contribute to*

wholesale rates put downward pressure on Dilosk's margin, Dilosk also noted that a factor operating in the opposite direction was that investors were becoming more confident in Dilosk as it built a track-record.[592] In addition, Dilosk did not consider that an increase in interest rates would affect Dilosk's competitiveness.[593]

6.285 Dilosk has since increased its fixed rates by at least 45bps and has stated, both publicly and to the Commission, that this is as a direct result of the wholesale rate environment, specifically the increase in swap rates.[594]

6.286 Avant Money indicated that, although its parent, Bankinter, is a sizeable Spanish bank, Avant Money's cost of funding was linked to wholesale market rates rather than Avant Money having direct access to the deposits of Bankinter's customers in Spain.[595] However, Avant Money also indicated that it did not intend to be first to increase its pricing in the Irish mortgage market and felt confident that it would be able to price competitively relative to the Irish pillar banks and that its competitiveness would not be undermined by any change in the interest rate environment.[596]

6.287 Avant Money thought that other non-bank lenders in Ireland, such as Dilosk and Finance Ireland, could be particularly vulnerable to changes in the interest rate environment because they do not have access to customer deposits, nor do they

their funding, when they do not have sufficient funding from retail deposits and this can be a relatively cheap source of funding for them". See pages 2-3 of the Dilosk Call Note, dated 31 January 2022.

[592] See page 1 of the Dilosk Call Note, dated 31 January 2022.

[593] See page 4 of the Dilosk Call Note, dated 31 January 2022.

[594] See page 1 of the Dilosk Call Note, dated 31 March 2022.

[595] "*Avant's liability side of their balance sheet has funding from Bankinter instead of deposits. BMH explored further how that side of the balance sheet changes if ECB/wholesale rates change. [✂] replied that it would change in line with the relevant benchmark market rates, and that, as the rates continue to change, this will affect the cost of funding to Avant (ie if rates go up, the rate at which the Bankinter treasury will lend to Avant is likely to rise). From a treasury perspective, Avant can be seen as more of a corporate or subsidiary. Avant is tied to the curve of a certain rate and pay reasonable cost of funding on this to the the Bankinter treasury. If ECB rates rise, the swap curve will typically follow and funding costs will increase. Avant can then decide whether to absorb this or to increase rates*". See page 3 of the Avant Money Call Note, dated 9 February 2022.

[596] See pages 2 and 5 of the Avant Money Call Note, dated 28 January 2022.

have a parent which could choose to lend to them at preferential rates.[597] As noted in paragraph 6.133, Avant Money has also recently raised its fixed rates.[598]

6.288 Finance Ireland also recognised that banks can fund their lending from their deposits and also have the option to securitise, while a non-bank lender typically relies on a securitisation funding model; and that the cost of funds is different for banks and non-bank lenders.[599] However, Finance Ireland did not believe that interest rates would increase in 2022. Moreover, Finance Ireland stressed that being priced more competitively is key for Finance Ireland in terms of winning new business and growing market share, so they would not necessarily see themselves as increasing prices in response to base rate changes.[600]

6.289 In the Written Response, the Parties make the following points in relation to the Commission's calls with the non-bank lenders:

- *"During its call with the CCPC on 28 January 2022, Avant Money states that "[it] is confident that its ability to price competitively, and lower than pillar banks, will not be undermined by any change in the interest rate environment";*

- *"During its call with the CCPC on 31 January 2022, Finance Ireland stated that "being priced more competitively is key for Finance Ireland in terms of winning new business and growing market share, so they would not*

[597] Avant Money "*considered that the non-bank lenders, Dilosk and Finance Ireland, don't have these 'sticky' deposit elements, but have other liabilities (ie other sources of funding). In general, pillar banks, using deposit funding, would have an advantage over non-bank lenders (Dilosk and Finance Ireland) not being able to access this source of funding. This means that these pillar banks would not need to act as quickly in adjusting their mortgage rates, in the event of an increase in ECB interest rates and wholesale market swap rates, as non-bank lenders may feel that they need to respond to such changes. Banks with access to customer deposits don't face the same immediate pressures, and can hold their position longer. For instance, if a bank chooses to be more competitive in the lending market and chooses not to increase their mortgage interest rates, then they automatically become less competitive in the deposit market (if maintaining the same margin) – because this bank would be choosing not to pass the increased interest rates into higher deposit rates, but also not passing the increased interest rates into lending rates. Broadly, deposit taking banks have more flexibility than Dilosk or Finance Ireland*." See pages 2-3 of the Avant Money Call Note, dated 9 February 2022.

[598] https://www.rte.ie/news/business/2022/0506/1296524-avant-money-to-increase-some-mortgage-rates/.

[599] See page 2 of the Finance Ireland Call Note, dated 31 January 2022.

[600] See page 2 of the Finance Ireland Call Note, dated 31 January 2022.

necessarily see themselves as increasing prices in response to base rate changes""

- *"During its call with the CCPC on 31 January 2022, Dilosk noted that while they have absorbed rate increases in their margins to keep their prices competitive, "on the other hand, as Dilosk has become a more frequent issuer, their cost of bonds has gone down. As it grows and issues bonds more frequently, and manages arrears effectively, Dilosk has become a more known entity and investors have greater confidence in it. This provides a downward pressure on their costs of funding in securitisation, even as there is upward pressure due to generally rising wholesale funding costs and an increase in swap rates".*[601]

6.290 The Commission acknowledges that the non-bank lenders expressed confidence in their resilience to upward pressure in wholesale funding costs. These comments need to be weighed against the Commission's full assessment of funding costs, as well as activities in the market since the issuing of the Assessment. For instance, Dilosk and Avant Money increased their fixed term mortgage rates in March 2022 and May 2022, respectively.

6.291 To gain greater insights into the impact of changes in the cost of funding on different competitors, the Commission considered evidence on the differential effect of rising interest rates on different banks, depending on the size of their deposit book relative to their lending book. If those with larger deposits are likely to have a cheaper source of funding than those with smaller deposits, then this indicates that non-bank lenders, with no customer deposits, may see their recent price advantage undermined.

6.292 There is a widespread expectation that retail banks in Ireland are likely to benefit substantially from an increase in interest rates.[602] However, not all banks are

[601] See paragraph 5.43 of the Written Response.

[602] *"Lift-off for Irish bank profits is now coming into view after ECB president Christine Lagarde took a more hawkish posture on interest rates. That change could be transformational for the bottom line at the lenders. According to bank estimates, a 1 percentage point increase in the ECB's main rates would add €219m to AIB's annual earnings and €260m to Bank of Ireland's. In the first half of last year, AIB recorded a profit of €273m while Bank of Ireland booked €465m, so the*

expected to benefit in the same way from an interest rate increase.[603] Similarly, not all banks have the same level of deposits. For example, KBC has a small deposit book relative to its mortgage book when compared to other banks in the mortgage market.[604]

6.293 KBC also explained how the different levels of deposit funding can impact on a bank's profitability and its competitive pricing positions. In response to the KBC Phase 2 Information Request, KBC noted that it benefits from a higher NIM[605], of [✂]% in 2020, as compared to BOI, which had an NIM of 2.00%.[606] However, in the event that interest rates were to increase, KBC states that:

> *"[✂]".*[607]

6.294 An internal KBC document from June 2018 entitled "[✂]" noted that lenders which are more reliant on wholesale funding as opposed to deposits, will be more sensitive to increases in the ECB rate. The document suggested that:

sensitivity to interest rates is clear. While any rise in base rates will be positive for the Irish banks, the benefits are likely to intensify once base rates lift by more than half a percent, according to Goodbody bank analyst John Cronin". Irish Independent, 4 February 2022. https://www.independent.ie/business/irish/irish-banks-face-long-runway-before-a-rise-in-interest-rates-puts-wind-into-their-profits-41311288.html.

[603] "*According to analysts, monetary policy tightening by the ECB would support lenders' margins by reducing the cost of ECB excess liquidity and by rising Euribor rates, the euro zone bank-to-bank lending rates. But not all banks across the region will equally benefit from tightening central bank conditions.Some liquid, retail-focused banks could gain the most, said Jefferies analysts, citing Spanish banks Banco Popular Espanol (BPE) and Bankinter and Caixabank. "This is because liquid, retail-focused banks have seen margins negatively impacted given difficulty in passing negative rates on to depositors," Jefferies told clients".* https://www.reuters.com/article/europebanks-ecb-idUSL8N2UF3IQ.

[604] An internal KBC document notes that "*AIB & BOI can now fund the majority of their Irish mortgage portfolio with current accounts which are not rate sensitive. PTSB's position is relatively weaker, but they can still fund almost 70% of their mortgages with retail/SME funding*". See slide 6 of the KBC document "*ALM Agenda Items for KBCI CEO / SSM Meeting*", dated 5 June 2018 (PROD_IR0950371_0005268) ("*ALM Agenda Items for KBCI CEO / SSM Meeting*"). In terms of its own position KBC confirmed that *"KBCI is primarily funded through a combination of customer deposits and funding from within the wider KBC group, with each of these sources accounting for approximately 50% of KBCI's gross lending".* See KBC's response to Question 23 of the KBC Phase 2 Information Request, dated 14 January 2022.

[605] As referenced in the quote above 6.279 the inability to pass through negative rates has an impact on bank profitability which can be seen through a reduced NIM.

[606] See KBC's response to Question 23 of the KBC Phase 2 Information Request, dated 14 January 2022.

[607] See KBC's response to Question 23 of the KBC Phase 2 Information Request, dated 14 January 2022.

> *"if interest rates rise and banks pass on 75% of these increases to retail deposit customers, we estimate that [✂].*[608]
>
> *"In contrast KBCI would [✂]".*[609]

6.295 The differential sensitivity which KBC describes above would likely be significantly higher for non-bank lenders as they do not collect any customer deposits to use as a funding source. Therefore, the Commission is concerned that the growth in the market share of non-bank lenders in the supply of mortgages may be temporary, based on a recent environment of low wholesale funding costs, and not sustainable.

6.296 The Commission considers that the evidence above shows that the period of significant non-bank lender growth in recent years corresponded with and was influenced by an unusual period of low and negative rates. It also shows that an environment of rates returning to higher levels would negatively affect non-bank lender competitiveness relative to banks due to their different funding arrangements.

6.297 It does not necessarily follow that a 40bp increase in funding costs referenced above would automatically result in a 40bp increase in non-bank mortgage rates as the non-bank lenders may take other steps to address the situation, e.g., reduce their margin. But this dynamic is likely to lead to a narrowing of the gap between the mortgage rates currently offered by the non-bank lenders and the banks and, indeed, Dilosk and Avant Money increased their interest rates in March 2022 and May 2022, respectively.[610]

[608] "NII" or net interest income, is calculated by taking the difference between the interest income (generated by the bank's interest-earning assets) and the interest expense (incurred by the bank's interest-bearing liabilities). NII is a measure of bank profitability.

[609] See [✂].

[610] The Commission notes that the CEO of Dilosk recently (21 July 2021) pointed to how the treatment of retail credit firms, which the non-bank lenders are, impacts on the wholesale funding costs and, in turn, on mortgage pricing by those firms reliant on wholesale funding. "*I would also like to see greater capital markets support from the European Central Banks and the Central Banks towards the retail credit firms which supply consumer and business lending to the housing sector and other areas which serve the overall economy. A lower cost of wholesale funding translates into lower mortgage rates for customers*." https://businessandfinance.com/news/always-check-that-you-have-heart-smart-guts-and-luck-ceo-qa-with-fergal-mcgrath-of-dilosk-ics-mortgages/.

6.298 In the Written Response, the Parties asserted that *"the cost of funding is one of a number of key components in mortgage pricing along with capital requirements, credit risk, costs of capital, operating costs and acquisition costs."* The Commission agrees with this point, and is not saying that cost of funding is the only cost of lending, but rather that it is a significant component, and one in which non-bank lenders appear currently to have a competitive advantage, which may in a different interest rate environment, become a competitive disadvantage.

6.299 The Parties, in the Written Response, also note that:

> *"funding and the impact on pricing by lenders is not divided uniquely on bank and non-bank lender lines. Instead, different lenders will experience different impacts due increases in wholesale funding rates. It is also important to bear in mind that an increase in wholesale funding rates may also affect banks that also seeking [sic] funding on capital markets (eg, securtisation), rather than solely through deposits".*[611]

6.300 The Commission recognised this in the Assessment and acknowledges that this dynamic would also have some impact on KBC relative to other banks in the State as they rely on deposits for [✂]% of their funding, which is lower than the other banks. However, KBC has a track record of competing in different interest rate environments. Some of the non-bank lenders in the State have never competed in anything other than an ultra-low interest rate environment and the Commission considers this an important factor in weighing the likelihood that they could sustainably replace KBC as a competitive constraint. Additionally, the performance of the loan books of non-bank lenders may be uncertain due to these mortgages being relatively new. This, in turn, may impact on the rates at which investors are willing to lend to non-bank lenders in wholesale markets.[612]

[611] See paragraph 5.43 of the Written Response.

[612] In a rating report for a planned Dilosk bond issuance, it is noted that there is "*Limited Historical Performance Data*" and that "*The WA seasoning of the pool is 0.3 years, which means the performance of the securitised origination vintages has still not been observed in the long term. Moreover, Dilosk is a new lender with a mortgage with a limited performance history*". https://a.storyblok.com/f/59981/x/7e6a6d500b/dbrs-nir-dilosk-rmbs-no-5-dac.pdf

6.301 The Commission has also assessed whether there is evidence to suggest that the non-bank lenders' growth could be transient in nature. Non-bank lenders have recently increased their market share in the supply of mortgages. However, the non-bank lender segment has accounted for a very small share of mortgages for many years. As recently as 2020, the combined share of the non-bank lenders, as measured by flow, was only [5-10]%.

6.302 In the Written Response, the Parties considered that the *"increasing important [sic] of non-bank lending represents a structural change in financial markets"*. They point to an ECB paper[613] which sets out that the share of banks of total financial assets of all financial intermediaries had fallen from 52% in 2009 to 37% in 2020, but that since the beginning of 2015 the banks' loss in market share has slowed.

6.303 The Parties also suggest, in the Written Response, that:

> *"the Assessment does not give sufficient weight to the funding that is available to nonbank lenders through the securitisation of mortgages. Recent data compiled by JP Morgan…shows that there has been a significant increase in the issuance of RMBS that were distributed in Ireland in recent years, the value of which reached an all-time high of approximately €4.2 billion in 2021. The growth of the RMBS sector in Ireland can be partly attributed to the introduction of the EU Securitisation Regulation and the "Simple, Transparent and Standardised" (or "STS") label for securitised transactions in 2019, which has the effect of creating a "high degree of harmonised protection for investors in financial instruments". In addition, RMBS have become an increasingly popular feature in Ireland due to the application of the CBI macroprudential rules on mortgage lending, which have resulted in a relatively low risk with the lowest LTI ratio across the Eurozone and the LTV ratio also being below the Eurozone average. Non-bank lenders have taken full advantage of the*

[613] https://www.ecb.europa.eu/pub/pdf/scpops/ecb.op270~36f79cd6ca.en.pdf?f78feebf8d1405a1b52eed090775b20a

funding opportunities that the RMBS sector represent since entering the Irish market".[614]

6.304 The Commission acknowledges that these developments appear to have contributed to the growth of the RMBS sector in the State. The Commission observes, however, that RMBS notes are priced on the basis of a floating interest rate comprised of a reference or index rate (generally the three-month Euro Interbank Offered Rate ("EURIBOR")) plus a 'margin' or 'spread'. The purpose of this 'spread' is to make the return offered on a tranche of RMBS notes relatively more attractive to potential investors who could otherwise invest in other assets or securities also providing a return. The quantum of this 'spread' is determined by a number of factors, including level of demand from investors, and the developments set out above which, if favourable, can reduce the cost of RMBS funding for non-bank lenders. But, all else equal, changes to the three-month EURIBOR rate will be passed through in RMBS pricing.

6.305 In the Written Response, the Parties include an assessment that [✂].

6.306 The Commission also observes that there are numerous instances of lenders entering into the supply of mortgages in the State, only to leave after a relatively short amount of time, whether due to difficulties in building sufficient scale or finding their financial position undermined. For example, Pepper Finance exited the supply of mortgages in 2018, after only two years, despite having a mortgage book of €200m and around 900 loans.[615] In 2018, Dilosk bought the Pepper mortgage book and the €182 million of mortgages from the mortgage book of Leeds Building Society in the State, the €160m mortgage book of GE Capital Irish Home Loans, as well as the ICS mortgage book.[616] Danske and Bank of Scotland are other examples of mortgage providers that chose to exit the State .[617] In addition,

[614] See paragraph 5.45 of the Written Response.

[615] https://www.irishtimes.com/business/financial-services/finance-ireland-to-enter-mortgage-market-with-pepper-purchase-1.3667827

[616] https://www.irishtimes.com/business/financial-services/dilosk-to-buy-leeds-building-society-s-182m-irish-mortgages-1.3669534

[617] https://www.independent.ie/business/personal-finance/property-mortgages/over-20000-affected-as-former-bank-of-scotland-to-sell-5bn-of-mortgages-36846066.html

and as noted above Ulster Bank is in the process of withdrawing all of its banking services from the State and it has already ceased providing mortgages to new customers in the State. This points to there having been many mortgage lenders who have been unsuccessful in maintaining a presence in the supply of mortgages in the State. Indeed, this was recognised by BOI which stated at the Oral Submission that

> *"When compared to, for example, international banks who have come and gone, Ireland is very much [BOI's] home market and that's where our strategic focus primarily is and continues to be in the long term".*[618]

The Commission is concerned that the current growth of the non-bank lenders, and the potential competitive constraint that they offer, may be similarly ephemeral.[619]

6.307 The Commission considers that non-bank lenders may be particularly prone to exiting, or retrenching in, the market for mortgages in a response to changes in monetary policy conditions due to how they secure funding on wholesale markets; and also due to the different type of regulation which applies to them, as set out in paragraphs 2.25 to 2.30.[620]

Relatively limited product range

[618] See page 50 of the transcript of the Oral Submission.

[619] The Commission also notes that it has been reported that, while Dilosk's accounts record a profit after tax of €672,882 in 2020, it incurred a loss of €5.7m the previous year. https://www.independent.ie/business/irish/dilosk-founders-lift-stake-above-50pc-as-lender-eyes-further-growth-41139877.html

[620] The ECB has noted that *"some non-MFIs [non-monetary financial institutions] may accelerate the transmission of monetary policy. Specifically entities in the other financial institution (OFI) sector may react faster than banks to monetary policy impulses and changes in the economic and financial outlook. This means that they also retrench more rapidly in times of crisis. Part of this is associated with the less stringent regulation and supervision some non-MFIs are subject to. By contrast, banks as deposit-taking institutions hold reserves with central banks and act as their direct counterparties in monetary policy operations. For this reason they also generally enjoy a public sector backstop associated with extensive regulation and supervision"*. Although the ECB is not referring to non-bank lenders in the Irish mortgage market, the Commission considers that the ECB's comments illustrate that non-bank lenders may be more sensitive to monetary policy changes, such as changes in interest rate changes. https://www.ecb.europa.eu/press/key/date/2021/html/ecb.sp210824~9ab47b501b.en.html.

6.308 Evidence provided to the Commission by the Parties suggests that, in the Parties' view, non-bank lenders do not have the same broad-based appeal as banks. The internal KBC document '[✂]' states the following: "[✂]".[621]

6.309 In addition, Dilosk, for example, essentially only offers three mortgage products – a variable rate product, and 3 and 5-year fixed products (with different interest rates charged depending on relevant LTV ratio).

6.310 In paragraph 2.79, a Davy Report was cited which noted, in relation to the non-bank lenders, that "[a]*ll three target niche areas of the market. Dilosk targets Buy-to-let and civil service owner-occupiers; Finance Ireland targets the self-employed; and Avant Money targets low loan-to-value urban switchers*".[622] It has also been noted that Dilosk's mortgages are geographically skewed to Dublin and to a lesser extent Cork.[623] As set out above in paragraph 2.8, the non-bank lenders are not currently part of the proposed €400m mortgage funding under the First Homes Scheme.

6.311 However, the non-bank lenders themselves have each told the Commission that they plan to widen their target markets.[624]

6.312 They have also been actively introducing new products. In April 2021, Avant Money introduced a 10-year fixed product and in June 2021 full fixed for life products.[625] The Commission also notes the Parties' point in the Written Response that *"Moreover, since their entry, Avant Money, Dilosk and Finance Ireland have expanded their offerings and they now target a broad segment of consumers. As*

[621] See [✂].

[622] See *Irish Banks Back to the future.*

[623] https://www.independent.ie/business/irish/dilosk-founders-lift-stake-above-50pc-as-lender-eyes-further-growth-41139877.html.

[624] For example, when Avant Money launched in Ireland, it only made its mortgage products available in certain prime locations, mainly the cities of Dublin, Galway, Limerick, Cork and Waterford. The lender then announced in April 2021 that it would be extending its reach with its products becoming available to customers in parts of Wexford town, Kilkenny city, Dundalk, Athlone, and Carlow town. In December 2021, Avant Money announced that customers in all counties will now be able to take out a mortgage with the lender through certain brokers. https://www.bonkers.ie/blog/mortgages/avant-money-to-cut-its-mortgage-rates/.

[625] See page 1 of Avant Money Call Note, dated 6 December 2021.

shown in Table 7(b) below, the non-bank lenders combined offers 10 products compared to the six products offered by KBC. Most notably, non-bank lenders have led innovation in the long-term fixed rates space, with Finance Ireland introducing the first 15 and 20-year fixed rate mortgages and Avant Money shortly after launching a 30-year fixed rate mortgage".[626]

Lack of appeal to customers preferring to source from known/trusted brand; or directly from a provider

6.313 As set out in Section 2, research conducted for the Commission in 2017 indicated that the preference of consumers is to obtain a mortgage from established players already present in the provision of mortgage lending, rather than seek alternatives such as new entrants. Amárach Research found that study participants preferred to remain with banks and organisations with which they are familiar. Even when participants were impressed with the simplicity of a given offer from a new lender, they were not fully persuaded to select the new lender. Rather, the reaction from those surveyed to the theoretical offer from a new lender was that they would like the offer but would prefer it from a different market player.[627]

6.314 On the other hand, the Commission spoke to two members of the mortgage broker sector about customers' perceptions of non-bank lenders versus traditional banks.[628] Neither felt that customers see a difference between them, or that some customers have a reluctance to use non-bank lenders. One noted that one of the reasons customers come to brokers is to understand the market, including whether newer and non-bank lenders can be trusted, and rarely have issues with recommended lenders once they have discussed them with brokers.

6.315 The Commission also acknowledges the points made by the Parties in the Written Response that:

[626] See paragraph 5.67 of the Written Response.

[627] See page 31 of Amárach Research's Mortgage Switching Report for the Commission dated February 2017, which can be accessed at: https://www.Commission.ie/business/wp-content/uploads/sites/3/2017/06/Amarach-Mortgages-Study.pdf.

[628] See page 1 of the Irish Mortgage Corporation Call Note, dated 21 December 2021 and page of the 1 AIMA Call note, dated 22 December 2021.

"(a) First, the relevant analysis to be carried out in the context of the Assessment's theory of harm is between KBC and non-bank lenders, not between non-bank lenders and "better known bank brands".

(b) Second, this preliminary finding is based on purported reliance on the CCPC's Mortgage Study which is nearly five years old and the Amárach Research (based on interviews with 48 consumers) was not carried out at a time when the non-bank lenders were active in the market in the provision of residential mortgages. In any event, that qualitative study found that "They {ie, consumers} have a preference for the established indigenous players". This cannot be construed as consumers necessarily having a preference for KBC over non-bank lenders.

(c) Third, the finding is also contradicted by the comments from the mortgage brokers with the CCPC itself noting that "neither felt that customers see a difference between them, or that some customers have a reluctance to use non-bank lenders".

(d) Fourth, the CCPC's own investigation indicates that "Customers go to brokers to understand the market, including whether newer and non-bank lenders can be trusted. One broker said that customers rarely have issues with recommended lenders once they have discussed them with brokers". This is significant since non-bank lenders almost exclusively use the broker channel as a means of distribution."

6.316 The Commission notes that, due to their narrower product offering, non-bank lender may not be attractive to those customers who prefer to receive a range of financial services from a single source. Furthermore, a number of bank lenders currently offer or have offered interest rate discounts on mortgages to customers who hold an active current account with that bank.

6.317 The Commission's view is that there are factors which may make banks more attractive to certain customer segments, and that there has been evidence in the past that many borrowers prefer to borrow from a bank versus a non-bank lender, all else being equal. However, the Commission also acknowledges that the evidence supplied by brokers and the recent growth in market shares of the non-bank lenders may indicate a reducing differential in the relative perception of banks and non-bank lenders by prospective mortgage customers than in the past.

Conclusion on whether non-bank lenders are likely to replace the loss of competitive constraint that is likely to result from the Proposed Transaction

6.318 The relative competitive strength of the non-bank lenders has increased substantially in the last 12-24 months. In particular, non-bank lenders have been innovative in introducing new products to the market and offered low headline rates, benefitting from a low-cost base and the growth of the broker channel. However, the Commission is concerned that the growth in the non-bank lenders may be temporary, based on a recent environment of low wholesale funding costs. Therefore, this recent growth in non-bank lenders' share may not be sustained. The Commission considers that should wholesale funding costs rise, non-bank lenders face a potential disadvantage to retail banks, as they have greater exposure to such an increase given their lack of a customer deposit base.

6.319 Reflecting over a longer period on the Irish mortgage market, there have been multiple instances of lenders entering into the supply of mortgages in Ireland, only to leave after a relatively short amount of time, whether due to difficulties in building sufficient scale or finding their financial position undermined. The recent history of the provision of mortgages in the State does not show smaller competitors transitioning into medium or large-scale providers, or even sustaining themselves over many years. Therefore, the Commission is concerned that the apparent growth in the smaller non-bank lenders in very recent months will not translate into a sufficient and sustained competitive constraint on the incumbent full-service banks, including BOI, which would replace the competitive constraint provided by KBC.

B.(vii) Barriers to entry / expansion in the mortgage market.

Likelihood of sufficient and timely entry by bank and non-bank lenders

6.320 In relation to prospective entry by banks into the provision of mortgages in the State, the Commission has not been provided with or uncovered any evidence to support the view that a bank will enter in a timely, likely and sufficient manner to mitigate or prevent the identified effects on competition or prevent the loss of competitive pressure exerted by KBC pre-transaction. In the Written Response, the Parties highlight the example of BankInter entering the mortgage market through Avant Money, but this is not an example of entry as a bank.

6.321 With regard to entry by non-bank lenders, the Commission has already noted MoCo's anticipated entry into the mortgage market. As noted in paragraph 2.185 above, [✂].[629]

Barriers to entry and expansion

6.322 As discussed in detail in Section 2, there are significant barriers to entry and expansion in the provision of mortgages in the State. Such barriers may include: regulatory requirements; low profitability; repossession policies; barriers to switching; data inequality; and IBAN discrimination.

6.323 The Commission notes a number of factors raised by the Parties in the Written Response to suggest that barriers to entry and expansion may be low, or reduced. These include reduced State involvement in the banking sector in terms of Government shareholdings in retail banks, non-bank lenders and new entrants being less affected by regulatory capital requirements, and lower operating costs compared to retail banks.

6.324 The Commission has no evidence of any bank lender prepared to enter the market and incur the additional capital costs imposed on bank lenders operating in the State.[630] In addition, the Commission is not aware of entry by any bank lenders into

[629] See page 1 of the MoCo Call Note, dated 1 June 2021.

[630] The Commission is aware that Starling Bank has applied for a banking licence with the CBI. However, the Commission has not seen indications that Starling will soon enter into the supply of mortgages in Ireland. https://www.independent.ie/world-news/starling-bank-takes-aim-at-overtaking-big-five-rival-barclays-41051852.html.

the supply of mortgages in the State since the global financial crisis. Rather, the Commission observes that there has been a number of exits.

6.325 On the basis of the above and as detailed in Section 2, it is the Commission's view that there are high barriers to entry and expansion in the mortgage market in the State and that it is unlikely that the Commission's competitive concerns will be ameliorated through timely and sufficient entry and expansion by banks in the mortgage market.

Overall conclusions on the examination of KBC as an important competitive force and the extent to which other lenders are likely to replace KBC as a competitive constraint

6.326 The Proposed Transaction will lead to a reduction in the number of full-service retail banks providing mortgages from four (BOI, AIB, PTSB and KBC) to three, given that Ulster Bank is in the process of withdrawing from the mortgage market and has significantly limited the availability of its products.[631] The increase in concentration and the reduction in choice of mortgage providers available to consumers, particularly for those preferring to source a mortgage from a full-service retail bank, may reduce the competitive pressure on these providers. This, in turn, could lead to higher prices, such as higher mortgage interest rates, lower quality, or reduced innovation in areas such as customer service, the application process, or the types of products offered by mortgage providers.

6.327 The Commission's view is that KBC has exerted an important competitive constraint in the market for mortgages; and that the Proposed Transaction will result in KBC's exit from the market and the loss of an important constraint in a concentrated market. In light of this, the Commission is concerned that the Proposed Transaction would lead to an SLC, unless the competitive constraint exerted by KBC would be replaced by an existing or potential competitor in the market, which is able to grow and provide competitive pricing and an attractive switching proposition for consumers following implementation of the Proposed Transaction.

[631] See paragraphs 6.4 to 6.6.

6.328 The relative competitive strength of the non-bank lenders has increased substantially in the last couple of years. However, this increase is very recent and may not be sustainable. Unlike KBC, the non-bank lenders have no track record of competing in different interest rate environments and through multiple economic and market cycles.

6.329 The Commission has noted the likelihood that increasing market rates will put some pressure on the competitive position of the non-bank lenders and in particular recognises that the mortgage market represents a particular challenge for newer entrants when customer inertia is so high. Therefore, the Commission considers there is a significant risk that the apparent growth in the non-bank lenders will not translate into a sustained competitive constraint on the incumbent full-service retail banks, including BOI, which would replace the competitive constraint provided by KBC.

6.330 Following engagement with the Parties, the Parties submitted Proposals aimed at identifying measures that will ameliorate the effects on competition arising from the Proposed Transaction.

(e) Proposals

6.331 The Commission has structured its analysis in this section as follows:

(a) Overview of draft proposals submitted by the Parties;

(b) Market testing the draft proposals;

(c) The Commission's evaluation of the draft proposals;

(d) Conclusion

A. Overview of draft proposals submitted by the Parties

6.332 As set out in paragraph 1.44 in issuing the Assessment, the Commission was of the preliminary view that the Proposed Transaction was likely to result in an SLC in the market for the provision of mortgages in the State.

6.333 On 11 March and 5 April 2022, BOI and KBC submitted draft proposals pursuant to Section 20(3) of the Act. These draft proposals consisted of the following:

(a) **The KBC Customer Measures,** where BOI would commit to**:**

(a) honour the fixed rate included in the existing terms and conditions of KBC fixed rate mortgages for the remainder of the fixed term;

(b) honour the 0.2% discount in mortgage rate of every KBC customer eligible for that discount at the date of mortgage transfer to BOI, for as long as their transferred mortgage is held with BOI, without being required to hold a BOI current account; and,

(c) offer the variable rate equivalent to that of KBC migrated variable rate customers, as well as BOI fixed rate options, to fixed rate KBC mortgage customers on their first roll over post migration

(b) **the RMBS Funding Proposal**, whereby BOI would commit to offer to purchase on the primary market a volume of RMBS securities originated by Dilosk and Finance Ireland, over 3 years;

(c) the **Mortgage Innovation Funding Proposal**, whereby BOI would make €1 million available in funding to companies (other than licenced retail banks and their subsidiaries) developing innovations relevant to the market for the provision of mortgages in the State; and,

(d) the **KBC Proposal**, whereby KBC would provide access to operational capability, from the resources used by the non-transferring KBC mortgage origination business, to mortgage lenders (excluding licensed retail banks or their subsidiaries). [632]

[632] Based on all the information available to it, the Commission was not convinced that the KBC Proposal would be implementable or effective, and therefore, it could not be taken into account by the Commission in making its determination in respect of the Proposed Transaction. The Commission communicated this position to the Parties, and on this basis, the Parties withdrew the KBC Proposal.

B. Market testing the draft proposals

6.334 Over the period 25 April to 28 April 2022, the Commission market tested the draft proposals[633] in order to help establish whether they were likely to be appropriate, proportionate and effective in ameliorating the identified SLC concerns in the market for the provision of mortgages in the State.[634]

6.335 The Commission conducted phone interviews with industry experts, with three non-bank lenders and with one potential non-bank lender entrant into the market for the provision of mortgages in the State.[635] Of the non-bank lenders, two were potential remedy-takers due to their funding model being based on RMBS. The two potential remedy-takers welcomed the RMBS Funding Proposal and believed that it would be effective in supporting their growth in the market and thus their ability to compete more effectively and sustainably in the market through bringing down their cost of funding. The potential remedy-takers stated that this in turn would support competition in the provision of mortgages in the State. Both potential remedy-takers indicated that, to be effective, the RMBS Funding Proposal should offer as much flexibility to a remedy-taker as possible, including in terms of the time for which the funding would be available; the types of mortgage backed securities that would be purchased; and the percentage of BOI involvement in each issuance.

6.336 The non-bank lenders who are not potential remedy-takers did not consider the RMBS Funding Proposal to be relevant to their business or effective in supporting competition in the market. One noted that, in its experience, there was no shortage of RMBS funding available.[636] One expressed a view that the loss of competition could best be addressed by a divestment by BOI of a material portion

[633] It was not necessary for the Commission to market test the KBC Proposal.

[634] Market testing is one facet of the Commission's consideration of any remedies proposed by parties in a given case. Market testing is not determinative in its own right, but is an important perspective through which the Commission evaluates proposed remedies. The Commission can and does consider factors beyond views expressed during market testing in determining whether proposed remedies are appropriate, proportionate, and effective in addressing the Commission's SLC concerns.

[635] See Avant Money Call Note, dated 25 April 2022; Dilosk Call Note, dated 25 April 2022; Finance Ireland Call Note, dated 28 April 2022, and; MoCo Call Note, dated 26 April 2022.

[636] See page 1 of the MoCo Call Note, dated 26 April 2022.

of mortgage loan assets to a new entrant.[637,638] Both non-bank lenders who are not potential remedy-takers expressed scepticism over the effectiveness of any measures to support RMBS funding in the market.

6.337 With regard to the Mortgage Innovation Funding Proposal, all non-bank lenders questioned the potential efficacy and the relevance of such a proposal for their business.

6.338 With regard to the KBC Proposal, none of the non-bank lenders considered that the proposed measures would be of relevance to them.

C. The Commission's evaluation of the draft proposals

6.339 The Commission has considered each element of the draft proposals below.

KBC Customer Measures

6.340 The Commission recognised that the KBC Customer Measures demonstrated an intention on the part of BOI to protect transferring KBC customers.

6.341 However, the Commission expressed a concern to KBC that there was a risk that KBC could increase its rates before the completion of the Proposed Transaction in a manner that would render the draft proposals ineffective. For example, if KBC were to increase its rates with a view to eroding the differential between KBC's interest rates and BOI's interest rates. This would disadvantage KBC customers. On 19 May 2022, KBC provided assurances to the Commission regarding KBC's obligations up until the point of completion of the Proposed Transaction, which the Commission has taken into account in its evaluation of the draft proposals.

6.342 The Commission considers that the proposed KBC Customer Measures which are intended to protect KBC mortgage customers who would transfer to BOI following

[637] See page 2 of the MoCo Call Note, dated 26 April 2022.

[638] The Commission notes that it is for the Parties to submit proposals that address the Commission's competition concerns. The Commission can then decide to market test proposals that have been submitted.

implementation of the Proposed Transaction address the concerns about possible consumer harm that were set out in the Assessment.

RMBS Funding Proposal

6.343 The Parties have suggested that the RMBS Funding Proposal will support identified remedy-takers in the following ways:

> *"The Proposal is expected to give a pricing benefit in all interest rate environments (thus enhancing mortgage origination and incentives to continue to compete aggressively) which would go to the concern of increased costs leading to reduced competitiveness in a rising rate environment.*
>
> *The Proposal is expected to give funding certainty and in particular an 'anchor investor' in all interest rate environments – which would go to the concern of inability to obtain funding in a rising rate environment.*
>
> *The Proposal is expected to have positive effects on the success of the remedy-taker's RMBS transactions improving its track record – which would also go to the concern of inability to obtain funding in a rising rate environment.*
>
> *The Proposal is expected to have positive effects on the wider RMBS market – which would support increased investor sentiment and market growth which would also go to the concern of inability to obtain funding in a rising rate environment.*
>
> *Thus, the purpose of the funding proposal is to remove the CCPC's specific interest rate environment concerns and copper-fasten the remedy-taker's ability to meet its own stated objective to grow to a share of the market of 10-15%, in any likely interest rate environment".*

6.344 The Commission notes that both potential remedy-takers welcomed the RMBS Funding Proposal and agreed with the Parties' view of the likely benefits.[639]

6.345 The Commission proposed that this funding by way of RMBS purchases by BOI should be made available to both potential remedy-takers and that both should be able to avail of the potential cost-of-funding benefits resulting from this additional capacity for RMBS funding. BOI agreed to increase the total amount of funding required to €1 billion, i.e., €500 million for each of Dilosk and Finance Ireland.

6.346 The Commission considers that funding over a three-year period should allow the remedy-takers to plan to use this funding over a number of RMBS issues and to tailor the exact participation of BOI in any particular issue to suit the remedy-taker's preferences in differing interest rate environments.

6.347 The Commission agrees that an effect of the RMBS Funding will likely be to reduce the cost of funding for the non-bank lender remedy-takers and to increase the certainty of funding for the remedy-takers as there will be a guaranteed purchaser of a certain proportion of RMBS issued by the remedy-takers over the period for which the Funding Proposal would be in effect. The Commission notes that the impact of the RMBS Funding on cost-of-funding was estimated by the Parties to be at least a 5bps reduction in the margin or spread[640] that an issuer of RMBS has to pay on the notes issued by it. The Commission's discussions with industry experts indicates the assumptions behind the calculation of the potential impact are reasonable.

6.348 The Commission has discussed above in paragraphs 6.271 to 6.307 its view of the vulnerability of non-bank lenders to changes in the interest rate environment, which could affect their sustainability in the medium to long-term. The RMBS Funding Proposal aims to ameliorate these concerns.

[639] See the Dilosk Call Note, dated 25 April 2022 and the Finance Ireland Call Note, dated 28 April 2022.

[640] The premium/margin above a reference rate that an issuer of a security pays to holders of that security.

Mortgage Innovation Funding Proposal

6.349 The Commission notes that much innovation in the market is to do with the development and application of technologies to improve the customer experience. Such 'process-type' innovations may be developed by parties other than mortgage providers as inputs to a mortgage provider's business. These are 'process-type' innovations which may introduce efficiencies/improvements in the processes and procedures involved in applying for a mortgage or considering mortgage applications. Such innovations could impact on competition and ultimately benefit consumers by, for example, reducing the financial and temporal costs associated with applying for or switching a mortgage.

6.350 The Commission notes that its market testing of the proposed Mortgage Innovation Funding Proposal indicated that the non-bank lenders did not find it particularly applicable or relevant to their business. However, the Commission considers that the Mortgage Innovation Fund Proposal is likely to have appeal to parties outside the group of non-bank lenders, particularly to smaller technology-based companies. The effect of the proposal would therefore be to contribute to funding for parties working in the broader mortgage 'space', even if such parties are not active in the provision of mortgages to customers themselves.

6.351 The Commission considers that the Mortgage Innovation Funding Proposal has the potential to incentivise innovations relevant to the provision of mortgages in the State. Therefore, the Commissions considers that this proposal further contributes to ameliorating the concerns arising from the Proposed Transaction in the mortgage market in the State.

D. Conclusion

6.352 On 23 May 2022, BOI submitted to the Commission the binding Proposals which are appended to this determination.

6.353 In light of the binding Proposals submitted by BOI and in light of its analysis as set out in this Determination, the Commission has determined that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

7. COMPETITIVE ASSESSMENT – COORDINATED EFFECTS

7.1 Coordinated effects occur where a proposed transaction changes the nature of competition in the relevant market by making it more likely that the merged entity and some or all of its competitors will coordinate their behaviour by, for example, raising prices and/or decreasing output. Thus, the key question is whether a proposed transaction would materially increase the likelihood that firms in the market for the provision of mortgages to all types of customer (with the exception of customers purchasing business Buy-to-let mortgages) in the State would successfully coordinate their behaviour or would strengthen existing coordination between firms in this market.

No Evidence of Coordinated behaviour prior to the Proposed Transaction

7.2 The Commission has found no evidence of coordinated behaviour between competitors in the market for the provision of mortgages in the State. The Commission contacted a wide range of third parties during its investigation and none raised any concern about existing coordinated behaviour between mortgage providers.

Conditions and Evidence Considered for Coordinated Behaviour

7.3 In assessing the potential for a proposed transaction to result in coordinated effects, the Commission will assess whether the conditions and incentives that are generally necessary for successful coordination between competitors are present or likely to arise, which includes assessing:

(a) the ability to identify common terms of coordination; and,

(b) the ability to detect deviations from the terms of coordination, and the ability to punish deviations that would undermine the coordinated interaction.[641]

[641] See paragraphs 4.25-4.31 of the Commission's "*Guidelines for Merger Analysis*" for a detailed discussion of the conditions and incentives conducive to coordinated behaviour.

7.4 In this instance, the Commission assessed whether the Proposed Transaction would increase the possibility of coordination between competitors in the market for the provision of mortgages in the State and then examined whether it would increase the sustainability of any such coordination.

The Possibility of Reaching Common Terms of Coordination

7.5 In order to coordinate behaviour, firms need to achieve an understanding as to how to do so. This need not involve explicit agreements among competitors, or any communication between them, nor need it involve all firms active in the relevant market or perfect coordination between firms. Coordinated behaviour can take many forms. In some markets, firms may coordinate their behaviour on prices in order to keep them above the competitive level. In other markets, coordination may aim at limiting production or the amount of new capacity brought to the market. Firms may also coordinate their behaviour by dividing the market between them, for instance by geographic area or other customer characteristics.

7.6 In this instance, mortgage lenders in the State could coordinate their behaviour by agreeing on prices charged for the provision of mortgages.

7.7 The Commission considered factors such as market share symmetry, price transparency, product differentiation and market stability. Having assessed these factors, the Commission considers that the Proposed Transaction will not make it more likely that the merged entity and other mortgage providers will engage in coordinated behaviour in market with the effect of substantially lessening competition in this market.

8. VERTICAL RELATIONSHIP

8.1 The Parties have stated in the notification that there is no vertical relationship between BOI and KBC. The Commission has not identified any vertical relationship between the Parties. On this basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

9. EFFICIENCIES

9.1 Paragraphs 8.1 and 8.2 of the Commission's Merger Guidelines state that:

> *"A merger may generate various efficiencies for the merged entity. The Commission's analysis of efficiencies goes beyond the impact of efficiencies on the merged entity and focuses on whether verifiable efficiencies mitigate adverse competitive effects and prevent an SLC".*
>
> *"The onus rests on the parties to show that claimed efficiencies are (i) merger-specific, (ii) verifiable and (iii) benefit consumers sufficiently to prevent an SLC".*

9.2 The Commission has not received any submission from the Parties on efficiencies which meets the criteria set out in paragraph 8.2 of the Commission's Merger Guidelines.

10. CONCLUSION

10.1 In light of the Proposals submitted by BOI and in light of its analysis as set out in this Determination, the Commission has formed the view that the Proposed Transaction, will not substantially lessen competition in any market for goods or services in the State.

10.2 Before making a determination in this matter, the Commission, in accordance with section 22(8) of the Act, has had regard to any relevant international obligations of the State, and concluded that there were none.

11. ANCILLARY RESTRAINTS

11.1 No ancillary restraints were notified.

12. DETERMINATION

Pursuant to section 20(3) of the Competition Act 2002, as amended (the "Act"), the Governor and Company of the Bank of Ireland ("BOI") has submitted to the Competition and Consumer Protection Commission (the "Commission") the proposals set out below regarding measures to be taken to ameliorate any effects of the proposed acquisition on competition in markets for goods or services in the State, with a view to the said proposals becoming binding on BOI.

The Commission has taken the proposals into account and, in light of the said proposals (which form part of the basis of its determination), has determined, in accordance with section 22(3)(a) of the Act that the result of the proposed acquisition whereby BOI would acquire certain assets and liabilities from KBC Bank Ireland plc ("KBC"), an indirectly wholly-owned subsidiary of KBC Group N.V., including KBC's performing mortgage loans, KBC's customer deposit accounts and certain other assets and liabilities, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect. Before making a determination in this matter, the Commission, in accordance with section 22(8) of the Act, had regard to any relevant international obligations of the State, and concluded that there were none.

For the Competition and Consumer Protection Commission

Jeremy Godfrey
Chairperson
Competition and Consumer Protection Commission

APPENDIX A: THE PROPOSALS

Appendix A: Proposals

M/21/021–Bank of Ireland / Certain Assets of KBC: Proposals

Proposals by The Governor and Company of the Bank of Ireland to the Commission

23 MAY 2022

BOI (as hereinafter defined) hereby submits to the Commission (as hereinafter defined) the following proposals under Section 20(3) of the Act (as hereinafter defined):

Recitals

A. On 16 April 2021, BOI notified to the Commission under Part 3 of the Act a transaction whereby BOI would acquire the KBCI Assets (as hereinafter defined) from KBCI (as hereinafter defined), an indirectly wholly-owned subsidiary of KBC Group N.V., including KBCI's performing mortgage loans, KBCI's customer deposit accounts and certain other assets and liabilities (the "**Proposed Transaction**").

B. On 20 October 2021, the Commission made a determination that it intended to carry out a full investigation under Section 22 of the Act in relation to the Proposed Transaction.

C. Pursuant to Section 20(3) of the Act, BOI has submitted the Proposals (as hereinafter defined) for the purpose of ameliorating any effects of the Proposed Transaction on competition in markets for goods or services in the State and with a view to alleviating concerns identified by the Commission and the Proposals becoming binding on BOI if the Commission takes the Proposals into account and states in writing that the Proposals form the basis or part of the basis of a Determination.

1 **Definitions**

1.1 In this Agreement, the following terms shall have the following meanings:

"Act" means the Competition Act 2002 (as amended);

"Affiliates" means all undertakings or persons which, directly or indirectly, control BOI, undertakings directly or indirectly controlled by BOI and / or by the ultimate parents of BOI, whereby the notion of control shall be interpreted pursuant to Section 16 of the Act;

"Agreement" means this agreement containing the Proposals;

"BOI" means The Governor and Company of the Bank of Ireland, a chartered corporation with limited liability registered in Ireland with Registered Number C1 having its registered office at 40 Mespil Road, Dublin 4, Ireland;

"BOI SVR" means a standard variable rate available to a mortgage customer originated by BOI;

"BPS" means one basis point equal to one hundredth of one percentage point;

"BTL" means a residential loan secured with a first-ranking mortgage granted to individuals and which is not a PDH;

"Completion Date" means the date of the completion of the Proposed Transaction;

"Commission" means the Competition and Consumer Protection Commission and its successors;

"Determination" means a determination of the Commission under Section 22(3)(a) of the Act that the Proposed Transaction may be put into effect taking into account the Proposals, which form part of the basis of the Determination;

"Determination Date" means the date of the issuance of the Determination by the Commission;

"Dilosk" means Dilosk DAC, with company registration number 531010;

"ECB Eligibility" or "ECB Eligible" means, in respect of any securities, that they satisfy the Eurosystem eligibility criteria as set out in Part Four of Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (ECB/2014/60), as amended;

"Escrow" has the meaning ascribed to it in clause 4.1;

"EU Securitisation Regulation" means Regulation (EU) 2017/2402 of the European Parliament and of the Council, of 12 December 2017, laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation;

“Finance Ireland” means Finance Ireland Credit Solutions Designated Activity Company, with company registration number 549222;

“Fixed Rate” means a fixed-rate mortgage loan secured against a property where the interest rate does not change for a defined period of the loan;

“Funding” means the funding that will be made available to Dilosk and Finance Ireland pursuant to clause 3.1;

“Funding Commitment Term” means a period of 3 years beginning on the date that the Funding Recipients are informed that the Funding is available pursuant to clause 5.2.1;

“Funding Recipient” means Dilosk or Finance Ireland and “Funding Recipients” means both;

“Innovation Entity” has the meaning ascribed to it in clause 4.2;

“ISIN” means International Securities Identification Number;

“KBCI” means KBC Bank Ireland plc, a company incorporated in Ireland with company registration number 40537 and having its registered office at Sandwith Street, Dublin 2, D02 X489, Ireland;

“KBCI Assets” means KBCI’s performing mortgage loans, KBCI’s customer deposit accounts and certain other assets and liabilities;

“KBCI SVR” means KBCI’s standard variable rate available to a KBCI mortgage customer as advertised by KBCI at or most recently prior to the Completion Date;

“Liquidity Coverage Ratio or “LCR” means with respect to a residential mortgage backed securitisation, the requirements pursuant to Article 13 of the Delegated Regulation (EU) 2018/1620 on liquidity coverage requirement for credit institutions dated 13 July 2018, amending Delegated Regulation (EU) 2015/61 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity;

“LCR Eligibility” means compliance with the criteria necessary for a residential mortgage backed securitisation to be designated as compliant with the LCR;

“Proposals” means the proposals as set out in this Agreement;

“PDH” means residential loans secured with a first-ranking mortgage granted to individuals for the acquisition of their main residence (also known as Owner Occupier);

“Request” has the meaning ascribed to it in clause 4.5;

“RMBS” means Residential Mortgage Backed Securities;

“State” means the Republic of Ireland;

“STS Eligibility” means compliance with the criteria necessary for a residential mortgage backed securitisation to be designated as a “simple, transparent and standardised” securitisation by a third party authorised pursuant to Article 28 of the EU Securitisation Regulation in connection with an assessment of the compliance of the notes with the requirements of Article 18 and Articles 19 to 22 of the EU Securitisation Regulation;

“Securities” has the meaning ascribed in Clause 3.1;

“SVR” means standard variable rate;

“Transferred Mortgage” means a mortgage transferred from KBCI to BOI pursuant to the Proposed Transaction;

“Transferred Mortgage Customer” means the holder(s) of a Transferred Mortgage;

“Transferred Mortgage SVR” means a standard variable rate made available by BOI to a Transferred Mortgage Customer in accordance with this Agreement; and

"Working Day" means a day (other than a Saturday or a Sunday or public holiday) on which banks are open for retail business in Dublin.

2 **Transferred Mortgages**

2.1 KBCI Fixed Rate

2.1.1 BOI undertakes that, for any Transferred Mortgage, it shall honour any Fixed Rate agreed between KBCI and its customers for the remainder of the agreed Fixed Rate term which is in place at the Completion Date.

2.2 KBCI Current Account Discount

2.2.1 BOI undertakes that, for any Transferred Mortgage, it shall ensure that every Transferred Mortgage Customer who benefits from a 20 BPS ‘current account discount' on the interest rate applicable to that Transferred Mortgage on the Completion Date shall continue to receive that discount for so long as the Transferred Mortgage Customer holds the Transferred Mortgage with BOI.

2.2.2 BOI undertakes that any such discount referred to in clause 2.2.1 shall not be conditional on the Transferred Mortgage Customer purchasing or consuming any products or services from BOI other than the Transferred Mortgage and in particular shall not be conditional on an obligation to open a BOI current account.

2.3 KBCI SVR

2.3.1 BOI shall, from the Completion Date, make available a set of Transferred Mortgage SVRs to Transferred Mortgage Customers on the date of their first expiry and roll-off from a Fixed Rate that was agreed with KBCI before the Completion Date, which are independent of any BOI SVR.

2.3.2 BOI undertakes that this set of Transferred Mortgage SVRs referred to in clause 2.3.1 above shall be the same interest rates, from the Completion Date, to the set of KBCI SVRs advertised by KBCI at or most recently prior to the Completion Date.

2.3.3 For the avoidance of doubt, the Transferred Mortgage SVRs are variable rates which may change from time to time. […]

2.3.4 BOI shall, from the Completion Date, offer the relevant Transferred Mortgage SVR to a Transferred Mortgage Customer on the first expiry and roll-off from a Fixed Rate that was agreed with KBCI before the Completion Date, in addition to any interest rates offered by BOI to all BOI customers.

2.3.5 The relevant Transferred Mortgage SVR offered to a Transferred Mortgage customer shall be determined on the basis of the relevant loan-to-value range and other SVR cohort identifiers used by BOI (e.g., BTL) applicable to that customer on the date of the first expiry and roll-off from the Fixed Rate agreed with KBCI before the Completion Date.

2.4 Communication to Transferred Mortgage Customers

2.4.1 BOI shall send a letter to all Transferred Mortgage Customers notifying them of the proposals described in 2.1 to 2.3 above by two weeks after the Completion Date at the latest.

3 **Funding Commitment**

3.1 During the Funding Commitment Term, BOI commits to offer to purchase on the primary market up to €1 billion in aggregate of Class A rated AAA (by two rating agencies) publicly syndicated RMBS securities (the "**Securities**") originated by Dilosk and Finance Ireland, subject to a maximum of €500 million funding being provided to either of them.

3.2 BOI commits to purchase up to a maximum of a 50% stake in any single AAA tranche of Securities within the Funding Commitment Term, with BOI's stake being subject to the allocation mechanism of the Funding Recipients.

3.3 The Securities to be purchased shall be on standard market terms with the following eligibility/label requirements applying to no less than 90% (€450 million) of the total Securities volume to be purchased from either Funding Recipient: ECB Eligibility, LCR Eligibility, STS Eligibility, secured entirely on PDH/ Owner Occupier mortgages with no mixed pools. Up to 10% (€50 million) of the total volume of Securities to be purchased from either Funding Recipient may be secured in whole or in part on BTL mortgages providing these Securities also meet the criteria for ECB Eligibility.

3.4 The Securities must on issuance have been structured and checked for compliance in advance with the relevant ECB Eligibility guidelines and the Funding Recipients must be satisfied that the structure should not cause the ECB to withhold (or delay beyond their usual timing) listing them as eligible assets. The application to the ECB for ECB Eligibility for each issuance must be made by each Funding Recipient no later than one month from the Securities issuance date.

3.5 The Securities will be purchased at re-offer and will have a coupon of 3 month Euribor (or equivalent benchmark) plus a spread.

3.6 The Securities will be held by BOI until the issuer optional redemption dates of each RMBS transaction.

3.7 The Securities will have the following market standard structural features:

Issuer optional redemption date	Call date of 4 years or shorter
Incentive to redeem	Minimum 50% step up in coupon All excess revenue (on and post step up) pays down Class A notes

Credit Enhancement	Subordinated notes and a general reserve fund
Amortisation	Notes to redeem sequentially starting with Class A notes
0% bond floor	Securities issued at or above par and higher spread to Euribor, or unless otherwise agreed
Arrears Provisioning	Principal deficiency ledger to provide for expected losses after loans enter into arrears (i.e. no less than 50% at 6 months in arrears, no less than 75% at 9 months in arrears and no less than 100% at 12 months in arrears.

3.8 For the avoidance of doubt, BOI will not be bound to purchase any Securities issued in the primary market pursuant to these Proposals following the expiration of the Funding Commitment Term.

4 **Innovation Funding**

4.1 BOI undertakes that, within 3 months of the Completion Date, it shall transfer €1 million to an escrow account ("**Escrow**"). BOI shall provide a copy of Escrow details to the Commission within ten (10) Working Days of the transfer of such monies.

4.2 BOI will use its reasonable endeavours to appoint an established entity with experience of awarding funding to companies ("**Innovation Entity**") for the purposes of the Innovation Entity making funding available to companies, other than licensed retail banks and their subsidiaries, developing innovations relevant to the market for the provision of mortgages in the State. BOI will inform the Commission of the identity of the Innovation Entity within ten (10) Working Days of the appointment.

4.3 When the Innovation Entity confirms to BOI that a framework to enable operation of the innovation funding is successfully established, all monies in Escrow shall be released to the Innovation Entity for the purposes of the distribution of such funding. Within ten (10) Working Days after the release of all monies in Escrow, BOI will confirm the occurrence of same to the Commission.

4.4 Any costs or expenses incurred in identifying and/or appointing the Innovation Entity shall be borne by BOI. To the extent there are there are any costs or expenses incurred by the Innovation Entity in operating and distributing the innovation funding, these will be borne by BOI and/or the Innovation Entity and shall not be deducted from the €1 million innovation funding.

4.5 Within ten (10) Working Days of appointing the Innovation Entity under Clause 4.2, BOI will make a request (“**Request**”) to the Innovation Entity to seek expressions of interest from companies, other than licensed retail banks and their subsidiaries, developing innovations relevant to the mortgage market in the State, in being awarded such funding. BOI shall provide a copy of the Request to the Commission.

4.6 If, within 12 months of the Completion Date, an Innovation Entity has not been appointed pursuant to Clause 4.2, all monies in Escrow shall be distributed by BOI to not-for-profit organisations working in fields related to supporting and empowering consumers to make better choices in the market for the provision of mortgages in the State.

5 **Compliance Certificates**

5.1 BOI shall submit to the Commission within twelve (12) months of the Completion Date, and, at intervals of one year thereafter for a period of three years from the Completion Date, a written certificate in the form set out in Schedule A, signed by a senior executive confirming that BOI has complied in all material respects with its obligations set out in this Agreement in the preceding 12 month period.

5.2 Additionally, for the Funding Commitment outlined in clause 3 above:

5.2.1 within fifteen (15) Working Days of the Determination Date, BOI shall inform the Commission and each of the Funding Recipients that the funding is available on request in accordance with the terms set out in clause 3 above;

5.2.2 within two (2) months of the date that the Funding Recipients are informed that the Funding is available pursuant to clause 5.2.1, BOI shall inform the Commission of the identity of an internationally recognised accounting firm that BOI intends to instruct to supply the written confirmation provided for in clause 5.2.3 to the Commission and unless the Commission objects within five (5) Working Days of being so informed, BOI shall proceed to instruct the identified firm;

5.2.3 within six (6) months of the date that the Funding Recipients are informed that the Funding is available pursuant to clause 5.2.1, within twelve (12) months of the date that the Funding Recipients are informed that the Funding is available pursuant to clause 5.2.1, and within intervals of 12 months until the end of the

Funding Commitment Term (a total of four (4) reports), BOI will supply a written confirmation from an internationally recognised accounting firm, approved by the Commission, confirming the aggregate value of Securities purchased by BOI along with the ISINs of the individual Securities during the reporting period.

5.3 The Commission reserves the right to require BOI to provide to the Commission, at any time, such additional information as the Commission requires in order for the Commission to verify compliance with its obligations set out in this Agreement. BOI shall, and shall procure that its Affiliates shall, promptly provide to the Commission all such information in its possession.

5.4 The Commission may provide such written directions to BOI from time to time as needed to require compliance with this Agreement. BOI shall, and shall procure that its Affiliates shall, comply promptly with any written direction issued by the Commission pursuant to this Agreement.

5.5 BOI shall nominate a senior executive who shall have responsibility for monitoring compliance by it with this Agreement, for responding to any request(s) for information and for complying with any written direction(s) received from the Commission in connection with this Agreement.

5.6 BOI shall provide the name and contact details of such senior executive to the Commission and shall provide written notice to the Commission in advance of any change of the senior executive nominated pursuant to clause 5.5 of this Agreement and shall promptly provide to the Commission the name and contact details of any senior executive who is to replace the prior nominated senior executive.

5.7 This Agreement shall come into effect on the Determination Date. This Agreement shall, however, cease to apply if completion of the Proposed Transaction does not occur and BOI has informed the Commission of such occurrence. For the avoidance of doubt, insofar as Funding has been provided pursuant to the Funding Commitment and completion does not occur, such Funding as has been provided will remain in place according to the relevant terms but no additional Funding will be provided pursuant to this Agreement.

6 **Review Clauses**

6.1 The Commission may at its sole discretion waive any provision in this Agreement of its own motion at any time, subject to consultation with BOI.

6.2 The Commission may at its sole discretion waive or modify any provision in this Agreement in response to a reasoned written request from BOI.

6.3 Nothing in this Agreement shall convey any rights upon any person or entity which is not a party to this Agreement.

Dated ____ May 2022

SIGNED for and on behalf of
THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND, by its duly authorised representative

Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission