



# DETERMINATION OF MERGER NOTIFICATION M/21/040 – AIB/ CERTAIN ASSETS OF ULSTER BANK

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## Section 21 of the Competition Act 2002

The proposed acquisition by Allied Irish Banks, p.l.c. of certain assets of Ulster Bank Ireland DAC.

Dated: 31 December 2021

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### Introduction

1. On 30 July 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 notification of the proposed transaction whereby Allied Irish Banks, p.l.c. (“AIB”) would acquire certain assets, consisting of a portfolio of performing commercial loans, of Ulster Bank Ireland DAC (“Ulster Bank”) (the “Proposed Transaction”).

### The Proposed Transaction

2. AIB, Ulster Bank and NatWest Holdings Limited (as guarantor of Ulster Bank's obligations) (the “Parties”) entered into two mortgage sale deeds (the “MSDs”),<sup>1</sup> dated 28 June 2021, which contain the key commercial terms of the Proposed Transaction. Ancillary to the MSDs, the Parties have concluded an [...], also dated 28 June 2021, to govern [...].
3. The MSDs also provide for the transfer of approximately [250–300] of Ulster Bank employees (“Anticipated Employees”) to AIB, under the European Communities Transfer of Undertakings Regulations 2003 (the “TUPE Regime”).
4. In sum, the MSDs with the [...] provide for the transfer to AIB of Ulster Bank’s rights, interests, obligations and benefits, with respect to Ulster Bank loans to corporates businesses, largely consisting of small and medium sized enterprises (“SMEs”) and larger corporates (the “Target Assets”). The rights and benefits to the Target Assets and the associated terms and conditions relating to such Target Assets are comprised in the following types of documentation:
  - i. underlying loan or facility agreements (or any similar documents evidencing the relevant financial accommodation) that govern each borrower's obligations to Ulster Bank (including ancillary rights and claims), and,

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<sup>1</sup> [...].



- ii. security documents that establish the security a borrower agrees to provide (e.g., a mortgage), as well as any other related documents and rights held by Ulster Bank in relation to the Target Assets.
5. According to the merger notification, the Proposed Transaction is structured as an [...]. This means that, following the Proposed Transaction, [...].
6. Following the implementation of the Proposed Transaction, AIB will hold the rights, claims and obligations associated with the Target Assets and thus, have sole control over the Target Assets.

### **The Undertakings Involved**

#### *The Acquirer - AIB*

7. AIB is a direct subsidiary of AIB Group P.L.C. (“AIB Public”), a public limited company incorporated in the State and listed on the Irish Stock Exchange. AIB Public and its subsidiaries (the “AIB Group”) provide a range of banking products and services to personal, business and corporate customers in the State and the United Kingdom. In the State, the AIB Group provides two types of banking products and services:
  - i. Retail Banking - includes mortgages, consumer lending, small and medium-sized enterprise lending, asset-backed lending, wealth management and daily banking; and,
  - ii. Corporate, Institutional and Business Banking - includes specialised finance, commercial finance, syndicated finance and corporate finance advisory services. In addition, the AIB Group provides private banking services and advice to corporate clients.
8. The AIB Group also participates in international syndicated finance transactions through teams based in New York and Dublin.
9. For the financial year ending 31 December 2020, AIB Group’s worldwide turnover was €2,373 million of which €1,946 million was generated in the State.

#### *The Seller - Ulster Bank*

10. Ulster Bank is a wholly-owned subsidiary of NatWest Group plc. Ulster Bank is a full-service retail and commercial bank, with 1.1m customers in the State. Ulster Bank’s business is formed of two distinct divisions: retail banking and corporate and commercial banking.

#### *The Target Assets - Ulster Bank Assets and Anticipated Employees*

11. According to the MSDs, the Target Assets include the following variety of credit products of Ulster Bank:
  - i. [...];
  - ii. [...];
  - iii. [...];
  - iv. [...];



- v. [...];
  - vi. [...];
  - vii. [...];
  - viii. [...];
  - ix. [...];
  - x. [...];
  - xi. [...];
  - xii. [...]; and,
  - xiii. [...].
12. AIB will not acquire current or deposit accounts of commercial customers of Ulster Bank as part of the Proposed Transaction.<sup>2</sup> In addition, the following corporate loan assets of Ulster Bank are not transferring to AIB:
- i. non-performing loans, being any loan that was non-performing as at 31 December 2020;
  - ii. loans to certain smaller SMEs, being any of Ulster Bank's retail / personal banking assets or liabilities, nor any loans provided by Ulster Bank's business direct franchise (i.e. to SMEs with less than €2 million annual turnover);<sup>3</sup>
  - iii. loans not meeting environmental, social and corporate governance ("ESCG") standards, being, loans that do not comply with AIB'S ESCG standards;
  - iv. any freehold or leasehold property of Ulster Bank - no branches, agencies, cash centres, or call centres;
  - v. any Ulster Bank intellectual property rights, IT platforms, or goodwill; and,
  - vi. credit card facilities and leasing.
13. For the financial year ending 31 December 2020, the Target Assets generated worldwide turnover of [...], all of which was generated in the State.
14. Regarding the Anticipated Employees, the Parties submit that, while the final number of employees to transfer may vary somewhat,<sup>4</sup> it will likely involve:
- i. [...];
  - ii. [...];<sup>5</sup>
  - iii. [...]; and,
  - iv. [...].
15. In terms of the Proposed Transaction, the transfer of the Anticipated Employees will occur automatically by operation of law in accordance with the TUPE Regime and without the need for action or agreement on the part of the Parties.

## Investigation

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<sup>2</sup> [...].

<sup>3</sup> [...].

<sup>4</sup> Employees can exercise rights not to transfer to AIB.

<sup>5</sup> [...].



16. On 9 September 2021, the Commission served a Requirement for Further Information (“RFI”) on AIB, pursuant to section 20(2) of the Act. On 14 September 2021, the Commission issued an information request to Ulster Bank. The service of the RFI adjusted the deadline within which the Commission had to inform the notifying parties of the determination the Commission had made in respect of the Proposed Transaction in Phase 1. Upon compliance with the RFI, the “appropriate date” (as defined in section 19(6)(b)(i) of the Act) became 23 November 2021.<sup>6</sup>
17. During the Phase 1 investigation, the Commission requested and received further information and clarifications from the Parties. The Commission also engaged with third parties in relation to its assessment of the competitive effects of the Proposed Transaction. The third-party engagements consisted of market enquiries which included sending questionnaires to competitors, customers, regulators and other industry stakeholders. In some cases, the Commission also contacted third parties by telephone and/or e-mail to seek further details regarding their responses.

### **Analysis**

18. The Commission is unable, at this stage, to make a determination that the result of the Proposed Transaction will not be to substantially lessen competition in any market for goods or services in the State. Accordingly, it intends to carry out a full investigation under section 22 of the Act in relation to the Proposed Transaction.

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<sup>6</sup> The “appropriate date” is the date from which the time limits for making both Phase 1 and Phase 2 determinations begin to run.



### **Determination**

The Competition and Consumer Protection Commission, in accordance with section 21(2)(b) of the Competition Act 2002, as amended (the “Act”), has determined that it intends to carry out a full investigation under section 22 of the Act in relation to the proposed transaction whereby Allied Irish Banks, p.l.c. would acquire certain assets, consisting of a portfolio of performing commercial loans, of Ulster Bank Ireland DAC.

For the Competition and Consumer Protection Commission

**Brian McHugh**  
**Member**  
**Competition and Consumer Protection Commission**