DETERMINATION OF MERGER NOTIFICATION M/21/040 AIB / CERTAIN ASSETS OF Ulster Bank

28 April 2022

CCPC

Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí

Competition and Consumer Protection Commission

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1. INTRODUCTION

Introduction

1.1 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 a proposed transaction whereby Allied Irish Banks, p.l.c. ("AIB") would acquire certain assets, consisting of a portfolio of performing commercial loans ("Target Assets"), of Ulster Bank Ireland DAC ("Ulster Bank") (the "Proposed Transaction").

The Proposed Transaction

1.2 On 28 June 2021, AIB, Ulster Bank and NatWest Holdings Limited ("NatWest") (as guarantor of Ulster Bank's obligations) (the "Parties") entered into two mortgage sale deeds (the "MSDs"),[1] which contain the key commercial terms of the Proposed Transaction. Ancillary to the MSDs, the Parties have also concluded an […].

1.3 The MSDs also contain terms that govern the arrangement for the transfer of approximately [250-300] Ulster Bank employees ("Anticipated Employees") to AIB. According to the Merger Notification Form, the Anticipated Employees are expected to transfer by operation of law, from Ulster Bank to AIB, under the European Communities Transfer of Undertakings Regulations 2003 (the "TUPE Regime").[2]

1.4 The Merger Notification Form states that the MSDs provide, in sum, for the transfer to AIB of Ulster Bank's rights, interests and benefits, with respect to the Target Assets, in: (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 (ii) security documents that establish the security a borrower agrees to provide (e.g., a mortgage), as well as any other

[1] There are two MSDs because one MSD is for assets that are security backed and another MSD is for those that are not security backed.
[2] See paragraph 14 on page 6 of the notification ("Merger Notification Form").

related documents and rights held by Ulster Bank in relation to the Target Assets ("Loan Agreements").[3]

1.5 According to the Merger Notification Form, the Proposed Transaction is structured as […].[4] This means that, following the Proposed Transaction, […].

1.6 Following the implementation of the Proposed Transaction, AIB will hold the rights, interests, obligations and benefits with respect to the Target Assets and thus, have sole control over the Target Assets.

The Undertakings Involved

The Acquirer - AIB

1.7 AIB is a direct subsidiary of AIB Group P.L.C. ("AIB Public"), a public limited company incorporated in the Republic of Ireland (the "State") and listed on the Irish Stock Exchange. AIB Public and its subsidiaries, which includes AIB (collectively 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:

(a) Retail Banking - includes mortgages, consumer lending, small and medium-sized enterprise lending, asset-backed lending, wealth management and daily banking; and,

(b) 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.

1.8 The AIB Group also participates in international syndicated finance transactions through teams based in New York and Dublin.

[3] See paragraph 10 on page 5 of the Merger Notification Form.
[4] See paragraph 11 on page 5 of the Merger Notification Form.

1.9 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

1.10 Ulster Bank is a wholly-owned subsidiary of NatWest Group plc ("NatWest Group").[5] Ulster Bank is a full-service retail and commercial bank, with 1.1 million customers in the State. Ulster Bank's business is formed of two distinct divisions: retail banking and corporate and commercial banking.

The Target Assets – Certain Assets of Ulster Bank

1.11 According to the MSDs, the Target Assets include the following variety of credit products of Ulster Bank:[6]

(a) […];

(b) […];

(c) […];

(d) […];

(e) […];

(f) […];

(g) […];

(h) […];

(i) […];

[5] NatWest Group plc was previously called RBS Group plc, and changed to its current name in July 2020. See: https://www.rbs.com/rbs/about/update-on-parent-name.html and https://www.ulsterbank.ie/globals/about-us/corporate-information.html.

[6] See paragraph 53 on page 16 of the Merger Notification Form, clause 2 on page 27 of the MSD A dated 28 June 2021 and clause 2 on page 27 of the MSD B. Defined terms are as they appear in the MSDs. In addition, paragraph 55 on page 16 of the Merger Notification Form states that *"The Loan Book also includes a small number of personal loans to persons connected with business customers (e.g. directors, shareholders, partners of business customers of Ulster Bank)."*

(j) […];

(k) […];

(l) […]; and,

(m) […].

1.12 AIB will not acquire current[7] or deposit accounts of commercial customers of Ulster Bank as part of the Proposed Transaction.[8] In addition, the following [...] assets of Ulster Bank are not transferring to AIB:[9]

(a) non-performing loans, being any loan that was non-performing as at 31 December 2020;

(b) loans provided by Ulster Bank's business direct unit, i.e. loan to businesses with less than €2 million annual turnover;

(c) loans not meeting environmental, social and corporate governance ("ESCG") standards, being loans that do not comply with AIB'S ESCG standards;

(d) any freehold or leasehold property of Ulster Bank - no branches, agencies, cash centres, or call centres;

(e) any Ulster Bank intellectual property rights, IT platforms, or goodwill; and,

(f) credit card facilities and leasing.

1.13 For the financial year ending 31 December 2020, the Target Assets generated worldwide turnover of €[…], all of which was generated in the State.

[7] Note that the On-Boarding Agreement provides for a situation where Ulster Bank customers that have overdraft could open current account with AIB to facilitate the transfer of the facility. In this regard, AIB will not acquire current accounts of those customers but the customers will have to decide to open accounts with AIB. Specifically, according to Clause 10 of Schedule 2 of the On-Boarding Agreement, borrowers with an overdraft facility with Ulster Bank will be advised that their overdraft facility is part of the Target Assets and that the borrower needs to open a current account with AIB if they wish to continue to use the overdraft facility once it has transferred to AIB. The borrowers will be given the choice to refinance with another provider.
[8] See paragraph 60 on page 17 and 18 of the Merger Notification Form.
[9] See paragraph 56 of page 16 of the of the Merger Notification Form.

1.14 According to the Merger Notification Form, approximately [250-300] Ulster Bank employees are expected to transfer by operation of law from Ulster Bank to AIB under the TUPE Regime. Furthermore, the Merger Notification Form states that while the final number of employees to transfer may vary somewhat, it will likely involve:[10]

(a) […];

(b) […];

(c) […]; and,

(d) […].

Rationale for the Proposed Transaction

1.15 AIB have stated the following in the Merger Notification Form:[11]

> *"The Proposed Transaction will allow AIB to utilise excess capital on its balance sheet to improve earnings, while allowing AIB to provide a smooth transition to a lender with a good track record for Ulster Bank customers in the context of NatWest's announced exit from the State."*

Preliminary Investigation ("Phase 1")

Contacts with the Undertakings Involved

1.16 On 9 September 2021, the Commission served a requirement for further information ("RFI") on AIB ("AIB Phase 1 RFI"), pursuant to section 20(2) of the Act. On 14 September 2021, the Commission issued an information request to Ulster Bank ("Ulster Bank Phase 1 Information Request"). The service of the AIB Phase 1 RFI adjusted the deadline within which the Commission had to inform the notifying party of the determination the Commission had made in respect of the Proposed Transaction in Phase 1.

[10] See paragraph 15 on page 6 of the Merger Notification Form, which indicates that employees can exercise rights not to transfer to AIB.
[11] See paragraph 34 on page 11 of the Merger Notification Form.

1.17 Upon compliance with the AIB Phase 1 RFI, the “appropriate date” (as defined in section 19(6)(b)(i) of the Act) became 23 November 2021.

1.18 During the Phase 1 investigation, the Commission requested and received, on an ongoing basis, further information and clarifications from AIB, Ulster Bank and NatWest.

Third Party Submissions

1.19 No third party submissions were received during the Phase 1 investigation.

Market Enquiries

1.20 During the Phase 1 investigation, the Commission sent questionnaires to, and conducted calls with, various third parties, including:

(a) 57 parties identified […] as competitors (“the competitors”), classified as domestic banks,[12] foreign banks,[13] non-banks,[14] a passporting bank,[15] and potential new entrants;[16]

(b) 208 parties identified by AIB and Ulster Bank as customers (the “customers”) (the “Customer Questionnaire”); and,

[12] These are: The Governor and Company of the Bank of Ireland (“Bank of Ireland”), Permanent TSB P.L.C. (“Permanent TSB”), and, KBC Bank Ireland plc (“KBC”).

[13] These are: Barclays International Financial Services (Ireland) Limited (“Barclays”), BNP Paribas S.A. (“BNP Paribas”), Citibank Investment Services Ireland Limited , Close Brothers Limited (“Close Brothers”), Coöperatieve Rabobank U.A. (“Rabobank”), Danske Bank A/S, Deutsche Bank/DB Ireland Public Limited Company, Goldman Sachs Bank Europe SE (“Goldman Sachs”), HSBC Ireland (Holdings) Public Limited Company (“HSBC”), ING Bank N.V., Intesa Sanpaolo Bank Ireland Public Limited Company, Investec Bank PLC (“Investec”), JP Morgan Bank Luxembourg (“S.A.”) (“JP Morgan”), Macquarie Unlimited Company, The bank of Nova Scotia (“Scotia”), Wells Fargo Global Fund (Ireland) Limited (“Wells Fargo”), Bank of America Custodial Services (Ireland) Limited (“Bank of America”) and Bank of Montreal Europe Public Limited Company.

[14] These are: Bibby Financial Services (Ireland) Limited (“Bibby”), Bluestone Investments Limited, Bridge and York Capital Partners, CapitalFlow Commercial Finance (“Capitalflow”), Enterprise Ireland, Finance Ireland Credit Solutions Designated Activity Company (“Finance Ireland”), First Citizen Finance Designated Activity Company (“First Citizen”), Flender Ireland Limited (“Flender”), Grenke Finance Limited Company (“Grenke”), Grid Finance Impact Limited (trading as GRID Finance) (“GRID Finance”), Invoice Fair Limited, Linked Finance is a trading name of Linked P2P Limited (“Linked Finance”), Proventus Renewable Public Limited Company (“Proventus”), SME Finance and Leasing Solutions DAC (“SME Finance”), UBS Group AG (“UBS”), Activate Capital Limited, Allianz Ireland Limited, Bain Capital (Ireland) Limited (“Bain Capital Credit”), Blackstone Inc., Cardinal Capital Group UC (“Cardinal Capital”), Cerberus Capital Management, L.P, Dunport Capital Management DAC (“Dunport”), Kernel Management Partners Limited, trading as Kernel Capital, Lone Star Laon Company, M&G Managed European Loan Fund Limited (“M&G”), BDO Development Capital Fund, Atlantic Bridge II Limited Partnership, Muzinich & Co (Ireland Limited”) (“Muzunich”), Lotus Investment Group, Castlehaven Finance Limited (“Castlehaven”), Beechbrook Capital LLP (“Beechbrook”), and, Beach Point Capital (Ireland) DAC (“Beach Point”).

[15] Bankinter S.A. (“Bankinter”).

[16] These are: N26 GmbH (“N26”), Revolut Limited, and, Starling Bank Limited (“Starling Bank”).

(c) The Irish League of Credit Unions.

1.21 The Commission received responses from the majority of the competitors to whom it sent a questionnaire ("Competitor Questionnaires") as follows: for domestic banks (100%),[17] for foreign banks (85%),[18] non-banks (44%),[19] passporting bank (100%)[20] and potential entrants (100%).[21] In some cases, the Commission also contacted those competitors by telephone and/or email to clarify and/or seek further detail in relation to their responses.

1.22 The Commission received responses from 41%[22] of the customers to whom it sent a questionnaire. In some cases, the Commission also contacted those customers by telephone and/or email to clarify and/or seek further detail in relation to their responses.

1.23 The Commission did not receive a response from the Irish League of Credit Unions.

1.24 Additionally, the Commission engaged with several industry stakeholders including the Irish Assets & Invoice Finance Association ("IAIFA") and the Central Bank of Ireland (the "CBI").

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 31 December 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.

[17] 3 out of 3.
[18] 8 out of 15.
[19] 12 out of 27.
[20] 1 out of 1.
[21] 1 out of 3.
[22] 87 of 208.

Full Investigation ("Phase 2")

Third Party Submissions

1.27 No third-party submissions were received during the Phase 2 investigation.

Market Enquiries

1.28 During the Phase 2 investigation, the Commission sent questionnaires and followed up with some competitors[23] requesting copies of data they supply to the CBI.

1.29 The Commission received a response from the majority of the competitors to whom it sent a Phase 2 questionnaire (86%).[24] In some cases, the Commission also contacted those competitors by telephone and/or email to clarify and/or seek further detail in relation to their responses.

1.30 The Commission also conducted calls and sent questionnaires to 30 customers of Ulster Bank (the "Phase 2 Customer Questionnaire");[25]

1.31 The Commission received responses from the majority (70%) of customers to whom it had sent the Phase 2 Customer Questionnaire.[26]

1.32 Additionally, the Commission engaged with the CBI and the Department of Finance.

Information Sources Relied Upon

1.33 During the Phase 2 investigation, the Commission continued the process initiated during the Phase 1 investigation of seeking the views of, and engaging with, third parties in relation to the effects on competition of the Proposed Transaction, including competitors, industry stakeholders, and customers. Relevant third-party views are also referenced appropriately.

1.34 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

[23] These are: Bank of Ireland, Capitalflow, BNP Paribas, Citibank, Danske, Rabobank, and Wells Fargo.
[24] 6 out of 7.
[25] These are: […].
[26] 21 out of 30.

Determination, including information provided in response to the AIB Phase 1 RFI, Ulster Bank Phase 1 Information Request and information obtained from third parties and other information available in the public domain. The Commission also relied on information submitted in response to a request for information served on AIB pursuant to section 20(2) and 22(4A) of the Act (the "AIB Phase 2 RFI") and an information request served on Ulster Bank (the "Ulster Bank Phase 2 Information Request").[27]

1.35 During the Phase 2 investigation, the Commission also sought expert economic advice and analysis from Dr Christian Koboldt of DotEcon Limited and Dr Steven Tokar.[28] The advice is incorporated into the Commission's analysis of the Proposed Transaction and, although the Commission benefitted from expert advice, the Commission alone is responsible for the views expressed in this Determination.

Contacts with the Undertakings Involved

1.36 During the Phase 2 investigation, the Commission requested and received, on an ongoing basis, further information and clarifications from AIB, Ulster Bank and NatWest.

1.37 On 28 January 2022, the Commission served the AIB Phase 2 RFI. On 2 February 2022, the Commission served the Ulster Bank Phase 2 Information Request. The issuance of the AIB Phase 2 RFI adjusted the deadline by which the Commission was required to furnish its written Determination, of the Proposed Transaction, to the notifying party (as per section 22(4)(a) of the 2002 Act) in Phase 2.[29]

1.38 Ulster Bank provided its response to the Ulster Bank Phase 2 Information Request on 26 February 2022. AIB provided its response to the AIB Phase 2 RFI on 21 March 2022.

[27] See paragraph 1.37 for dates when the information request was issued by the Commission.
[28] Dr Katharina Sailer of Economic Consulting and Data Analysis Limited was appointed as project manager.
[29] The service does suspend the assessment period.

1.39 The service of the AIB Phase 2 RFI does not adjust the "appropriate date" (as defined in section 19(6)(b)(i) of the Act) and therefore the appropriate date is still 23 November 2021.

2. INDUSTRY BACKGROUND

2.1 The Parties are both active in the provision of business lending in the State. This chapter provides an overview of the provision of business lending in the State, focusing on, in particular, (a) Customers of Business Lending; (b) Competitors; (c) Role of Relationship Management; (d) Pricing; (e) Role of Government, ownership and credit supply; (f) Barriers to entry and switching costs; and (g) Countervailing Buyer Power.

Customers of Business Lending

2.2 The customers of business lending span the entire range of sectors and size categories ranging from sole traders, to Small and Medium Enterprises ("SME"), to large corporates in the economy. The Commission is using the EU Commission definition of SMEs which is *"enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million"*.[30] The definition of SMEs is segmented into Micro-enterprises, which are defined as enterprises that employ fewer than 10 persons and whose annual turnover or annual balance sheet total does not exceed €2 million; Small enterprises which are defined as enterprises that employ fewer than 50 persons and whose annual turnover or annual balance sheet total does not exceed €10 million; and Medium-sized enterprises which are defined as enterprises that employ fewer than 250 persons and either have an annual turnover that does not exceed €50 million, or an annual balance sheet not exceeding €43 million.

2.3 The purpose of a loan, i.e., the reason it is required, can broadly be divided into working capital requirements and investment funding. Working capital loans are used to finance a business's day-to-day operations and include the following: overdrafts, short term working capital loans, and invoice finance. Investment funding includes capital expenditure finance, and finance for acquisition or funding organic growth.

[30] European Commission, 'Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises'.

2.4 The purpose of the loan can influence the term of the loan required, with term lengths of less than one year generally considered short-term.[31] Secured loans, those which are backed by an asset, such as property, generally have lower interest rates and/or fees in comparison to unsecured lending (for example, overdrafts).[32]

2.5 Both the form of security required to secure the loan, together with the purpose of the loan, influence the type of loan a business will seek and may be offered. The size of the business and the sector in which it operates may also influence both the type of loan a business will seek and be offered. Market intelligence indicates that businesses typically use more than one lending product.[33]

2.6 The Parties indicated that multi-homing was also a feature of the commercial banking sector. They informed the Commission that it was particularly prevalent for large corporate customers and institutional borrowers, but was also a feature for SMEs.[34]

2.7 Some of the lending products which comprise the Target Assets are typically associated with funding a company's working capital requirements, such as invoice finance, overdrafts and documentary credit and guarantees; while others are typically associated with investment funding, such as general purpose business loans ("GPLs").[35] GPLs, invoice finance, overdrafts and documentary credit and guarantees have differences in terms of their characteristics, usage, pricing, and/or the set of providers which supply them. More details are provided in Chapter 3.

2.8 The Department of Finance has indicated that a low demand for credit has been a consistent feature of the Irish SME environment in recent years as evidenced by its

[31]See https://www.centralbank.ie/docs/default-source/statistics/data-and-analysis/financial-accounts/financial-accounts-data/notes-on-compilation.pdf?sfvrsn=6.

[32] See https://businessbanking.bankofireland.com/credit/business-loans/business-loan/features-and-benefits/.

[33] Ipsos MRBI's Survey of SMEs found that almost half, (47%), of medium sized enterprises (turnover €10m - €15m) had a loan and of those almost half (49%) had more than one loan. Note that loans, here, excludes overdrafts, credit cards, leasing/contract hire & commercial mortgages.

[34] Multi-homing is where business customers use more than one financial provider for their banking or business lending needs. From paragraphs 261 and 264 on pages 75-76 of the Merger Notification Form. AIB was aware of multi-banking by at least […]% of its customers within its corporate banking division. AIB said that, for a sample SMEs who have their main current account with one of the main Irish banks, between […]% and […]% have taken out their main loan with a different provider, including non-bank lenders.

[35] Note that some GPLs can also be used for working capital purposes, those of a short-term nature.

SME Credit Demand Survey.[36] The SME Credit Demand Survey Report April - September 2021 shows that credit demand for SMEs has been on a downward trend from 2012 to date, with only 17% of surveyed businesses seeking credit in the assessed 2021 period.[37] Predicted credit demand among the surveyed businesses was also low, with only 7% predicting that they would seek bank finance in the next six months.[38] A key reason provided for this low level of demand for credit is that businesses use their own funds instead of loans where possible.[39]

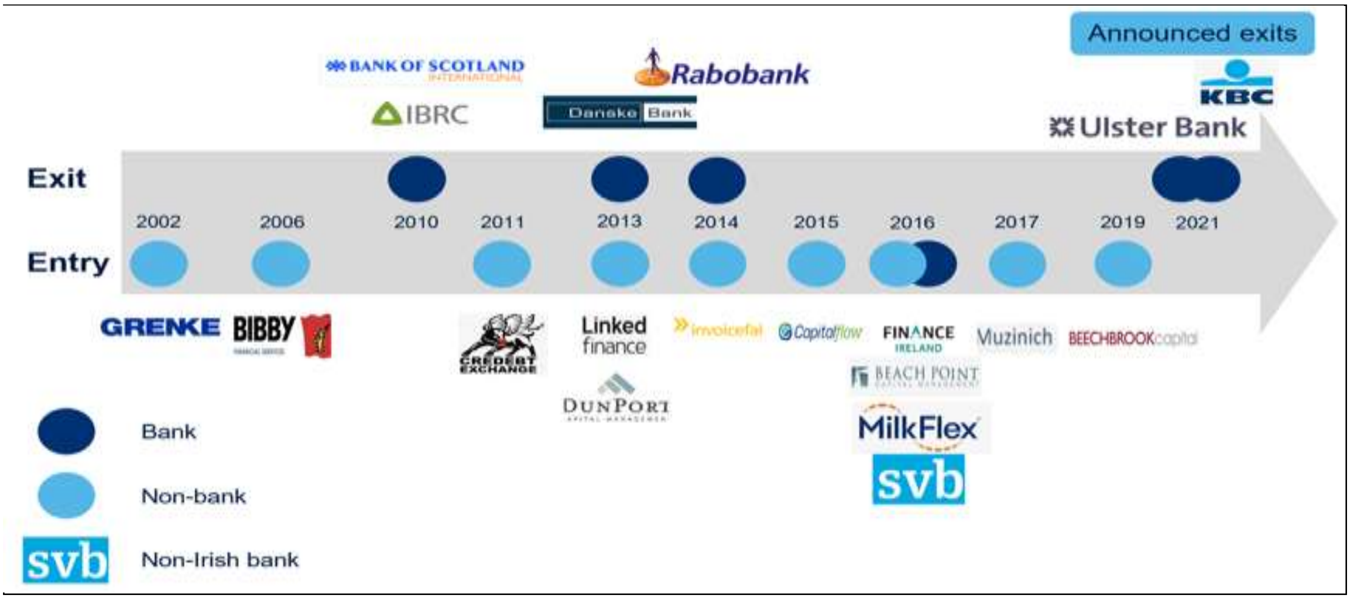
Providers of Commercial Lending in the State

2.9 In this section the Commission provides an overview of the banks active in commercial lending in the State followed by an overview of the role of non-banks in commercial lending.

2.10 Firstly, Figure 1 below, which was provided by the Parties, provides examples of entry and exit since 2002. Note the examples include both banks and non-banks.

[36] The Department of Finance's response to questionnaire, including the Department of Finance's SME Credit Demand Survey April-Sept 2021.
[37] ibid page 30.
[38] ibid page 31.
[39] The Department of Finance also noted that Government supports available for businesses during COVID-19 restrictions also played a role in low levels of demand for credit.

Figure 1: Examples of entry and exit in provision of lending to Irish businesses[40]



Source: The Merger Notification Form, Figure 1, page 27

Banks Active in Commercial Lending in the State

2.11 Focusing initially on banks active in the State, the Commission observes that they typically compete across a wide spectrum of lending products. For the purposes of this analysis it is useful to consider the differences in their customer focus:

(a) **Pillar Banks**, consisting of Bank of Ireland, and the two parties to the Proposed Transaction, AIB and Ulster Bank, cover lending to all types of businesses regardless of turnover size;

(b) **Retail Banks**, consisting of Permanent TSB and KBC, primarily cater to retail (i.e., non-business) customers but also serve SMEs, with a focus on the smaller sized businesses; and

(c) **International Banks**, such as Barclays, BNP Paribas, HSBC, Bank of America, Citibank, Danske Bank and Rabobank, focus on medium and large corporates with a high turnover and with an international outlook.[41] They may be sector focused (e.g.,

[40] See Figure 1 on page 27 of the Merger Notification Form. See also paragraph 249.
[41] Businesses larger than SMEs as defined in paragraph 2.2.

Rabobank, which focuses on agriculture), or more general with no particular sector focus, (e.g., Barclays).

2.12 A brief overview of the main banks providing commercial lending in the State, other than the AIB and Ulster Bank, is provided immediately below.[42]

Bank of Ireland

2.13 Bank of Ireland is one of the largest financial services groups in Ireland. It provides a broad range of banking and other financial services. In the State, Bank of Ireland is active in retail banking, wealth and insurance, and corporate banking.

2.14 Bank of Ireland provides the full range of commercial lending products and services in the State and is is one of the pillar banks in the State.

2.15 Bank of Ireland operates in the supply of business lending through a number of distribution channels including brokers, branch network, by telephone and online. AIB also noted that, when considering incumbent banks, it considers Bank of Ireland to be […].[43] Bank of Ireland also serves commercial customers through relationship managers.

Permanent TSB

2.16 Permanent TSB is a provider of retail and SME banking products and services in the State, and is one of Ireland's longest established financial services institutions. In terms of commercial lending, Permanent TSB focuses on micro and smaller SMEs. Permanent TSB informed the Commission that they recently extended their loan product offering through partnership with the Strategic Banking Corporation of Ireland ("SBCI"). Permanent TSB launched the SBCI Future Growth Loan Scheme in November 2020 and recently launched the SBCI Brexit Impact Loan Scheme in Q.1

[42] A description of the Parties is provided in Chapter 1.
[43] See […].

2022. In January 2022, Permanent TSB announced an expansion of its SME business with a new €1 billion loan fund to be deployed over the next three years.[44]

2.17 On 22 December 2021, the Commission was notified of a proposed acquisition by Permanent TSB of certain assets of Ulster Bank, consisting of among other assets, Ulster Bank's microenterprise and asset finance businesses, which is currently under review by the Commission.[45]

KBC Bank

2.18 KBC bank is the fifth largest retail bank in the State, having entered into the retail banking sector in 2012.

2.19 KBC Bank primarily caters to personal customers, but also serves SMEs with a focus on the micro and smaller SMEs in niche target segments such as professionals in the medical, financial, legal and property services sector. On 13 January 2022, KBC announced that it had entered into a legally binding agreement with Bank of Ireland, whereby Bank or Ireland would acquire all of KBC Bank Ireland's performing loans (including commercial loans).[46] This transaction was cleared by the Commission subject to legally binding commitments on 23 May 2022.[47] In June 2019, KBC announced that it had sold its legacy performing corporate loan portfolio of roughly €260 million to Bank of Ireland.[48]

International Banks

2.20 There are a number of international banks active in the business lending sector in the State.

[44] See the following link: Permanent TSB in major expansion of SME business with new €1 billion loan fund to be deployed over the next three years.
[45] See https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m-21-076-ptsb-certain-assets-of-ulster-bank/.
[46] https://www.kbc.ie/business/important-update-from-kbc-bank-ireland-business-banking.
[47] https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m-21-021-bank-of-ireland-certain-assets-of-kbc/.
[48] https://www.kbc.ie/-/kbc-bank-ireland-closes-sale-of-legacy-corporate-loan-portfolio-to-bank-of-ireland.

2.21 In the Merger Notification Form, AIB indicates that it competes with the international banks only in relation to the supply of finance to larger corporate customers.[49] This was supported by correspondence from third parties:

(a) HSBC stated that it does not provide business lending to […] in the State.[50]

(b) BNP Paribas stated that whilst it has a longstanding presence in Ireland, its activity in the business lending sector is orientated towards Irish corporates, subsidiaries of BNP Paribas' international clients, financial institutions and institutional investors.[51]

(c) Barclays stated that it does not provide business banking services for businesses with consolidated revenues of less than €[…].[52]

(d) Rabobank stated that it has a very specialised business lending practice in Ireland, only offering services to […] in the Food and Agriculture sector.[53]

Non-bank Lenders Active in Business Lending in the State

2.22 There are a variety of non-bank lenders active in business lending in the State. Ulster Bank submitted that non-bank lenders are "*able to enter the market at very low cost, and grow their market share quickly, and usually develop a deep expertise in one or more lending product lines*".[54] Non-bank lenders do not provide the full range of products and services available from a licensed bank and tend to specialise either by product, such as invoice finance, or by customer size.[55] For example, Grenke only provides invoice finance and asset finance, while Bibby provides invoice finance and trade finance. Cardinal Capital, Castlehaven, RELM and Activate Capital are only active in lending for commercial real estate ("CRE"). Capitalflow is active in both invoice and asset financing, as well as CRE financing. Non-bank lenders offering financing to SMEs

[49] See Confidential Annex 8 of the Merger Notification Form.
[50] See the note of the call between HSBC and the Commission, dated 29 October 2021.
[51] See the response of BNP Paribas to question 1 of the Competitor Questionnaire, dated 8 October 2021.
[52] See the response of Barclays to question 1 of the Competitor Questionnaire, dated 1 November 2021.
[53] See the response of Rabobank Dublin to question 9 of the Competitor Questionnaire, dated 14 October 2021.
[54] See paragraph 5 of the response to the Ulster Bank Phase 2 Information Request, dated 25 February 2022.
[55] CBI, 'Behind the Data: the role of non-bank lenders in financing Irish SMEs.' Available at: https://www.centralbank.ie/statistics/statistical-publications/behind-the-data/the-role-of-non-bank-lenders-in-financing-irish-smes

in the State include Dunport, Bain Capital Credit, Muzinich, Beechbrook, Finance Ireland and Proventus.

2.23 Generally, non-bank lenders provide funding at higher interest rates than those of the pillar banks, and provide funding to customers that banks may not be interested in due to, perhaps, risk appetite.[56] This view is supported by non-bank lenders such as […] and […].[57]

2.24 The Parties told the Commission that the products and services acquired by business customers from non-bank lenders often sit alongside services acquired from a customer's relationship bank,[58] which is a situation that "*works very well for some (but not all) customers*."[59] This means that businesses, even if they acquire lending from a non-bank lender, will almost always have a relationship with a bank for at least some of their financial services.

2.25 Non-bank lenders are, however, considered an important source of finance to SMEs in Ireland, having granted new loans totalling a value of €1.6 billion to Irish SMEs in 2020.[60] Non-bank lenders provide increased choice for borrowers, particularly in market segments underserved by other lenders.[61] The CBI states that non-bank lenders' *"...position as a key part of the SME funding ecosystem was demonstrated by the inclusion of non-bank lenders in the government's COVID-19 Credit Guarantee Scheme, as well as by participation in the range of SBCI loan schemes over the past decade."*[62]

Role of Relationship Managers in Business Lending

[56] CBI, 'Behind the Data: the role of non-bank lenders in financing Irish SMEs', citing Cherneko et al, 2019; Tsuruta, 2010; Denis and Mihov, 2003; Carey at al. 1998 "*There is evidence that banks and non-bank lending can have different risk profiles*". Available at https://www.centralbank.ie/statistics/statistical-publications/behind-the-data/the-role-of-non-bank-lenders-in-financing-irish-smes
[57] From page 2 of the note of the call between […] and the Commission dated 11 February 2022 *"from a borrower's perspective the primary difference between funds [meaning a non-bank lender, such as […] and banks providing finance is that funds tend to provide a higher level of debt, work quicker but […]."* And from page 2 of the note of the call between […] and the Commission, dated 19 December 2021 "*[…]*".
[58] See paragraph 5 of the response to the AIB Phase 1 RFI, dated 10 November 2021.
[59] ibid.
[60] CBI, 'Behind the Data: the role of non-bank lenders in financing Irish SMEs.' Available at: https://www.centralbank.ie/statistics/statistical-publications/behind-the-data/the-role-of-non-bank-lenders-in-financing-irish-smes
[61] ibid.
[62] ibid.

2.26 Most of the banks that submitted information to the Commission highlighted the importance of the role of relationship managers for their business customers.

2.27 Ulster Bank informed the Commission that:

> *"This customer-orientated model generates significant benefits and efficiencies for customers, as well as for Ulster Bank. Customers have a dedicated [relationship manager] who understands their business and acts as a customer champion within the bank, who has a more nuanced view of the customer's risk profile."*[63]

2.28 Ulster Bank also noted the following in a call with the CCPC on 11 February 2022:

> "*the Target Assets can be described as a relationship managed book, their customers are complex and have specialist needs. Ulster Bank looks at the banking relationship in its entirety, not on a product by product basis. Relationship managers build up knowledge over the years, which in turn reduces risk for the bank and helps them serve customers more easily."*[64]

2.29 These views are consistent with the Commission's findings in the course of its investigation. Ulster Bank noted that there is a difference between the degree of relationship management that is required between different categories of customers depending on their size.[65]

2.30 AIB set out its view of the significance of relationship managers in a Capital Markets Strategy document from 21 May 2021 regarding its Corporate and Institution Banking customers where it stated that […].[66] Similarly, […] noted that their business lending, outside of micro customers, is based on relationship management.[67]

2.31 Customer surveys conducted on behalf of the banks also indicate the importance of a banking relationship in determining the choice of loan provider for a business. One

[63] See the introduction of the response to the Ulster Bank Phase 2 Information Request, dated 2 February 2022.
[64] See page 2 of the note of the call between Ulster Bank/NatWest and the Commission, dated 11 February 2022.
[65] See the response to question 13 of the Ulster Bank Phase 2 Information Request, dated 25 February 2022. Ulster Bank indicate that ratio of relationship managers to customers is approximately […] for SME; […] for Mid Corporate; and […] for CRE.
[66] See slide 7 of '*Production01 – 0000025'*, dated 18 June 2021, provided as part of AIB's response to questions 1, 3, 34, and 47 to 49 of the AIB Phase 1 RFI, dated 10 November 2021.
[67] See […].

survey found that an existing banking relationship was a key driver in the choice of main loan provider, with almost 2 in 3 (64%) respondents saying that an existing banking relationship was the main driver.[68]

Pricing

2.32 Pricing of business loans is often determined on the basis of the features of the individual loan and the customer. This is particularly true for larger loan amounts and larger size customers, whereas for smaller loan amounts, there is more standard pricing. For example, AIB operates […].[69]

2.33 AIB uses a […] to set its loan pricing, which takes account of factors such as: […].[70] Ulster Bank has a similar pricing model.

2.34 Business lending products provided by non-banks are generally more expensive than those provided by banks, which may arise due to non-banks having a higher cost of funds, or due to the types of customers to whom they lend.[71] However, non-banks consider themselves to have quicker turn-around times on decisions, and potentially a higher risk appetite, than pillar banks.[72]

Role of Government – Ownership and Credit Supply

Government Shareholdings in Irish Banks

2.35 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.[73] The Shareholding Management Unit (now the Shareholding and Financial Advisory Division ("SFAD")) was created within the Department of Finance to take responsibility

[68] See slide 9 of '*AIB Large Medium Market Monitor*', dated March 2021, provided by AIB as part of the Additional Documents submission of 7 September 2021.
[69] See the response to question 9 of the AIB Phase 2 RFI, dated 9 March 2022.
[70] See paragraph 94 on page 30 of the Merger Notification Form.
[71] As indicated above in paragraph 2.23.
[72] See note of the call between […] and the Commission on 11 February 2022, and the note of the call between […] and the Commission on 19 December 2021.
[73] https://www.audit.gov.ie/en/find-report/publications/2011/2010-annual-report-chapter-08-national-pensions-reserve-fund.pdf.

for the management of shareholdings and investments of the State in the banking sector. These include investments in AIB, Bank of Ireland and Permanent TSB.[74] As of 25 March 2022, the State held 71% of AIB's shares;[75] 4.93% of Bank of Ireland's shares;[76] and 74.92% of Permanent TSB's shares.[77] Government policy is to return the banking sector to private ownership in a phased manner that maximises the recovery value to the taxpayer.[78]

2.36 With each of AIB,[79] Bank of Ireland,[80] and Permanent TSB,[81] the State has in place Relationship Framework agreements which set out the relationship between the Minister for Finance (the "Minister"), and that bank. Paragraph 2 of each Relationship Framework agreement acknowledges that each of the banks remains a separate economic unit with independent powers of decision-making and that its board and management teams retain responsibility and authority for determining the bank's strategy and commercial policies (including business plans and budgets) and conducting day-to-day operations.[82]

Government - Credit Supply

2.37 The SBCI was established in 2014 for the purpose of making low-cost credit available to Irish SMEs.[83] Credit is provided through on-lending partners – the State provides credit through private lending institutions, both banks and non-banks, which then lend directly to SMEs.[84] The SBCI has five categories of loans available to Irish SMEs: (i) Brexit Impact Loan; (ii) Covid 19 Guarantee Scheme; (iii) Future Growth Loan Scheme;

[74] https://www.gov.ie/en/organisation-information/f95734-the-shareholding-and-financial-advisory-division/.
[75] https://www.gov.ie/en/publication/066a28-banks/
[76] The State's Bank of Ireland stake falls below 5pc after the latest share sale - Independent.ie 24 March 2022.
[77] https://www.permanenttsbgroup.ie/who-we-are/ownership-profile
[78] https://www.gov.ie/en/publication/066a28-banks/
[79] See Relationship Framework between the Minister for Finance and AIB, dated 29 March 2012, available at: https://assets.gov.ie/5905/220119170216-48b36141fde24091b6038e380bdf53a7.pdf.
[80] See Relationship Framework between the Minister for Finance and Bank of Ireland, dated 30 March 2012, available at: https://assets.gov.ie/5902/220119165518-368886e707b94e0dbbc758784b38c9ad.pdf.
[81] See Relationship Framework between the Minister for Finance and Permanent TSB, dated 29 March 2012, available at: https://assets.gov.ie/5907/220119171401-73204346db4a45f9b88b0b4cd64066a7.pdf.
[82] The Department of Finance noted that the Minister for Finance has no role in the day-to-day commercial and operational matters of any bank operating within the State, including banks in which the State has a shareholding. See the response, dated to 28 March to the Commission questionnaire issued to the Department of Finance on 28 February 2022.
[83] The SBCI was incorporated pursuant to the Strategic Banking Corporation of Ireland Act 2014, and is wholly owned by the Ministry of Finance. The SBCI is subject to relevant European regulations, such as those governing State Aid.
[84] See https://sbci.gov.ie/.

(iv) Invoice finance; and (v) Leasing and Hire Purchase.[85] The Department of Finance explained that these schemes operate on the principle of a state-guarantee mechanism, whereby the Exchequer agrees to take on a given percentage of losses incurred by private lenders to enable competitive interest rates for borrowers that are below market rates. The Department of Finance further noted that such schemes are not specific to an individual lender: they entail an open call for expression of interest to identify and select any on-lenders in the market capable and interested in delivering such schemes.[86]

Barriers to Entry and Expansion

2.38 There appear to be substantial barriers to entry into the supply of business lending as a full-service bank serving a broad range of customer sizes and sectors and supplying a broad range of business banking and lending products. This is reflected in the age of the pillar banks, with Bank of Ireland established in 1783, Ulster Bank entering the State in 1860 and AIB forming in 1966 through the amalgamation of three existing banks.[87] These barriers include, but are not limited to, switching costs, legal and institutional barriers, regulatory and capital requirements, low profitability, and information asymmetries. Each of these barriers to entry are briefly discussed below. These barriers appear to be less substantial for those providers specialising in certain products, or sectors, or certain customer types.

Switching Costs

2.39 Switching refers to customers changing providers. In banking, business customers will frequently incur costs, whether pecuniary or the opportunity costs of their time, when they initially establish a relationship with their banking service provider. They will

[85] See https://sbci.gov.ie/.
[86] See the response, dated 28 March, to the Commission questionnaire issued to the Department of Finance on 28 February 2022.
[87] See https://www.bankofireland.com/about-bank-of-ireland/about-the-group/bank-of-ireland-history/, https://www.ulsterbank.ie/globals/about-us/corporate-information/our-history.html#:~:text=The%20Central%20Bank%20of%20Ireland%20came%20into%20being%20on%201%20February%201943, and https://aib.ie/investorrelations/about-aib/history. Also note that Permanent TSB and has been in existence, in one form or another, since 1816 and KBC entered retail banking in the State in 2012.

often, thereafter, remain 'loyal' to that institution in order to avoid incurring the same costs again, or just due to a degree of inertia.[88]

2.40 However, customers' perception of switching costs also plays an important role. Ulster Bank recognised that customers tend to expect the switching process to be difficult.[89] Also, considering the importance of the banking relationship to some customers, the loss of that relationship may be considered as a further reason not to switch, particularly for those customers which consider that they have built a beneficial relationship with a dedicated relationship manager. An Ulster Bank SME customer survey found that a small amount of SME's switched their main business operating account in the past 5 years.[90]

2.41 According to the Merger Notification Form, switching costs were relatively low.[91] However, Ulster Bank estimated that switching costs savings to customers of €[…] will result from the Proposed Transaction when compared to Ulster Bank exiting absent the Proposed Transaction. According to Ulster Bank, this latter situation is one whereby in the State, Ulster Bank, (i) ceases the provision of all new lending to both new and existing customers;[92] (ii) does not sell the Target Assets to an entity which is active, or intends to be active in the provision of business lending; (iii) terminates short term lending facilities;[93] and, (iv) for long term facilities services the loans[94] to completion without providing any new lending, or sells them to a business that does not provide business lending (such as credit servicing firms) ("Wind-Down"). Ulster Bank indicated that these saved costs were composed of bank valuation fees, bank legal fees, borrower legal fees, due diligence costs and professional fees for valuers, accountants, lawyers and corporate advisors. AIB also noted that *"Significant investment by AIB, in terms of due diligence on loan book quality and a data*

[88] Donatella Porrini and Giovanni B. Ramello, '*Competition in Banking: Switching Costs and the Limits of Antitrust Enforcement*' (2005) Law and the State: A Political Economy Approach, 358.
[89] See slide 23 of *'SME Business Proposition Debrief'*, dated 19 March 2020, submitted as a part of the response to the Ulster Bank Phase 2 Information Request dated 25 February 2022.
[90] See slide 55 of '*SME Customers Satisfaction Survey -H2 2019*', dated 1 December 2019 submitted as part of the response to questions 19, 22, and 24 the Ulster Bank Phase 1 Information Request, dated 29 October 2021.
[91] See paragraph 97 on page 30 of the Merger Notification Form.
[92] The Commission notes that Ulster Bank has already ceased the provision of lending to new customers.
[93] According to Ulster Bank this would include invoice finance, overdrafts and documentary credit and guarantees.
[94] This would include certain types of GPLs. This would be done by either itself or through an outsourced credit servicing firm.

enablement exercise to facilitate simultaneous migration of unprecedented numbers of customers, ensures Ulster Bank customers bear no migration costs whatsoever."[95] In a paper by Professor Francis O'Toole, on behalf of Ulster Bank, these savings are referred to as efficiencies of the Proposed Transaction.[96]

2.42 The Commission notes the Parties' submission referencing efficiencies. However, in this case the identified cost savings by Ulster Bank, which have not been verified by the Commission, appear to be related to a once-off elimination of switching costs for customers who will migrate to Ulster Bank as a result of the Proposed Transaction. The Commission notes that this type of unverified cost saving may not meet the efficiency test set out in chapter 8 of the CCPC's Guidelines for Merger Analysis ("the Merger Guidelines"). However, these estimates for the elimination of switching costs arising from the Proposed Transaction would indicate that switching costs in business lending may indeed be significant.

Regulatory and Capital Requirements

2.43 As a consequence of the global financial crisis, 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 whole.[97] These included the implementation of a framework for setting minimal capital requirements for banks. It has been reported that, due to the requirement to hold more capital, these policy measures impact upon the profitability of banks engaged in business lending in the State.[98]

2.44 Non-bank lenders are not subject to the same capital requirements as those faced by banks. Non-bank lenders in the EU are subject to regulatory oversight from the

[95] See the introduction of the response to the AIB Phase 2 RFI, dated 9 March 2022. See also the responses to questions 9, 63, 67 and 68.
[96] See the paper by Professor Francis O'Toole entitled *"Efficiencies: The Proposed Transaction and Wind-Down Scenarios"* submitted to the Commission on 18 March 2022.
[97] See the CBI's macro-prudential policies.
[98] See the Banking and Payments Federation Ireland Report entitled *"Irish Mortgage RWA Density Analysis Project"* by Kevin McConnell, dated January 2021.

Alternative Investment Fund Managers Directive ("AIFMD").[99] However, against this non-bank lenders do not have access to the low-cost deposit funding.

Low Profitability and Market Vulnerability

2.45 Market participants may encounter difficulties in generating sustainable returns for a number of reasons. In the Merger Notification Form, AIB submitted that the financial sector in Ireland is one that faces unsustainably low profitability, and ever-decreasing net interest margins.[100] Average Return on Equity ("ROE") in 2019 for Irish banks, according to a report by Goodbody Stockbrokers in May 2021, was lower than their European counterparts. For continental European banks, the average ROE was 6% while, for the same time period, it was around 3% for AIB, 2% for Ulster Bank, and 4% for Bank of Ireland.[101] The net interest margins earned by the main Irish banks had been steadily decreasing in the period up to 2021 although recent market movements suggest that this may not be a long- term trend.

2.46 In addition, the CBI has noted that Ireland has been particularly vulnerable to shocks in global financial conditions, particularly the sudden repricing of risk in global financial markets.[102]

Information Asymmetry

2.47 Incumbent banks are able to form judgements as to the creditworthiness of potential business borrowers based upon information they have accumulated on the past financial performance of the borrower's business; how the business in managed; how it has previously responded to shocks; the repayment history for previous loans; and how its current account cash flows vary over time. New entrants have limited access

[99] See Directive 2001/61/EU of the European Parliament and of the Council on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulation (EC) No 1060/2009 and (EU) No 1095/2010. Available at: Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010Text with EEA relevance (europa.eu). See also 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.

[100] See paragraph 149 on page 47 of the Merger Notification Form.

[101] See the report by the Banking and Payments Federation of Ireland, *'The Future of Retail Banking in Ireland',* dated September 2021. Available at: https://bpfi.ie/wp-content/uploads/2021/09/BPFI-Future-of-Retail-Banking-in-Ireland-Report.pdf

[102] Financial Stability Review 2021:I (centralbank.ie)

to such information, which may make the task of calculating risk significantly more difficult, particularly in relation to SME lending. This has been identified as contributing to the higher financing costs that SMEs typically face as compared to larger business borrowers.[103]

Countervailing Buyer Power

2.48 It appears that there is little countervailing buyer power in business lending for the majority of customers. Larger corporate customers may have a degree of negotiating power, but this would be very limited for smaller businesses. [...].

Industry Specific Concerns

2.49 The Commission has identified industry specific concerns which are not merger specific and these are outlined in Annex 1.

[103] See paragraph 27 on page 9 of the OECD report entitled, 'New Approaches to SME and Entrepreneurship Financing: Broadening the range of instruments', dated 2015.

3. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

Introduction

3.1 In this chapter, 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 AIB and the Target Assets, the views of the Parties, and then sets out the Commission's view of the potential relevant product and geographic markets.

3.2 Market definition, although not an end in of itself, is a useful tool for evaluating a merger's likely competitive effects.[104] 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.[105] The Commission expects to take such factors into account in its assessment of the competitive effects of the Proposed Transaction in Chapter 5.

Horizontal overlap

3.3 The Merger Notification Form[106] identifies the following horizontal overlaps between AIB and the Target Assets in the State:

- […];
- […];
- […];
- […];
- […];
- […];
- […]; and,
- […]

[104] See paragraph 2.2 of the Merger Guidelines.
[105] See paragraph 2.3 of the Merger Guidelines.
[106] See paragraph 66 on page 20 of the Merger Notification Form.

3.4 The Merger Notification Form notes that AIB offers a variety of credit and credit-like finance products and services in the State, which overlap with all of the products that comprise the Target Assets.

3.5 The Commission agrees that there is a horizontal overlap between the AIB and the Target Assets in all of the products and services that comprise the Target Assets.

3.6 For the purposes of its analysis, the Commission has grouped products included in the Target Assets, and identified by the Merger Notification Form as products where there is a horizontal overlap, into four categories: GPLs,[107] invoice finance,[108] overdrafts,[109] and, documentary credit and guarantees.[110] These products and the grouping of these products are described in Chapter 2.

Vertical Overlap

3.7 The Commission has not identified any vertical overlap between the activities of AIB, and those of the Target Assets, in the State.

General Principles

3.8 The role of market definition is explained in the 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.[111]

3.9 According to 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

[107] Consisting of Business Loans, Revolving Credit, Term Loans and Bridging Loans in the Target Assets.
[108] Consisting of invoice finance in the Target Assets.
[109] Consisting of overdrafts in the Target Assets.
[110] Consisting of the 'Other category' in the Target Assets. This includes *"**Guarantees/performance guarantees/advance payment guarantees** A credit-like service whereby a provider agrees to guarantee its customer's debt to a third party, in the event the customer fails to pay the third party. The customer pays the provider for this service. **Terminable indemnities** Similar to a guarantee, an indemnity is a creditlike service whereby a provider agrees to indemnify third parties should its customer fail to pay what it owes to the third parties. **Standby letters of credit.** Similar to a guarantee a letter of credit is a credit-like service whereby a provider agrees to provide a set amount of credit to its customer and its customer can use this letter to give third party sellers comfort that it has access to sufficient funds to pay the third party sellers."* Page 21 of the Merger Notification Form.
[111] See paragraph 2.1 of the Merger Guidelines.

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".[112]

3.10 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.[113]

3.11 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".[114]

3.12 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 customers/service providers 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 intended use, as well as observed substitution patterns,[115] between various products that can potentially be included in the same product market.

[112] See paragraph 2.8 of the Merger Guidelines.
[113] See paragraph 2.2 of the Merger Guidelines.
[114] See paragraph 2.9 of the Merger Guidelines.
[115] Including the costs and timing of switching between the products and potential substitutes. Paragraph 2.14(c) of the Merger Guidelines.

3.13 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.[116]

3.14 Ultimately, the Commission's definition of the relevant market or markets depends on the specific facts, circumstances, and evidence of the merger under investigation.[117]

Previous Determinations and Relevant Precedents

3.15 In order to assist the Commission in coming to a view on the appropriate product markets to define in relation to this Proposed Transaction, the Commission has considered previous determinations of the Commission, European Commission precedent, and Competition and Markets Authority ("CMA") reviews of business banking markets. While these precedents did not consider exactly the same set of products as the Commission has reviewed in relation to the Proposed Transaction, they are helpful in indicating how previous determinations have dealt with market segmentations in relation to business banking markets.

3.16 The Commission highlighted, in *M/17/054 - KKR/Pepper,* that narrower product markets may be warranted within "*corporate banking*", including for "*lending*" and "*documentary credit.*"[118] The Commission also previously looked at product segmentations and competitive conditions in corporate lending (without concluding on markets), namely for corporate mortgages (*M/17/054 - KKR/Pepper*) and for invoice finance (*M/08/036 - LLOYDS TSB/HBOS*). These cases both consider narrower markets than corporate banking or corporate lending.

[116] See paragraph 2.1 of the Merger Guidelines.
[117] See paragraph 2.6 of the Merger Guidelines.
[118] See paragraph 19 of *M/17/054 - KKR/Pepper* citing *Case M.4692 – Barclays/ABN Amro*.

3.17 The Commission has also pointed to European Commission precedent in a number of cases.

3.18 In *M/17/054 - KKR/Pepper* the Commission refers to the 2007 decision of the European Commission in *Case M.4692 – Barclays/ABN Amro*. In this case the European Commission noted the following in relation to the relevant product market for corporate banking services:[119]

> *"Corporate banking comprises a broad range of banking services offered to general corporate clients. The Commission has found that within this segment, products such as deposits, **lending**, payment transactions, **documentary credits** and international payments may constitute **distinct product markets**. […]""*

3.19 The European Commission has on a number of occasions identified separate markets for invoice finance,[120] and documentary credit and guarantees,[121] citing both a lack of demand side and supply side substitutability with the more general business lending segment.

3.20 Asset finance and credit cards, neither of which are part of the Target Assets but would be part of the wider lending market advocated by AIB in the Merger Notification Form, have equally been investigated as separate markets from corporate lending by the European Commission (see, e.g., *COMP/M.4844 - Fortis/ABN AMRO Assets* and references therein).

3.21 Neither the Commission nor the European Commission have yet defined a market for business overdrafts. When investigating the market for consumer overdrafts, the European Commission noted that, within the segment of revolving credit, consumers saw overdraft facilities and card-based credit as distinct segments.[122]

[119] See paragraphs 18-19 of *M/17/054 - KKR/Pepper*, emphasis added.
[120] Referred to as "factoring", e.g. *COMP/M.4844 - Fortis/ABN AMRO* Assets or *M.7944 – Credit Mutuel/GE Capital's Factoring and Equipment Financing Business in France and Germany.*
[121] See *COMP/M.2567 - Nordbanken/Postgirot.*
[122] See paragraph 47 of *M.5384 BNP Paribas S.A.|Fortis Bank S.A.|Fortis Bank Luxembourg S.A.|Fortis Insurance Belgium S.A.*

3.22 The European Commission has also considered whether banking markets should be segmented according to customer size. According to the European Commission's investigation in *M.4844 - Fortis/ABN AMRO Assets*, smaller customers have different needs as to product complexity and transaction size. They also have less in-house knowledge about banking products, less access to foreign banks or to capital markets (as an alternative funding source), lower bargaining power and typically hold fewer banking relationships. The investigation also found that banks treat customers differently based on their size as to product standardisation, marketing approach, and risk assessment.[123]

3.23 When considering different markets for corporate lending to smaller commercial customers (such as SMEs) and to larger corporate clients, the European Commission found *"that there is no obvious single parameter by which companies can be designated as SMEs or LCCs, and which would be applicable to all market players in a given market*."[124] However, in carrying out market inquiries as part of their analysis of a merger, the European Commission has found that "*it appears that the turnover represents a good proxy to determine whether a customer is part or not of the LCCs segment*".[125]

3.24 The European Commission has acknowledged that size thresholds might be case specific. Past decisions of the European Commission and national competition authorities show that, in fact, large differences in thresholds exist between business lending markets in different Member States. For instance, while the European Commission decided on a threshold of €250 million for the purpose of identifying LCCs (Large Corporate Customers) in *M.4814 Fortis/ABN AMRO Assets* (the Netherlands), a considerably lower one of €20 million was found to be more likely to be applicable in *M.8414 DNB/NORDEA/LUMINOR GROUP* (Baltics) given the specific characteristics of business lending in the concerned Member States. Some national competition

[123] See paragraph 14 of *COMP/M.4844 – Fortis/ABN AMRO Assets*.
[124] See paragraph 26 of *M.8414 DNB / NORDEA/LUMINOR GROUP*, citing *COMP/M. 2567 – Nordbanken/Postgirot, COMP/M.3894 – Unicredito / HVB, COMP/M.4844 – Fortis/ABN AMRO Assets.*
[125] See paragraph 30 of *M.8414 DNB/NORDEA/LUMINOR GROUP*.

authorities have used the EU definition of an SME (i.e. around €50 million) to subdivide the market.[126]

3.25 Ultimately, the European Commission did not, in any of the above-mentioned cases need to conclude on whether these candidate markets (whether segmented by product or by size) constituted separate product markets.

3.26 The Commission also investigated the applicability of the CMA's 2016 Retail Banking Market Investigation to the current case.[127] While the terms of reference supported an investigation of business lending products in aggregate to SMEs, the CMA's investigation carried out, and reported on, separate analyses of GPLs, invoice finance, asset finance, and payment cards.[128] Similarly, overdrafts were investigated separately to other types of lending products.[129]

Relevant product markets

Views of the Parties

3.27 In the Merger Notification Form, AIB stated that:

"In line with precedent, AIB submits that corporate banking and retail banking form separate and distinct product market segments.

Within corporate banking, AIB submits that deposit and current accounts form separate and distinct market segments to corporate lending. Corporate loans serve a different purpose and are not substitutable from a demand or supply perspective with products like deposits and current accounts.

Regarding further segmentation of corporate lending, AIB considers that there is ' no obvious single parameter by which companies can be designated as SME's or large

[126] See Greece: *562/VII/2013 National Bank of Greece S.A.|Eurobank Ergasias S.A.* – LCCs are companies with a turnover of over €50 million (Greece); Norway: *V2003-61 DnB Holding ASA/Gjensidige NOR ASA* – LCCs are companies with turnover of over 300 million NOK (€30 million in today's exchange rate); Denmark: *4/0120-0401-0044 Nordea Bank Danmark A/S/Fionia Bank A/S* – SMEs with a turnover of less than €47 million were categorised under "retail banking" along with private customers; UK: *ME/3862/08 Lloyds TSB Group plc.|HBOS plc*. - The exact definition of SME (small and medium sized enterprises) varies, but the OFT has previously classed firms as SMEs where they have an annual turnover of up to £25 million (currently €29.97 million as of 12 April 2022).
[127] See, CMA, '*Retail Banking Investigation, Final Report*'.
[128] See paragraphs 7.21-7.39 on pages 225-229 of the CMA, '*Retail Banking Investigation, Final Report*'.
[129] See paragraph 4.68 on page 85 of the CMA, '*Retail Banking Investigation, Final Report*'.

corporate customers,' and that there is overlap in provision of lending between these segments. While there is considerable overlap between the two customer segments, and some basis to argue for a single product market encompassing SME's and LCC's, AIB considers that there may be two relevant product segments: (i) loans to SMEs; and (ii) loans to LCCs. As regards geographic scope, both such segments have at least a national and, especially for larger Irish businesses, an international scope.

Regarding lending products supplied to corporate customers, AIB submits that these products are to a significant extent interchangeable. Accordingly, AIB submits that provision of loans generally to Irish business should not be further segmented. Nor does AIB consider there [sic] *basis for distinguishing between loans to customers in different sectors, all of which tend to require a similar mix of products (business loans, overdrafts, term loans, etc.)"*[130]

3.28 In its response to the Phase 2 RFI,[131] AIB reiterated its view that the narrowest plausible markets were the supply of loans[132] to each of: (i) SMEs; and, (ii) LCCs.[133] AIB submitted that its internal documents, and the fact that it segments its business based on loan size rather than customer turnover, are indicative that there is no agreed segmentation of business lending customers based on turnover.[134] AIB also submitted that the fact that AIB's internal divisions do not align with counterpart divisions in other banks indicates that one should not draw conclusions about market segmentation based on customer size.[135] AIB submitted that, if a bright line needs to be drawn for analytical purposes, the most appropriate definition of an SME is a

[130] See paragraphs 126-129 on pages 37-38 of the Merger Notification Form.

[131] Specifically, AIB states that "*most likely a single segment for supply of loans to businesses exists, with the only potential for further segmentation between LCCs and other customers.*" See Page 38 of the response to the AIB Phase 2 RFI, dated 9 March 2022.

[132] In the Merger Notification Form AIB uses the terms Loan, Lending, and Credit interchangeably. AIB later clarified that their understanding of the term "loan" refers to *"what the CCPC refers to as general business loans, irrespective of term length, type of collateral, whether they are revolving or not or other similar loan characteristics, as well as credit product categories such as asset finance (including leasing, hire purchase and similar services), invoice finance (including invoice discounting, factoring and similar services), guarantees/trade finance, overdrafts and credit card balances."* AIB also states that equity-based finance is not a part of this definition. See page 6 of the response, dated 1 March 2022, to questions 1,3,6,7,8, and 9 of the informal request for information issued to AIB on 22 February 2022.

[133] See paragraph 111 on page 33 of the Merger Notification Form. Non-SMEs are referred to as 'LCCs' by AIB.

[134] See the response to question 3 of the response to the AIB Phase 2 RFI, dated 9 March 2022.

[135] See the response to question 3 of the response to the AIB Phase 2 RFI, dated 9 March 2022

business that has an annual turnover less than €50 million, and a non-SME is a business that has annual turnover in excess of €50 million.[136]

3.29 In addition, AIB submitted that each of these two markets includes, at least, all of the Target Assets as well as asset finance, credit card balances and debt securities.[137] AIB submitted that European Commission and CMA precedents are supportive of this proposed market definition.[138] AIB submitted that high levels of supply side substitutability,[139] and a chain of substitutability on the demand side,[140] between different types of loan products show that loans of different product types are interchangeable.[141]

3.30 AIB submitted that, in its experience, customers use the same loan products for different purposes,[142] and different forms of loan product for the same purpose.[143] Similarly, AIB submitted that there is no difference, from a demand perspective, in the provision of business lending products to businesses from different sectors.[144]

3.31 Ulster Bank, while not presenting a formal view on the narrowest possible relevant market, agreed with AIB that loans to businesses form one single product market.[145] Ulster Bank did, however, submit that different loan products are used for different purposes, with GPLs being used for investment finance, and overdrafts being used for

[136] See the response, dated 28 February 2022, to questions 4 and 5 of the informal request for information issued to AIB on 22 February 2022.
[137] See the correspondence between AIB and the Commission on 2 March 2022. Equity based securities are explicitly excluded from AIB's definition of the relevant product market.
[138] See the response to question 2 of the AIB Phase 2 RFI, dated 9 March 2022.
[139] AIB cite three examples of expansion from providers of one or two types of lending products into other types of lending products by non-bank lenders in the past 10 years as evidence of this.
[140] See page 2 of the paper by Oxera and Francis O'Toole entitled *'Confidential M.21.040 - Market definitions and competitive effects 15 March – Final'* submitted to the Commission on 15 March 2022.
[141] See the response to question 2 of the AIB Phase 2 RFI, dated 9 March 2022. AIB notes that this is the case even if not all loans are substitutable for each other in every situation.
[142] See the response to question 2 of the AIB Phase 2 RFI, dated 9 March 2022.
[143] See the response to question 2 of the AIB Phase 2 RFI, dated 9 March 2022.
[144] In particular, in response to the Commission seeking AIB's views on whether there were differences in the potential market for the provision of GPLs to CRE businesses and businesses excluding CRE ("ex-CRE"), AIB stated that there were no differences in the demand side characteristics for GPLs for CRE and GPLS ex-CRE businesses. *"Finally, from the customer perspective there is no difference between a GPL and a GPL to CRE, it is the customer's business that causes the distinction. As such, from a demand point of view, there is limited difference."* See the response to question 2 of the AIB Phase 2 RFI, dated 9 March 2022.
[145] See the response to question 2 of the Ulster Bank Phase 2 Information Request, dated 25 February 2022.

working capital purposes.[146] This is in contrast to AIB, which submitted that GPLs can equally be used to fund short term/working capital needs or investment finance.[147]

3.32 Ulster Bank differentiated the provision of business lending for three types of customers based on size: (i) customers with an annual turnover of less than €10 million;[148] (ii) customers with an annual turnover of between €10 million and €250 million;[149] and, (iii) customers with an annual turnover in excess of €250 million.[150] Ulster Bank submitted that business lending conditions to CRE businesses are distinct from other types of business lending.[151]

Views of the Commission

3.33 In order to come to a view on the relevant product markets in this case, the Commission has considered a body of evidence including precedent as described above, and evidence collected during the merger review process. Evidence includes the responses to the Commission's Customer Questionnaire, engagement with relevant third parties, and the evidence submitted by the Parties during the course of the Commission's Phase 1 and Phase 2 investigations.

3.34 The Parties have proposed that there is a single market for all lending products that may be differentiated by customer size.[152] The Commission's review of European Commission precedent and previous determinations of the Commission indicates that further segmentation should be considered. In particular, the Commission has considered:

[146] NatWest and Ulster Bank stated that *"GPLs and overdrafts serve different purposes and functions. Customers will choose a GPL for long term capital investment, while Ulster Bank seeks to ensure that customers only use overdrafts for short-term working capital requirements."* See pages 1-2 of the response, dated 28 February 2022 to the clarification request on the nature of different types of lending products issued to NatWest and Ulster Bank on 22 February 2022.
[147] See the response to question 3 of the AIB Phase 2 RFI, dated 9 March 2022.
[148] See the response to question 1 of the Ulster Bank Phase 2 Information Request, dated 25 February 2022.
[149] Ulster Bank notes that enterprises with an annual turnover in excess of €250 million *are "generally considered"* to be LCCs, and that this classification is a *"more common classification"* than Ulster Bank's own internal threshold of €500 million. See the response to question 1 of the Ulster Bank Phase 2 Information Request, dated 25 February 2022.
[150] See the response to question 1 of the Ulster Bank Phase 2 Information Request, dated 25 February 2022.
[151] See the response to question 2 of the Ulster Bank Phase 2 Information Request, dated 25 February 2022.
[152] The Commission notes that the product market for all lending products proposed by the Parties includes products that are not part of the Proposed Transaction. The Commission does not agree with this wide product market, and so does not consider further any products that do not form part of the Proposed Transaction.

(a) Should the product markets be differentiated by customer size?

(b) Should the market be narrower than a market for all lending products?

(a) Should the product markets be differentiated by customer size?

3.35 As noted above, AIB has proposed the broadest possible market including all types of lending to all sizes of business, but has indicated that there may be reason to differentiate between businesses with an annual turnover of less than €50 million and businesses with an annual turnover greater than €50 million. Ulster Bank has also proposed that there may be a differentiation of customers by size, and distinguished between customers with an annual turnover of less than €10 million; customers with an annual turnover of between €10-250 million; and customers with an annual turnover in excess of €250 million.

3.36 The Commission's consideration of European Commission precedent in paragraphs 3.15 to 3.25 indicates that a segmentation by size of customer may be warranted, but that there is no one metric that can distinguish between size categories, and which would be applicable to all market players in a given market.

3.37 The Commission agrees with the Parties that there are likely to be differences in the competitive conditions associated with different sizes of customer, such that separate markets may be delineated. The evidence gathered over the course of the Commission's Phase 1 and Phase 2 investigations indicates that there are differences in the demand for types of lending product, and in the supply of lending products, depending on the size of the customer.

Threshold for identifying smaller businesses

3.38 In line with the European Commission precedent set out above in paragraphs 3.15 to 3.25, the Commission sought to identify relevant turnover levels as proxies for assessing whether the demand and supply side characteristics of lending markets to different sized businesses differed to the extent that they could be considered as separate markets. The Commission's starting point in identifying the threshold for smaller businesses is the internal turnover division of €2 million used by Ulster Bank to distinguish its more retail-like business customers, from those that may have more complex business lending needs. Lending to business customers with an annual turnover of less than €2 million is not subject to the Proposed Transaction.[153] This means that there is no overlap between AIB and the Target Assets in the provision of business lending to customers of this size category. The results of the Commission's investigation indicate that businesses with an annual turnover of less than €2 million, hereafter referred to as microenterprises, have banking needs that are more similar to retail customers than larger business customers.[154]

3.39 Both AIB and Ulster Bank have business units that deal with very small businesses, however only Ulster Bank uses a turnover threshold. Both Ulster Bank and AIB use a borrowing threshold, with this being €1 million for AIB, and €250,000 for Ulster Bank. However, AIB grants […], which AIB has stated was a "*good approximation*" for the removal of microenterprises from AIB customer data. Taken together, the Commission views that there may be differences in lending to microenterprises compared to other types of business lending, such that distinct business units are utilised within banks.[155]

3.40 In addition, from the lender's perspective, it tends to be less expensive to provide business lending services to microenterprises than to businesses with larger turnovers,[156] but microenterprises consistently pay the highest interest rates of any of the business size groups investigated by the Commission.[157] The Commission has not received evidence of common revolving credit facility ("RCF") usage by microenterprises. Microenterprises, perhaps because their borrowing needs are less complex than larger sized enterprises, also had a lower average turnaround time in

[153] They are subject to the transaction notified to the Commission under *M/21/076 – PTSB/Certain Assets of Ulster Bank*.
[154] See the response to question 3 of the Ulster Bank Phase 2 Information Request, dated 25 February 2022. Ulster Bank notes that there are similarities in the lending amounts, security level, complexity of financial needs, complexity of paperwork required to get a loan, and the manner in which they approach the bank between microenterprises and retail customers. This is in part why, according to […], this group of customers fit into the business lending model, which is geared towards retail-like customers. See […].
[155] Bank of Ireland estimates that over […]% of their customers in their smaller business focused unit would be microenterprises. See page 1 of the document entitled [...]. Microenterprises for Bank of Ireland would have an exposure of less than […], and […], compared to small SMEs, who would have exposure of between […] and […], and [...].
[156] See the response to question 3 of the Ulster Bank Phase 2 Information Request, dated 25 February 2022.
[157] According to the Commission's analysis of the Department of Finance's yearly SME Credit Demand Surveys, the average interest rate paid across time for Loans from October 2013 to 2021 by microenterprises was 15-20% higher than small SMEs, and, 30-35% higher than medium SMEs. See a 2021 survey at https://www.gov.ie/en/publication/c3c54-sme-credit-demand-survey-report-april-september-2021/. 2020 proved to be an exception to this, whereby the average interest rate was higher for small SMEs than microenterprises.

2021 (18 days) for finance applications compared to small SMEs (28) and medium SMEs (25).[158]

3.41 In addition to the pillar banks, microenterprises are served by a different set of lenders that do not target larger businesses, such as Permanent TSB, KBC, and the credit unions. The Commission notes that it has received evidence that there is some interest from new entrants such as […],[159] and […][160] who currently have a main focus on personal banking, in expansion into the provision of funding to microenterprises, meaning that barriers to expansion from retail consumer lending into microenterprise lending may be lower compared to lending to larger businesses. In contrast, the Commission has received no evidence of intent of expansion into the provision of lending to microenterprises from lenders who currently target larger businesses.

3.42 In summary, the Commission's view is that demand for lending from microenterprises is distinct from demand for lending from larger businesses, and is analogous to the type of demand for consumer retail lending.[161] There are a range of suppliers of lending for businesses with a turnover of less than €2 million. Finally, Ulster Bank's loans to microenterprises do not form part of the Proposed Transaction. For all of these reasons, the Commission finds that lending to microenterprises constitutes a distinct product market. Because of the current and potential supply conditions in this market, the Commission considers that this market does not need to be considered further in the competitive assessment.

Threshold for identifying LCCs

3.43 Having found that microenterprises were likely to be in a separate market, the Commission then considered whether lending to large corporates constituted a separate market, and if so, where the threshold would be for identifying large corporates.

[158] See page 45 of the Department of Finance, '*SME Credit Demand Survey October 2020-March 21*'.
[159] See […].
[160] See […].
[161] Note that businesses with an annual turnover <€2 million meet the EC's definition of microenterprises. https://ec.europa.eu/growth/smes/sme-definition_en

3.44 The Commission started with the turnover threshold used by the European Commission in *COMP/M.4844 - Fortis/ ABN AMRO Assets* of €250 million to differentiate the set of large corporate customers who have a different set of lending needs from smaller, less financially complex businesses. Ulster Bank has confirmed that the €250 million figure is generally thought of as the cut-off point between LCCs, and smaller businesses.[162] Ulster Bank has a separate business unit for customers with turnover above €500 million. […] distinguishes internally between customers with above/below €350 million turnover. […] has told the Commission that they only target customers with above €100 million turnover. When asked whether they target midsize corporate customers ("MCCs")[163] (or below), the majority of the international banks said that they did not, indicating that they apply a size threshold of at least €250 million. The Commission therefore deem an annual turnover of €250 million as an appropriate proxy to distinguish large corporates from smaller businesses. References to LCC in the remainder of the document refer to customers with annual turnover in excess of €250 million.

3.45 The results of the Commission's investigation indicate that LCCs have banking needs that are distinct from those of smaller businesses.

3.46 LCCs typically have an international presence;[164] can more readily access international bond markets to fund their long-term needs;[165] relatively frequently have an RCF;[166] and are more financially complex, having dedicated treasury or banking departments,[167] using multiple lending product types[168] with multiple lending providers.[169] On average, interest rates payable by LCCs tend to be much lower than

[162] See the response to question 2 of the Ulster Bank Phase 2 Information Request, dated 25 February 2022.
[163] Businesses with an annual turnover of between €50-250 million.
[164] 77% of surveyed LCCs who explained if they had an international presence or not stated that they have an international presence, compared to 31% of companies with an annual turnover of between €2-250 million. Source: Responses to the Commission's Customer Questionnaire.
[165] See the response to question 1 of the Ulster Bank Phase 2 Information Request, dated 25 February 2022.
[166] 56% of the surveyed LCCs had an RCF, compared to 4% of companies with an annual turnover of between €2-250 million. Source: Responses to the Commission's Customer Questionnaire.
[167] Source: Responses to the Commission's Customer Questionnaire.
[168] The average number of product types held by an LCC was 4, compared to 2 for companies with an annual turnover of between €2-250 million. Note however that a number of the surveyed LCCs listed a number of products within these product types, so the number of lending products in use is higher. Source: Responses to the Commission's Customer Questionnaire.
[169] The average number of lending providers that an LCC had was 7, with the highest being 17 active relationships, and the lowest being 1. The mode and median number of relationships was 5, which may be more reflective of the typical LCC. In this instance, the number

those payable by businesses with an annual turnover of between €2-250 million.[170] In addition, the product functionality referenced in paragraphs 3.57-3.69 below is less applicable to LCCs. In particular GPLs are stated as being used for funding both investment finance and working capital.[171] This may be reflective of the higher usage of RCFs among this size category, or could potentially be indicative that the demand side substitutability between different categories of lending products is higher for LCCs, at least when it comes to funding working capital.

3.47 In addition to the pillar banks, LCCs are served by a different set of competitors which do not typically target businesses with lower turnovers, such as JP Morgan; Citibank; Bank of America; Société General; Royal Bank of Canada; UBS; Credit Suisse; and Lloyds Bank.[172] The share of the international banks who lend to this size group is large relative to the share of lending provided by international banks to businesses with an annual turnover of between €2-250 million.

3.48 The Commission has not received evidence of recent expansion by lenders who targeted smaller businesses into the provision of lending to LCCs. The Commission did not receive any evidence of intent of expansion into the provision of business lending to smaller businesses from the large international banks it engaged with.

3.49 Given the wide range of large international banks that are serving this customer segment, and the borrowing characteristics of this customer size group, the Commission did not consider that the Proposed Transaction would be likely to give rise to competition concerns insofar as this customer segment is concerned. Therefore, the Commission does not consider any further the competitive effects of the Proposed Transaction in this potential market for lending to LCCs.

presented is the average number of lending providers that an LCC has had across time, and is not reflective of the number of the active lending relationships at one time. Source: Responses to the Commission's Customer Questionnaire.

[170] […]. Within Ulster Bank's four lending sizes covered by the scope of the Proposed Transaction, businesses with an annual turnover of over €500 million had consistently lower interest rates to businesses with an annual turnover between €30-500 million, which had consistently lower interest rates than businesses with an annual turnover of between €2-30 million. See page 2 of the response, dated 7 March 2022, to the clarification request on the nature of different types of lending products issued to NatWest and Ulster Bank on 3 March 2022.

[171] Source: Responses to the Commission's Customer Questionnaire.

[172] See the response to question 1 of the Ulster Bank Phase 2 Information Request, dated 25 February 2022.

Businesses with an annual turnover of between €2-250 million

3.50 As indicated above, the results of the Commission's investigation indicate lending to microenterprises may constitute a distinct lending market, and lending to LCCs may constitute a distinct lending market. The results of the Commission's investigation indicated that lending conditions are broadly homogenous for the provision of business lending to businesses with an annual turnover between €2-250 million. There are some differences in the (i) regulations applicable and (ii) level of negotiating power[173] to some categories of businesses that fall within this turnover band.[174]

3.51 However, the results of the competitive effects analysis are the same whether a wider turnover range consisting of businesses with an annual turnover of between €2-250 million, or a narrower range of turnover bands, consisting of businesses with an annual turnover of: (i) SMEs (excluding microenterprises); and, (ii) MCCs, is assessed, and as such the Commission does not consider this further at this time.

3.52 As already noted, businesses with an annual turnover of between €2-250 million are typically domestically focused;[175] more financially complex than microenterprises;[176] and less financially complex than LCCs.[177] In contrast to LCCs, they typically do not have a dedicated treasury department,[178] and are less likely to review their banking relationships on annual basis.[179] RCF usage is low,[180] possibly reflective of the fact that, in Ulster Bank's experience, only "*very strong credit counterparties where the risk of default is very low and/or security is very strong"* can gain access to such a facility in the first place.[181]

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[173] The responses to the Commission's Customer Questionnaire indicate that 80% of MCCs reported being able to negotiate with their lenders on some aspect of price, compared to 65% of SMEs.
[174] Specifically, (i) SMEs (excluding microenterprises); and, (ii) MCCs.
[175] See footnote 164.
[176] In particular, businesses in this turnover band are more likely to have a relationship manager within a bank, in contrast to microenterprises who may be served on a pooled basis, or otherwise.
[177] See footnote 168. Ulster Bank also asserts that businesses with an annual turnover of between €10-250 million will *"generally rely on traditional banks for their core business lending."* See the response to question 1 of the Ulster Bank Phase 2 Information Request, dated 25 February 2022.
[178] Source: Responses to the Commission's Customer Questionnaire.
[179] Source: Responses to the Commission's Customer Questionnaire.
[180] See footnote 166.
[181] See the response to question 27 of the Ulster Bank Phase 1 Information Request, dated 29 October 2021.

3.53 In addition to the pillar banks, businesses with an annual turnover of between €2-250 million are served by some European[182] and UK[183] banks, which focus on the higher end of the turnover scale, and a range of non-bank lenders, which typically focus on the lower end of the turnover scale.[184] Responses to the Commission's customer questionnaire indicated that none of the responding SMEs had a lending product with an international bank, while some MCCs noted that they had a lending product with an international bank.[185] This was limited to businesses that had a presence overseas, or were involved in an international acquisition.[186]

3.54 The Commission's view is that businesses with a turnover between €2-250 million share sufficient characteristics in their demand and supply of lending products to warrant them being considered to fall within the same market for the purposes of further assessment.

Conclusions on differences in customer size

3.55 The results of the Commission's investigation indicate that there are differences in the borrowing needs of businesses dependent on their size. These differences were found in: the general characteristics; customer usage patterns; relative pricing levels between the different lending offerings towards different sizes of business; and the observed set of competitors. These differences are most notable at the very low end of business size, which is analogous to microenterprises, and the very high end of business size, which the Commission has termed LCCs. While there are differences in some respect to businesses which have annual turnovers of between €2-250 million, the results of the Commission's competitive effects analysis do not differ to such an

182 […], but only for businesses with an annual turnover in excess of €50 million but which must be internationally focused. […] does not lend to SMEs, and will only offer some products to their largest clients (excess of €250 million annual turnover). The new clients for strategy for […] is to a certain extent also internationally focused, as they onboard MNCs that the […] group already have relationships with.

183 […], but only for customers in this group in excess of €100 million.

184 The Commission notes that the in contrast to their shares in the market for the provision of lending to LCCs, the presence of international banks in this market segment is limited, having as a whole, 6% of the stock of GPLs ex CRE to businesses with an annual turnover of between €2-250 million.

185 Source: Responses to the Commission's Customer Questionnaire.

186 Source: Responses to the Commission's Customer Questionnaire.

extent that the Commission further investigated if there were differences in size groups within this turnover band.

3.56 The Commission considers that the demand and supply side characteristics of lending to businesses in the three different size categories above (i.e. microenterprises, LCCs, and businesses with an annual turnover of between €2-250 million) differ to such an extent that they may be considered distinct markets. The Commission does not need to come to a definitive view on the precise relevant market in this instance since its conclusion on the likely competitive impact of the Proposed Transaction is unaffected by whether the precise relevant product market(s) are defined as above; more narrowly consisting of the provision of business lending to: (i) SMEs (excluding microenterprises); and, (ii) MCCs; or more broadly, consisting of lending to all business customers regardless of size. The Commission notes that, for the reasons outlined above, it does not intend to consider the market for lending to microenterprises and the market for lending to LCCs in the assessment of the competitive effects of the Proposed Transaction.

(b) Should the market be narrower than a market for all lending products?

3.57 The Parties have submitted that there is a single market for all lending products. Having regard to its previous determinations and the European Commission precedent cited in paragraphs 3.15-3.25, the Commission has assessed the extent to which different product types should be considered as separate relevant markets.

3.58 As per the Merger Guidelines, the Commission has considered whether demand and supply side substitution would imply narrower product markets. In particular, the Commission has considered the product characteristics, functionality and price of each type of product in order to come to a view as to whether business lending customers would find GPLs, invoice finance, overdrafts and documentary credit and guarantees to be good demand side substitutes for each other, or not. The Commission has also considered supply side substitution, such that a supplier would enter the market to supply an alternative product in a timely manner, and without incurring significant costs.

3.59 The different lending product types are described in Chapter 2. In summary, for the purposes of its analysis, the Commission has grouped the product types as follows:

- GPLs;
- Invoice finance;
- Overdrafts; and,
- Documentary credit and guarantees.

Assessment of demand side substitution

3.60 The Commission considers that certain products within the Target Assets have distinct characteristics such that they can be grouped into the separate product types identified in paragraph 3.59. The Commission considers that the characteristics of these product groups differ to such an extent that it is worth investigating the level of demand and supply side substitutability between these product groups.

3.61 The Commission's starting point is GPLs, because GPLs form the largest part of the Proposed Transaction. GPLs are usually considered to be medium to long-term lending products.[187] They are committed and typically offered for a specific purpose,[188] whose risk the lender assesses prior to extending such a loan.[189] They are typically used in combination with other types of lending products.[190] They have a typically lower interest rate than other types of lending products and have unique types of fees that

[187] The Commission notes that approximately 4% of Ulster Bank GPLs, and AIB estimates that less than […]% of AIB GPLs, have a term of less than 1 year.
[188] A committed lending facility is one whereby the lender is obliged to provide funding to a proposed borrower at the borrower's request, subject to certain covenants being complied with on the part of the borrower.
[189] See page 2 of the response, dated 7 March 2022 to the clarification request on the nature of different types of lending products issued to NatWest and Ulster Bank on 3 March 2022.
[190] Source: Responses to the Commission's Customer Questionnaire. The fact that lending products are typically used in combination with other types of lending products indicates that they may be complements rather than substitutes.

are not levied on other types of lending products.[191] Aside from RCFs, they are relatively inflexible lending products.[192]

3.62 The Commission's view is that a GPL customer would not switch to an invoice finance product and would not find invoice finance to be a substitute for a GPL because invoice finance is a specialised short-term lending product which is secured against the customer's receivables (or unpaid invoices).[193] The Commission has received evidence from Ulster Bank that […]% of invoices are paid back within 30 days, […]% are paid back within 31-60 days, […]% are paid back within 61-90 days, and a very small percentage are paid back outside of 90 days. Given that the vast majority of invoices are paid back within 90 days, the Commission takes 90 days as the lending period for invoice finance.[194] Once set up, it is revolving. Invoice finance is typically used to help with short term regular working capital requirements (due to, for example, payment/delivery differences between outgoings and incomings and/or seasonal fluctuations).[195] There can be long term (circa 6 months) cancellation fees, reflective of the fact that considerable resources are invested in the establishment of such a facility.[196]

3.63 For invoice finance, the lending amount is restricted by the size of the receivables base and the funds are not committed, making it less suitable for investment finance. Similarly, the short-term nature of the lending against any set of invoices means that it is more suitable for working capital and less suitable for investment purposes.

[191] These can include arrangement fees; cancellation fees/early repayment fees, commitment fees; exit fees; monitoring fees; drawings fees; and breakage fees (for fixed rate loans). See page 4 of the response, dated 28 February 2022, to questions on the nature of different types of lending products issued to Ulster Bank and NatWest on 22 February 2022.
[192] See Figure 5 on page 82 of the Merger Notification Form.
[193] The Commission notes that, of Ulster Bank's invoice finance customers, a majority have another type of loan with Ulster Bank (see page 3 of the response, dated 18 February 2022, to the questionnaire issued to Ulster Bank and NatWest on the nature their invoice finance business on 15 February 2022). The Commission notes that this may indicate that the different types of lending products are complements rather than substitutes.
[194] See page 3 of the response, dated 18 February 2022 to the questionnaire issued to Ulster Bank and NatWest on the nature their invoice finance business on 15 February 2022.
[195] Source: Responses to the Commission's Customer Questionnaire. AIB provided one example of a business using a term loan in conjunction with an invoice finance facility to fund investment, but no examples were given of invoice finance by itself being used for investment finance. See the response to question 2 of the AIB Phase 2 RFI, dated 9 March 2022.
[196] See page 2 of the response, dated 28 February 2022, to questions on the nature of different types of lending products issued to Ulster Bank and NatWest on 22 February 2022.

3.64 In relation to relative pricing, the interest rate applicable to invoice finance facilities tends to be lower than that applied to overdrafts, but higher than that applicable to GPLs.[197] There also tend to be very different fee structures for the different products, such as some having set up fees and others not having these, or to a far lesser extent. The evidence received from customers of AIB and Ulster Bank indicates that businesses are highly unlikely to use their invoice finance facility for investment finance purposes.[198]

3.65 The Commission's view is that a GPL customer would not switch to an overdraft, and would not find an overdraft to be a good substitute for a GPL. Overdrafts are short-term lending products, and are typically used alongside other lending products instead of as a standalone product.[199] They are tied to a current account.[200] They are not extended for a specific purpose, are revolving, and can therefore be used flexibly by the customer. They are not secured against any particular asset and they are not committed.[201] Overdrafts are a riskier alternative to other forms of lending for the customer insofar as a lender may choose to cancel, or change the maximum credit of, the facility with little notice.[202]

3.66 While the cost to the customer of arranging an overdraft tends to be relatively low, the borrowing costs to the customer tend to be considerably more expensive than most other types of lending products, especially GPLs.[203] The evidence assessed by the

[197] A yearly analysis of the average weighted interest payable on [...]'s lending products on a yearly basis from 2015 to 2021 shows that for businesses with an annual turnover of between €2-250 million, invoice finance is […]% higher than GPLs, and […]% lower than overdrafts.
[198] The responses to the Commission's Customer Questionnaire confirm that among the surveyed firms, none who responded who gave reasons for using invoice finance listed invested finance. AIB has provided one example that they are aware of, of a business that used invoice finance to fund an investment project, however, this was only done in conjunction with a GPL, and not on a standalone basis.
[199] Source: Responses to the Commission's Customer Questionnaire. The Commission notes that this may be indicative that different types of lending products are complements rather than substitutes.
[200] *"Since overdraft is a type of credit, which allows a current account to go into an overdrawn position, a customer cannot have an overdraft without a current account."* See paragraph 61 on page 18 of the Merger Notification Form; *"An overdraft facility is a loan facility that enables withdrawals of an account to exceed deposits. A customer therefore needs an account to use an overdraft facility."* See footnote 147 on page 104 of the response to the AIB Phase 1 RFI. Note that the CMA in their 2016 Retail Banking study treated overdrafts as an add-on to a current account, and not as standalone lending product. See paragraph 4.68 on page 85 of the CMA, '*Retail Banking Investigation, Final Report*'.
[201] "*A type of credit, which allows a current account to go into an overdrawn position, up to a pre-agreed limit. While there is no fixed repayment period in place, an overdraft may be subject to regular review and may be repayable on demand.*" See the table *"The Principal Target Assets by product"* in paragraph 66 on page 20 of the Merger Notification Form.
[202] See page 1 of the response, dated 7 March 2022 to the clarification request on the nature of different types of lending products issued to NatWest and Ulster Bank on 3 March 2022.
[203] Commission analysis of AIB quarterly new lending data 2015-Q2 of 2021.

Commission suggests that they are most suitable to manage short-term cash flow requirements,[204] given their high level of flexibility and cost relative to other types of lending product.[205] The responses to the Commission's Customer Questionnaire confirm that businesses use their overdrafts only to cover short term/working capital finance, and not investment finance.[206]

3.67 The Commission found evidence that overdrafts and invoice finance are to a certain extent substitutable by virtue of the fact that both are used to fund short-term/working capital needs.[207] However, there are also material differences between overdrafts and invoice finance which are likely to impact on their substitutability: (i) Overdrafts are easier to set up for a customer compared to invoice finance, requiring less in depth knowledge of the borrower by a bank;[208] (ii) An overdraft ties a customer to a bank by requiring a current account, while invoice finance does not;[209] (iii) Invoice finance requires a receivable base to finance, limiting it to certain businesses, while overdrafts can be used by businesses of all types;[210] (iv) The extent of any lending on invoice finance is limited to a proportion (usually about 80%) of the value of outstanding invoices and the period in which these are repaid; (v) Invoice finance is typically cheaper to use than an overdraft facility;[211] and, (v) Overdrafts were less likely to be used in combination with other types of lending products.[212]

3.68 The Commission's view is that a GPL customer would not switch to documentary credit and guarantees, and would not find documentary credit and guarantees to be a substitute for a GPL. They are frequently used in international trade or in other

[204] See page 2 of the response, dated 7 March 2022 to the clarification request on the nature of different types of lending products issued to NatWest and Ulster Bank on 3 March 2022.
[205] See *Figure 5: stylised dimensions to credit products, by flexibility in borrowing terms and cost'* on page 82 of the Merger Notification Form.
[206] Source: Responses to the Commission's Customer Questionnaire.
[207] Source: Responses to the Commission's Customer Questionnaire.
[208] See the response to question 63 of the Ulster Bank Phase 1 Information Request, dated 29 October 2021.
[209] The Commission has received evidence that there are a number of Ulster Bank customers who have no other products except for invoice finance with Ulster Bank.
[210] In other words, under a SSNIP test a customer could therefore not switch to an invoice finance facility in response to a 10% increase in the cost of their overdraft facility, as they could not avail of an invoice finance facility sans invoices to finance.
[211] See footnote 197.
[212] Source: Responses to the Commission's Customer Questionnaire. In addition, the results of the Commission's investigation into customers who use invoice finance revealed that the vast majority (88%) had a revealed preference to use invoice finance in conjunction with other business banking services.

situations where the reliability of payment by a trading partner cannot be assured. The lender steps in for one of the trading partners to assure contracted payment terms are met. *"Guarantees (or Bonds and Standby Letter of Credit) provide both buyers & sellers in a trade transaction with reassurance that performance or financial obligations will be met."*[213] The Commission considers, in line with the EU Commission precedent cited in paragraphs 3.15-3.25, that documentary credit and guarantees may form a distinct product market.[214]

3.69 The responses to the Commission's Customer Questionnaire confirm that GPLs are the **only** product within the Target Assets which customers have described as being suitable for investment finance, indicating that there is low demand side substitutability with the other types of lending products covered under the Proposed Transaction.[215] The Commission views the patterns of customer behaviour in how they utilise different types of lending products as a strong indicator that these products may constitute distinct product markets from a demand side perspective. The Commission therefore concludes that, for the purposes of further assessment, the market is narrower than the provision of all types of lending product and that the provision of GPLs, invoice finance, overdrafts and documentary credit and guarantees constitute separate product markets.

3.70 The Commission has further considered whether the market for the provision of GPLs should be further segmented to take account of the specific needs of particular groups of customers. The Commission's investigation indicated that the provision of GPLs to CRE businesses had different characteristics which may warrant the finding of a separate product market. The results of the Commission's investigation found that turnover is less useful as a metric for CRE businesses as all revenue will be the rent generated from property.[216] In light of this, the Commission conducted its review in relation to the provision of GPLs to CRE businesses of all sizes.

[213] See the response to question 29 of the Ulster Bank Phase 1 Information Request, dated 29 October 2021.
[214] *COMP/M.2567 - Nordbanken/Postgirot.*
[215] Source: Responses to the Commission's Customer Questionnaire.
[216] See the response to question 14 of the Ulster Bank Phase 2 Information Request, dated 25 February 2022. Turnover may be a more useful metric when it comes to the development finance aspect of CRE.

3.71 CRE businesses are less likely to switch their main lending relationship midway through the loan term due to the project-by-project nature of this business.[217] This is reflected in the lack of attrition in CRE customers that Ulster Bank had in this customer portfolio from August of 2021 to 31 January 2022.[218] CRE GPLs have a much higher churn[219] rate compared to GPLs to non-CRE businesses.[220] A CRE borrower is also more likely to be a special purpose vehicle ("SPV"), established to finance the particular project for which the borrowing is made, than a non-CRE borrower.[221] Finally, CRE borrowers typically require less active relationship management than non-CRE businesses.[222] Taken together, the project-by-project nature of the business, low switching rates, high churn rates, and a less active need for a relationship management characterise the demand side needs of a CRE business as distinct from other types of business borrowers.

Assessment of Supply Side Substitution

3.72 The Commission has sought information on the supply side characteristics of different types of lending products by looking at: the nature of the expertise required to offer a product; any regulatory requirements to provide a product; any differences in the observed set of competitors offering a product; any evidence of recent expansion from one type of lending product into the next; and any evidence of planned expansion from one type of lending product into the next.

[217] Exceptions to this might be if refinancing occurs in conjunction with a new project needing funding.

[218] See the response to question 11 of the Ulster Bank Phase 2 Information Request, dated 25 February 2022.

[219] In this instance, churn refers to customers who no longer hold the relevant in-scope product. These are customers who had an open in-scope product at the previous year end with AIB, but no longer held the same in-scope product at year end. This may be due to some customers who are likely to switch, while some may simply cease taking out new loans, perhaps because they were an SPV set up to fund one particular development.

[220] For AIB, MCC churn rate for GPLs ex CRE from 2018-2021 was on average […]% vs […]% for CRE GPLs. For SMEs (excluding microenterprises) this rate was […]% for GPLs ex CRE, and […]% for CRE GPLs. See the document entitled, *'CONFIDENTIAL BUSINESS SECRETS - AIB - 10, 24, 35, 47, 59',* dated 11 March 2022 submitted as a part of the response to questions 10, 24, 35, 47, and 59 of the AIB Phase 2 RFI, dated 11 March 2022. Ulster Bank also noted the higher churn rate in their CRE department vs other departments. See the response to question 10 of the Ulster Bank Phase 2 Information Request, dated 25 February 2022.

[221] AIB notes that the majority of property investors use SPVs to carry out borrowing transactions. A large proportion of Ulster Bank CRE customers are SPVs. See the response to question 15 of the Ulster Bank Phase 2 Information Request, dated 25 February 2022.

[222] See page 8 of the document entitled, *'Customer Story Boards and SME Case Studies'* submitted by Ulster Bank on 21 March 2022. Ulster Bank notes that the RM ratio for CRE is [...], versus [...] for non-CRE businesses. See page 40 of the response to the Ulster Bank Phase 2 Information Request, dated 25 February 2022.

3.73 In aggregate, the evidence gathered by the Commission during it assessment of the Proposed Transaction indicates that there is a low level of supply side substitution between GPLs and other types of lending products. Lenders of GPLs require a good understanding of the business of the borrower and the industry it is operating in, making relationship managers particularly important.[223] A track history with clients (gained through offering banking services more generally) also helps with understanding the risk that lending to a particular customer poses.[224] There is a distinct set of non-bank lenders who exclusively provide GPLs, including CRE exclusive lenders,[225] non-CRE lenders,[226] and some who cover both.[227] Evidence gathered by the Commission suggests that recent expansion into the provision of GPLs, particularly GPLs to businesses ex-CRE from other types of lending products, has been limited.[228] The Commission has received no evidence from the competitors contacted, which currently do not provide GPLs, of intent to expand into the provision of GPLs in a timely fashion.[229]

3.74 In considering the provision of GPLs to CRE businesses, the Commission notes that CRE lending has a dedicated unit, division or team in each pillar bank,[230] dedicated separate units in debt advisory firms,[231] and a large range of specialised, dedicated non-bank lenders.[232] […] pillar banks have submitted internal documents which have highlighted a CRE strategy as separate from other types of lending.[233] […][234] of the

[223] Alternatively to a relationship manager, a lender may have sectoral specialists or a dedicated point of contact, as in the case of non-bank lenders.
[224] On this point in general, NatWest and Ulster Bank state that *"It is a much less complex process for a customer to refinance their GPLs with their existing bank, due to the existing bank's knowledge of the customer's business, developed through the multi-year relationship which has built up between lender and borrower. It is also typically cheaper for borrowers to refinance their GPLs with their existing lender, as transaction costs, such as legal and security costs and financial due diligence costs, are reduced or eliminated. This is the same for all customers regardless of customer size."* See the response to question 9 of the Ulster Bank Phase 2 Information Request, dated 25 February 2022.
[225] E.g., Activate Capital.
[226] E.g., Dunport Capital.
[227] E.g., Bain Capital Credit.
[228] The Commission is aware of two examples being Capitalflow's expansion from asset finance into GPLs to CRE, and First Citizen's expansion into GPLs to CRE from other forms of asset backed finance. The Commission notes that asset finance is excluded from the scope of the Proposed Transaction.
[229] At least, to businesses with an annual turnover in excess of €2 million.
[230] CRE in Ulster Bank, REF in AIB, and Property Finance in Bank of Ireland.
[231] E.g., Deloitte Real Estate Advisory, KPMG Real Estate.
[232] E.g., Activate Capital, RELM, Castlehaven.
[233] See […].
[234] […], and […].

three pillar banks have also provided the Commission with internal documents which evidence that they have considered the threat posed by these dedicated non-bank CRE lenders in an in-depth fashion, covering aspects such as their leadership, margins, funding bases, loan to value and loan to cost ratios, strengths, and weaknesses.[235]

3.75 Additionally, a number of reports identify the move from domestic to international investors, and reduced reliance by CRE customers on debt financing through Irish retail banks. Such reports include the CBI report from February 2021 "*Property funds and the Irish commercial real estate market"*[236] and The Irish Institutional Property's (IIP) report from May 2021 *"The Significance of International Development Finance in Ireland's Real Estate Markets"*[237].

3.76 The Commission notes that a number of banks and non-bank lenders are active in the provision of GPLs to CRE businesses. The Commission has received little evidence of dedicated CRE lenders expanding from the provision of GPLs to CRE to the provision of GPLs to other types of business.

3.77 Invoice finance requires frequent interaction between the lender and the client and a higher administrative burden for the lender,[238] which discourages some credit funds from offering this product.[239] The provision of invoice finance typically involves separate expertise, units or teams within pillar banks, suggesting that there are supply side characteristics that mark it as distinct from other types of lending products.[240] Invoice finance can be carried out by an unregulated entity, unlike other types of lending products such as overdrafts.[241] Evidence gathered by the Commission suggests that recent expansion into the provision of invoice finance from other types of

[235] These documents in general highlight that non-bank lenders typically offer a higher loan to cost or loan to value ratio in return for a higher margin. NBLs are also more willing to lend to developments that are outside the risk appetite of pillar banks, such as developments outside of core urban centres. Insurance companies are the exception to this, typically offering lower margins than the pillar banks, but in turn have a more limited risk appetite.
[236] See the document entitled, '*Production01 – 0000195'*, dated 22 February 2021, submitted as a part of the response to questions 1, 19 and 34 of the AIB Phase 1 RFI, dated 10 November 2021.
[237] See the document entitled, '*Production01 – 0000193'*, dated 10 May 2021, submitted as a part of the response to questions 2, 21, 22, 24, 25, 26, 31, 34, 46, and 47 to 49 of the AIB Phase 1 RFI, dated 10 November 2021.
[238] Capitalflow explained that this is typically why a service charge/administration fees are levied on an invoice finance facility. See the note of the call between Capitalflow and the Commission, dated 1 March 2022.
[239] See […].
[240] For instance, […] invoice finance specialists in Ulster Bank are to transfer to AIB under the Proposed Transaction.
[241] AIB's invoice finance is carried out by an unregulated entity.

business lending products covered under the Proposed Transaction has been limited.[242] The Commission has received no evidence from competitors contacted who currently do not provide invoice finance of intent to expand into the provision of invoice finance in a timely fashion. In aggregate, the evidence gathered by the Commission suggests that there is a low level of supply side substitution between invoice finance with these other types of lending products.

3.78 The evidence gathered by the Commission during its assessment of the Proposed Transaction suggests that expansion into the provision of overdrafts from other types of business lending products covered under the Proposed Transaction has been limited, which may in part be tied to the fact that only regulated banks can provide overdrafts, as they require current accounts. The Commission has received no evidence, from those competitors contacted which do not provide overdrafts, of an intention to expand into the provision of overdrafts in a timely fashion.[243]

3.79 If an entity wishes to issue documentary credit and guarantees, it must have a clearing account presence.[244] This limits the provision of this type of product to existing banks, banks who wish to passport their services into the State, and entities who would seek to be regulated as a bank by the CBI.[245] Like the provision of invoice finance, the pillar banks may have dedicated teams to this lending product, suggesting some level of dedicated expertise required.[246] The evidence gathered by the Commission to date suggests that expansion into the provision of documentary credit and guarantees from other types of business lending products covered under the Proposed Transaction has been limited.[247] The Commission has received no evidence of intention to expand into the provision of documentary credit and guarantees in a timely fashion from competitors contacted who currently do not provide this product.

[242] The Commission has seen no evidence of expansion from one entity offering one type of product covered under the Proposed Transaction expanding into invoice finance. The Commission is aware that both Capitalflow and Grenke have expanded from asset finance to invoice finance.
[243] At least, to businesses with an annual turnover in excess of €2 million.
[244] See the response to question 5 of the Ulster Bank Phase 2 Information Request, dated 25 February 2022. Ulster Bank asserts that there is a need for a clearing bank presence to operate overdrafts and guarantees.
[245] This may take at most 12 months from the completion of a full application to the CBI.
[246] E.g., See AIB's Trade Finance Team https://aib.ie/fxcentre/about-us/meet-the-team
[247] The Commission is aware of one example of this, Bibby's expansion into this potential market.

3.80 The Commission has weighed the evidence available to it on the sets of competitors, levels of expertise, examples of past expansion, and indications of future expansion, and finds that the level of supply side substitutability between the different types of lending products which form part of the Target Assets is low.

Conclusion on the relevant product markets

3.81 The Commission defines markets to the extent necessary to assess the competitive effects of a merger.

3.82 Given that overdrafts are largely, or exclusively, supplied by bank lenders in the State, the Commission considers that the results of a competitive effects assessment in relation to overdrafts would be similar to those established for GPLs ex-CRE. In addition, the evidence supplied to the Commission shows that they represent a relatively low volume of lending. Although many customers have access to overdrafts, through their current account, overdrafts account for a very small share of total business lending and a very small share (less than […]%) of the Proposed Transaction. Given this, and the similarity assessment of overdrafts would have to that for GPLs ex-CRE, the Commission decided not to further investigate overdrafts and so does not discuss these in the chapter on competitive effects analysis.

3.83 For the same reasons, the Commission decided not further investigate documentary credit and guarantees and so does not discuss these in the competitive assessment. These products are largely, or exclusively, supplied by bank lenders in the State and, so, the Commission considers that the results of a competitive effects assessment would be similar to those established for GPLs ex-CRE. In addition, the evidence supplied to the Commission shows that they represent substantially less than […]% of the value of the Proposed Transaction.

3.84 The Commission considers that the relevant product markets for which it needs to give further consideration in relation to any likely impact of the Proposed Transaction are:

(i) the provision of GPLs to businesses, other than CRE businesses, with turnover of between €2-250 million; ("GPLs ex CRE")

(ii) the provision of GPLs to CRE businesses; and,

(iii) the provision of invoice finance services to businesses, with turnover of between €2-250 million.

Geographic Markets

Views of the Parties

3.85 AIB considers that the geographic market for loans to SMEs is at least national, and that loans to LCCs may be international.[248] Ulster Bank has described the provision of lending to businesses with an annual turnover in excess of €500 million as a "*large international competitive market*"[249].

Views of the Commission

3.86 The Commission agrees that the relevant product markets are national in scope. The Commission has seen no evidence to suggest that a finding of narrower, subnational markets would be warranted.

3.87 Given differences in competitive conditions between jurisdictions, the Commission considers that a finding of a wider cross-border market would not be appropriate. Some providers of lending in the State must follow, for example, the Consumer Credit Act 1995 (as amended); the Consumer Protection Code 2012; and the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) Regulations 2015. The Commission recognises that a wider geographic market for the provision of loans to LCCs[250] may be warranted. However, for the purpose of the Commission's determination it is not necessary to decide whether the market for LCCs is national or wider in scope, as per paragraph 3.49

[248] See paragraph 128 on page 38 of the Merger Notification Form.
[249] See the response to question 78 of the Ulster Bank Phase 2 Information Request, dated 25 February 2022.
[250] Note that the Commission in this instance views an LCC as a business with over €250 million annual turnover.

above, the Proposed Transaction is not likely to give rise to competition concerns insofar as the provision of lending to LCCs is concerned.

Conclusion on the definition of product and geographic markets

3.88 Having regard to the evidence available to it, the Commission considers that the relevant markets for the competitive assessment of the Proposed Transaction are:

(i) the provision of GPLs to businesses in the State, other than CRE, with turnover of between €2-250 million (“the provision of GPLs ex-CRE”);

(ii) the provision of GPLs to CRE businesses in the State; and,

(iii) the provision of invoice finance services to businesses in the State, with turnover of between €2-250 million.

4. RELEVANT COUNTERFACTUAL

Introduction

4.1 Under section 22(3) of the Act, the Commission must consider whether a merger or acquisition gives rise to a substantial lessening of competition ("SLC"). The SLC test 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".

4.2 The 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."*[251]

4.3 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.

4.4 Paragraph 1.15 of the 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."*

[251] See paragraph 1.12 of the Merger Guidelines.

4.5 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.[252] 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 an SLC.

4.6 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 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.

4.7 To establish the relevant counterfactual, it is necessary to: (a) establish the competitive situation that would prevail in the absence of the merger; and, (b) distinguish between: (i) merger-specific competitive effects; and, (ii) non-merger-specific competitive effects, if any, that would occur irrespective of the merger being put into effect.[253]

4.8 The Commission recognises that competitive conditions can and do change over time and that 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. It is equally important to distinguish between competitive conditions and other developments that would have happened irrespective of the merger (which

[252] See paragraph 1.14 of the Merger Guidelines.
[253] See paragraph 1.13 of the Merger Guidelines.

should be taken into account as part of any counterfactual analysis) and those which are directly related to or the result of the merger (which are irrelevant to the counterfactual analysis[254]).

4.9 The Commission generally adopts the prevailing conditions of competition as the counterfactual against which it assesses the impact of the merger.[255] However, this may not always be the case, e.g., non-merger specific competitive effects may in some circumstances occur irrespective of the merger or acquisition. One particular example where the pre-merger situation would not be the relevant counterfactual is where the target firm is a failing firm.[256]

4.10 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.

4.11 In coming to its view of the appropriate counterfactual in this case, the Commission has not ignored developments post-notification of the Proposed Transaction. Rather, post-notification developments that are unrelated to the Proposed Transaction have been taken into account in both the merger scenario and the counterfactual. However, post-notification developments that are causally related or attributable to the Proposed Transaction have not been taken into account by the Commission.

4.12 As part of its assessment of the relevant counterfactual in this case, the Commission has assessed:

(a) whether the Target Assets would exit the relevant markets identified in Chapter 3 in the absence of the Proposed Transaction; and, if so,

[254] See, for example, the European Commission's decision in Case M.7278, *General Electric/Alstom*, 8 September 2015, in which the Commission found that "*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*", at section 8.10.3.6, available at https://ec.europa.eu/competition/mergers/cases/decisions/m7278_6808_3.pdf.
[255] See paragraph 1.12 of the Merger Guidelines.
[256] See paragraph 1.14 of the Merger Guidelines.

(b) whether there is a credible alternative purchaser of some, or all, of the Target Assets which may lead to a less anti-competitive alternative outcome than the Proposed Transaction.

4.13 In this section the Commission has assessed (a), and (b) under the following subsections:

(a) The Parties' views of the appropriate counterfactual;

(b) The Commission's assessment of the appropriate counterfactual and whether:

(i) the Target Assets would have exited the market in the absence of the Proposed Transaction; and

(ii) there is a credible alternative purchaser of some, or all, of the Target Assets which may lead to a less anti-competitive alternative outcome than the Proposed Transaction in each of the following product and geographic markets:

a) the provision of GPLs ex-CRE in the State;
b) the provision of GPLs to CRE businesses in the State; and
c) the provision of invoice finance services to businesses in the State, with turnover of between €2-250 million; and

(c) The Commission's conclusion on the appropriate counterfactual.

(a) The Parties' views of the appropriate counterfactual

4.14 The Merger Notification Form states that, *"Even in the absence of the Proposed Transaction, NatWest had decided to close the entirety of Ulster Bank (including the Target Assets). Therefore, in any counterfactual, the business associated with the Target Assets will leave the market."*[257] More specifically, Ulster Bank said that the appropriate counterfactual for the Proposed Transaction is that Ulster Bank will cease

[257] See paragraph 162 on page 49 of the Merger Notification Form.

supplying commercial banking products/services to existing customers in the State.[258] Ulster Bank states that it "*would look to close-down its relationships with customers as soon as possible*" by ceasing to provide credit to its existing commercial business customers.[259] Ulster Bank asserts that, absent the Proposed Transaction, there would not be a sale of the Target Assets as structured in the Proposed Transaction to an alternative purchaser. The reasons provided by Ulster Bank for this are that there are no less anti-competitive alternative purchasers, or purchasers with capacity to acquire the entire Target Assets as a going concern.

4.15 Ulster Bank states that it will not seek to sell short term loans. Specifically, in relation to short term loans, Ulster Bank submitted that:[260]

[…].

4.16 In relation to long term loan facilities, Ulster Bank submitted that:[261]

[…].

4.17 In relation to breaking up the Target Assets to facilitate smaller asset sales to alternative purchasers. Ulster Bank submitted that:[262]

"NatWest and Ulster Bank (and indeed Ulster Bank's customers) have no appetite for breaking the Target Assets down into smaller customer or product segments. This would be operationally too complex. It would represent a worse outcome for customers who prefer to keep their lending products with a single provider".

4.18 In summary, Ulster Bank submitted that the relevant counterfactual is that, in the absence of the Proposed Transaction, Ulster Bank would cease to provide its commercial banking products/services to existing customers in the State. Ulster Bank would not sell the entire Target Assets as it considers that there are no alternative

[258] According to paragraph 175 on page 54 of the Merger Notification Form and the Ulster Bank website, on 30 July 2021 Ulster Bank published on its website that it will no longer be taking on new to bank customers across any of their business banking services, with the exception of Lombard. See https://www.ulsterbank.ie/business/support/important-customer-notice.html.
[259] See the response to question 9 of the Ulster Bank Phase 2 RFI, dated 25 February 2022.
[260] See the response to question 23 of the Ulster Bank Phase 2 RFI response, dated 25 February 2022.
[261] See paragraph 5 of the introduction to the Ulster Bank Phase 2 Information Request, dated 25 February 2022.
[262] See paragraph 9 of the introduction to the Ulster Bank Phase 2 Information Request, dated 25 February 2022.

purchasers for all of the Target Assets which would lead to a less anti-competitive outcome relative to the Proposed Transaction. Instead, Ulster Bank submits that it would close short-term loans and likely look to sell its long-term lending products in a single portfolio transaction.

(b) The Commission's assessment of the appropriate counterfactual

4.19 As set out above, the Commission's assessment of the relevant counterfactual begins by considering whether, absent the Proposed Transaction, Ulster Bank had, or would have, taken concrete steps to cease its operations in the State with respect to the Target Assets. The Commission then considers whether there may be an alternative purchaser for some, or all, of the Target Assets which may lead to a less anti-competitive alternative outcome, relative to the Proposed Transaction, in the relevant product markets discussed in Chapter 3.

(I) Ulster Bank's intentions to cease its operations in the State, with respect to the Target Assets, absent the Proposed Transaction

4.20 The timeline for the Proposed Transaction submitted by Ulster Bank indicated that Ulster Bank and NatWest started contemplating the sale of the Target Assets in December 2020 as that was when they invited initial offers of interest from AIB and [...].[263] Therefore, the Commission has assessed the intentions of Ulster Bank and NatWest with respect to Ulster Bank's operations in the State on the basis of an in-depth analysis of internal documents of Ulster Bank and NatWest, which were produced prior to the Proposed Transaction being in contemplation.

4.21 Information reviewed by the Commission of a meeting held in March 2019 ("March 2019 Meeting") shows that, since at least 2018, the board of RBS (as NatWest was then known) ("RBS Board"),[264] was not satisfied with the performance of Ulster Bank in the State and did not think it likely that Ulster Bank could provide their desired level

[263] See the introduction of the response to the Ulster Bank Phase 1 Information Request, dated 5 October 2021.
[264] As stated in Chapter 1, RBS was renamed to NatWest in 2020.

of return. In the March 2019 Meeting, the RBS Board acknowledged that Ulster Bank *"faces challenges in returning above its cost of capital"* and that [...].[265]

4.22 Also, in the March 2019 Meeting, the RBS Board commented that, *"We have considered a wide range of exit options (see Q4);* [...]. The RBS Board however, [...] that, *"From a risk perspective beginning a wind-down before […] might be premature and produce unintended consequences."*[266]

4.23 Based on its risk assessment, at the March 2019 Meeting the RBS Board decided [...]. In the March 2019 Meeting the RBS Board decided to continue with a strategy that was started in 2018 following the appointment of a new CEO to Ulster Bank, Jane Howard, [...] (the "CEO Strategy").

4.24 […][267][…].[268]

4.25 According to the minutes of the March 2019 Meeting, the RBS Board requested views on strategic options [...]. The CEO Strategy was reviewed in a meeting of the NatWest Executive Committee held on [...].[269]

4.26 At the April 2020 Meeting, the outlook on Ulster Bank's performance in the State remained unchanged. In that meeting the NatWest Executive Committee resolved that "[...]*, it was an appropriate time to re-consider the Group's long-term future in the Republic of Ireland."*[270] [...], the NatWest Executive Committee [...] decided to commence the review of Ulster Bank's operations in the State. The NatWest Executive Committee decided to focus on two possible options to facilitate an exit, namely; (1) wind-down of Ulster Bank and (2) a merger with […] with a view to exit over time, either through a sale or initial public offer.

[265] […].
[266] […].
[267] […].
[268] […].
[269] […].
[270] […].

4.27 In particular, regarding the wind-down option, the NatWest Executive Committee decided that *"consideration needed to be given to the implications of a wind-down from a NWH capital perspective."*[271] Regarding the option of a merger with […], the NatWest Executive Committee acknowledged that "*improved returns may not be achieved through a potential combination […]"* and that more will be determined after engagements with […].[272] In summary, in the [...] Meeting, the NatWest Executive Committee decided the following:[273]

> *"a) that it was the right time to re-consider the long-term future in [the Republic of Ireland];*
>
> *b) to focus on a narrowed scope of inorganic options alongside the "new" status quo (wind-down and [merger] with […]) as set out in the paper; and,*
>
> *c) that a further update should be provided in June 2020"* ([...]).

4.28 The Commission is of the view that the [...]. This is because, unlike in [...], where a strategy was pursued to try and stabilise Ulster Bank's long-term position in the State, the NatWest Executive Committee resolved to focus on options that would facilitate the exit of Ulster Bank from the State. This signifies a change in Ulster Bank's long-term strategy in the State.

4.29 Based on the […] Meeting, the NatWest Executive Committee planned to discuss [...] in June 2020. This discussion happened in meetings held on 10 and 11 June 2020 ("June 2020 Meetings").[274]

4.30 In the June 2020 Meetings, the NatWest Executive Committee accepted the financial outlook presented by the Project [...] team, that Ulster Bank could not produce adequate returns in the State. Specifically, according to the minutes of the June 2020 Meetings, "*Even under assume* [sic] *materially lower impairments we will not be close*

[271] […].
[272] […].
[273] […] .
[274] […].

to achieving cost of equity returns through the plan period… […].[275] This led the NatWest Executive Committee to consider the following options for a managed exit: (1) a wind-down of Ulster Bank (termed the Gradual Case); (2) a merger with […]; and, (3) a merger with […].[276]According to the minutes of the June 2020 Meetings *"the Directors recognised that a wind-down of UBIDAC was likely to be the most favourable."*[277]

4.31 [...].

4.32 The Commission did not find any evidence or information that Ulster Bank and NatWest implemented further strategies to ensure that Ulster Bank would continue to compete in the State. [...].

4.33 On 18 September 2020, NatWest confirmed to the media that it was carrying out a review of Ulster Bank's operations in the State.[278] In a meeting held in October 2020, the NatWest Executive Committee, with the Project [...] team, continued to review options to [...].

4.34 In that meeting in October 2020, new additional options to the wind-down of Ulster Bank were discussed, namely: (a) a wind-down with some loan sales up to €[…] to bring capital repatriation forward by 1 year to […] (termed the Central Case); and, (b) a wind-down with a larger sale of assets up to €[…] to bring capital repatriation forward to […] ([...]).

4.35 The NatWest Executive Committee also accepted recommendations of the Project […] team that sufficient work had been done to make an explicit statement that NatWest was conducting a strategic review of Ulster Bank's position in the State, in time for the Q3 2020 results. And, therefore, that work should commence to start engagements

[275] […].
[276] […] […].
[277] […].
[278] See article here: https://www.irishtimes.com/business/financial-services/natwest-confirms-review-of-ulster-bank-as-covid-19-bites-1.4358311.

with stakeholders, including the Government, regulators, customers, and employees, as part of the […] strategy (the "[…] Decision").[279]

4.36 The Department of Finance stated, in a call with the Commission, that, in [...], Ulster Bank met with the Minister and [...]. [...].

4.37 The Commission is of the view that the board documents of the meetings of the NatWest Executive Committee prior to […] demonstrate NatWest and Ulster Bank's intentions to cease Ulster Bank's operations in the State.

4.38 [...]. There is no evidence of a decision or discussions, after the [...] Meeting, towards sustaining Ulster Bank operation in the State long-term.[280] [...] in the June 2020 Meetings, the NatWest Executive Committee continued to discuss the [...] options for Ulster Bank. [...] confirming to the media, in September 2020, that NatWest was carrying out a review of Ulster Bank's operations in the State; [...].

4.39 In light of the above, the Commission is of the view that there is sufficient evidence to conclude that Ulster Bank's intention to cease operations in the State was not causally related or attributable to the Proposed Transaction. This means that the intention to exit preceded the Proposed Transaction Therefore, the Commission is of the view that there is sufficient evidence to show Ulster Bank's intentions to cease its operations in the State, absent the Proposed Transaction.

4.40 The NatWest Executive Committee took further steps specifically in relation to the Target Assets in the context of its intention to exit the State. Therefore, in the following paragraphs, the Commission sets out its assessment of Ulster Bank and NatWest's intention specifically with respect to the Target Assets.

4.41 By [...], the NatWest Executive Committee identified a course of action for the Target Assets. As indicated in paragraph 4.34 above, one of the options considered by the NatWest Executive Committee, to facilitate an exit was a wind-down with a larger sale

[279] See document entitled […], submitted in response to questions 1,2,10, 11 and 13 of the Ulster Bank Phase 1 Information Request, dated 5 October 2021.
[280] See paragraph 4.30 of this determination regarding the comment from the NatWest Executive Committee that [...].

of assets up to €[…] to bring capital repatriation forward to […] (termed the [...]). The minutes of meeting in December 2020, shows that the NatWest Executive Commission discussed potential parties they could approach to sell the assets to under the [...].[281]

4.42 In relation to the planned course of action, […].[282] Specifically, the minutes of a meeting held on 8 December 2020 (the "December 2020 Meeting") show that the NatWest Executive Committee resolved that, *"We are therefore prioritising the investigation of a deposit-led transaction with […] to transfer a large part of our balance sheet ([…]-led Option")."*[283] The minutes of the December 2020 Meeting also shows that the NatWest Executive Committee expected that there would then be a further sale of some residual assets which […] did not wish to acquire.[284]

4.43 Considering recommendations from their appointed advisors, Goldman Sachs, in the December 2020 Meeting the NatWest Executive Committee identified AIB and […] as potential purchasers for any residual assets.

4.44 The Commission is of the view that the December 2020 Meeting is significant as in this meeting the NatWest Executive Committee resolved to initiate discussions with AIB (and […]) for the potential sale of Target Assets.

4.45 Table 1 below, which was submitted to the Commission by Ulster Bank, summarises the decision-making process that led to the selection of AIB as the preferred buyer for the Target Assets.[285]

Table 1: Ulster Bank's summary of the decision-making process in the sale of the Target Assets

Date	Event

281 […].

282 NatWest and Ulster Bank's submissions regarding discussions with […] were confirmed by the SFAD of Department of Finance. According to SFAD, […] consulted the Minister on the potential acquisition of certain assets of Ulster Bank. SFAD indicated that […] notified the Minister of discussions with Ulster Bank and that the board papers provided by […] suggested that some mid-size SME loans were originally in the set of potential assets being discussed between NatWest and […] in 2020. See response from the Department of Finance dated 28 March 2022.

283 See document entitled […] submitted as a part of the response to questions 1,2,6,9,10 and 13 of the Ulster Bank Phase 1 Information Request, dated 5 October 2021.

284 See document titled […] submitted as a part of the response to questions 1,2,6,9,10 and 13 of the Ulster Bank Phase 1 Information Request, dated 5 October 2021. According to the minutes of the meeting, […] *i) We are in active discussions with relevant counterparties interested in acquiring assets – these would be relevant under both the […]-led Option (for the residual balance sheet) and Accelerated Managed Exit*."

285 See the introduction of the response to the Ulster Bank Phase 1 Information Request, dated 5 October 2021.

[…]	[…]:
[…]	[…]:
	[…]:

Source: Ulster Bank and NatWest submission[286]

4.46 The Commission investigated in detail the internal documents of Ulster Bank and NatWest and, through these, was able to verify the timeline and events set out above.

4.47 In the December 2020 Meeting, the NatWest Executive Committee also resolved to establish the Caspian Executive Steering Group ("Caspian ESG"), a committee of the Boards of NatWest Group and NatWest Holdings that had full authority to consider all matters and take all decisions in connection with the [...] strategy, including, but not limited to, approving any proposed transaction.[287]

4.48 As shown in Table 1 above, Caspian ESG, with Goldman Sachs, initiated the bidding process for the Target Assets in December 2020.

4.49 AIB and […] submitted proposals for the purchase of the Target Assets on 22 January 2021. During the evaluation of their respective bids, Ulster Bank and NatWest retained the Wind-Down of Ulster Bank as a backstop. In particular, in a meeting of the NatWest Executive Committee held on 26 January 2021, Caspian ESG presented that *"As well as continuing to build the Gradual Case [Wind-Down of Ulster Bank] for a managed exit which remains our back-stop, we have engaged with […] and Allied Irish Bank ("AIB") on a mainly corporate focused asset and liability perimeter…"* [288]

4.50 Ultimately Ulster Bank and NatWest resolved to select AIB as the preferred bidder (ahead of […]) for the Target Assets on 29 January 2021.[289] According to the minutes of a meeting held on 29 January 2021, *"Part of the judgement* [to select AIB as preferred bidder] *has been based around behaviours, with AIB taking a more reasonable and flexible approach particularly regarding competition issues which*

[286] See the introduction of the response to the Ulster Bank Phase 1 Information Request, dated 5 October 2021.
[287] […].
[288] […].
[289] […].

when combined with the better outcome for staff and the fact that the transaction is strategic for them had led the Caspian ESG to recommend proceeding with AIB as the preferred partner for the commercial perimeter."[290] According to NatWest and Ulster Bank, […] for the Target Assets between […] and AIB was not significantly different.[291]

4.51 Minutes of various meetings held in February 2021 [...].shows that [...] discussed the timing for the committee of the board of directors of each of NatWest Group, and NatWest to note the memorandum of understanding for sale of the Target Assets to AIB.[292] In […] also discussed the timing for the confirmation that the strategic review of Ulster Bank had been concluded and that NatWest has taken a decision to cease Ulster Bank's operations in the State, as well as for the public statement (the "Withdrawal Announcement").

4.52 On 19 February 2021, NatWest Group and NatWest approved the recommendations to confirm that the strategic review of Ulster Bank had been concluded and for the Withdrawal Announcement to be made on 19 February 2021.[293]

Conclusion of the Commission's assessment of Ulster Bank's intentions to cease its operations in the State, with respect to the Target Assets, absent the Proposed Transaction

4.53 As stated above, in paragraph 4.6, the Commission places more weight on documents produced prior to the Proposed Transaction being in contemplation. The Commission is satisfied that there is sufficient evidence to show that Ulster Bank and NatWest intended to exit the State prior to the contemplation of the Proposed Transaction. Therefore, the Commission is satisfied that Ulster Bank and NatWest's decision was not causally related or attributable to the Proposed Transaction. [...].

[290] […].
[291] […]
[292] […].
[293] See document entitled *"210219 20210219 - FINAL NWG and NWH Board Results inc Caspian Committe.PDF"* dated 19 February 2021 submitted as a part of the response to questions 6 and 10 of the Ulster Bank Phase 1 Information Request, dated 5 October 2021.

4.54 Accordingly, the Commission is of the view that the relevant counterfactual is that Ulster Bank would cease its operations in the State in respect of the Target Assets absent the Proposed Transaction.

4.55 In the following paragraphs, the Commission sets out its assessment of whether the Target Assets could have been sold to a potentially less anti-competitive alternative purchaser.

(II) Is there is a credible alternative purchaser of some, or all, of the Target Assets which may lead to a less anti-competitive alternative outcome than the Proposed Transaction in each of the following identified product markets?

4.56 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 takes 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.

4.57 The Merger Notification Form states that,

> *"There is no realistic and credible less anti-competitive alternative to the Proposed Transaction, given that a sale of Ulster Bank in its entirety was not feasible, there was a low level of interest in the Target Assets, and […] bidders."*[294]

4.58 Ulster Bank informed the Commission that […] was the […] other viable alternative to AIB to purchase the Target Assets as, in its view, other banks (including […]) do not have the capability or capacity to service the customers who fall within the scope of the Target Assets.[295]

[294] See paragraph 189 on page 59 of the Merger Notification Form.
[295] See paragraph 195 on page 60 of the Merger Notification Form and paragraph 8 of the response to the Ulster Bank Phase 2 Information Request, dated 25 February 2022.

4.59 To consider whether there is an alternative purchaser of the Target Assets, as a whole or in part, the Commission sought to obtain the views of: (i) domestic banks; (ii) international banks; and, (iii) non-banks.[296]

4.60 Permanent TSB told the Commission that […].[297] Permanent TSB elaborated by stating that […].[298] Permanent TSB said that the purchase of the Target Assets and the migration of customers would have required […].

4.61 The Commission also explored whether the Irish Government may have been in a position to influence the assets which Permanent TSB may seek to purchase from Ulster Bank. As noted, at paragraph 2.36 above, the Relationship Framework agreements between the Minister for Finance and each of AIB, Bank of Ireland, and Permanent TSB, acknowledge that each bank remains a separate economic unit with independent powers of decision-making and that its board and management teams retain responsibility and authority for determining the bank's strategy and commercial policies.[299] In particular, the Department of Finance does not have the power to influence the decision of a bank to exit the State and is also legally precluded from influencing Permanent TSB in its actions in the market, including the assets which Permanent TSB may choose to purchase from Ulster Bank.[300]

4.62 KBC told the Commission that it did not consider acquiring: (i) the Target Assets; (ii) part of the Target Assets; or (iii) any other assets of Ulster Bank which were marketed for sale. KBC said that it had entered into a Memorandum of Understanding with Bank of Ireland, which was expected to lead to a transaction whereby Bank of Ireland would acquire substantially all of KBC Ireland's performing loan assets and liabilities.[301]

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[296] See paragraph 1.21 of this Determination for a list of the third parties.
[297] See the response of Permanent TSB to the Competitor Questionnaire, dated 08 November 2021.
[298] See note of the call between the Commission and Permanent TSB, dated 19 November 2021.
[299] The Department of Finance noted that the Minister has no role in the day-to-day commercial and operational matters of any bank operating within the State, including banks in which the State has a shareholding. However, they stated that, as a shareholder in Permanent TSB, the Minister (and Department officials) would consider the pros and cons as part of a consultation discussion, of any acquisition (or disposal) of assets by Permanent TSB. They further noted that the funding of any potential acquisitions is a matter for the board of Permanent TSB in the first instance.
See the response, dated 28 March, to the Commission questionnaire issued to the Department of Finance on 28 February 2022.
[300] See the note of the call between the Department of Finance and the Commission, dated 15 March 2022.
[301] See the response of KBC to the Competitor Questionnaire, dated 29 October 2021.

4.63 Of the third parties contacted, […] is the only party that submitted an indicative proposal to NatWest with respect to the Target Assets.[302] However, as stated in Table 1 above, Ulster Bank and NatWest (Caspian ESG) did not consider […] a preferred purchaser.

4.64 The Commission considers that, while [...] is clearly a potential alternative purchaser of the Target Assets, it is not clearly a less anti-competitive alternative purchaser. Ulster Bank and NatWest said in their response to the Ulster Bank Phase 2 Information Request, that, […].[303] The Commission's own initial analysis also shows that it is possible that a sale of the Target Assets to [...] would raise competition concerns similar to those that may arise in relation to the Proposed Transaction.[304] Therefore, it would be inappropriate for the Commission to adopt a sale of the Target Assets to [...] as the most likely counterfactual in the absence of the Proposed Transaction.

4.65 In the following paragraphs, the Commission sets out its analysis as to whether there are any other alternative less anti-competitive purchasers for the Target Assets in relation to each of the identified potentially relevant markets which it discussed in Chapter 5.

An alternative purchaser which may lead to a less anti-competitive alternative outcome than the Proposed Transaction in the provision of GPLs ex-CRE in the State

4.66 According to the Merger Notification Form, absent the Proposed Transaction, NatWest would likely look to sell Ulster Bank's loan book with long term loans.[305]

4.67 Ulster Bank submitted that, if a sale could not be made of the Target Assets to either AIB or […], "*Ulster Bank would then need to look to sell the loans to a financial sponsor, if any interest could be generated.*"[306] Ulster Bank and NatWest further submitted that

[302] See […].
[303] See Ulster Bank response to question 66 of the Ulster Bank Phase 2 Information Request, dated 25 February 2022.
[304] In those markets in which AIB has a relatively high market share, [...] similarly has a relatively high market share, as shown [...].
[305] See paragraph 189 on page 59 of the Merger Notification Form.
[306] See paragraph 15 of Ulster Bank's response to Ulster Bank Phase 2 Information Request, dated 25 February 2022, read with paragraph 184 on page 57 of the Merger Notification Form. Financial sponsors are companies with a credit licence to receive the capital and interest payment (but not providing normal banking services). These companies are not involved in the provision of business lending but instead manage the book for yield.

a sale of the GPLs ex-CRE to a financial sponsor would not be expected to lead to continued competition for customers in the State as a financial sponsor would be expected only to manage any outstanding loan book for yield.[307]

4.68 The Commission considers that the sale of any assets to a credit serving firm (i.e., a company that does not provide lending but manages book for yield) is likely to have the same effect as a Wind-Down by Ulster Bank as, in both situations, Ulster Bank would cease to provide new GPLs ex CRE.

4.69 Moreover, none of the other third parties contacted by the Commission said that they had expressed an interest, to Ulster Bank or NatWest, to acquire GPLs ex-CRE.[308] In this regard, the Commission's view is that there is no evidence to substantiate an alternative view to the Commission's view that the relevant counterfactual with respect to the provision of GPLs ex-CRE is a Wind-Down.

Alternative purchaser which may lead to a less anti-competitive alternative outcome than the Proposed Transaction in the provision GPLs to CRE businesses in the State

4.70 […] submitted to the Commission that it sent a letter to Ulster Bank, dated 20 April 2021, (the "Introductory Letter") in which it sought to:

> *"open a dialog with* you [Jane Howard of Ulster Bank] *on any aspects of the Bank's portfolio that you would deem suitable, given […]'s capability and desire to accelerate its growth in our core target markets".*[309]

4.71 […] told the Commission that it currently provides […] in the State. […] was interested in purchasing Ulster Bank assets in the areas that it currently operates, such as GPLs

[307] See paragraph 15 of the response to the Ulster Bank Phase 2 Information Request, dated 25 February 2022.
[308] For example, BNP Paribas stated that it already has relationships with LCCs and MCCs who also bank with Ulster Bank thus did not need to take on more assets / exposure. Rabobank stated that it did not consider purchasing the Target Assets because (i) it was not aware of the transaction and (ii) it's Dublin services F&A companies only and assets the subject of loan sales such as these tend not to fit within their narrow sector and corporate mandate. Investec stated that it has not been involved in business banking services in the State (including lending and alternative funding) for many years nor does it have any plans to re-enter this segment of the market. Bankinter stated that a purchase of the Target Assets would have been challenging as it does not have IT, or sales team in the State.
[309] See Submissions from […] on 24 January 2022.

for CRE.[310] […] submitted to the Commission that, if the opportunity were still available, it would still be interested in buying Ulster Bank's GPLs for CRE assets.

4.72 NatWest and Ulster Bank submitted that the relevant counterfactual for GPLs for CRE is a Wind-Down. However, the Commission considers that NatWest would likely achieve more value from a sale to an alternative purchaser relative to a Wind-Down. The Commission notes that GPLs for CRE tend to be high value loans which do not require substantial on-going relationship management.[311] The Commission considers that these factors make it more likely that Ulster Bank and NatWest would seek to sell the GPLs for CRE assets to another active provider of such loans in the State, in the absence of the Proposed Transaction.

4.73 The Commission considers that, in the absence of the Proposed Transaction, there are credible potential purchasers of Ulster Bank's GPLs for CRE, and that NatWest and Ulster Bank would have had an incentive to sell these loans to an alternative purchaser. The Commission is, therefore, of the view that the counterfactual for GPLs for CRE is the sale to an alternative less anti-competitive purchaser, for example, […].

An alternative purchaser which may lead to a less anti-competitive alternative outcome than the Proposed Transaction in the provision of invoice finance services to businesses in the State, with turnover of between €2-250 million.

4.74 Ulster Bank submitted that, as part of a Wind-Down (in the absence of the Proposed Transaction), Ulster Bank would,

> *"Withdraw the provision of all on-demand facilities (including overdrafts, invoice finance, trade finance and guarantees), and any other facilities maturing within 12 months (for example longer-team loans nearing the end of their current term)."*[312]

4.75 Ulster Bank further submitted that it would be difficult or unattractive to sell the invoice finance facilities, relative to a Wind-Down with respect to these assets, for the following reasons:

[310] See the notes of the calls between the […] and the Commission dated 3 November 2021, and 8 February 2022.
[311] See note of the call between Ulster Bank and the Commission, dated 11 February 2022.
[312] See the response to question 62 of the Ulster Bank Phase 2 Information Request, dated 25 February 2022.

(a) Firstly, the value of the invoice finance book would be low and unattractive to potential buyers because most of Ulster Bank's customers who have invoice finance facilities have a revealed preference to maintain their invoice finance account with the same bank with whom they hold overdraft and term loan facilities (on a holistic relationship-managed basis).[313] To illustrate the point, Ulster Bank said that, a sizeable majority of its invoice finance customers have an overdraft that will interact closely with the invoice finance product. In addition, a further significant proportion of Ulster Bank's invoice finance customers have a current account, but no overdraft, with Ulster Bank.[314] Accordingly, Ulster Bank submits, that if it sought to separate the invoice finance facilities, most customers would likely seek to have their invoice finance, current account, overdraft and other lending products from a single provider. Therefore, these customers are likely to respond to any separation of Ulster Bank's invoice finance facilities from their other banking and/or lending facilities by refinancing with a full-service bank. Furthermore, Ulster Bank anticipates that the customer switching/refinancing would likely happen even before Ulster Bank could pursue a sale of its invoice financing facility. Thus, the value of the invoice finance book would reduce, making it unattractive to potential buyers.

(b) Secondly, it would not be worthwhile to NatWest to pursue a sale of its invoice finance assets because it would be costly and time consuming for Ulster Bank to do so. For example, from a timing perspective, it took four months for the Parties to negotiate the Proposed Transaction (that is to get from Memorandum of Understanding to signing the two MDS and on-Boarding Agreement with AIB). From a cost perspective, Ulster Bank says that, under the Proposed Transaction, the budget for external consultants on the migration planning, preparation and execution is c. €[…]. Although Ulster Bank would not incur the same level of cost if selling just invoice finance, there would be substantial additional costs incurred,

[313] According to the document entitled *"2203_CCPC_Amalfi_invoice financing CF"*, dated 29 March 2022, Ulster Bank said that, *"Invoice finance products account for a very small proportion (circa €230m out of circa €4.2bn) of the total value of assets being transferred under the terms of the Proposed Transaction. The primary rationale for including invoice finance in the transaction perimeter is to ensure that invoice finance products remain with the same provider as customers' other lending products, particularly overdrafts, trade finance and term loans."*

[314] See the document entitled *"2203_CCPC_Amalfi_invoice financing CF"*, dated 29 March 2022.

whether arising with adviser fees or the opportunity cost of utilising the time of NatWest and Ulster Bank staff in this way. Ulster Bank indicated that these costs would be large relative to the relatively low annual revenues (€[…]) and operating profits (€[…]) accruing from the Ulster Bank invoice finance assets.[315] The invoice finance assets are also relatively small in relation to the total value of the Proposed Transaction (4%).

(c) Thirdly, Ulster Bank submitted that it would be able to recover its outstanding lending within a relatively short period and at relatively low cost. Ulster Bank told the Commission that, in the event of a Wind-Down, it would give a 6 month notice period to its customers that Ulster Bank will not lend against any further invoices after this period. Based on the debtor funding days profile of the portfolio of Ulster Bank customers, and assuming that no customers become insolvent during the process, Ulster Bank anticipates that it would expect to be able to collect the vast majority of outstanding amounts within […] days of the start of the collect-out process.[316] This means that Ulster Bank would expect to have almost no outstanding loans […] months after giving notice to customers.

4.76 In assessing the appropriate counterfactual in relation to invoice finance, the Commission first considered the viability of selling the invoice finance assets to a full-service bank and, secondly, to an invoice finance specialist.

4.77 As discussed at paragraph 4.45 above, the full-service banks that were interested in the commercial lending assets of Ulster Bank were AIB and […]. The Commission's analysis of market shares does not lead the Commission to believe that a sale of the invoice finance assets to […] would likely be a less anticompetitive counterfactual than a sale of these assets to AIB. Therefore, the Commission has not adopted a sale to […] as the appropriate counterfactual. In addition, the Commission did not identify any other full-service banks which were interested in purchasing only the invoice finance assets, as opposed to the entirety of the Target Assets. Therefore, the Commission

[315] See the document entitled *"2203_CCPC_Amalfi_invoice financing CF"*, dated 29 March 2022.
[316] Ulster Bank explained that the collect-out process […].

does not consider a sale of the invoice finance assets to a full-service bank to be the appropriate counterfactual.

4.78 The Commission next investigated whether a sale of the invoice finance assets to an invoice finance specialist would be the most realistic counterfactual in the absence of the Proposed Transaction. The Commission identified at least one invoice finance specialist, […], which expressed an interest in Ulster Bank's invoice finance assets. […] provides invoice finance, and other forms of business lending, but is not a full-service bank (for example, it does not provide current accounts or overdrafts or other typical banking services).

4.79 The Commission then assessed whether there would be a viable business to sell to an invoice finance specialist that will address any effects on competition and which included an assessment of the customer's revealed preference to have invoice finance with a full-service bank. As part of its assessment, the Commission considered what the likely response would be of Ulster Bank's invoice finance customers if their facilities were to be sold to an invoice finance specialist.

4.80 The Commission found that the vast majority of Ulster Bank customers with invoice finance have at least one other product (i.e., current/deposit account and/or other loans) with Ulster Bank, and just a small minority source only invoice finance from Ulster Bank.[317] The Commission considered that this evidence may indicate a revealed preference for Ulster Bank's invoice finance customers to source multiple financial products from a single provider, particularly a full-service bank.

4.81 The Commission investigated this issue further by contacting a sample of Ulster Bank's invoice finance customers to survey them about their preference between full service banks and invoice finance specialists when sourcing invoice finance.[318] The survey results show that, for all those customers surveyed who have invoice finance and

[317] See page 2 of the document entitled, '*2022.02.18 letter from UB re Invoice Finance (updated response)*' submitted by Ulster Bank, dated 18 February 2022.

[318] The Commission contacted 30 out of […] of customers with invoice finance from Ulster Bank. The Commission received responses from 21 customers. Of those sampled, […] customers had invoice finance and other products from Ulster Bank and […] customers had only invoice finance from Ulster Bank.

other products with Ulster Bank, there is a preference to have their invoice finance facility with a full-service bank.[319]

4.82 Given the preferences of Ulster Bank's invoice finance customers, the Commission considers that few current customers would allow their facilities to be transferred to an invoice finance specialist. Rather, the Commission considers it likely that these customers would close their invoice finance facilities with Ulster Bank, or with any invoice finance specialist, and, instead, seek alternative facilities with a full-service bank. This leads the Commission to conclude that there was not a viable sale of the invoice finance assets to an invoice finance specialist, or a sale which would have led to a less anticompetitive counterfactual than Proposed Transaction.

4.83 In conclusion, the Commission considers that the relevant counterfactual in relation to invoice finance is a Wind-Down, meaning that, in the absence of the Proposed Transaction, Ulster Bank would cease the provision of its invoice finance service without the sale to an alternative less anti-competitive purchaser.

(c) The Commission's conclusion on the appropriate counterfactual

4.84 On the basis of the above, the Commission considers that the Parties have substantiated their submission with supporting evidence which pre-dates the Proposed Transaction, that, absent the Proposed Transaction, Ulster Bank would have exited the State.

4.85 In addition, based on the evidence and information available to it, the Commission considers that there was no alternative less anti-competitive purchaser for Ulster Bank's GPLs ex-CRE business in the State or for Ulster Bank's invoice finance services to businesses in the State with turnover of between €2-250 million. However, the Commission considers that there was an alternative (and potentially less anti-competitive) purchaser in respect of Ulster Bank's provision of GPLs to CRE businesses in the State.

[319] See responses to the Commission's invoice finance questionnaire.

4.86 Therefore, the Commission has reached the view that the appropriate counterfactual is that, absent the Proposed Transaction, Ulster Bank would have exited the State and that it would have proceeded with (i) a Wind-Down in respect of (a) its GPLs ex-CRE business in the State and (b) its provision of invoice finance services to businesses in the State with turnover of between €2-250 million, and (ii) a sale to an alternative purchaser in respect of its provision of GPLs to CRE businesses in the State.

5. COMPETITIVE ASSESSMENT – UNILATERAL EFFECTS

Introduction

5.1 In this Chapter, the Commission sets out its analysis of the likely competitive effect of the Proposed Transaction in each of the three relevant markets identified in Chapter 3 above:

(a) the provision of GPLs to businesses in the State, other than CRE, with turnover of between €2-250 million;

(b) the provision of GPLs to CRE businesses in the State; and,

(c) the provision of invoice finance services to businesses in the State with turnover of between €2-250 million.

5.2 The remainder of this Chapter sets out:

(a) The theory of harm considered

(b) The Parties' views

(c) The assessment as regards the provision of GPLs to businesses in the State ex-CRE

(d) The assessment as regards the provision of GPLs to CRE businesses in the State

(e) The assessment for the provision of invoice finance services to businesses in the State

(f) The Commission's conclusions

Theory of harm – reduction in competition

5.3 As noted above, under section 22(3) of the Act, the Commission must consider whether a merger or acquisition gives rise to a substantial lessening of competition, i.e. the SLC test. The Commission has considered whether the Proposed Transaction is likely to lead to an SLC in any of the three relevant markets identified in Chapter 3 above. The approach of the Commission is to set out the potential harm or harms to which the Proposed Transaction could give rise. This is called a theory of harm. The Commission then presents the evidence and analysis which are relevant to testing the identified theory of harm, before the Commission draws inferences on the basis of this evidence.

5.4 In this instance, the Commission considered a unilateral effects theory of harm. Unilateral effects, as explained in paragraph 4.8 of the Merger Guidelines, occur when "*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*." The Commission assesses whether the Proposed Transaction, as compared to the counterfactual, would result in an increase in concentration in the relevant markets and a reduction of competitive pressure on the remaining banks, which may result in an increase in prices for customers such as higher lending interest rates.[320] This may materialise due to the small number of providers, substantial barriers to entry and switching costs, and reduced competitive pressure on the remaining provider(s).

5.5 The Commission's analysis has not focussed on the closeness of competition between Ulster Bank and AIB. This is because there is pre-Proposed Transaction evidence to indicate that Ulster Bank was taking concrete steps to exit the relevant markets. Therefore, it would not be realistic to treat Ulster Bank as though it is a competitor that would remain in the market absent the Proposed Transaction.

5.6 The Commission's competitive assessment compares the most realistic counterfactual, which is the exit of Ulster Bank via a sale or a Wind-Down, in the absence of the Proposed Transaction. The Commission took a similar approach in *M/15/026 Baxter Healthcare/Fannin Compounding* and similar approaches have also been followed by other competition authorities (see Annex 2).[321] These competition authorities compared the counterfactual of a firm's exit against the proposed merger and assessed the competitive effects in this context.[322] The Commission applies a similar framework here.

[320] Unilateral effects occur when 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. See paragraphs 4.8 to 4.13 of the Merger Guidelines.
[321] See Commission's determination in https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m15026-baxter-healthcare-fannin-compounding/.
[322] Note that the Commission is of the view that the relevant counterfactual for GPLs for CRE is a potential sale to an alternative purchaser.

5.7 The Commission's starting point for its competitive analysis of the Proposed Transaction is the degree of market concentration that would exist following implementation of the Proposed Transaction compared with the relevant counterfactual. Market concentration refers to the number and size of firms in the relevant market. Paragraphs 3.9 to 3.10 of the Merger Guidelines set out that the Commission utilises the Herfindahl-Hirschman Index (HHI) as a measure of market concentration.[323] The CCPC's Merger Guidelines state that the Commission will have regard to the following HHI thresholds:[324]

"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."

5.8 The 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*."

5.9 The Merger Guidelines set out other aspects that should also be considered when assessing the impact of a merger.[325] In this case the Commission focuses on barriers to entry and customer switching as the most relevant aspects.

[323] The Commission's approach of considering concentration and HHIs when assessing retail banking mergers is consistent with the views of other competition authorities. For example, the UK's Office of Fair Trading considered HHIs when assessing the proposed retail banking merger between Lloyds TSB Group plc and HBOS plc. OFT, paragraph 180 of Anticipated acquisition by Lloyds TSB plc of HBOS plc.
[324] See paragraph 3.10 of the Merger Guidelines.
[325] See paragraph 3.12 of the Merger Guidelines.

5.10 A focus on market concentration is also reflected in a paper published by the CBI in 2014 on market power in banking and the impact on SME lending. The paper, authored by Ryan, O'Toole, and McCann, looked at the impact of market power in the supply of lending to SMEs. The results support the market power hypothesis: that increases in market power result in increased financing constraints for SMEs.[326]

The Parties' views

5.11 As indicated in Chapter 3, the views of the Parties and that of the Commission differ when it comes to defining the narrowest potential markets affected by the Proposed Transaction. The Parties have submitted that the potential product market consists of the provision of business lending products of all types, or at its narrowest split between SMEs and non-SMEs. Therefore, the views of the Parties set out in paragraphs 5.12-5.21, on the nature of banking in the State, relevant competitive pressures, switching costs, barriers to entry, and countervailing buyer power apply to their defined market(s). Where Ulster Bank and AIB submitted views on the specific markets identified by the Commission, these are included under the specific market sections below.

5.12 The Parties submit that the Proposed Transaction, and the exit of Ulster Bank from the State, should be viewed against a backdrop of unsustainably low bank profitability, ever decreasing net interest margins, and a rapid emergence of alternative lenders as an important conduit for credit provision to Irish businesses. According to the Parties, these are the factors that contributed to Ulster Bank's decision to exit the State. The currently challenging environment for Irish banks has been recognised by the CBI.[327] From Ulster Bank's perspective, this also limited the choice of purchaser of the Target Assets.

5.13 The Parties submit that Ulster Bank's exit will not have a significant effect on competition because: (a) AIB and Bank of Ireland were, are, and will remain, each other's closest competitors and will continue to exercise a strong competitive

[326] See page 1 of Ryan, O'Toole and McCann, Does bank market power affect SME financing constraints?.
[327] See paragraph 149 on page 47 of the Merger Notification Form. See also Chapter 3 of the Oxera and O'Toole report on market definition and competitive effects, dated 15 March 2022.

constraint on each other following implementation of the Proposed Transaction; and, (b) Ulster Bank is not seen by AIB as an important competitor and is not a uniquely vigorous or effective competitor.[328]

5.14 The Parties submit that Irish businesses requiring loans and/or financing will continue to have a range of finance providers. Furthermore, the competitive landscape for the supply of credit to Irish businesses is characterised by strong competition between domestic banks, international banks, and a range of non-bank lenders, particularly those taking advantage of digital technology to offer lending products efficiently. The Parties submit that this will remain the case following the Proposed Transaction.[329]

5.15 The Parties' submissions also covered switching costs, barriers to entry, countervailing buyer power and competitor sets as discussed further in paragraphs 5.16-5.21 below.[330]

Switching costs

5.16 It is submitted in the Merger Notification Form that switching costs are low as the impediments to switching between loan providers are low and largely procedural.[331] However, the Parties did not take a consistent approach to the extent of switching costs. In a later submission, as outlined in paragraph 2.41 above, Ulster Bank estimated that, across all assets within the Proposed Transaction, Ulster Bank customers could avoid switching costs of €[…] as a result of the Proposed Transaction compared to the counterfactual of a Wind-Down.[332]

5.17 In addition, the importance of switching costs also appeared in the Parties' internal documents. For example, Ulster Bank material said that there was a perceived barrier to switching amongst business customers and the large majority were reluctant to

[328] See paragraphs 232-243 on pages 69-72 of the Merger Notification Form.
[329] See paragraphs 244-294 on pages 72-82 of the Merger Notification Form.
[330] The Parties also submitted information on market definitions and the market shares. For the reasons explained in Chapter 3 the Commission does not adopt the Parties' market definitions. Therefore, the Commission does not discuss the Parties' market share figures here.
[331] See paragraph 96 on page 30 of the Merger Notification Form.
[332] Ulster Bank indicated that these saved costs were composed of bank valuation fees, bank legal fees, borrower legal fees, due diligence costs and professional fees for valuers, accountants, lawyers and corporate advisors.

move banks.[333] Ulster Bank stated that switching costs include legal fees and arrangement fees and accountants' fees to prepare financial information for credit assessment. The customers might also have to train their staff to reflect new account details.[334]

Barriers to entry

5.18 The Parties said that barriers to entry and exit are relatively low.[335] In the Parties' view, the largest regulatory barrier to entry was capital requirements and Irish banks' low profitability.[336]

5.19 The Parties said that exit barriers are low, as demonstrated by the relatively recent exits, including Bank of Scotland Ireland, Danske Bank and Rabobank.[337]

Countervailing buyer power

5.20 AIB submitted that large corporate customers have countervailing buyer power as they have a wide array of national and international alternatives to AIB.[338]

Competitor sets

5.21 Ulster Bank provided specific overviews of the competitor sets in the markets identified by the Commission, and these are outlined below, as appropriate. AIB submitted that it considers there to be no segmentations in business lending markets based on product type, or sector. AIB additionally submitted that, even *"if GPLs were to be segmented, AIB would still face significant competitive pressure."*[339] AIB stated that this competitive pressure arises from:

[333] See page 23 of the document entitled *"2020-03-19J.1556SMEBusinessPropositionDebriefSRV1."* dated 19 March 2020, submitted as a part of the response to the Ulster Bank Phase 2 Information Request, dated 25 February 2022. Ulster Bank stated that switching costs includes, legal fees and arrangement fees.
[334] See the document entitled *"1. Amalfi Customer Switching Journeys v1d30 for ESG – 20210505"* dated 5 May 2021 submitted by Ulster Bank as a part of the response to the Ulster Bank Phase 2 Information Request, dated 25 February 2022.
[335] See paragraph 77 and 247 on pages 25 and 72 of the Merger Notification Form. See also the response to question 5 of the AIB Phase 2 RFI, dated 9 March 2022; and the response to question 5 of the Ulster Bank Phase 2 Information Request, dated 25 February 2022.
[336] See paragraph 80 on page 25 of the Merger Notification Form.
[337] See paragraph 81 on page 26 of the Merger Notification Form.
[338] See page 146 of the response to the AIB Phase 2 RFI, dated 9 March 2022.
[339] Page 36 of the response to the AIB Phase 2 RFI, dated 9 March 2022.

(a) Domestic and international credit institutions such as […]; and,

(b) Non-bank lenders such as […][340]

Competitive Assessment of Theory of Harm in GPLs ex-CRE

5.22 In this section the Commission presents its competitive assessment for GPLs ex-CRE in the State under the following topics:

(a) Parties views;

(b) Market structure, market shares and HHIs; and,

(c) Commission's assessment.

Parties views

5.23 AIB provided general views on competitor sets for the provision of GPLs as outlined in paragraph 5.21. Ulster Bank submitted that in relation to the provision of GPLs ex-CRE:

(a) The main bank competitors in GPLs ex-CRE are AIB, Bank of Ireland, Permanent TSB, Barclays, HSBC and Rabobank;

(b) AIB and Bank of Ireland compete across all turnover ranges, while Permanent TSB plans to focus on smaller SMEs so will likely only supply SMEs in the €2-10 million turnover range;[341]

(c) Barclays, HSBC and Rabobank compete in the larger SME/mid corporate sector (i.e., turnover €10-250 million);

[340] Page 37 of the response to the AIB Phase 2 RFI, dated 9 March 2022. The Commission understands that […] is a credit institution, and not a non-bank lender. The Commission also notes that some of these non-bank lenders lend specifically to CRE.
[341] On 24 January 2022, Permanent TSB announced, what it described as, a major expansion of SME business with new €1 billion loan fund to be deployed over the next three years. Permanent TSB described this as a significant scaling up of its SME offering to build on its planned acquisition of Ulster Bank microenterprise and asset finance businesses. https://www.permanenttsb.ie/about-us/notices/2022/january/permanent-tsb-in-major-expansion-of-sme-business-with-new-1-billion-loan-fund-to-be-deployed-over-the-next-three-years/.

(d) The main non-banks/financial sponsors are Finance Ireland, Dunport, Castlehaven, Bain Capital, Proventus, Timbercreek and Initiative Ireland;[342]

(e) Non-bank lenders tend to compete in the €2-50 million range; and,

(f) Recently, Fintechs have focused on digital lending platforms, offering unsecured loans up to around €100,000 to small SME customers.[343]

Market structure, market shares and Herfindahl-Hirschman Index ("HHIs")

5.24 For GPLs ex-CRE the Commission constructed market shares using collected loan data from each of the banks (AIB, Ulster Bank, Bank of Ireland, BNP Paribas, KBC, Permanent TSB, Barclays and HSBC),[344] and non-bank shares were estimated from the CBI's Central Credit Register loan data.[345] These non-bank providers of GPLs ex CRE in the State typically consist of credit funds such as Dunport, Proventus Capital Partners, Beach Point Capital, Muzinich, Beechbrook Capital and Bain Capital Credit.

5.25 Table 2 below sets out the estimated shares of the existing stock held by each of the lenders in the State as of 2021 in three scenarios, i.e., prior to the Proposed Transaction, following implementation of the Proposed Transaction and in the event of a Wind-Down by Ulster Bank.

Table 2: Estimated market shares – GPLs ex-CRE to SMEs (ex microenterprises) and MCCs (€2-250 million turnover) – 2021 Stock

Lender	**Pre-Proposed Transaction**	**Wind-Down Scenario[346]**	**Post-Proposed Transaction**

[342] The Commission notes that Castlehaven, Timbercreek and Initiative Ireland appear to be mainly, or exclusively focused on the provision of GPLs to CRE.
[343] See page 19 of the response to the Ulster Bank Phase 2 Information Request, dated 25 February 2022.
[344] For Bank of Ireland, […]. AIB and Ulster Bank's thresholds are €300k and €250k (plus turnover threshold of €2m) respectively. Alternative estimates for market shares have been made for a Bank of Ireland […].
[345] Data for non-banks is only available for new lending to SMEs. The Commission believes it likely that non-banks' share of the overall stock in this market is lower than this. This is based on qualitative evidence that non-banks' non-CRE lending is primarily focused on SMEs and is growing (see https://www2.deloitte.com/ie/en/pages/finance/articles/alternative-lending-in-action0.html). As a result, their share of SME lending is likely to be higher than their share of non-SME lending, and their share of new lending is likely to be greater than their share of stock. As a conservative estimate, this share has been applied to the whole market. This assumption does not have a material effect on the subsequent analysis.
[346] In this scenario, Ulster Bank's stock is assumed to transfer to the other lenders on a pro-rata basis determined by their pre-Proposed Transaction market shares. For example, Bank of Ireland has a [30-40]% share of this relevant market prior to the Proposed Transaction.

AIB	[30-40]%	[40-50]%	[40-50]%
Bank of Ireland	[30-40]%	[30-40]%	[30-40]%
Ulster Bank	[10-20]%	0%	0%
BNP Paribas	[0-10]%	[0-10]%	[0-10]%
Other Banks[347]	[0-10]%	[0-10]%	[0-10]%
Non-Banks	[10-20]%	[0-10]%	[0-10]%

Source: The Commission, based on information provided by the Parties and third parties, and CBI's Central Credit Register loan data

5.26 As demonstrated in Table 2 above, pre- Proposed Transaction, AIB has [30-40]% of the stock of GPLs for ex-CRE, Bank of Ireland has [30-40]% of the stock of GPLs for ex-CRE, while Ulster Bank's share is [10-20]%. After implementation of the Proposed Transaction, AIB's share would increase to [40-50]%. The combined share of AIB and Bank of Ireland is [80-90]% compared to a pre-Proposed Transaction combined market share of [60-70]%.

5.27 Table 2 above also contains figures on market shares under a Wind-Down of the Ulster Bank GPLs ex-CRE business.[348] In this scenario, Ulster Bank's stock is assumed to transfer to the other lenders on a pro-rata basis determined by their pre-Proposed Transaction market shares. AIB's share increases to [40-50]%, while Bank of Ireland's increases to [30-40]%. The combined share of AIB and Bank of Ireland is [80-90]% compared to a pre-Proposed Transaction combined market share of [60-70]%.

5.28 Based on the market share estimates set out in Table 2 above, the Commission's view is that the Proposed Transaction occurs in a highly concentrated market. Whether the Commission concludes that, following implementation of the Proposed Transaction, all of Ulster Bank's pre-Proposed Transaction market share will transfer to AIB; or, in a Wind-Down situation, Ulster Bank's pre-Proposed Transaction market share is redistributed proportionately amongst remaining competitors, the market for the provision of GPLs ex-CRE in the State will become more concentrated.

Therefore, Bank of Ireland is assumed to acquire [30-40]% of Ulster Bank's ([10-20]%) share in a Wind-Down scenario. The Commission has then rounded the figures.

[347] Includes, KBC, Permanent TSB, Barclays and HSBC.

[348] See paragraphs 4.66 to 4.69 above for further discussion of the counterfactual in GPLs ex-CRE.

5.29 The Commission also considered how the market shares set out in Table 2 above, particularly those for a Wind-Down and those for the Post-Proposed Transaction, translate into HHIs. Table 3 below shows the HHI under the Wind-Down and the HHI Post-Proposed Transaction and shows the difference in the HHI delta between these two scenarios. Table 3 does not present the pre-Proposed Transaction HHI or the HHI delta between the pre-Proposed Transaction scenario and either the Wind-Down or the post-Proposed Transaction scenario. This is because the Commission does not consider the pre-Proposed Transaction to be the relevant counterfactual and, therefore, presenting HHI deltas relative to the pre-Proposed Transaction HHI would not be appropriate for the purposes of this assessment. The wider issues associated with the exit of Ulster Bank are considered in Annex 1. Table 3 shows HHI ranges because the Commission did not have complete data for non-bank lenders and, therefore, considered different assumptions for the shares of the non-bank lenders which, in turn, leads to the calculation of a HHI range.[349]

Table 3: The HHIs for GPLs ex-CRE, with turnover of between €2-250 million, 2021

	HHI
Counterfactual – Wind-Down	[3,146-3,339]
Post-Proposed Transaction	[3,503-3,645]
HHI delta	[307-357]

Source: The Commission analysis of lending data

5.30 Table 3 above show that the HHI post-Proposed Transaction would be between 3,503 and 3,645, depending on the assumptions made for individual non-bank lenders' market shares. The change in HHI between the level of concentration that arises under a Wind-Down and the level of concentration that arises under the Proposed Transaction (also known as delta) would be between 307 and 357, and depends on the assumptions used for non-bank lenders in the calculation of the HHI.[350] The HHI

[349] The reason for a range is that the Commission does not have data on the individual market shares of the non-bank lenders. For this reason, a 'high' assumption of a single non-bank lender having a market share of [10-20]% was used, and a 'low' assumption was used in which 63 non-bank lenders (this number is based on the April 2021 CBI statistical publication, 'The role of non-bank lenders in financing Irish SMEs') had an equal market share. The reality is likely to be somewhere in between.

[350] As noted, at paragraph 3.10 of the Merger Guidelines, the HHI delta reflects the change in market concentration resulting from the merger. In most merger assessments, the comparison is between the HHI arising with the pre-merger market shares and the HHI arising following the merger. However, when the counterfactual is different to the pre-merger market conditions, then the comparison is between that counterfactual (here, a Wind-Down by Ulster Bank) and the merger (here, the Proposed Transaction).

delta shows how concentration increases with the Proposed Transaction beyond the increase in concentration following a Wind-Down.

5.31 As noted previously, the Merger Guidelines indicate that any market with a post-merger HHI greater than 1,000 may be regarded as concentrated and highly concentrated if greater than 2,000. In addition, the Merger Guidelines note that, in a highly concentrated market, a delta of less than 150 is unlikely to cause concern.[351] The Merger Guidelines also note that the lower the post-merger HHI and the smaller the increase in the HHI, the less likely it is that the Commission will deepen its assessment of the competitive effects of a merger.[352] The HHI range identified in Table 3 above indicates that the estimated increase in the HHI, when comparing the Proposed Transaction to a Wind-Down by Ulster Bank, is greater than 250 and that the market is highly concentrated. Therefore, the Commission considered that it was appropriate to investigate further the competitive effects of the merger.

Commission's assessment

5.32 The evidence from the market shares and HHI shows that Ulster Bank's exit would increase the level of concentration in this potential market, with AIB and Bank of Ireland continuing to have large market shares. This occurs in both a Wind-Down and the post-Proposed Transaction scenarios. The post-Proposed Transaction scenario, whereby AIB's share of the stock of GPLs ex-CRE increases by Ulster Bank's share of stock, results in higher HHIs and a higher delta relative to the Wind-Down situation. As noted previously, the market is highly concentrated and the HHI delta is greater than the 250 HHI delta in the Merger Guidelines, justifying a deeper investigation of the Proposed Transaction.

5.33 Nevertheless, the Commission notes that, in relation to the competitive assessment of the Proposed Transaction, a Wind-Down would also result in a highly concentrated market structure with AIB and Bank of Ireland having large market shares and both having greater market shares than they enjoyed prior to the Wind-Down. While the

[351] See paragraph 3.10 of the Merger Guidelines.
[352] See paragraph 3.10 of the Merger Guidelines.

HHI is higher in the post Proposed Transaction scenario than in the Wind-Down scenario, this is driven by the mathematics of the HHI calculation: the higher HHI is driven by the higher post-Proposed Transaction AIB share.[353] In both the Wind-Down and the post-Proposed Transaction scenarios there would remain two pillar banks and a range of other fringe providers. The Commission considers that the competitive dynamic between these two pillar banks would be similar under both scenarios.

5.34 The Commission has not identified additional evidence which would support the view that competition would be worse for customers, following implementation of the Proposed Transaction than in the event of a Wind-Down, because of the more asymmetric market shares resulting from the Proposed Transaction, where AIB would have a relatively larger share of the relevant market than [...]. Internal documents from […] AIB […] show that Bank of Ireland is currently AIB's closest competitor (and vice versa) and will likely remain AIB's closest competitor following implementation of the Proposed Transaction.[354]

5.35 As noted previously, the Commission's Merger Guidelines set out other factors, alongside measures of concentration, that should also be considered when assessing the competitive impact of a merger or acquisition.[355] These factors include consideration of whether there are particularly significant regulatory barriers to entry and whether there are high customer switching costs. Both of these factors are relevant in the context of the Proposed Transaction and the Commission has considered them further as part of its assessment of the likely competitive impact of the Proposed Transaction on this relevant market.

5.36 Although full-service banks and non-bank lenders both compete in the provision of GPLs ex-CRE, the barriers to entry for each type of business model differ. Therefore, the Commission considers separately the barriers to entry for entrance into the provision of GPLs ex-CRE as: (i) a full-service bank; and, (ii) a non-bank lender.

[353] The HHI total is based on the squares of the market shares, so markets with the same number of suppliers will have the lowest HHI when all the suppliers have the same market share.
[354] See pages 6-7 of the document entitled '*Confidential - AIB Internal Documents Position Note_Project Amalfi_September 2021'* submitted by AIB, dated 7 September 2021.
[355] See paragraph 3.12 of the Merger Guidelines.

5.37 The Commission first considers barriers to entry to become a full-service bank provider supplying GPLs ex-CRE. For the provision of GPLs ex CRE, the main barriers to entry for new bank entrants are prescribed minimum capital requirements which affect profitability, as explained in paragraph 2.42. Furthermore, there are necessarily substantial fixed costs to offer a full-range of business banking services, which are sought by some business banking customers, in addition to GPLs. These fixed costs include levies, infrastructure, regulatory costs, digital investment. Due to the size of the Irish economy and full-service banking being a scale business, these fixed costs can have a relatively larger impact on costs than in larger economies.[356] The Commission's investigation did not identify any likely new bank entrants into the supply of GPLs ex-CRE. These factors indicate that there are substantial barriers to entry into the supply of GPLs ex-CRE by full-service banks.

5.38 The Commission next considered barriers to entry for non-bank lenders in the relevant market. As explained above, the main barrier to entry is the regulatory requirement concerning minimum capital levels. These minimum capital requirements are not applicable to non-bank lenders, therefore, regulatory barriers to entry for non-bank lenders in the supply of credit to business are lower than for bank lenders, particularly deposit-taking banks.

5.39 The Commission also considered evidence of barriers to expansion of existing lenders in this relevant market. There is some evidence of Permanent TSB seeking to increase its presence in lending to […].[357] However, this evidence does not suggest that the expansion by Permanent TSB would replace the capacity, range of services, size of loans, or competitive constraint currently provided by Ulster Bank in the provision of GPLs ex-CRE.

5.40 Also, in relation to expansion, there has been a growth, generally, in the involvement of the non-bank lenders in this relevant market and for other types of business

[356] See Goodbody Document entitled Irish Banks - 20210701_Goodbody on Irish Banks - Mortgage Rates Focus (14 pgs).pdf, dated 01 July 2021.
[357] See […].

lending. The Department of Finance indicated the following in a call with the Commission:[358]

> *"According to the SME Credit Unit, data indicates that the non-bank lending sector is playing a stronger role than previously. In particular, data from the CBI indicates that the non-banks account for about €5 billion of the €18 to €19 billion in total lending. The Department welcomes the growth in the share/representation of non-banks in SME lending.*
>
> *The Department indicated that the role that non-banks play in the SME banking sector should not be underestimated."*

5.41 The Commission has received evidence that the role of non-banks is expected to grow further in this relevant market, with […]'s business proposition in the State partly based on the expectation that 25% of GPL funding in Ireland will eventually be provided by non-bank lenders;[359] and […] stating that perhaps Ireland will follow other jurisdictions, where non-bank lenders are taking larger shares of new lending.[360] In addition, the CBI,[361] and the Department of Finance,[362] while not commenting on this specific market, have acknowledged the growing role of non-bank lending in the State. The Commission received no evidence of intention to acquire the Target Assets, or part thereof, from the credit funds that responded to its market enquiries.[363]

5.42 These credit funds have different appetites in terms of the turnover size of their customers. For instance:

(a) Dunport targets businesses with an annual revenue in excess of €5 million;[364]

(b) Muzinich states on their website that they target the lower mid-market;[365]

[358] See note of call between the Department of Finance and the Commission, dated 15 March 2022.
[359] See [...].
[360] See [...].
[361] See CBI, 'The role of non-bank lenders in financing Irish SMEs'.
[362] See note of the call between the Department of Finance and the Commission, dated 15 March 2022.
[363] These being [...].
[364] See https://www.dunportcapital.ie/directlending/ .
[365] See https://www.muzinichprivatedebt.com/.

(c) Beechbrook focuses on SMEs with a turnover of between €3-25 million;[366] and,

(d) Bain Capital Credit targets businesses with an EBIDTA of between $10-150 million.[367]

5.43 The lending amount issued per year by individual funds appears to be growing, including, for example, the launch of Dunport Capital's €255 million Oak fund in 2021;[368] and the launch of a fund expected to reach €150 million by Beach Point Capital.[369] Both funds received partial funding from the Ireland Strategic Investment Fund.

5.44 However, the non-bank lenders still face challenges that affect their profitability and their ability to compete with bank providers. For example, non-bank lenders, which often receive their funding through wholesale markets, cannot fund their lending through the holding of deposits, which typically leads to a higher cost base than that of banks. The Commission has considered whether the ability of non-bank lenders to compete effectively may be affected by a changing interest rate environment, particularly given the different sources of funding which banks and non-banks tend to have. Research undertaken by the Bank of England outlines that, in general terms, deposit funding may be cheaper than wholesale funding.[370]

5.45 This higher cost base may, in turn, be reflected in the higher interest rates charged by these non-bank lenders for the provision of GPLs ex CRE. The evidence gathered by the Commission suggests that competitive strengths of non-banks tend to be in areas such as quantum, and speed, as compared to price. Moreover, the ability of non-bank lenders to compete on price may deteriorate.

[366] See https://www.beechbrookcapital.com/ireland-sme-fund.
[367] See https://www.baincapitalcredit.com/approach.
[368] See https://www.dunportcapital.ie/insight/launch-of-oak/.
[369] See https://isif.ie/news/beach-point-capital-launches-isif-backed-fund-to-support-irish-smes.
[370] The research 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".* See page 11 of the Bank of England's Quarterly Bulletin, dates Q4 2014, 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.

5.46 The Commission notes that recent growth by non-bank lenders corresponds with the recent unusually low interest rate environment, reflected in the negative ECB interest rates, which tends to allow for cheaper funding through the wholesale market. Banks have 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.[371] 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.

5.47 In addition, the small aggregate share of non-bank lenders in this relevant market indicates that, despite their growth, most business banking customers seek GPLs ex-CRE from a full-service bank provider. This may be due to the other business banking services offered by such providers (such as current accounts, overdrafts, etc.) or the reputation, brand, staff, branch networks, or exclusive capabilities of the full-line bank providers. Therefore, while the barriers to entry for non-bank lenders may not be particularly high, the barriers to rapid expansion, in terms of acquiring a large share of the market from bank lenders, appear to be substantial.

5.48 The Commission has also considered switching behaviour and countervailing buyer power in relation to GPLs ex-CRE. Customers tend to refinance at the end of existing terms (i.e., the period of the loan) instead of midway through a GPL. Therefore, the Commission considers that switching will primarily arise at the end of the loan term of a GPL. The Commission's investigation has not found evidence that the pillar banks track switching in a systematic fashion on a product by product basis. However, the

[371] The experience of retail banks stickiness to pass through negative rates has been noted by many commentators including the ECB: *"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".* https://www.ecb.europa.eu/press/key/date/2020/html/ecb.sp200826~77ce66626c.en.html

Commission considers that customer switching rates are quite low in business banking. In reference to switching a full business banking relationship, Ulster Bank has submitted that *"a small SME or a mid-corporate will likely only switch occasionally";*[372] and further noted that *"it is more common for customers to seek alternative financing in respect of a single product category, without switching their entire banking relationship."*[373] Ulster Bank reported that very few of their customers with an annual turnover between €30-250 million, and very few of their customers with an annual turnover between €2-30 million switched to alternative providers from December 2020 to December 2021.[374]

5.49 It appears that there is little countervailing buyer power in this market for the majority of customers. The few providers available to customers, particularly those who may prefer sourcing GPLs from a full-service bank, will be a factor here. However, some customers on the higher turnover end of this market may have a degree of negotiating power relative to smaller businesses.

Conclusion on the market for the provision of GPLs ex-CRE

5.50 The Commission considers that the evidence summarised above for GPLs-ex CRE shows that:

(a) The most likely counterfactual is the Wind-Down scenario.

(b) Both the Wind-Down and the Proposed Transaction would result in a highly concentrated market structure with AIB and Bank of Ireland continuing to have large market shares, such that the competitive effects of the Proposed Transaction are limited relative to the counterfactual.

(c) Under a Wind-Down, the main options likely to be considered by customers are AIB or Bank of Ireland, and this will remain the same under the Proposed Transaction.

[372] See the response to question 5 of the Ulster Bank Phase 2 Information Request, dated 25 February 2022.
[373] ibid.
[374] See the response to question 8 of the Ulster Bank Phase 2 Information Request, dated 25 February 2022.

5.51 Based on this evidence, the Commission concludes that the result of the Proposed Transaction would not be to substantially lessen competition in the supply of GPLs ex-CRE in the State.[375]

Assessment of Theory of Harm in the provision of GPLs to CRE businesses in the State

5.52 In this section the Commission presents its assessment of the likely impact on competition of the Proposed Transaction in the market for the provision of GPLs to CRE businesses in the State. The remainder of this section covers the following topics:

(a) Parties' views;

(b) Market structure, market shares and HHIs; and,

(c) Commission's assessment.

Parties' views

5.53 In addition to the views set out in paragraphs 5.12-5.21, the Parties expressed some views which related specifically to the provision of GPLs to CRE businesses in the State.

5.54 AIB said that customers are sophisticated and well-advised businesses can, and do, switch between providers of GPLs to CRE businesses in the State, and provided examples of customers switching.[376]

5.55 Ulster Bank said that CRE customers may choose to obtain finance from specialist lenders, including Activate Capital and HBFI. These companies may be willing to offer a higher loan to value ratio than banks, but at a higher price.[377]

Market structure, market shares and HHIs

[375] An additional factor which the Commission considered was whether, in the counterfactual, it is likely that relationship managers would exit the market, to take up other roles, which might imply a reduction in capacity, and a reduction in customer service, relative to the Proposed Transaction.
[376] See page 87 of the response to the AIB Phase 2 RFI, dated 9 March 2022.
[377] See response to question 4 on page 18 of the Ulster Bank Phase 2 Information Request, dated 25 February 2022.

5.56 For the provision of GPLs to CRE businesses in the State, the Commission constructed market shares using collected loan data from each of the banks,[378] and non-bank shares were estimated from the CBI's Central Credit Register loan data. Ulster Bank's share in this potential market is small ([0-10]%) based on the Commission's calculation, and the structure of the market is unlikely to change substantially following implementation of the Proposed Transaction.[379]

5.57 Table 4 below sets out the estimated shares of the flow of new CRE lending to SMEs in the State as of 2021 in three scenarios.[380]

(a) First, pre-Proposed Transaction, which reflects pre-merger competitive conditions. AIB has [30-40]% of the stock of GPLs for CRE, while Ulster Bank's share is [0-10]% and Bank of Ireland has a [20-30]% share. The combined share of AIB and Bank of Ireland is [50-60]%.

(b) Second, the counterfactual of the sale to an alternative purchaser. As an example, the Commission has chosen a sale to Non-Bank Buyer, since Non-Bank Buyer expressed interest in purchasing that part of the Target Assets i.e. GPLs for CRE.[381] In the event of such a sale, Non-Bank Buyer's share of the relevant market increases by [0-10]% to [0-10]%. The combined share of AIB and Bank of Ireland would be, again, [50-60]%.

[378] There are differences in the way that banks have been able to define customers for the purposes of creating the data for this table. For the data in the table, a Bank of Ireland 'micro' enterprise is defined using a borrowing threshold of […]. AIB and Ulster Bank's thresholds are €300k and €250k (plus turnover threshold of €2m) respectively. Alternative estimates for market shares have been when using a different Bank of Ireland 'micro' definition threshold of […]. These alternative market share estimates do not substantively alter the analysis.

[379] The [0-10]% share figure for Ulster Bank is likely to be an underestimate because of the method used by Ulster Bank to define SMEs. While the Commission considers the [0-10]% to be an under-estimate, the Commission's view is that adjusting to correct for this underestimate would not alter the Commission's conclusions on the impact of the merger in this market. The Commission also considered market share data based on the stock of loans, which excluded non-banks. The Commission's view is that the flow data in Table 4 more accurately reflects competition, compared to the stock data excluding non-banks.

[380] These estimates apply to SMEs only. Given the different choice set and competitor landscape available to larger enterprises, the Commission's view is that it would not be appropriate to extend this share to the non-SME CRE segment.

[381] For clarity, the counterfactual involving a sale to Non-Bank Buyer is for comparison purposes and is representative of a sale to an alternative purchaser that has a low existing market share. The Commission does not assume the counterfactual to the Proposed Transaction is a sale to Non-Bank Buyer.

(c) Third, after implementation of the Proposed Transaction, with the Ulster Bank share transferring to AIB, AIB's share would increase from [30-40]% to [30-40]%. The combined share of AIB and Bank of Ireland would be [50-60]%.

Table 4: Estimated market shares – GPLs for CRE to SMEs - 2021 New lending

Lender	Pre-Proposed Transaction	Counterfactual – Sale to Alternative Purchaser (e.g., Non-Bank Buyer)	Post-Proposed Transaction
AIB	[30-40]%	[30-40]%	[30-40]%
Bank of Ireland	[20-30]%	[20-30]%	[20-30]%
Ulster Bank	[0-10]%	0%	0%
Non-Bank Buyer	[0-10]%	[0-10]%	[0-10]%
Other Banks[382]	[0-10]%	[0-10]%	[0-10]%
Non-Banks	[40-50]%	[40-50]%	[40-50]%

Source: The Commission, based on information provided by the Parties and third parties, and CBI's Central Credit Register loan data

5.58 Table 5 below shows that the HHI Post-Proposed Transaction would be between 1,531 and 3,412, depending on the assumptions made for individual non-bank lenders' market shares.[383] The HHI delta which compares the counterfactual to the post-Proposed Transaction scenario, would be 57. The HHI delta is not sensitive to whether the higher or lower HHI figures in the range are adopted as the difference between the HHI in the figures in the low HHI scenario is the same as the difference between the HHI figures in the high scenario.

Table 5: The HHIs for GPLs for CRE to SMEs – 2021, New Lending

	HHI
Counterfactual – Sale to Alternative Purchaser (e.g., Non-Bank Buyer)	[1,473-3,355]
Post-Proposed Transaction	[1,531-3,412]
HHI delta*	57

* Delta in low scenario appears to be 58 but this is due to rounding. The correct delta is 57 in both scenarios.

Source: The Commission analysis of lending data

[382] KBC and Permanent TSB account for c. [0-10]%.

[383] The reason for a range is that the Commission does not have data on the individual market shares of the non-bank lenders. For this reason, a 'high' assumption of a single non-bank lender having a market share of [40-50]% was used, and a 'low' assumption was used in which 63 non-bank lenders (this number is based on the April 2021 CBI statistical publication, 'The role of non-bank lenders in financing Irish SMEs') had an equal market share. The reality is likely to be somewhere in between, and closer to the lower end of the range.

5.59 Comparing these figures to those in paragraph 3.10 of the Merger Guidelines, the post-Proposed Transaction HHI is arguably above 2,000, which the Merger Guidelines identify as a highly concentrated market, and the delta is below 150, which the Merger Guidelines identify as being unlikely to cause concern, subject to additional considerations. The Commission considers certain of these additional criteria below but notes that, as per the Merger Guidelines, the HHI delta suggests that the Proposed Transaction is unlikely to cause concern insofar as the provision of GPLs to CRE businesses is concerned.

Commission's assessment

5.60 As discussed in paragraph 3.74 above, evidence in internal documents supported the view that non-bank lenders provided a competitive constraint on the pillar banks in the provision of GPLs to CRE businesses in the State. These include […]; and also AIB's non-bank lender overview document from April 2019 where AIB provided an overview of the key non-bank lenders from its perspective, with a specific section on CRE and development finance.[384] In addition to their circa [40-50]% market share, as stated in paragraph 3.74, […] of the three pillar banks provided the Commission with internal documents which evidence that they have considered the threat posed by these dedicated non-bank CRE lenders in an in-depth fashion.[385] These documents cover aspects such as the non-bank lenders' leadership, margins, funding bases, loan to value and loan to cost ratios, strengths, and weaknesses.[386]

5.61 These internal documents also showed different non-bank lenders operating different loan values and covering a range of sectors. Therefore, even though any given non-bank lender may not be able to match the offering of a bank, there appears to be a sufficient range of lenders to cover the different customer needs which arise in this

[384] See the documents entitled, *'Production – 0000189'*, dated 12 October 2021 submitted as a part of the response to questions 2,21, 23,24,25 and 31 of the AIB Phase 1 RFI, dated 10 November 2021; and *'Production – 0000379'*, dated 01 July 2019 submitted as a part of the response to question 18 of the AIB Phase 2 RFI, dated 9 March 2022.

[385] […].

[386] These documents in general highlight that non-bank lenders typically offer a higher LTC or LTV ratio in return for a higher margin. Non-bank lenders are also more willing to lend to developments that are outside the risk appetite of pillar banks, such as developments outside of core urban centres. Insurance companies are the exception to this, typically offering lower margins than the pillar banks, but in turn have a more limited risk appetite.

potential market. For example, Cardinal Capital have informed the Commission that they primarily target […], while Bain Capital Credit informed the Commission that they target [...].[387]

5.62 Additionally, a number of public reports identify a move from domestic to international investors in this potential market and a reduced reliance by CRE customers on debt financing through Irish retail banks. Such reports include the CBI report from February 2021, "*Property funds and the Irish commercial real estate market"*[388] and The Irish Institutional Property's (IIP) report from May 2021, *"The Significance of International Development Finance in Ireland's Real Estate Markets".*[389] Furthermore, the Commission has received a submission from Ulster Bank which lists known instances of losses of potential CRE deals to non-bank lenders.[390]

5.63 The evidence seen by the Commission suggests that non-bank lenders offer a broad range of loans for different types of commercial real estate. While these non-bank lenders tend to have higher pricing than the banks, they may also appeal to customers due to their higher risk appetite and faster approvals process.

5.64 The Department of Finance also informed the Commission that:[391]

> *"A survey which asked SMEs about the proportionality of their lending (bank vs non-bank) indicated that 45% of the lending to SMEs was from non-banks. This was particularly relevant for construction, real estate finance, and asset finance."*

5.65 As outlined above in paragraphs 5.44-5.46, a rise in interest rates could lead to a weakening of the competitive proposition of non-bank lenders. The Commission is of

[387] See […].
[388] See the document entitled'*Production01 – 0000195'*, dated 22 February 2021, submitted as a part of the response to questions 1, 19 and 34 of the AIB Phase 1 RFI, dated 10 November 2021.
[389] See the document entitled'*Production01 – 0000193',* dated 10 May 2021, submitted as a part of the response to questions 2,21,22, 24,25,26,31,34,46 and questions 47 to 49 of the AIB Phase 1 RFI, dated 10 November 2021.
[390] NatWest and Ulster Bank have identified […] instances from 2017 to 2021, of losing deals on CRE GPLs to non-bank lenders. Ulster Bank and NatWest provided descriptions of the two main reasons that these deals were lost: *"**Terms/Conditions unacceptable**: This means the customer was seeking a structure that was outside Ulster Bank's risk appetite- for example the customer may have been looking for looser covenants (especially in respect of loan to value ratio) than Ulster Bank was willing to offer. In these cases, the customer would have been offered a more aggressive structure by other lenders, that Ulster Bank was unable to match.*
***Price**: opportunity was lost on price."* […] of these deals were lost on the terms/conditions, while the remaining [...] were lost on price. See the document entitled '*Annex 2 CRE Opportunities lost to Alternative Lenders*', submitted by Ulster Bank, dated 9 March 2022.
[391] See the note of the call between the Department of Finance and the Commission dated 15 March 2022.

the view that this applies equally to the market for the provision of GPLs to CRE businesses in the State.

5.66 The evidence from the market shares and HHIs is that the Proposed Transaction would lead to a small change in the pre-Proposed Transaction market shares. Ulster Bank is not a strong competitor in the provision of GPLs to CRE businesses in the State.

Conclusion on the market for the provision of GPLs to CRE businesses

5.67 The evidence summarised above in respect of the market for the provision of GPLs to CRE businesses in the State shows:

(a) The most likely counterfactual is the sale to an alternative purchaser. However, due to the existence of other competitors and the minimal pre-Proposed Transaction market share of Ulster Bank, the Commission did not further explore this option.

(b) Ulster Bank's share in this segment is small ([0-10]%) and the structure of the market does not change substantially following implementation of the Proposed Transaction.

(c) Non-bank lenders are very active, and cover a broad range of customer requirements, in this potential market, as reflected in the internal documents of the banks.

5.68 Based on this evidence, the Commission concludes that the result of the Proposed Transaction would not be to substantially lessen competition in the provision of GPLs to CRE businesses in the State.

Assessment of Theory of Harm in the provision of invoice finance

5.69 In this section the Commission presents its assessment of the likely competitive effects of the Proposed Transaction in the market for the provision of invoice finance services to businesses in the State with an annual turnover of between €2-250 million. The remainder of this section covers the following topics:

(a) Parties' views;

(b) Market structure, market shares and HHIs; and,

(c) Commission's assessment.

Parties' Views

5.70 In addition to the views set out in paragraphs 5.12-5.21, the Parties submitted specific views on the provision of invoice finance.

5.71 It is submitted in the Merger Notification Form that customers could obtain invoice finance from both traditional banks and the alternative lenders.[392] The main alternative providers in this potential market identified by the Parties were […].[393] It was also submitted that peer-to-peer lending, while currently small, was a growing alternative source of more flexible credit.[394] The Merger Notification Form also stated that asset-backed finance and leasing were alternatives for businesses that used invoice finance.[395] In addition it highlighted the recent investment of […] and the SBCI in […], a provider of invoice finance.[396]

Market structure, market shares and HHIs

5.72 The Commission has constructed market shares using data collected from the Irish Asset and Invoice Finance Association (IAIFA).[397] Table 6 below sets out the estimated shares of the existing stock held by each of the lenders in the State in three scenarios.

(a) First, pre-Proposed Transaction, which reflects pre-merger competitive conditions. AIB has [20-30]% of the stock of invoice finance, while Ulster Bank's share is [10-20]%. The combined share of AIB and Bank of Ireland is [80-90]%.

[392] See paragraph 294 on page 82 of the Merger Notification Form.
[393] See paragraph 294 on page 82 of the Merger Notification Form.
[394] See paragraph 294 on page 82 of the Merger Notification Form.
[395] See figure 4 on page 80 of the Merger Notification Form; and pages 50-51 of the response to the AIB Phase 1 RFI, dated 10 November 2021.
[396] See paragraph 82 on page 26 of the Merger Notification Form.
[397] The Commission notes that some non-domestic banks, BNP Paribas, Danske Bank, and Rabobank, which have reported invoice finance volumes to the Commission, are not IAIFA members and are thus excluded from the IAIFA dataset. However, these banks do not provide invoice finance to SMEs and in fact, Danske and Rabobank only serve […]. From the pillar banks, […].

(b) Second, the counterfactual of an Ulster Bank Wind-Down. In this scenario Ulster Bank's customers are assumed to accrue to all other lenders, pro rata on the basis of market shares in the first scenario.[398]

(c) Third, after implementation of the Proposed Transaction, with the Ulster Bank share transferring to AIB. AIB's share would increase to [40-50]%. The combined share of AIB and Bank of Ireland would be [90-100]%.

Table 6: Estimated market shares – Invoice finance Services to SMEs and MCCs, Stock, 2021

Lender	Pre-Proposed Transaction	Ulster Bank Wind-Down	Post-Proposed Transaction
AIB	[20-30]%	[30-40]%	[40-50]%
Bank of Ireland	[50-60]%	[50-60]%	[50-60]%
Ulster Bank	[10-20]%	0%	0%
Non-Bank Buyer	[0-10]%	[0-10]%	[0-10]%
Other[399]	[0-10]%	[0-10]%	[0-10]%

Source: The Commission, based on IAIFA data

5.73 Based on the market share estimates set out in Table 6 above, the Commission's view is that there is high concentration, across the three scenarios identified, in the market for the provision of invoice finance in the State.

5.74 Table 7 below shows that the HHI post-Proposed Transaction would be 4,204-4304. Nevertheless, the HHI delta, which compares the counterfactual to the post-Proposed Transaction scenario, would be -152.

Table 7: The HHIs for Invoice finance Services to SMEs and MCCs, Stock, 2021

	HHI
Counterfactual – Ulster Bank Wind-Down	4356-4,456
Post-Proposed Transaction	4,204-4304
HHI Delta	(-152)

Source: The Commission analysis of lending data

[398] Ulster Bank told the Commission that in the event of a Wind-Down, it expected […]% of its invoice finance customers would not be able to obtain invoice finance from AIB or Bank of Ireland. The Commission considered an alternative counterfactual based on […]% of customers moving to suppliers other than AIB and Bank of Ireland. While the HHI figures differed, this did not change the Commission's conclusion on whether the merger would lead to a substantial lessening of competition in the supply of invoice finance in the State.
[399] Includes […].

5.75 Comparing these figures to those in paragraph 3.10 of the Merger Guidelines, the post-Proposed Transaction HHI is above 2,000. However, the delta is negative (-152) compared to the counterfactual and, therefore, below the HHI delta thresholds identified in the Merger Guidelines.

Commission's assessment

5.76 The evidence from the market shares and the HHI analysis shows that the market is currently highly concentrated, and would be highly concentrated following the Proposed Transaction, with AIB and Bank of Ireland having large post-Proposed Transaction market shares.

5.77 The results of the Commission's engagement with relevant competitors in the market for the provision of invoice finance has revealed that barriers to entry for this market appears to be high. Switching tends to be low, with one competitor describing it as a product that a customer does *"not chop and change regularly"*.[400]

5.78 The Commission notes that the counterfactual would also result in a concentrated market with AIB and Bank of Ireland having large market shares. While the HHI is higher in the Wind-Down, this is driven by the mathematics of the HHI calculation: the higher HHI is driven by the higher Bank of Ireland share.[401] In both the Wind-Down and the post-Proposed Transaction scenarios there would be competition between two pillar banks and a fringe of other providers. The Commission has not identified additional evidence which would support the view that competition would be worse for customers in the post-Proposed Transaction scenario than under the counterfactual of a Wind-Down, where the largest provider (Bank of Ireland) would likely benefit from a further growth of its relative size. Some third parties pointed to a Wind-Down leading to a worse outcome for invoice finance customers relative to the Proposed Transaction.[402]

[400] See [...].
[401] The HHI total is based on the squares of the market shares, so markets with the same number of suppliers will have the lowest HHI when all the suppliers have the same market share.
[402] See [...].

5.79 The Commission's view in paragraph 5.34 on the relevance of internal documents in setting out the competitive dynamic between AIB and Bank of Ireland in the market for the provision of GPLs ex-CRE, and how this is unlikely to differ under the Proposed Transaction compared to the Wind-Down, applies equally in the market for the provision of invoice finance. In addition, the Commission has received evidence that Bank of Ireland is already aggressively pursuing former Ulster Bank customers, with […] invoice finance customers of Ulster Bank already having switched to Bank of Ireland since the announcement of the Proposed Transaction in February 2021.[403]

5.80 The Commission notes that the role of non-bank lenders has been growing in the market for invoice finance, with the overall market share of the non-bank members of IAIFA growing their overall market share in terms of lending volume and number of customers in 2020 and 2021. In terms of lending volume, non-banks have grown in the overall stock of total lending from [0-10]% in 2020 to [0-10]% in 2021[404] while their share in customer numbers has increased by [20-30]%. The non-bank lenders that the Commission engaged with (Capitalflow, Bibby Financial Services and Grenke) primarily focused on the provision of invoice finance to […], with Capitalflow expanding their range to […]. Capitalflow has described their preferred customer type as […].[405]

5.81 These non-bank lenders tend to compete on non-price factors, with Capitalflow listing its strengths in this area as […].[406] Capitalflow's assessment of its competitors in this market also draws a distinction in the types of strengths and weaknesses of banks and non-bank lenders. The strengths of the banks are listed as […], while the strengths of the non-banks are listed as […].[407] This focus on non-price competition in favour of […] from the non-banks was also expressed by […], who noted that its cost base is higher than that of the banks, but can […].[408]Taking a conservative approach, the Commission also considered an alternative counterfactual whereby, rather than a Wind-Down, Ulster Bank would choose to sell its invoice finance assets to an alternative purchaser

[403] See page 2 of the document entitled, '*2022.02.18 letter from UB re Invoice Finance (updated response)*' submitted by Ulster Bank, dated 18 February 2022.
[404] IAIFA returns Q1 2020 to Q3 2021.
[405] Response of Capitalflow to Competitor Questionnaire.
[406] See the response of Capitalflow to the Competitor Questionnaire.
[407] See […].
[408] See […].

in the absence of the Proposed Transaction. If all of Ulster Bank's current market share were transferred to an alternative purchaser which was one of the non-bank invoice finance providers, the Commission calculated that the HHI delta would be substantial (594) relative to the Proposed Transaction.

5.82 Nonetheless, the Commission considered that, even if a sale to an alternative purchaser were the appropriate counterfactual to adopt, this would still not lead to a finding that the Proposed Transaction would lead to a significant lessening of competition in this relevant market. This is because evidence indicated that the large majority of Ulster Bank invoice finance customers have a preference for receiving invoice finance from a full-service bank, rather than a non-bank specialist provider. As such, these customers would be unlikely to stay with any alternative non-bank purchaser, implying that, in reality, the HHI delta would be far lower than if all customers stayed with the alternative purchaser.[409]

Conclusion on the market for the provision of invoice finance

5.83 The evidence above for invoice finance shows:

(a) The most likely counterfactual is a Wind-Down;[410]

(b) Both the counterfactual (i.e., Wind-Down) and the Proposed Transaction would result in a concentrated structure, with both AIB and Bank of Ireland having large market shares, such that the competitive effects of the Proposed Transaction are limited relative to the counterfactual;

[409] The Commission observed that the vast majority of Ulster Bank invoice finance customers source other banking services from Ulster Bank. More specifically, a sizeable majority of Ulster Bank's invoice finance customers have an overdraft (and a further significant proportion have a current account with no overdraft). This may indicate a revealed preference of such customers for sourcing multiple banking services, including invoice finance, from a single full-line bank. The Commission explored this further by surveying these customers and those which only sourced invoice finance from Ulster Bank. This survey was consistent with the evidence on revealed preference. The Commission is aware that invoice finance facilities are short-term and that other lending products held by these customers would transfer to AIB with the execution of the Proposed Transaction. Therefore, it appeared likely to the Commission that only a small minority of Ulster Bank invoice finance customers would be retained by an alternative purchaser if a sale to alternative purchaser were the appropriate counterfactual to adopt.

[410] For comprehensiveness, the Commission also investigated the potential impact of the Proposed Transaction if a less likely counterfactual was adopted: the sale of the invoice finance business to an alternative provider. The evidence from Ulster Bank and Commission interviews of Ulster Bank customers suggests that a relatively small proportion of Ulster Bank customers are likely to remain with the alternative purchaser. This led the Commission to reach the same conclusion: the result of the merger would not be to substantially lessen competition in the supply of invoice finance in the State.

(c) Under a Wind-Down, the main options likely to be considered by customers are AIB or Bank of Ireland, and this will remain the same under the Proposed Transaction; and,

5.84 Based on this evidence, the Commission concludes that the result of the Proposed Transaction would not be to substantially lessen competition in the provision of invoice finance services to businesses in the State with an annual turnover of between €2-250 million.

Conclusion on Competitive Effects Analysis

5.85 In light of the available evidence gathered by the Commission during the course of its Phase 1 and Phase 2 assessments of the Proposed Transaction, the Commission finds that the Proposed Transaction is unlikely to lead to a substantial lessening of competition in any of the potential markets identified above.

6. ANCILLARY RESTRAINTS

6.1 No ancillary restraint was notified.

7. CONCLUSION

7.1 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.

7.2 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.

DETERMINATION

The Competition and Consumer Protection Commission, in accordance with section 22(3)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition whereby Allied Irish Banks, p.l.c. would acquire certain assets, consisting of a portfolio of performing commercial loans, of Ulster Bank Ireland DAC, would not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put to effect.

For the Competition and Consumer Protection Commission

Jeremy Godfrey

Chairperson

Competition and Consumer Protection Commission

1. ANNEX 1 - THE STATE OF COMPETITION IN CERTAIN RELEVANT MARKETS

1.1 In this Annex the Commission provides some commentary on competition in relation to two of the relevant markets it has considered as part of its investigation namely: GPLs ex-CRE and invoice finance.

1.2 Ulster Bank had decided to exit these markets before it embarked on the Proposed Transaction.[411] As a consequence of this decision, and irrespective of whether or not the Proposed Transaction proceeds, there will be only two pillar banks competing in these markets. While there will also be some competition from non-banks, the impact will be limited because most business customers have a preference to borrow from full-service banks.

1.3 The exit of Ulster Bank will lead to a high level of concentration in these markets, and the Commission is very concerned that there will not be sufficient competition in the markets for GPLs ex-CRE and invoice finance following Ulster Bank's exit. This concern arises whatever the mechanism for Ulster Bank's exit; it is not a consequence of the fact that the exit will be achieved by means of the Proposed Transaction.

1.4 The Commission's assessment of the Proposed Transaction is based on the difference in competitive conditions arising following the Proposed Transaction as compared with the competitive conditions that would arise absent the Proposed Transaction. The Commission has concluded, based on the evidence available to it, that the relevant counterfactual for the assessment of the Proposed Transaction is that, absent the Proposed Transaction, Ulster Bank would in any event would have exited the market. Both scenarios therefore involve the exit of Ulster Bank from the State. In both scenarios, the competition from Ulster Bank is lost. Both scenarios involve a high-level of concentration in the relevant markets. And both scenarios raise serious concerns about the adequacy of competition in these markets. However, there is no substantial difference in competitive conditions between the two scenarios. Hence

[411] See Chapter 4.

the Commission has concluded that the exit of Ulster Bank by means of the Proposed Transaction will not result in a substantial lessening of competition, when compared with the alternative of an exit of Ulster Bank by winding down its business lending. This conclusion does not diminish in any way the high-level of concern that the Commission has about the inadequacy of competition that will arise when there are only two full-service banks competing in these markets.

1.5 The remainder of this Annex sets out in more detail why the Commission has concerns about the state of competition in the provision of GPLs ex-CRE and in the provision of invoice finance following Ulster Bank's exit.

1.6 The evidence shows that Ulster Bank has been an important competitor in GPLs for non-CRE and invoice finance. Following Ulster Bank's exit, competition from Ulster Bank will no longer exist and only two pillar banks, AIB and Bank of Ireland, will remain. The post-exit HHIs show that these will continue to be highly concentrated markets. While there are non-bank lenders active in both these markets, they face a number of disadvantages relative to bank lenders and it is unlikely that they will expand rapidly to take substantial market share from the main bank lenders. The pricing of non-bank lenders for business lending may increase faster than pricing of pillar banks in response to market interest rate increases due to the ability of pillar banks to utilise the deposits of their customers.[412] Therefore, the constraint placed by non-bank lenders on pillar banks may weaken with any base rate increases. The evidence on barriers to entry shows that there is unlikely to be timely and sufficient entry by new full-service bank lenders into these sectors. Consequently, the competitive constraints on AIB and Bank of Ireland in these markets may be weak and there is likely to be an enduring lack of competition.

1.7 The Commission has considered the types of business lending customers which are most likely to be impacted by the exit of Ulster Bank, the change in the market structure and the resulting increase in concentration.

[412] See https://www.reuters.com/article/europebanks-ecb-idUSL8N2UF3IQ.

1.8 The business lending customers most immediately affected are those that currently have a GPL or invoice finance product with an Irish bank.[413] AIB and Bank of Ireland business lending customers will no longer have the option of switching, or threatening to switch, to Ulster Bank as an option of a full-service bank provider of these products, reducing their relative bargaining power. For Ulster Bank customers, the options of AIB and Bank of Ireland will remain, but now they will only have one full-service bank they can switch, or threaten to switch to.

1.9 The other customers who are likely to be affected are the businesses who currently do not have a GPL or invoice finance facility with a full-service bank, but would like to in the future. These customers will only have AIB and Bank of Ireland as full-service bank providers of these products. In addition, the Commission considers it informative to consider the numbers of businesses that could be affected by ineffective competition in the supply of these business lending products.

1.10 The Commission's focus in this Determination has primarily centred on businesses with an annual turnover of between €2-250 million, which relates to SMEs (excluding microenterprises) and MCCs.[414] In relation to SMEs, the number of SMEs affected might be estimated through the European Commission's 2019 Small Business Act for Europe ("SBA") figures which show that there were 20,837 SMEs, excluding micro businesses (i.e. those whose annual turnover does not exceed €2 million), in Ireland and that these businesses employed 627,818 people.[415] In relation to MCCs, The Irish Times Top 1000 companies currently shows that there are circa 398 MCCs in Ireland.[416] Taken together, the approximate number of businesses who would fall within the scope of potential customers for business lending services such as GPLs (both to CRE and Ex-CRE) is 21,235. Therefore, there are a large number of businesses in the State

[413] The Commission notes that the number of AIB customers with an estimated annual turnover of between €2-250 million with GPLs ex-CRE is […] and the number of Ulster Bank customers, of all turnover sizes with GPLs ex-CRE is approximately […]. In addition, the number of AIB customers as of […] with invoice finance was […] and the number of Ulster Bank customers with invoice finance as of […] was […]. These customers are the most directly affected customers.
[414] As defined at paragraphs 2.2 and 3.4 above, SMEs are businesses with an annual turnover not exceeding €50 million and MCCS are businesses with an annual turnover between €50 million and €250 million.
[415] See https://ec.europa.eu/docsroom/documents/38662/attachments/15/translations/en/renditions/native.
[416] See https://www.top1000.ie/companies.

which could be affected by a reduction in competition in the State with respect to GPLs ex-CRE and invoice finance following the exit of Ulster Bank.

1.11 More broadly, it has been reported that, in 2016, there were 270,557 SME enterprises in the economy, employing 1.063 million people, which was equivalent to 68.4% of private business employment; and that SMEs contributed €79.6 billion (42% of the total in the economy) of gross value added (the value that producers have added to the goods and services they have bought) in the Irish economy.[417]

1.12 It is clear that bank lending continues to play an essential role for many SMEs in Ireland. Although the effects of the Covid-19 pandemic led to annual gross lending in 2020 being lower than before the pandemic, new lending, at €3.1 billion for the year, remained above the levels from 2010 to 2016.[418]

1.13 The Commission has also observed that many SMEs have a strong preference to source their borrowing from a full-service bank. This is indicated by the high market shares of the full-service banks in GPLs ex-CRE and invoice finance. It is also indicated by the evidence which the Commission has seen on the preference of a large proportion of SMEs to source multiple banking products from the same banking provider.

1.14 As stated in paragraph 5.10 in Chapter 5 above, a paper by Ryan, O'Toole, and McCann looked at the impact of market power in the supply of lending to SMEs. The results support the market power hypothesis: that increases in market power in the supply of lending result in increased financing constraints for SMEs – a firm faces a financing constraint if it has a profitable investment opportunity at the current market cost of capital, but it cannot get the financing to undertake the investment.[419] This result is consistent with other academic research in this area, which shows that greater bank

[417] See https://isme.ie/wp-content/uploads/2020/05/LOCAL-JOBS-ALLIANCE-REPORT-May-20-2020.pdf.
[418] See https://www.centralbank.ie/docs/default-source/publications/sme-market-reports/sme-market-report-2021.pdf.
[419] See page 1 of Ryan, O'Toole and McCann, Does bank market power affect SME financing constraints?

market power is associated with greater credit constraints for SMEs.[420] Michael Dowling, a professor of finance at Dublin City University, has also expressed concerns about competition in banking in Ireland, and the lack of enticement for other European Banks to enter the Irish market. He also added that *"regulation is needed to prevent monopolistic behavior* [sic] *among the banks that are left."*[421]

1.15 A report by the CBI considered the net interest margin ("NIM") of retail 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.[422] This study looked at this key margin measure across the banks' activities in Ireland. The study shows that the NIM of banks in the State increased while that of the comparison group declined and finds that there are low levels of competition in the State.

> *"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"*.[423]

1.16 In a different banking market in Ireland, that for residential mortgages, the CBI noted, in 2015, that "*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*

[420] See Carbo, S., Rodriguez-Fernandez, F., Udell, G., 2009. Bank market power and SME financing constraints, Review of Finance 13 (2), 309-340. Also, Love, I., Peria, M.S., 2012. How bank competition affects firms' access to finance Policy Research Working Paper Series, The World Bank.

[421] See CNBC, https://www.cnbc.com/2021/05/03/irelands-banking-landscape-is-undergoing-drastic-change.html, reviewed 22 June 2022.

[422] See page 8 of the CBI, 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.

[423] See page 8 of the CBI, 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.

entrants may be difficult in an environment which has seen financial fragmentation and a retrenchment towards national banking markets".[424]

1.17 A study into the supply of banking services to SMEs in the UK found high levels of concentration, high barriers to entry, and low switching rates alongside practices by the banks which served to restrict and/or distort competition.[425] These factors, in turn, were identified as leading to excessive prices and profits – in particular, to the four largest retail banks serving SMEs in the UK, which led to adverse effects on SMEs or their customers.

1.18 Ulster Bank customers have also expressed regret regarding Ulster Bank's withdrawal from the State. One customer of Ulster Bank, SME Customer 1, outlined the importance that having Ulster Bank as an available funder in the State had for their business:[426]

> *"A large part of our success is due to the senior debt terms we received by AIB and UB competing.*
>
> *I think it is a great shame that in the future the next* [SME Customer 1] *will have to live with the first AIB terms and have much less chance of success.*
>
> *There will be a 2 bank monopoly. Bank of Ireland wouldn't even talk to us so essentially AIB will own the startups. The customer will suffer."*

1.19 Similar sentiments were received from a number of business customers of Ulster Bank, across a range of sectors, and across all sizes, from small SMEs[427] to LCCs.[428] These customers viewed Ulster Bank's exit from the State as negative and/or poor for competition in the medium to long term and have estimated that the impact of this poorer state of competition will mainly be in the form of higher prices, and a reduction

[424] See page 19 of https://www.centralbank.ie/docs/default-source/publications/correspondence/finance-reports/influences-on-svr-pricing-in-ireland.pdf?sfvrsn=2.
[425] See https://webarchive.nationalarchives.gov.uk/ukgwa/20111202184328/http://www.competition-commission.org.uk/rep_pub/reports/2002/462banks.htm#summary.
[426] Email correspondence with SME Customer 1.
[427] Meaning businesses with an annual turnover of between €2-10 million.
[428] Per the Commission's definition, meaning a business with an annual turnover in excess of €250 million.

in credit availability. Some of the responses that the Commission has received from Ulster Bank customers include:

"As outlined above, it is disappointing Ulster Bank are leaving the Irish Market after nearly 180 years serving Irish society. […] Their departure from the SME / business banking market is also concerning. Like Irish mortgage customers, SMEs in Ireland have very little choice and this is not a good outcome for Ireland Inc."[429]

"The Proposed Transaction will impact on the provision of Business Banking and Lending in the State. It will effectively create a duopoly within the State (exc PTSB) which could potentially have an impact on the relevant pricing and availability of credit to both small and large businesses in Ireland and specifically in the motor sector. The lack of alternative banking partners reflects the level of regulation in the sector and the State is too small from a scale perspective to attract foreign banks in a meaningful way to the State. Across all products, it is likely that non-regulated alternative lenders will need to take on the role of new competition in the market but historically this usually means an impact in terms of pricing."[430]

"A reduction in competition has the potential to negatively impact pricing going forward, which has to be a concern."[431]

"In the midterm, the lower number of Irish lenders active in the corporate segment may reduce the ability to negotiate the best credit terms for the borrower, unless foreign lenders are willing to play a more active role and re-increase competition."[432]

"We feel with Ulster Bank no longer in the market then the market will be less competitive and the Banks remaining in the market will have the opportunity to take advantage of businesses requiring finance and our company would be no different. We feel that Ulster Bank Clients would be most at risk but also companies with current relationships. If Ulster Banks Products or services in any capacity were to

[429] Response of LCC Customer 1 to the Customer Questionnaire.
[430] Response of LCC Customer 2 to the Customer Questionnaire.
[431] Response of LCC Customer 3 to the Customer Questionnaire.
[432] Response of MCC Customer 1 to the Customer Questionnaire.

remain independent then we feel the market would be more competitive which would favour businesses like ours and the economy as a whole."[433]

"The news that Ulster Bank are exiting the Republic of Ireland lending market is bad for competition. The market needs more lenders not less. With regard to the proposed transaction, AIB will be able to offer our company all the same products that Ulster Bank have offered us. Our only concern is that AIB will use the exit of another competitor as an opportunity to increase banking costs, including current account fees, loan margins, etc."[434]

"I have slight concerns as it is one less bank in the market which inevitably, in my opinion, will result in price increases from the other banks. I also found Ulster Bank extremely easy to work with over the past number of years, especially with regards to supporting our acquisition growth. In my past experiences with both AIB and Bank of Ireland, I didn't find either of them as open as Ulster Bank when it came to supporting business growth."[435]

"The main concern would be a lack of Credit Availability. Effectively the market will be reduced to BOI and AIB for Bank Lending. The main concern we might have would be for larger transactions which would require a number of banks to underwrite, as an individual bank would be precluded from being able to do a large transactions [sic] by themselves. Traditionally for large Bank club deals you would have the 3 Banks (AIB, BOI & UB) to club together or you could get the best two to club together. Whereas as [sic] now you only have two, so the terms of one Bank will likely be the lowest common denominator, where previously you could have competitive tension by selecting the best two."[436]

"Disappointed that Ulster Bank is pulling out of the Irish market. […] has had a very good relationship with Ulster Bank, through good times and bad. We would have major concern that following the announcement on KBC also pulling out of the

[433] Response of SME Customer 2 to the Customer Questionnaire.
[434] Response of SME Customer 3 to the Customer Questionnaire.
[435] Response of MCC Customer 2 to the Customer Questionnaire.
[436] Response of SME Customer 4 to the Customer Questionnaire.

market, we are now down to 2 main banking providers for large businesses – BOI and AIB (assuming with [sic] Permanent TSB will be more focussed on retail banking). AIB and PTSB are effectively state owned. Given Ireland already has one of the highest rates of [sic] borrowing across Europe, this will inevitably reduce competition even further, increasing the cost of borrowing and potentially impact the availability of different credit facilities."[437]

"The proposed transaction, of itself, [UB transfer of assets to AIB] will not affect our business. Its Ulster Bank's decision to leave the market that creates the challenge and will, in my opinion, impact upon competition and market pricing. For a company such as ours, where a banking relationship has lasted for so long, Ulster Bank's decision to leave the Irish market is extremely disappointing. For the company, it will cause enormous disruption but not pose an existential threat. We will, in the very near term, engage with other providers and form a new relationship. My impression is that this new relationship will carry a higher operating cost than the existing one. A continuation of our present (bundling) strategy, will restrict our options to one of the two other pillar banks (AIB/BOI) that include large-scale foreign exchange dealing operations. [Permanent TSB does not provide a full FX service]. That there are only two alternate banks offering a complete service will, in my opinion, be detrimental to competition and pricing, and will give rise to increases in cost across the market."[438]

"The loss of Ulster Bank will create a lot of uncertainty for SMEs and we all expect to suffer from the lack of competition. We anticipate the interest rates on loans and bank charges to increase."[439]

"The news of Ulster Bank exiting the market was very disappointing to us. With limited banking competition in ROI, we are very concerned about access to Finance in the future."[440]

[437] Response of MCC Customer 3 to the Customer Questionnaire.
[438] Response of SME Customer 5 to the Customer Questionnaire.
[439] Response of SME Customer 6 to the Customer Questionnaire.
[440] Response of SME Customer 7 to the Customer Questionnaire.

1.20 The Commission notes that, in addition to the directly affected Ulster Bank customers, 18 customers of AIB across a number of sectors, and ranging from small SMEs to LCCs, also expressed concerns over the level of ongoing competition in business banking markets in the State going forward, citing general concerns over the level of concentration,[441] a reduced ability to negotiate on pricing,[442] and a lack of availability of future finance,[443] as the most problematic aspects of Ulster Bank's exit from the State.

1.21 In light of the above, the Commission recognises that, if the exit of Ulster Bank leads to higher borrowing costs and lower lending, then this could have important negative consequences for the Irish economy. For example, less lending to SMEs is likely to lead to lower investment, which could mean lower growth and fewer jobs.

1.22 It is not uncommon for business banking and lending markets to be concentrated in European countries and elsewhere, as is indicated by the analyses in various market investigations into the sector.[444] However, the Commission observes that the levels of concentration in Irish business banking markets appear to be particularly high, and this will be materially exacerbated by the exit of Ulster Bank.

1.23 As noted in paragraph 4.61, the Commission explored with the Department of Finance their approach to considering the exit of Ulster Bank from the State. More generally, the Department of Finance indicated that, while it would welcome as much competition as possible, it has not taken any steps in relation to Ulster Bank withdrawing its services in the State; it has not conducted research or has any papers that analyse concentration in commercial lending markets; and, legally, it cannot incentivise entry of new participants. In addition, the Minister has no role in the day to day commercial and operational matters of any bank operating within the State.[445]

[441] Response of MCC Customer A to the Customer Questionnaire.
[442] Response of MCC Customer B to the Customer Questionnaire.
[443] Response of LCC Customer A to the Customer Questionnaire.
[444] The Commission notes that EU member states with a similar population to that of Ireland typically have more than two pillar banks. In Denmark, the four largest banks have market shares of approximately 60% in all lending, while in Finland the top four banks have an 80% market share in the overall banking market. https://www.ebf.eu/finland/.
[445] See the note of the call between the Department of Finance and the Commission, dated 15 March 2022; also, the Department of Finance's response to the CCPC's letter of 28 February 2022.

However, the Department of Finance also stated that it continues to review the banking market and is currently conducting a retail banking review.[446]

1.24 On 1 July 2021, the Department of Finance announced that it is to conduct a broad-ranging review of the retail banking sector in Ireland. This was prompted by a number of announcements in the Spring of 2021 in relation to the structure of the sector.[447] The terms of reference for the retail banking sector review were published on 23 November 2021.[448] The Commission welcomes this review.

1.25 The role of SMEs in the Irish economy is crucial in terms of providing key goods and services, significant employment and a dynamism to innovate and compete.

1.26 Banking plays a key role in the operation and growth of SMEs. The provision of credit to SMEs and larger corporates is important in supporting their day-to-day operations and their ability to invest in future capabilities and capacity. Banks provide the very large majority of credit in the two relevant markets the Commission has focused on here, that for GPLs ex-CRE for businesses with turnover between €2-250 million, and that for Invoice Finance. In addition, the evidence points to many of the customers of these products placing particular value in sourcing these services from a bank which is also able to provide other banking products as part of a relationship banking service. The result of Ulster Bank exiting the market means that only two full-service banks remain in the State to serve the needs of a significant proportion of SMEs and corporates with turnover between €2-250 million.

1.27 International evidence shows that higher concentration in banking services is likely to have a detrimental effect on competition, leading to poorer outcomes for business borrowers in terms of pricing, innovation and service.

1.28 It is not the role of the merger regime to regulate markets and the CCPC must follow the relevant legal tests in making its decisions. The CCPC does not have a role in

[446] The Terms of Reference of the Retail Banking Review (the "Review") were published on 23 of November 2021. One of the terms of reference is "*in recognition that a key role of the banking sector is in the provision of sustainable credit to the economy, assessing the availability of credit to SMEs from both banks and non-banks as well as considering the impact of State measures in this area and if policy changes are merited*".
[447] https://www.gov.ie/en/press-release/d9ba7-minister-donohoe-publishes-term-of-reference-for-retail-banking-review/.
[448] ibid.

approving or reversing the decision of a company that has decided to exit the State. However, in making this Determination, it is important that the Commission highlights the real and strategic issues the Commission has identified in this market, which are likely to harm business customers and the wider Irish economy. The CCPC will continue to work with all stakeholders to consider how these issues can best be addressed and ensure the market is open and competitive to the benefit of everyone.

1. ANNEX 2 - PREVIOUS CASES INVOLVING EXIT

1.1 The Proposed Transaction will result in the exit of one of the three pillar banks engaged in business lending, leaving only AIB and Bank of Ireland as the main pillar bank competitors in this sector. Therefore, the Commission considered previous competition authority decisions which faced similar issues, in particularly the treatment of strategic exit or exit due to a failing firm or division. The Commission's summary of five relevant cases is below.

Baxter/Fannin

1.2 This merger involved two companies supplying products and services to the healthcare sector in the State. Fannin submitted to the Commission that it would exit the market if the proposed purchase by Baxter was prohibited.[449] The Commission found that Fannin satisfied each condition of the failing division test. Therefore, the most likely outcome in the absence of the proposed transaction was that Fannin would close and its assets would exit the relevant market.[450] The Commission's reasoning was that, since competition was likely to deteriorate to at least the same extent (and, possibly, to an even greater extent) in the absence of the proposed transaction, there was no basis for prohibiting the proposed transaction.[451]

Nynas/Shell/Harburg refinery

1.3 This merger involved the purchase of a refinery in Hamburg-Harburg.[452] The European Commission stated:

> *"Thus, to assess whether a concentration significantly impedes effective competition, the Commission must compare the competitive conditions that prevail without the concentration with the conditions that would result from the concentration.*

[449] See paragraph 25 of Determination of merger notification M/15/026- Baxter Healthcare/Fannin Compounding.
[450] See paragraph 182 of Determination of merger notification M/15/026- Baxter Healthcare/Fannin Compounding.
[451] See paragraph 188 of Determination of merger notification M/15/026- Baxter Healthcare/Fannin Compounding.
[452] See paragraph 4 of Nynas/Shell/Harburg refinery.

To determine the conditions that would prevail without the concentration, the Commission may take into account future changes to the market that can reasonably be predicted.

Of particular relevance may be whether, without the concentration, the relevant assets would exit the market. Where the assets would in the near future be forced out of the market if not taken over by another undertaking and where there is no prospect of a less anti-competitive alternative purchase than the notified concentration, the Commission may conclude that a deterioration of the competitive structure that follows the concentration is not caused by the concentration, since the competitive structure of the market would in any event deteriorate to at least the same extent without the concentration."[453]

1.4 The European Commission's analysis found that if the refinery was not purchased by another undertaking, it was very likely that the refinery would have been closed and the assets would have exited the market.[454] The European Commission also found no prospect of a less anti-competitive purchaser of the refinery.[455] The European Commission therefore assessed the effects on competition of the transaction in comparison to the effects on competition of the closure of the refinery.[456] Compared to the counterfactual of the closure of the refinery, the European Commission found that the merger would not significantly impede effective competition.[457]

Chemring/Wallop

1.5 This merger involved two companies which produced air defence countermeasures. The merger led the parties to have a combined share of 100% of the supply of magnesium, teflon and viton flares.[458] The Competition and Markets Authority (CMA) found that, in the absence of the merger, Wallop would inevitably have exited the

[453] See paragraphs 308-310 of Nynas/Shell/Harburg refinery.
[454] See paragraph 327 of Nynas/Shell/Harburg refinery.
[455] See paragraph 360 of Nynas/Shell/Harburg refinery.
[456] See paragraph 362 of Nynas/Shell/Harburg refinery.
[457] See paragraph 526 of Nynas/Shell/Harburg refinery.
[458] See Anticipated acquisition by Chemring Group plc of the air countermeasures and pyrotechnics business and certain assets of Wallop Defence Systems Limited.

market, with no replacement of the competitive constraint exerted on Chemring. Relative to this counterfactual, the CMA found that the merger would not give rise to a realistic prospect of a substantial lessening of competition and cleared the merger.[459] The CMA's reasoning was that, in both the counterfactual and the merger, Wallop would no longer provide a competitive constraint and therefore the result of the merger was not a substantial lessening of competition.

Eurocarparts/Andrew Page

1.6 This merger involved two companies which supplied car parts and garage equipment. In 98 local areas there was a horizontal overlap. However, in 48 of these areas, Eurocarparts was the only bidder for the depots owned by Andrew Page. The CMA found that, in the absence of the transaction, these depots would likely have been closed, with no replacement of the competitive constraint exerted on Eurocarparts. Relative to the counterfactual, in these 48 areas the CMA found that the merger was not expected to result in a substantial lessening of competition. The CMA's reasoning was that, in both the counterfactual and the merger, Andrew Page depots would no longer provide a competitive constraint and therefore the result of the merger was not a substantial lessening of competition.[460]

Linergy/Ulster Farm

1.7 This merger involved two companies which provided animal rendering services in Northern Ireland. The CMA found that, in both the merger and the counterfactual, the Ulster Farm Category 1 plant, which dealt with material carrying a risk of transmitting spongiform encephalopathy, would not operate. Therefore, the CMA found that the merger was not expected to result in a substantial lessening of competition in this market. The CMA's reasoning was that, in both the counterfactual and the merger, Ulster Farm would no longer provide a competitive constraint and therefore the result of the merger was not a substantial lessening of competition.[461]

[459] See paragraphs 3-11 of Anticipated acquisition by Chemring Group plc of the air countermeasures and pyrotechnics business and certain assets of Wallop Defence Systems Limited.
[460] See paragraphs 1-28 of A report on the completed acquisition by Euro Car Parts of the assets of the Andrew Page business.
[461] See paragraphs 1-18 of A report on the completed acquisition by Linergy Limited of Ulster Farm By-Products Limited.