CCPC Mergers & Acquisitions Report 2021

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

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Introduction

2021 has been a particularly busy one for mergers in Ireland. We have seen a near doubling of the number of mergers when compared with 2020. The total number of notified mergers in 2021 was 81, compared to 41 in 2020. To some extent this increase may represent a catch up from the slow down in activity in 2020 but it is clear the appetite for merger activity has been very strong in Ireland in 2021. This mirrors the wider global trend of increased levels of deal making in the last year.

The sector which has been most prominent has been financial and insurance services. In particular we have seen a number of significant merger notifications in the banking sector. These have the potential to fundamentally impact on what is a key sector for the Irish economy and the team in the CCPC has allocated a significant amount of resource to ensure that the notifications are carefully considered. Sectors which have seen reductions in activity in 2021 include Information & Communications and Healthcare.

In 2021 the CCPC delivered 74 merger determinations of which 8 were in respect of proposed transactions notified towards the end of 2020 and carried over to 2021.There were 14 extended Phase 1 investigations under review in 2021, five of which required a Phase 2 investigation. Of the Phase 2 investigations, one was withdrawn, one was cleared with commitments and at the end of the year three are ongoing – all in the banking sector.

The CCPC views as very important its role in ensuring consumers are protected from outcomes that could lead to higher prices or lower quality goods and services. Where competition concerns are identified, the CCPC only approves such mergers when remedies can completely address the competition concerns. In 2021 we received formal commitments to address competition concerns in relation to three mergers. This is largely in line with the level of commitments we have seen over recent years. In addition one notification (Link Group/Pepper) was withdrawn while it was undergoing a Phase Two investigation. Our investigation identified competition concerns with this transaction and we engaged with the companies on these. It was during this process that the parties announced that they were withdrawing from the proposed acquisition. The investigation was closed without the need for the CCPC to issue a determination.

One key element of a merger regime is the need to ensure efficiency in the review process. It is important that businesses have the confidence that notifications will be dealt with effectively and in a timely manner, in particular where no significant competition issues arise. We are pleased to record that in 2021 non-extended Phase 1 investigations were completed in an average length of 20.2 working days, a significant decrease on the 2020 figure of 22.9 working days and carries on an improving trend in recent years.

A key driver of this improvement was our introduction in July 2020 of the Simplified Merger Notification Procedure (SMNP) which delivers efficiency benefits for businesses through reduced notification requirements and allows for speedier decision timelines. The SMNP has now been well established and 32 mergers were cleared using it in 2021.

The CCPC continued to engage with our European colleagues on developments within the European merger regime. There has been a considerable amount of work done to consider appropriate measures to deal with the fast moving digital sector and international competition issues, including what additional tools and powers could be useful to address these issues. One development in 2021 has been the increasing use of 'Artcle 22' which allows national competition authorities in the EU to refer merger transactions to the European Commission for determination. The CCPC made one referral under Article 22 in the Facebook/Kustomer case. The CCPC expects that there will be further clarity on some of these issues in 2022 and we will continue to keep under review the impact on the merger regime.

We can see from the increased number of notifications and the ability of the CCPC to make determinations that we have successfully managed the impact of Covid-19 on the merger review regime. As part of our ongoing improvement we have taken the time to consider the lessons from the steps we put in place and have decided to make some changes to our procedures. This includes requiring all notifications to be made electronically and clarifying submission times.

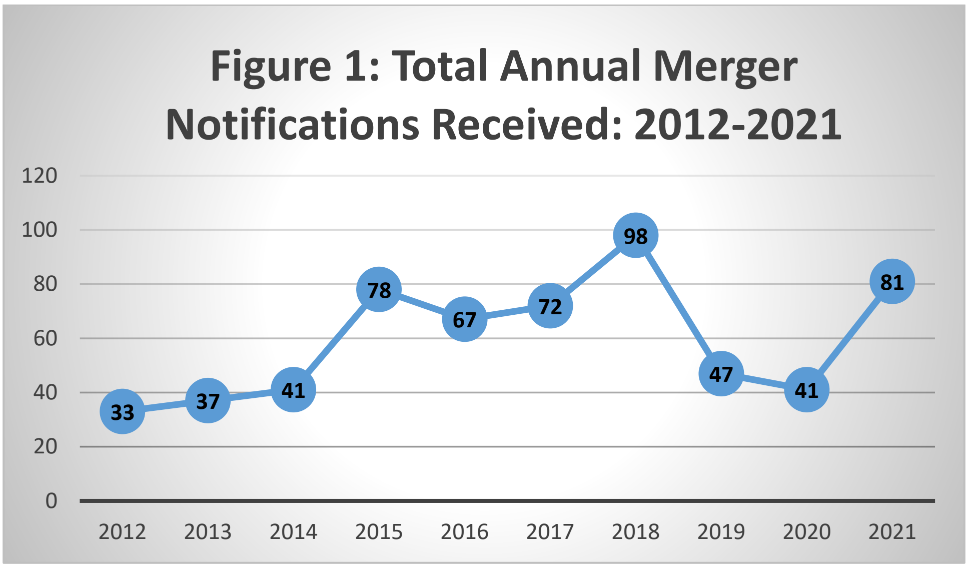
We continue to work closely with the Department of Enterprise, Trade and Employment on potential changes to the merger regime and note the department's consultation in 2021 on the Competition (Amendment) Bill 2021. We expect there will be clarity in 2022 on what changes to merger legislation will come into effect and we will consult with stakeholders on how we incorporate any changes into our merger regime procedures.

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

1. 2021 Merger Notifications & Determinations

Notifications

1.1 For the 2021 calendar year, the CCPC received 81 merger notifications. This represents a increase of approximately 98% on the number of mergers notified in 2020, which was 41. Of the 81 merger notifications received, 35 were notified under the SMNP as discussed further in section 4 below. Figure 1 presents the trend in the number of merger notifications to the CCPC and formerly, the Competition Authority, for the period 2012 to 2021.



1.2 As outlined in the 2019 Mergers & Acquisitions report, on 1 January 2019 new financial thresholds[1] for the mandatory notification of proposed mergers or acquisitions to the CCPC came into effect. This change immediately reduced the number of merger notifications received. As can be seen from Figure 1, mergers notifications fell from 98 in 2018 to 47 in 2019. This reduced number of notifications continued into 2020 with 41 notifications, possibly due to the impact of Covid-19 restrictions on business activities both in the State and globally. With

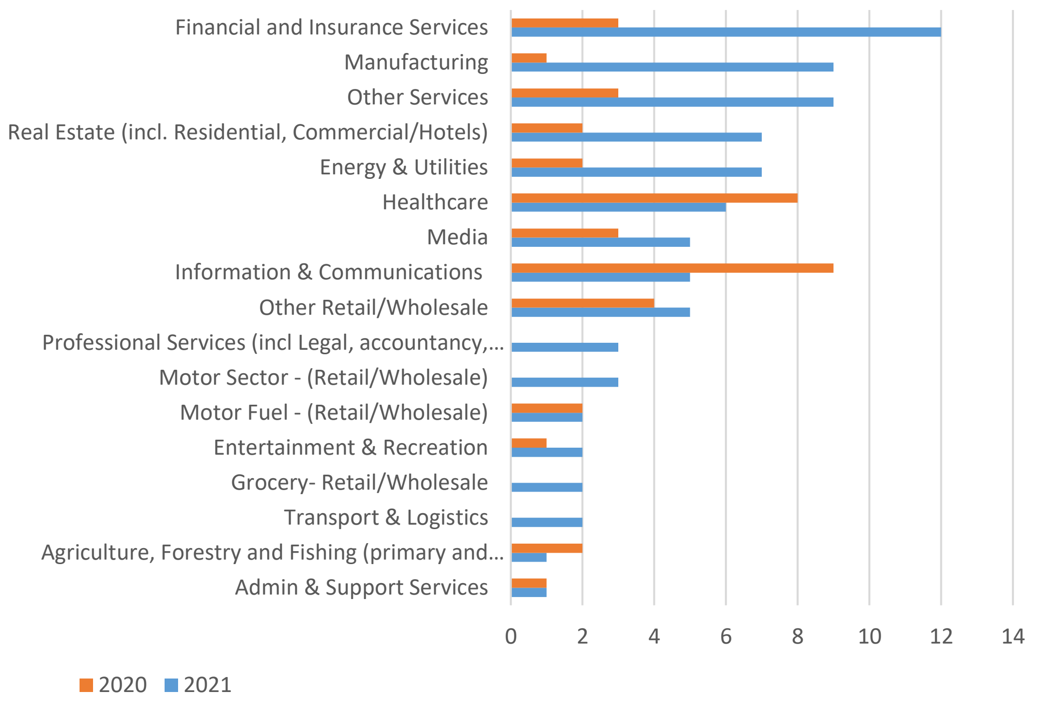
[1] The new financial thresholds increased as follows: (i) the aggregate turnover in the State of the undertakings involved from being not less than €50,000,000 to being not less than €60,000,000 and (ii) the turnover in the State of each of 2 or more of the undertakings involved increased from not less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

the easing of restrictions in 2021, an increase in business activity resulted in a substantial increase in merger notifications received.

Sectoral Breakdown of Notified Mergers

1.3 The sectoral[2] breakdown of mergers received in 2020 and 2021 are presented in Figure 2 below. In 2021, Financial and Insurance services was the most prominent sector with 12 notifications received. This was followed by Manufacturing and Other Services with 9 notifications each. This is a change from 2020, where the most prominent sectors were Information and Communications, and Healthcare.

Figure 2: Number of Mergers by Sector: 2020 - 2021



Determinations

1.4 During the course of 2021, the CCPC issued 74 Determinations. 66 of the determinations were issued in respect of proposed transactions notified during 2021 and the remaining 8 were in respect of proposed transactions notified towards the end of 2020 which were carried over to 2021. Of the 74

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

Determinations issued, 32 were issued under the Simplified Merger Procedure, representing approximately 43% of all determinations issued in 2021.

1.5 In 2021, 14 investigations involved an extended Phase 1 review, three of which were carried forward from 2020. Of the three carried forward from 2020, one, which was a Phase 2 investigation (M/21/003 – Link Group/Pepper), was withdrawn, a Phase 2 determination was issued in relation to the second (M/21/005 - ESB/Coillte (JV)) and a Phase 1 determination issued in relation to the third (M/20/029 – Brookfield (Greenergy)/Amber Oil). Of the remaining 11 extended investigations, Phase 1 determinations were made in respect of 8 and 3 required a Phase 2 investigation which are still under consideration at the end of 2021.

1.6 Table 1 below presents a list of the mergers which required an extended Phase 1 and Phase 2 investigations.

Table 1: - Extended Phase 1 and Phase 2 Investigations

M/20/029 – Brookfield (Greenergy)/Amber Oil
M/20/003 – Link Group/Pepper (Phase 2 investigation)
M/20/005 – ESB/Coillte (JV) (Phase 2 investigation)
M/21/009 – CityLink / GoBus
M/21/011 – Easycash/Bank of Ireland ATMs
M/21/012 – AIB/Goodbody
M/21/016 – Pandagreen/Exomex
M/21/024 – Orpea / FirstCare
M/21/031 – Glennon Brothers/Balcas
M/21/046 – Bank of Ireland/Davy (Wealth Mgmt and Capital Markets)
M/21/054 – Zeus Packaging/Limerick Packaging
***M/21/004 – AIB/BoI/PTSB – Synch Payments JV (Phase 2 investigation)**
***M/20/021 – Bank of Ireland/Certain Assets of KBC (Phase 2 investigation)**
***M/20/040 – AIB/Certain Assets of Ulster Bank (Phase 2 investigation)**

*Ongoing investigations carried over to 2022

1.7 In 2021, formal commitments to ameliorate competition concerns were required and obtained from notifying parties in respect of the following three cases:

- ***M/20/005 - ESB/Coillte (JV)*** – joint behavioural commitments to prevent directors appointed to the proposed joint venture by ESB potentially having access to and exchanging competitively sensitive information between ESB and the proposed joint venture; Further commitments by Coillte to prevent the exchange of information between Coillte and the proposed joint venture in relation to Coillte's third party land customers.

- ***M/21/016 – Pandagreen/Exomex*** – structural commitment to divest to Padraig Thornton Waste Disposal Limited, trading as "Thorntons Recycling", the customers to whom Pandagreen supplies individual C&I waste collection services in certain areas of Co. Louth. The divestment was approved by the CCPC.

- ***M/21/024 -Orpea/FirstCare*** – behavioural commitment by Orpea to inform the Commission of any acquisition of residential care or nursing home in Co. Kildare for a period of two years from the date of the determination, 6 July 2021, and voluntarily notify the acquisition to the Commission before it is put into effect, if directed to do so by the Commission.

1.8 One notification (M/20/003 - Link Group/Pepper) was withdrawn during a Phase 2 investigation. Our investigation identified potential competition concerns with the proposed transaction and involved entensive engagement with the parties to address the identified potential competition concerns. It was during this process of engagement, that the parties announced that they were withdrawing from the proposed transaction. Consequently, the CCPC closed the investigation without the need to issue a determination

Timeframes

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

1.10 Between 1 January 2021 and 31 December 2021, the CCPC took an average of 20.2 working days to issue a Phase 1 decision, the corresponding figure for 2020 was

22.9.[3] The timelines in individual cases that did not raise serious concerns varied from 11 to 29 working days depending, for example, on the complexity of the structure of the transaction and the nature of the competition issues involved.

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

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

2. Media & International Mergers

Media Mergers[4]

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

2.2 In 2021, the CCPC reviewed and issued merger determinations in relation to five media mergers as presented in Table 2 below.

Table 2: - Media mergers reviewed - 2020

M/21/007 - Bauer/Communicorp
M/21/008 - DMG Media/New Scientist
M/21/028 - Bauer / Imagine Radio
M/21/052 - DMG Media/Nalac
M/21/072 - Bauer (Expres Net) / E2 Services

International Mergers

2.3 The CCPC is required to monitor EU merger activity and, when it considers there is a significant interest to Ireland the CCPC can attend and participate in EU merger advisory committees. Over the period 1 January 2021 to 31 December 2021, the

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

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

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

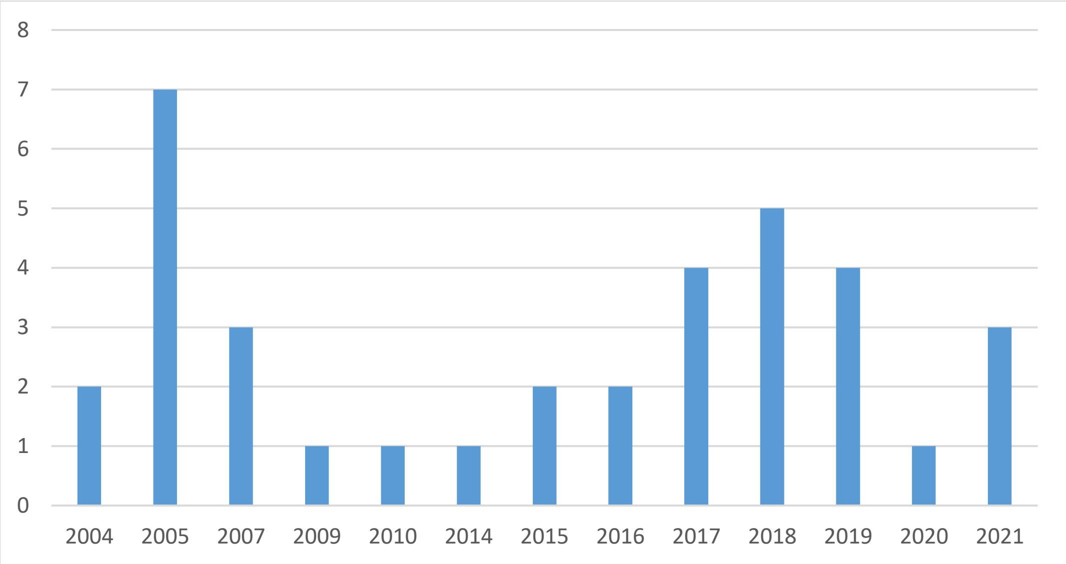
- M.10132 Blackstone/B&J/Applegreen
- M.10493 Illumina/Grail
- M.8181 Merck/Sigma-Aldrich
- M.9987 – Nvidia/Arm (Article 4 referral)
- M.10262 Meta (Formerly Facebook)/Kustomer (Article 22 referral)

3. Merger Remedies Review 2003 to 2021

3.1 The Competition Authority (TCA) commenced reviewing mergers in 2003 pursuant to Part 3 of the Competition Act 2002 (as amended). For the period 2003 to 2021, both the CCPC and TCA have approved 36 mergers with commitments to address potential substantial lessening of competition concerns. The acceptable commitments should prevent harm to competition resulting from the merger and should be appropriate, proportionate, time bound, capable of being implemented, monitored, enforced and should avoid any unintended anticompetitive outcomes.

3.2 Figure 3 below shows the number of mergers approved with commitments by the CCPC and TCA by the year of the decision.

Figure 3: Number of mergers approved with commitments by year



3.3 Of the 36 CCPC and TCA approvals with commitments, two thirds (66.7%) involved behavioural remedies, 25% of the approvals involved commitments which were primarily structural in nature and 8.3% required both structural and behavioural remedies. Table 3 below provides commitment breakdown by whether the approval was in phase 1 or phase 2. As can be seen there is a higher percentage of structural type commitments in phase 2 commitments.

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

2002-2021	Phase 1/Phase 2	Behavioural	Structural	Mix
Phase 1: Commitments	58% (21)	76.2%	14.3%	9.5%
Phase 2: Commitments	42% (15)	53.3%	40%	6.7%

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

3.5 Behavioural remedies involve remedies that are designed to modify or constrain the future conduct of merging firms. Behavioural commitments accepted by the CCPC and TCA have tended to primarily consist of "ring-fencing" commitments to prevent the flow of competitively sensitive information in the context of post-merger management of the merged firm and/or in a joint venture situation. "Ring-fencing" commitments made up 50% of all behavioural remedies, followed by the obligation to notify the CCPC of future acquisitions, even if the transaction is not notifiable (20%), access remedies (11%), and other behavioural remedies (19%).

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

3.7 Out of the 36 mergers approved with commitments, 24 commitments have completed, while 12 continue to apply. Six of these have defined expiry dates lasting up to a maximum of 5 years, and six will remain in force until certain ownership/shareholdings change to the extent that the CCPC considers that the commitments are no longer required. Table 4 below list the merger cases with active commitments.

Table 4: List of merger cases with active commitments

Merger	Commitment Type - Structural/Behavioural	Remarks
*M/17/068/Irish Times/Sappho(Irish Examiner)	Behavioural	Reporting obligation- Radio business
M/17/021 – Applegreen/JFT	Hybrid-Quasi structural and Behavioural	Reporting obligation – Facility operation and supply
M-17-027 Dalata/Clarion Clayton	Behavioural	Reporting on future acquistions and ring fencing
M-18-009 BWG/4 Aces	Structural and Behavioural	Structural part completed. Reporting on ring fencing.
M/18/031 - Uniphar/Sisk Healthcare	Behavioural	Reporting on ring fencing.
M/18/036 Enva/Rilta	Structural and Behavioural	Structural part completed. Reporting on access obligation.
M/18/042 – Oaktree/Alanis/Lioncor (JV)	Behavioural	Reporting on ring fencing.
M/18/053 – Pandagreen/Knockharley Landfill and Natureford	Behavioural	Reporting on access and future acquisition.
M/18/067 – LN Gaiety/MCD Productions	Behavioural	Reporting on ring fencing, non discrimination and future acquision.
M/19/010 – FormPress Publishing (Iconic)/assets of Midland Tribune	Behavioural	Reporting obligation on non-discrimination.
M/20/005 - ESB/Coillte (JV)	Behavioural	Reporting on ring fencing.
M/21/024 - Orpea/FirstCare	Behavioural	Reporting on future acquisitions.

Source: The CCPC

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

4. Merger Review Policy Developments - 2021

Simplified Merger Procedure

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

4.2 The CCPC decided to introduce a simplified merger notification procedure following two separate public consultations in 2018 and 2019. The SMNP Guidelines[6] provide a detailed overview of criteria that must be satisfied for a merger or acquisition to fall within the scope of the SMNP. It also outlines the safeguards and exclusions in place regarding situations where mergers or acquisitions which, notwithstanding that they fulfil the criteria requirements, may require the more detailed approach that the Standard Merger Notification Procedure entails.

4.3 During 2021, the CCPC reviewed 35 merger notifications under the SMNP and issued 32 merger determinations. For the period July to December 2020, the CCPC issued 7 SMNP determinations. For the SMNP decisions during 2021 the CCPC took an average of 12.9 working days, whereas the corresponding figure for 2020 was 13.4 working days.

4.4 The SMNP currently has, and will continue to have, a positive impact on businesses as review periods for mergers or acquisitions which do not raise significant competition concerns will be reduced and notifying parties will be exempt from providing certain information when filing mergers or acquisitions which do not raise significant competition concerns.

4.5 The SMNP does not replace the current procedure, but will facilitate more efficient review of mergers that do not raise competition concerns.

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

Changes to the CCPC Merger Notification Procedure

4.6 The CCPC are always aware of the need to review our procedures to ensure that they are up to date and most appropriate. In this context the CPPC reviewed the merger notification process including the electronic merger notification process, implemented in March 2020 as a temporary measure in response to the disruption to business caused by Covid-19. The CCPC formed the view that the electronic merger notification process had worked well since implementation, however there was some issues regarding the daily time limits that applied for receipt of merger notifications. For these reasons, from Wednesday 1 December 2021, the CCPC has made the following permanent changes to the merger notification procedure.

- all merger notifications (including all supporting documentation) are to be submitted in electronic format only to mergers@ccpc.ie.

- The timeframe for submissions has also changed in that completed notifications should be submitted to mergers@ccpc.ie between the hours of 09.00 and 15:00, Monday to Friday (excluding public holidays). For the purposes of determining the appropriate date under the Competition Act 2002 (as amended), where the notification and all supporting documents are not fully received by 15:00, the CCPC will consider the date of receipt of the notification to be the next working day.

- Where the merger may relate to overlapping products or services, applicants are now required under sections 4.8, 4.9 and 4.10 of the Merger Notification Form to provide the names and e-mail addresses of their top twenty largest customers, suppliers and competitors. The CCPC merger notification form and merger and acquisition procedures document have been updated to reflect these changes.

Future Changes to Merger Legislation and Policy

4.7 It is expected that there will potentially be changes to legislation in 2022 which will impact the current merger regime. The CCPC will review and consult on updating policy and procedures accordingly following the implementation of any relevant changes to legislation.

CCPC

Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí

Competition and Consumer Protection Commission