

## DETERMINATION OF MERGER NOTIFICATION M/22/044 – AIB / CERTAIN MORTGAGE (TRACKER) ASSETS OF ULSTER BANK

Section 21 of the Competition Act 2002

Proposed acquisition by Allied Irish Banks, p.l.c. of a portfolio of performing residential mortgage assets which are predominantly "tracker" mortgages of Ulster Bank Ireland DAC

Dated: 13 January 2023

## Introduction

1. On 25 August 2022, 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 (the "Notification") of a proposed transaction whereby Allied Irish Banks, p.l.c. ("AIB") would acquire a portfolio of performing residential mortgage assets which are predominantly "tracker" mortgages (the "Target Assets") of Ulster Bank Ireland Designated Activity Company ("Ulster Bank") (the "Proposed Transaction").

## The Proposed Transaction

2. The Proposed Transaction is to be implemented by way of a mortgage sale deed entered into between AIB, Ulster Bank and NatWest Group plc ("NatWest") (together the "Parties") dated 1 June 2022 (the "MSD"). The Target Assets comprise a loan portfolio of residential mortgages from Ulster Bank valued (at the time of Notification) at approximately €6bn with [...]% (€[...]) comprised of tracker mortgages'<sup>1</sup> with the remaining [...]% (approximately €6bn with [...]% (€[...]) consisting of 'combination mortgages'. A 'combination mortgage' occurs where customers have both tracker and non-tracker (i.e. the latter is on a variable or fixed rate) loans secured on a single property. This €[...] was split [...] between tracker and non-tracker balances.<sup>2</sup>

<sup>&</sup>lt;sup>1</sup> A tracker mortgage is defined in the MSD as "[...]." The Central Bank of Ireland has defined a tracker mortgage as "a type of home loan where the interest rate charged on the loan tracks that of another publicly available rate, typically the interest rate set by the European Central Bank" see <u>https://www.centralbank.ie/consumer-hub/explainers/what-is-the-tracker-mortgage-examination</u>.

<sup>&</sup>lt;sup>2</sup> The Commission notes that the value of the Target Assets as at 31 August 2022 was less than €6 billion.



3. The Parties state in the Notification that:

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

- 4. The Parties state in the Notification that pursuant to the MSD, [...].<sup>4</sup>[...].<sup>5</sup>[...].<sup>6</sup> AIB cannot, therefore, unilaterally alter those terms save as explicitly provided for in the Ulster Bank mortgage arrangements themselves.
- 5. There will be a difference post-Proposed Transaction in relation to the 'mortgage porting' options available to the transferred Ulster Bank customers. The Commission understands that mortgage porting refers to a situation where a customer buys a new property but seeks to retain their existing tracker mortgage arrangement, that being where the interest rate of the mortgage tracks the ECB main refinancing operation rate. Mortgage porting may give rise to a combination mortgage, a mortgage arrangement which has both tracker and non-tracker elements. In these circumstances, a "combination mortgage" is a type of mortgage where a borrower has "ported" their tracker mortgage to acquire a new property and obtained an additional new mortgage on that new property to fund any additional cost to buy it. Post-Proposed Transaction, transferred Ulster Bank customers will be able to avail of the AIB porting policy, and not the Ulster Bank porting policy.
- 6. Under the Proposed Transaction, AIB will not acquire any current or deposit accounts or credit/debit card facilities or leasing activities from Ulster Bank.<sup>7</sup> AIB will also not acquire any freehold or leasehold property of Ulster Bank including branches, agencies, cash centres, or call centres. AIB will also not acquire any Ulster Bank intellectual property rights, IT platforms, or goodwill as part of the Proposed Transaction.<sup>8</sup>
- 7. The Parties state in the Notification that at the date of signing the MSD, no employees were wholly or mainly assigned to the Target Assets.<sup>9</sup> However, in the interim period between signing and closing the Proposed Transaction the Parties anticipate that approximately [15-25] Ulster Bank employees may become wholly or mainly assigned to the Target Assets as Ulster Bank winds down its operations. Therefore, a cohort of Ulster Bank employees may

<sup>7</sup> Notification, page 10.

<sup>&</sup>lt;sup>3</sup> Notification, page 10.

<sup>&</sup>lt;sup>4</sup> Notification, page 9.

<sup>&</sup>lt;sup>5</sup> Notification, page 9.

<sup>&</sup>lt;sup>6</sup> See clause 2.1 of the MSD for further details.

<sup>&</sup>lt;sup>8</sup> Notification, page 10.

<sup>&</sup>lt;sup>9</sup> Notification, page 10.



have a right under the European Communities (Transfer of Undertakings) Regulations 2003 (the "TUPE regime") to transfer to AIB.

8. AIB has agreed to pay approx. €5.4 billion, equivalent to 95.15% of par value (with the par value expected to be approximately €5.7 billion at the Final Cut-Off Date), for the Target Assets. The exact amount will be determined on completion when, pursuant to the MSD, a full reconciliation of the amounts will take place.

## **The Undertakings Involved**

#### The Acquirer – AIB

- 9. AIB is a public limited company and a direct subsidiary of AIB Group Public Limited Company (a public limited company, incorporated in Ireland and listed on the Irish Stock Exchange, having its registered address at 10 Molesworth Street, Dublin 2, Ireland and registered number 594283) (together with AIB, "AIB Group").
- 10. AIB Group provides a variety of financial services, predominantly in Ireland, to a lesser extent in the UK and in some exceptional instances further afield. AIB Group is segmented into four major Group segments: (i) Retail Banking, (ii) Capital Markets, (iii) AIB UK and (iv) "Group". The Notification describes AIB UK and "Group" as follows:

"AIB UK offers retail and business banking services through a sector-led corporate and commercial bank supporting businesses in Great Britain ("Allied Irish Bank (GB)") and a retail and business bank in Northern Ireland ("AIB (NI)").

Group comprises wholesale treasury activities and Group control and support functions, providing mostly for internal service needs (e.g. in-house legal). Treasury manages the Group's liquidity and funding positions and provides customer treasury services and economic research. The Group control and support functions include Business & Customer Services, Finance, Risk, Legal, Corporate Governance & Customer Care, Human Resources, Corporate Affairs, Strategy & Sustainability and Group Internal Audit."<sup>10</sup>

<sup>&</sup>lt;sup>10</sup> Notification, page 23.



- 11. The Proposed Transaction falls within AIB Group's retail banking segment. Within Retail Banking, AIB Group offers products such as mortgages, consumer lending, certain business lending, asset-backed lending, wealth management, daily banking and general insurance.
- For the financial year ending 31 December 2021, AIB Group's turnover was €2,379 million worldwide, of which €2,197 million was generated in the State.

#### The Seller – Ulster Bank

- Ulster Bank is a designated activity company registered in the State under company number
  25766 having its principal office at Ulster Bank Head Office, Block B, Central Park,
  Leopardstown, Dublin 18, D18N153, Ireland.
- 14. Ulster Bank is a wholly-owned indirect subsidiary of NatWest. Ulster Bank is a full-service retail and commercial bank. Ulster Bank's business is formed of two distinct divisions: personal banking and commercial banking.
- 15. For the financial year ending 31 December 2021, the turnover attributable to the Target Assets was €74.4 million, the vast majority of which was generated in the State.<sup>11</sup> The value of the Target Assets as at 30 September 2022 was €[...] billion.<sup>12</sup>

## **Rationale for the Proposed Transaction**

16. The Parties state the following in the Notification:

"The Proposed Transaction will allow AIB to utilise excess capital on its balance sheet. The transaction is anticipated to be earnings per share (EPS) and return on tangible equity (RoTE) accretive.<sup>13</sup>

[...]

The Proposed Transaction arises in the context of NatWest's decision on 19 February 2021 to begin a phased withdrawal from the Republic of Ireland.....

<sup>&</sup>lt;sup>11</sup> The Notification states that *"A negligible amount of the Target Assets relate to customers in Northern Ireland"*. Notification, fn37. <sup>12</sup> Document entitled *'[...]*, submitted by Ulster Bank and NatWest on 21 December 2022.

<sup>&</sup>lt;sup>13</sup> RoTE is a key metric used to assess a company's performance and is frequently used when analysing banks. RoTE compares profits generated for equity investors relative to the amount of equity capital excluding intangible assets. By deducting intangible assets from shareholders' equity, RoTE gives a capital measure closer to regulatory capital and allows comparison with peers.

In other words, NatWest had decided to withdraw from Ireland. This decision to withdraw from the Irish market was communicated to the bank's licensing authority (i.e., the CBI), to the stock exchange, the government of Ireland, employees, customers, and other stakeholders. NatWest has sought to engage in various sales processes but its decision to leave Ireland has been taken and is final and irreversible in the timelines relevant for merger control."<sup>14</sup>

## **Contact with the Undertakings Involved**

17. On 4 October 2022, the Commission served a Requirement for Further Information ("RFI") on each of AIB, (the "AIB Phase 1 RFI") and Ulster Bank and NatWest (the "Ulster Bank and NatWest Phase 1 RFI") pursuant to section 20(2) of the Act. The service of these RFIs adjusted the deadline within which the Commission had to conclude its assessment of the Proposed Transaction in Phase 1. The Commission received responses from Ulster Bank and NatWest on 29 November 2022, and from AIB on 05 December 2022. Therefore, the "appropriate date" (as defined in section 19(6)(b)(i) of the Act) became 05 December 2022. During its investigation, the Commission requested and received, on an on-going basis, further information and clarifications from the Parties involved in the Proposed Transaction.

## **Third Party Submissions**

Coimisiún um

Iomaíocht agus Cosaint Tomhaltóirí

18. During the Phase 1 investigation, the Commission received 2 submissions from a third party in relation to the Proposed Transaction.<sup>15</sup> The Commission engaged with this third party by way of a follow-up questionnaire to consider the submissions in greater detail. The submissions, and two<sup>16</sup> responses to the follow-up questionnaire, were fully considered by the Commission insofar as they expressed potential competition concerns in relation to the Proposed Transaction.

## **Market Enquiries**

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

<sup>&</sup>lt;sup>14</sup> Notification, pages 19-20.

<sup>&</sup>lt;sup>15</sup> Both submissions (dated 7 September 2022 and 2 November 2022 respectively) were made by Cedar Lending Services Limited (trading as "MoCo").

<sup>&</sup>lt;sup>16</sup> Dated 4 January 2023 and 12 January 2023 respectively.



- (a) All parties identified as providers of mortgages in the State and who submit data to the Banking & Payments Federation Ireland;<sup>17</sup>
- (b) Three potential entrants identified by the Commission for the provision of mortgages in the State;<sup>18</sup> and
- (c) Two known alternative bidders for the Target Assets as identified in the Notification.<sup>19</sup>
- 20. The Commission received a response from each of the third parties to whom it sent a questionnaire.
- 21. In forming its conclusions as set out in this Determination, the Commission has considered all the relevant information available to it at the time of making the Determination, including information provided by the Parties in response to the Commission's RFIs, the information obtained from third parties as set out above, and other information available in the public domain.

## **Industry Background**

#### Introduction

- 22. AIB and Ulster Bank are both active in the provision of banking services in the State, and the Target Assets consist of mortgage assets. The Commission has in *M*/21/021 Bank of Ireland/Certain Assets of KBC, and *M*/21/076 PTSB/Certain Assets of Ulster Bank previously considered a range of factors pertaining to retail banking services in the State, and mortgage lending in the State.
- 23. In the determinations referenced in paragraph 22 above, the Commission's extensive overview of retail banking services in the State included a review of the providers of retail banking services in the State; the role of government in the Irish banking sector; and the applicable regulatory framework(s).
- 24. Specifically, in relation to the provision of mortgages in the State the Commission explained in these determinations the types of mortgages available; demand for mortgage lending; an overview of mortgage lending and distribution channels; switching; an outline of the various

<sup>&</sup>lt;sup>17</sup> These were Permanent TSB plc ("PTSB"), Bank of Ireland plc ("BOI"); Dilosk DAC trading as Dilosk ICS Mortgages ("Dilosk"); Finance Ireland Credit Solutions DAC ("Finance Ireland"); and, KBC Bank Ireland plc ("KBC").

<sup>&</sup>lt;sup>18</sup> MoCo, An Post Designated Activity Company ("An Post") and Revolut Limited ("Revolut").

<sup>&</sup>lt;sup>19</sup> M&G plc ("M&G") and PIMCO Europe GmbH ("PIMCO").

competitors active in the provision of mortgages; and potential barriers to entry and expansion. The Commission's analysis of the industry background in *M/21/021 – Bank of Ireland/Certain Assets of KBC* and *M/21/076 – PTSB/Certain Assets of Ulster Bank* has been in part<sup>20</sup> relied on in the Commission's review of the Proposed Transaction, with the addition of

part<sup>20</sup> relied on in the Commission's review of the Proposed Transaction, with the addition of the key changes in the industry identified below. The following sections provide additional background specific to tracker mortgages, and indicate key changes in the industry since the previous cases were concluded.

#### **Overview of tracker mortgages**

Coimisiún um Iomaíocht agus

Cosaint Tomhaltóirí

- 25. Tracker mortgages are residential mortgage loans which specify that the interest rate charged will be set at a specified margin, typically 1-1.3% above the European Central Bank (ECB) main refinancing operation rate for the lifetime of the loan.<sup>21</sup>
- 26. Tracker mortgages are no longer available to new customers in the State, and were mainly withdrawn following the financial crisis in 2008. Evidence gathered over the course of the Commission's Phase 1 review of the Proposed Transaction on the existing tracker mortgage books of AIB, Ulster Bank, BOI, PTSB and KBC has found that the majority of tracker mortgages across these lenders have tracker margins of between [...]%, remaining terms of between [...]-[...] years, and loan to value ("LTV") ratios of [...]-[...]%.<sup>22</sup>
- 27. Given that tracker mortgages are no longer available to new customers in the State, sources of new lending from a tracker mortgage portfolio arise through one of two mechanisms: mortgage porting; and mortgage top-ups. In both mechanisms, there is no competition between providers for mortgage porting and mortgage top-ups as only the bank at which the initial mortgage was taken out offers these services, therefore, any new revenue accrues to the existing provider.
- 28. **Mortgage porting** refers to a mechanism whereby a holder of a tracker mortgage wishes to purchase a new property during the term of the mortgage while retaining their tracker mortgage benefit. In this situation, the remaining balance on the tracker mortgage can be

<sup>&</sup>lt;sup>20</sup> The Commission notes that there are certain aspects of these determinations that may be no longer fully applicable. E.g., in [para. 2.47] of *M*/21/021 – Bank of Ireland/Certain Assets of KBC it states that there are 7 lenders offering residential mortgage products in the State, this number is now 6.

<sup>&</sup>lt;sup>21</sup> https://www.ecb.europa.eu/stats/policy and exchange rates/key ecb interest rates/html/index.en.html

<sup>&</sup>lt;sup>22</sup> The Commission understands this to mean the value or worth of the loan as a measure of the value of the property. The lower the value of the loan, the more secure the lender will be because there is more scope for a fall in the value of the property and for the lender to still recover some or all of its loan.



used against the new property but the mortgage holder goes onto a product such as AIB's "Tracker Interest Retention Rate", <sup>23</sup> which is higher than the previous tracker rate. The amount ported across as a new tracker mortgage to fund the new property purchase is capped at the total amount outstanding on the borrower's existing tracker mortgage at the time of the transfer.<sup>24</sup> Assuming the balance on the outstanding mortgage is not sufficient to purchase the new property, a top-up mortgage on prevailing existing mortgage rates of the lender can be granted, giving rise to a combination mortgage.<sup>25</sup> The Commission understands that no providers of residential mortgages in the State offer ported tracker mortgage products to new customers and that borrowers can "port" a tracker mortgage only if they stay with the provider of their tracker mortgage.<sup>26</sup>

- 29. The Commission has found that across [...], [...], [...], [...] and [...] from 2019 to 30 September 2022,<sup>27</sup> both the percentage of tracker accounts that applied to port their mortgage, and the percentage of that lender's flow<sup>28</sup> made up of tracker mortgage ports is very low. The percentage of tracker customers who sought to port their mortgage across this period never rose above [0-5]% per year, while the highest percentage of new lending attributable to mortgage porting came from [...].<sup>29</sup>
- 30. **Mortgage top-ups** refers to a situation whereby a tracker mortgage customer seeks additional lending through a mortgage instrument, typically for renovation or improvement purposes. In this situation, a separate mortgage, of either fixed or variable nature, is secured on the same property.
- 31. In relation to tracker mortgage top-ups, the Commission notes that across [...], [...], [...] and [...] from 2019 to 30 September 2022,<sup>30</sup> both the percentage of tracker accounts that applied to top-up their mortgage, and the percentage of the respective lender's flow made up of tracker mortgage top-ups is very low.<sup>31</sup> Both the percentage of tracker customers who sought

<sup>26</sup> Notification, page 6.

<sup>&</sup>lt;sup>23</sup> The relevant Bank of Ireland product is 'Tracker for Movers', and for PTSB it is 'Tracker Portability'.

<sup>&</sup>lt;sup>24</sup> Notification, page 6.

<sup>&</sup>lt;sup>25</sup> This being a mortgage arrangement with both tracker and non-tracker elements.

<sup>&</sup>lt;sup>27</sup> The Commission considers that 30 September 2022 marked the most reliable point to source data amongst the banking institutions with tracker mortgage books in the State given the circumstances surrounding the exit of Ulster Bank and KBC.

<sup>&</sup>lt;sup>28</sup> Mortgage flow refers to all new or additional mortgage lending originated over a given period.

<sup>&</sup>lt;sup>29</sup> Source: Commission analysis of [...] tracker mortgage data.

 $<sup>^{\</sup>rm 30}$  Data was not available from [...] on this, also see fn 27.

<sup>&</sup>lt;sup>31</sup> Source: Commission analysis of tracker mortgage lending data of [...], [...], [...] and [...] from 2019 to 30 September 2022.



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to top-up their tracker mortgage, and the percentage of flow arising from mortgage top-ups never rose above [0-5]% in the assessed period.<sup>32</sup>

- 32. The Commission views the historical low levels of porting and top-up applications sought, along with the percentage of flow that is made up of tracker mortgage porting or top-ups as a strong indicator that the potential for future flow arising from a tracker mortgage portfolio in of itself is low.
- 33. The Commission notes that since the determinations were made in *M/21/021 Bank of Ireland/Certain Assets of KBC* and *M/21/076 - PTSB/Certain Assets of Ulster Bank*, there have been a number of developments in relation to the provision of mortgages in the State, which are set out below.

#### **Rising interest rates**

- 34. Over the last year, there have been a number of increases in the ECB main refinancing operation rate, which has had an impact on the pricing decisions of a number of mortgage providers in the State. On 27 July 2022 the ECB raised the main refinancing operation rate to 0.50%, which was then raised to 1.25% on 14 September 2022, 2.00% on 2 November 2022 and 2.50% on 21 December 2022.<sup>33</sup> It has been reported that banks expected that further increases would occur in 2023.<sup>34</sup>
- **35**. Banks and non-bank lenders have passed on these increases in the ECB main refinancing operation rate in various forms, which are set out below:
  - (a) AIB announced on 14 October 2022 that it would raise its interest rates by 0.50%.<sup>35</sup>
    From close of business 25 November 2022 AIB, EBS<sup>36</sup>, and Haven<sup>37</sup> increased their fixed rate mortgage offerings by an additional 0.50%.<sup>38</sup>

- <sup>34</sup>https://www.bloomberg.com/news/articles/2022-10-28/most-banks-see-ecb-slowing-rate-hikes-reaching-peak-early-
- 2023#:~:text=Over%20the%20winter%20it%20will,the%20remainder%20of%20the%20year.%E2%80%9D

 <sup>&</sup>lt;sup>32</sup> Source: Commission analysis of tracker mortgage lending data of [...], [...], [...] and [...] from 2019 to 30 September 2022.
 <sup>33</sup> <u>https://www.ecb.europa.eu/stats/policy\_and\_exchange\_rates/key\_ecb\_interest\_rates/html/index.en.html</u>

<sup>&</sup>lt;sup>35</sup><u>https://aib.ie/content/dam/aib/group/Docs/Press%20Releases/2022/final-mortgages-press-release-14th-october-2022.pdf</u> <sup>36</sup> EBS d.a.c. ("EBS").

<sup>&</sup>lt;sup>37</sup> Haven Mortgages Limited ("Haven").

<sup>&</sup>lt;sup>38</sup> https://aib.ie/our-products/mortgages/fixed-rate-mortgage-change; https://www.ebs.ie/mortgages/fixed-rate-mortgage-change; and https://www.havenmortgages.ie/mortgage-centre/fixed-rate-mortgage-change



- (b) In November 2022 PTSB announced that it was increasing home loan fixed rate products by a weighted average of 0.45%, and that the increase per product will range from 0.05% to 0.9% depending on term length, loan size, and LTV ratio.<sup>39</sup>
- (c) On 10 November 2022 BOI raised the interest rates on their new fixed rate mortgages by 0.25%.<sup>40</sup>
- (d) In May 2022, Dilosk increased interest rates on all of its fixed-rate mortgage products. Dilosk stated that this increase was made due to the increase in its cost of funding, which impacted its net interest margin.<sup>41</sup> Dilosk again increased their interest rates in October 2022, this time by 1%, across both variable and fixed rate mortgage products.<sup>42</sup>
- (e) In June 2022, Finance Ireland increased its interest rates on its fixed-rate mortgage products.<sup>43</sup> In October 2022 Finance Ireland announced that it will raise its interest rates on variable and fixed rate mortgages by between 1.5-2%.<sup>44</sup>
- (f) In May 2022 Avant Money announced interest rate increases to a majority of their mortgage products, including medium and long-term fixed rates. In August 2022 Avant increased the interest rate on their three, four and five year fixed rate mortgage products by 0.5%, on their seven year fixed rate products by 0.7%, and their longer term fixed rate products by 1%.<sup>45</sup> In December 2022 Avant further increased the interest rate on their three products by 1%, their four year fixed rate product by 0.95% and its five year fixed rate by 1%.<sup>46</sup>

<sup>41</sup> See <u>M/21/076 - PTSB/Certain Assets of Ulster Bank</u>, [para. 2.146].

<sup>&</sup>lt;sup>39</sup><u>https://www.irishtimes.com/business/2022/11/18/permanent-tsb-to-raise-fixed-mortgage-and-deposit-rates/</u>

<sup>&</sup>lt;sup>40</sup>https://www.bankofireland.com/about-bank-of-ireland/press-releases/2022/bank-of-ireland-to-raise-interest-rates-by-0-25-for-newfixed-rate-mortgages/#:~:text=Ireland%20Group%20Website-

<sup>,</sup>Bank%20of%20Ireland%20to%20raise%20interest%20rates%20by,for%20new%20fixed%20rate%20mortgages&text=10%20November%2 02022%3A%20In%20light,for%20new%20mortgages%20by%200.25%25.

<sup>&</sup>lt;sup>42</sup> <u>https://www.independent.ie/business/personal-finance/property-mortgages/mortgage-lender-ics-to-hike-mortgage-rates-by-one-full-percentage-point-42103408.html</u>

<sup>&</sup>lt;sup>43</sup>https://www.independent.ie/business/personal-finance/property-mortgages/finance-ireland-the-third-lender-to-increase-mortgagerates-41751006.html

<sup>&</sup>lt;sup>44</sup> https://www.rte.ie/news/business/2022/1003/1326804-finance-ireland-rate-increases/

<sup>&</sup>lt;sup>45</sup> https://www.rte.ie/news/business/2022/0812/1315391-avant-money-mortgage-rate-hikes/

<sup>&</sup>lt;sup>46</sup> <u>https://www.rte.ie/news/business/2022/1207/1340515-avant-money-to-increase-mortgage-interest-rates/</u>



#### Impact on non-bank lenders of increased interest rates

- 36. In response to Phase 1 questionnaires sent by the Commission during its review of the Proposed Transaction, two current non-bank lenders submitted their estimated new lending figures for 2023 in light of these interest rate increases:
  - Dilosk states that it saw an *"instant uptick"* in new mortgage inquiries in early 2021 after Ulster Bank and KBC announced plans to withdraw from the State.<sup>47</sup> However, Dilosk has seen [...].<sup>48</sup>
  - (b) Finance Ireland expects it will see [...].<sup>49</sup>
- 37. Prior to the recent increases in interest rates, the share of new lending taken by non-banks had been increasing rapidly over the course of 2022. Figure 1 below, created by the Commission using data collected from non-bank lenders from Phase 1 questionnaires issued during the course of the Commission's review of the Proposed Transaction, shows the share of new mortgage business by non-bank lenders by drawdown.
- 38. These non-bank lenders collectively have very low shares of the stock of mortgages in the State but they have seen substantial growth in their share of mortgage origination recently, from a very low base. The total share of these lenders in mortgage origination was [25-30]% in 2022 Q2, compared to [0-5]% in 2020 Q1. However, Q3 of 2022 marks the first decline in this period in non-bank residential mortgage lending, with a fall in share of [0-5]%.

Figure 1: Non-bank lenders' share of total lending by drawdown, 2017 – 2022



Source: The Commission analysis of non-bank lending data from Q1 2017 – Q3 2022.

39. The Commission notes that, per the Commission's analysis of non-bank new mortgage lending data by approvals in Figure 2 below, there has also been a decline in the non-bank lender

<sup>&</sup>lt;sup>47</sup> https://www.dilosk.com/news/dilosk-aims-to-double-mortgage-market-share-to-10/.

<sup>&</sup>lt;sup>48</sup> Dilosk, Response to the third party non-bank questionnaire, dated 17 November 2022, pages 6 and 8.

<sup>&</sup>lt;sup>49</sup> Finance Ireland, Response to the third party non-bank questionnaire, dated 15 November 2022, page 7.



share of mortgage approvals following Q2 2022, dropping from circa [25-30]% in June 2022 to approximately [5-10]% over the space of Q3 2022. The Commission expects that this will have a knock-on effect on the share of non-bank new mortgage lending measured by drawdowns in 2023.

Figure 2: Non-bank lenders' share of total lending by approvals, 01 January 2022 – 30 September 2022.



Source: The Commission analysis of lending data

#### **Potential Entrants**

- 40. There have been a number of developments in recent months in relation to potential entrants who may become active in the provision of mortgages in the State:
  - (a) In September 2021 it was reported that MoCo was engaged with talks with An Post about setting up a partnership to enter into the provision of mortgage services in the State.<sup>50</sup> It is reported that the partnership between An Post and MoCo is no longer proceeding,<sup>51</sup> and An Post has informed the Commission that [...];<sup>52</sup>
  - (b) In M/21/076 PTSB/Certain Assets of Ulster Bank, the Commission described MoCo as a "new entrant to the Irish residential mortgage market".<sup>53</sup> MoCo has stated that the viability of new entrants in challenging incumbents has been challenged by increased market concentration;<sup>54</sup> and,
  - (c) Revolut has informed the Commission that mortgages are an area where they believe they can deliver much and offer substantial improvements. However, they have

<sup>&</sup>lt;sup>50</sup>https://www.irishtimes.com/business/financial-services/an-post-in-talks-with-non-bank-start-up-moco-to-offer-mortgages-1.4664431

<sup>&</sup>lt;sup>51</sup> <u>https://www.irishtimes.com/business/financial-services/2022/09/09/an-post-no-longer-in-talks-with-moco-on-mortgage-offering/</u> <sup>52</sup> Correspondence between the Commission and An Post, dated 13 December 2022.

<sup>&</sup>lt;sup>53</sup> M/21/076 – PTSB/Certain Assets of Ulster Bank, [para. 2.161].

<sup>&</sup>lt;sup>54</sup> MoCo, Submission to the Commission, dated 2 November 2022.



stated that although mortgage products are on their roadmap, their immediate focus is improving their unsecured retail credit business.<sup>55</sup>

## **Market Definition**

#### Introduction

- 41. In this section, the Commission identifies the potential product and geographic markets that are relevant for the assessment of the likely effects of the Proposed Transaction. It summarises the general principles that apply to market definition, the activities of the AIB and the Target Assets, the views of the Parties, the views of third parties, and then sets out the Commission's view of the potential relevant product and geographic markets.
- 42. The Commission's approach to market definition is explained in the Merger Guidelines.<sup>56</sup> Market definition provides a framework for assessing the competitive effects of a merger; it is a means to an end. The boundaries of a market do not determine the outcome of the analysis of the competitive effects of the merger, as there can be constraints on the merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints will be more significant than others.<sup>57</sup> The Commission expects to take such factors into account in its assessment of competitive effects.

#### Relevant Product Markets

#### Previous Decisions

- 43. The Commission has recently considered two mergers in the financial sector which dealt with the provision of mortgages in the State.<sup>58</sup> In its determinations in *M/21/021 Bank of Ireland/Certain Assets of KBC* and *M/21/076 PTSB/Certain Assets of Ulster Bank* the Commission found differences in both the demand and supply side substitutability between residential mortgages and business buy-to-let mortgages.
- 44. In relation to the difference in demand substitution between residential mortgages and business buy-to-let mortgages, in *M/21/076 PTSB/Certain Assets of Ulster Bank* the Commission found that *"Business Buy-to-let mortgages are generally not available to*

<sup>&</sup>lt;sup>55</sup> Revolut, Response to the third party potential entrant questionnaire, dated 21 December 2022, page 4.

 <sup>&</sup>lt;sup>56</sup> Guidelines for Merger Analysis, adopted by the Commission on 31 October 2014 (the "Merger Guidelines").
 <sup>57</sup> See Merger Guidelines, [para. 2.3].

<sup>58</sup> M/21/021 – Bank of Ireland/Certain Assets of KBC and M/21/076 – PTSB/Certain Assets of Ulster Bank.

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> residential mortgage-seekers. There may be limited substitutability at the margins, if for example a consumer started to acquire mortgages for a number of properties."<sup>59</sup> In relation to the differences in supply side substitutability between residential mortgages and business buy-to-let mortgages in M/21/076 - PTSB/Certain Assets of Ulster Bank the Commission found that "The Commission's view is that business Buy-to-let is functionally different to the provision of other types of mortgage and is akin to an investment product.".<sup>60</sup>

45. In relation to tracker mortgages specifically, the Commission has previously considered that:

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

The possible exception to this is the case of tracker mortgages. Tracker mortgages are linked to the ECB's interest rate, and as a result, have been historically [subject to] substantially lower interest rates than other mortgage products. However, tracker mortgages are no longer sold in the State. Customers with a variable or fixed rate mortgage cannot switch to a tracker mortgage. However, tracker mortgage customers can switch to variable or fixed rate mortgage.

The Commission considers that there is no need to come to a definitive view on whether tracker mortgages belong in the same product market as all other types of mortgage."<sup>61</sup>

46. In considering the provision of mortgages, the European Commission has recognised that the weakness or absence of demand-side substitution suggests that mortgages should be treated separately from other financial products. However, the exact product market definition has generally been left open.<sup>62</sup>

#### Views of the Parties

<sup>&</sup>lt;sup>59</sup> M/21/076 – PTSB/Certain Assets of Ulster Bank, [para. 3.39].

<sup>60</sup> M/21/076 – PTSB/Certain Assets of Ulster Bank, [para. 3.42].

<sup>&</sup>lt;sup>61</sup> M/21/076 – PTSB/Certain Assets of Ulster Bank, [paras. 3.33-3.35].

<sup>&</sup>lt;sup>62</sup> See for example Case M.7007 - RZB/ RBSPK/ RWBB and Case COMP/M.3894 - UNICREDITO / HVB.



- 47. The Parties state in the Notification that the definition of the relevant product and geographic markets can be left open as, in their view, the Proposed Transaction does not give rise to a substantial lessening of competition.<sup>63</sup> Notwithstanding, the Parties considered that the impact of the Proposed Transaction could be assessed in relation to the supply of residential mortgages.<sup>64</sup>
- 48. The Parties submitted in the Notification that as mortgage customers in the State have become more price sensitive the switching rates of customers with tracker mortgages may increase, but that *"tracker customers often consider they already have the best available mortgage rate; while the ECB rate rises may lead to higher switching, it is expected that fixed and variable rates may rise as well."*<sup>65</sup>
- 49. The Parties also submitted in the Notification that:

"The decision of whether to move from a tracker mortgage to a fixed rate mortgage makes economic sense is a balancing exercise involving not just confidence regarding future rate increases, but also the timing of switching, as well as many other personal circumstances and factors (including the duration of mortgage remaining or ability to retain a tracker rate in future). Therefore, a switch from tracker to fixed rate mortgage is based on multiple assumptions and factors and not just the ECB interest rates. On this basis, the current uncertainty in interest rates and the current forecasted upward trajectory [is] unlikely to be the sole determinant for the level of switching or refinancing of tracker mortgages relevant to the Proposed Transaction."<sup>66</sup>

50. In the response to the AIB Phase 1 RFI, AIB submitted that:

"[...]".67

<sup>&</sup>lt;sup>63</sup> Notification, page 41.

<sup>&</sup>lt;sup>64</sup> Notification, page 43.

<sup>&</sup>lt;sup>65</sup> Notification, page 33.

<sup>&</sup>lt;sup>66</sup> Notification, pages 58-59.

<sup>&</sup>lt;sup>67</sup> AIB, Response to the AIB Phase 1 RFI, dated 23 November 2022, page 51.



#### Views of Third Parties

- 51. In order to assess whether tracker mortgages belong in the same market as all residential mortgages the Commission sought the views of third parties on the circumstances where a customer with a tracker mortgage would be likely to switch to another type of mortgage.<sup>68</sup>
- 52. MoCo stated that:

"Despite the chequered past relating to the conduct of Irish banks in managing tracker mortgage loans, from the perspective of a consumer's economics, tracker mortgages are no different to variable rate mortgages or fixed rate mortgages, in that they must be assessed by the consumer on a regular basis in light of the consumer's preferences and needs at that time. It is logical therefore to refer to the wider mortgage market when assessing the impact that the Proposed Transaction will have on competition."<sup>69</sup>

- 53. BOI submitted that they have seen "[...]".<sup>70</sup>
- 54. PTSB submitted that from their perspective:

"[...]"71

- **55**. KBC submitted that: [...].<sup>72</sup>
- 56. Dilosk considered that they would *"expect some customers on Tracker mortgages to switch to fixed rates mortgages to avoid an increase in their mortgage rates in the future."*<sup>73</sup>
- 57. Finance Ireland considered that the increase in the ECB main refinancing operation rate is *"[I]ikely to impact over the longer term but tracker mortgages, even with the higher ECB rate base rate, are generally still competitive when compared to other products available."*<sup>74</sup>

<sup>&</sup>lt;sup>68</sup> For the reasons set out in <u>M/21/021 – Bank of Ireland/Certain Assets of KBC</u> and M/21/076 - <u>PTSB/Certain Assets of Ulster Bank</u>, the Commission considers that the provision of business buy-to-let mortgages is not in the same product market as the provision of residential mortgages.

<sup>&</sup>lt;sup>69</sup> MoCo, Third party submission of MoCo to the Commission, dated 2 November 2022, page 7.

<sup>&</sup>lt;sup>70</sup> BOI, Response to the third party bank competitor questionnaire dated 14 December 2022, page 2.

 $<sup>^{71}</sup>$  PTSB, Response to the third party bank competitor questionnaire, dated 28 November 2022, page 3.

<sup>&</sup>lt;sup>72</sup> KBC, Response to the third party bank competitor questionnaire, dated 17 November 2022, page 4.

<sup>&</sup>lt;sup>73</sup> Dilosk, Response to the third party non-bank competitor questionnaire, dated 17 November 2022, page 7.

<sup>&</sup>lt;sup>74</sup> Finance Ireland, Response to the third party non-bank competitor questionnaire, dated 15 November 2022, page 7.



- 58. Avant submitted that in response to the increase in the ECB main refinancing operation rate they have *"not yet seen any acceleration in switching from tracker to non-tracker mortgages"*.<sup>75</sup>
- 59. Revolut submitted that:

"A rise in the ECB Reference Rate directly impacting Tracker mortgages will lead to a portion of consumers considering switching as some Tracker mortgages may become more expensive than other Rate offerings in the market. However, we would not expect a significant increase in customers switching their tracker mortgages in the short term..."

#### Views of the Commission

- 60. For the purposes of its assessment of the Proposed Transaction, the Commission considers that there is no reason to depart from the views it had taken in *M/21/021 Bank of Ireland/Certain Assets of KBC* and *M/21/076 PTSB/Certain Assets of Ulster Bank* in relation to the exclusion of business buy-to-let purposes from its competitive assessment. The Commission then considered whether it would be appropriate to further segment the provision of mortgages excluding business buy-to-let mortgages between tracker and non-tracker mortgages. This involved full consideration of the views submitted by the Parties, and third parties, as well as an analysis of the switching patterns among tracker mortgage customers in the State.
- 61. There is some evidence of increased switching from tracker mortgages to other types of residential mortgage over the last year, and it is likely that this is a consequence of an increase in the ECB main refinancing operation rate. However, the actual level of switching remains low. The Commission notes that for the [...] who will [...] in the State, 2022 has seen a marked increase in the number of internal switches, but not necessarily external switches. For instance, in their response to [...], [...] switching data showed an increase from [...] internal switches in 2021 ([...]% of their tracker customer base), to [...] ([...]%) internal switches in 2022.<sup>77</sup> Similarly, in response to Phase 1 third party questionnaires, [...] internal switching data

77 [...].

<sup>&</sup>lt;sup>75</sup> Avant, Response to the third party non-bank competitor questionnaire, dated 16 November 2022, page 2.

<sup>&</sup>lt;sup>76</sup> Revolut, Response to the third party potential entrant questionnaire, dated 21 December 2022, page 5.



showed [...] from [...] ([0-5]%) in 2021 to [...] ([0-5]%) in 2022,<sup>78</sup> and [...] internal switching data showed [...] from [...] ([0-5]%) in 2021 to [...] ([0-5]%) in 2022.<sup>79</sup>

- 62. The above data collected from [...] and will [...] in the State suggests that there are tracker mortgage customers that consider other types of mortgage products as substitutes for tracker mortgages.
- **63**. Overall, evidence provided indicates that tracker mortgages belong in the same product market as other types of residential mortgage.

#### Relevant geographic market

64. The Parties submitted in the Notification that the market for the provision of mortgages was national in scope.<sup>80</sup> The Commission has previously held in *M/21/021 – Bank of Ireland/Certain Assets of KBC<sup>81</sup>* and *M/21/076 – PTSB/Certain Assets of Ulster Bank*<sup>82</sup> that the relevant geographic market for assessing the provision of mortgages in the State is national in scope. The Commission sees no reason to depart from this approach in relation to its assessment of the Proposed Transaction. With respect to the relevant geographic market, the Commission's view is that the market for the provision of mortgages is national in scope.

#### Conclusion on market definition

65. Having regard to the evidence available to it, and in line with its determinations in M/21/021 – Bank of Ireland/Certain Assets of KBC and M/21/076 – PTSB/Certain Assets of Ulster Bank, the Commission considers that the relevant market for the purposes of competitive assessment of the Proposed Transaction is the market for the provision of mortgages to all types of customer (with the exception of customers purchasing business buy-to-let mortgages) in the State.

## **Relevant Counterfactual**

#### Introduction

<sup>&</sup>lt;sup>78</sup> [...].

<sup>&</sup>lt;sup>79</sup> [...].

<sup>&</sup>lt;sup>80</sup> Notification, page 44.

<sup>&</sup>lt;sup>81</sup> M/21/021 – Bank of Ireland/Certain Assets of KBC, [paras. 4.48-4.49].

<sup>82</sup> M/21/076 – PTSB/Certain Assets of Ulster Bank, [paras. 3.58-3.59].



- 56. The Commission's approach to the counterfactual is set out in the Merger Guidelines.<sup>83</sup> In its assessment of the relevant counterfactual in this case, the Commission has assessed full consideration of all the available evidence including:
  - Ulster Bank's intentions to cease its operations in the State, with respect to the Target
    Assets, in the absence of the Proposed Transaction; and
  - (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.

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

- 67. The Parties stated in the Notification that Ulster Bank would exit the market in the State irrespective of the Proposed Transaction.<sup>84</sup>
- 68. The Commission has in M/21/040 AIB/Certain Assets of Ulster Bank, and M/21/076 PTSB/Certain Assets of Ulster Bank previously 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 those transactions being in contemplation.<sup>85</sup>
- 69. In both determinations the Commission found that there was sufficient evidence to conclude that Ulster Bank's intention to cease operations in the State was not causally related or attributable to either respective transaction, since the formation of that intention preceded Ulster Bank's contemplation of either transaction. Therefore, the Commission found that there was sufficient evidence to show Ulster Bank's intentions to cease its operations in the State, absent either respective transaction.<sup>86</sup>
- 70. Considering the evidence available to the Commission including (i) the Ulster Bank and NatWest documents which specifically address the Proposed Transaction, and (ii) the nature of the Target Assets, the Commission is satisfied that there is sufficient evidence to show that

<sup>86</sup> See <u>M/21/040 - AIB/Certain Assets of Ulster Bank</u>, [paras. 4.53-4.54] and <u>M/21/076 – PTSB/Certain Assets of Ulster Bank</u>, [paras. 4.53-4.54].

<sup>&</sup>lt;sup>83</sup> Merger Guidelines, page 3.

<sup>&</sup>lt;sup>84</sup> Notification, pages 50-56.

<sup>&</sup>lt;sup>85</sup> See <u>M/21/040 - AIB/Certain Assets of Ulster Bank</u>, [paras. 4.53-4.55] and M/21/076 – PTSB/Certain Assets of Ulster Bank, [paras. 4.53-4.54].



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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 to exit the State was not causally related or attributable to the Proposed Transaction.

- 71. 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.
- 72. 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.
- 73. In the following paragraphs, the Commission sets out its assessment of whether the TargetAssets could have been sold to a potentially less anti-competitive alternative purchaser.

(b) An alternative purchaser which may lead to a less anti-competitive alternative outcome than the Proposed Transaction in the provision of mortgages to all types of customer (with the exception of customers purchasing business Buy-to-let mortgages) in the State

- 74. 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.
- 75. The Parties stated in the Notification, and [...] that, absent the Proposed Transaction, Ulster Bank would still exit the State, thereby ceasing its provision of mortgages in the State, and NatWest would seek to sell Ulster Bank's performing tracker mortgage book to a financial counterparty.<sup>87</sup> Ulster Bank ran a competitive tender process for the sale of the Target Assets. The Parties state in the Notification that:

".....for various reasons, NatWest chose AIB's offer over that of international investment funds [...]. For the purposes of the counterfactual there is no need to specify which fund would have been the alternative, only the generic nature of the purchaser. It should be noted that other strategic purchasers were approached about

<sup>&</sup>lt;sup>87</sup> Notification, page 52, [para. 152].



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the sale but after consideration by them, none participated in the process other than *AIB*.

[...]

It is assumed, given this characterisation, that were an investment fund to acquire the Target Assets, it would treat the tracker mortgage portfolio as essentially a stable source of income linked to the ECB interest rate, in other words, as a collection of bonds with various maturity dates extending over the next decades."<sup>88</sup>

76. Internal documents submitted by Ulster Bank and NatWest to the Commission confirm that NatWest received a number of expressions of interest in the tracker mortgage book of Ulster Bank.<sup>89</sup> NatWest and Ulster Bank provided the following description of the sales process of the Target Assets:

#### "[...]."<sup>90</sup>

77. In addition to evidence provided by the Parties, the Commission engaged with potential purchasers of the tracker mortgage book.<sup>91</sup> In addition to interest from the [...] which participated in Ulster Bank's tender process, during the course of its market enquires as a part of the Commission's Phase 1 review of the Proposed Transaction, interest was expressed to the Commission by both [...] and [...] lenders in purchasing part or all of Ulster Bank's performing tracker mortgage book. On the basis of this engagement, the Commission considers that there were alternative (and potentially less anti-competitive) purchasers in respect of Ulster Bank's performing tracker mortgage book. Therefore, considering (i) the submissions of the Parties, (ii) internal documents from NatWest and Ulster Bank, and (iii) engagement with third parties, the Commission has reached the view that the appropriate counterfactual is that, absent the Proposed Transaction, Ulster Bank would still have exited the State and that it would have proceeded with a sale to a potentially less anti-competitive alternative purchaser of their tracker mortgage book.<sup>92</sup>

<sup>&</sup>lt;sup>88</sup> Notification, page 52, [paras. 152-155].

<sup>&</sup>lt;sup>89</sup> See for example, the document entitled '[...]' submitted by Ulster Bank and NatWest in response to the Ulster Bank and NatWest Phase 1 RFI.

<sup>&</sup>lt;sup>90</sup> Ulster Bank and NatWest, Response to the Ulster Bank and NatWest Phase 1 RFI, dated 7 November 2022, pages 5-6. <sup>91</sup> [...], [...] and [...].

<sup>&</sup>lt;sup>22</sup> The Commission notes that in a submission dated 12 January 2023 MoCo submitted that they would be able to potentially acquire [...]. For the purposes of MoCo's market share analysis under a proposed counterfactual, dated 12 January 2023, MoCo assumed they would acquire [...] of the Target Assets.



## **Competitive Effects**

#### **Assessment of Unilateral Effects**

78. In this section, the Commission sets out its analysis of unilateral effects arising from the implementation of the Proposed Transaction in the market for the provision of mortgages, (excluding business buy-to-let mortgages) in the State.

#### Views of the Parties

- 79. In the Notification, the Parties submitted that the Proposed Transaction will not give rise to a significant lessening of competition in the market for the provision of mortgage products in the State for the following key reasons:<sup>93</sup>
  - (a) The market share increment to AIB arising from the Proposed Transaction is negligible;
  - (b) Numerous strong competitors will remain;
  - (c) The Target Assets present a limited opportunity to generate 'new' business;
  - (d) Irish consumers will continue to have a range of mortgage providers;
  - (e) Switching is increasingly common in the Irish mortgage sector;
  - (f) There are relatively low and decreasing barriers to entry and expansion for non-bank lenders;
  - (g) The nature of the Target Assets will not strengthen the competitive position of AIB regarding residential mortgages;
  - (h) Evidence from AIB's view of the benefits it expects will accrue to it.
- 80. In response to the AIB Phase 1 RFI, AIB further submitted that:
  - (a) [...];<sup>94</sup>

<sup>93</sup> Notification, pages 56-65 [para. 16].

<sup>&</sup>lt;sup>94</sup> AIB, Response to the AIB Phase 1 RFI, dated 23 November 2022, page 6.



- (b) [...];<sup>95</sup>
- (c) [...];<sup>96</sup>
- (d) [...];<sup>97</sup>
- (e) [...].<sup>98</sup>

#### Views of Third Parties

- 81. BOI submitted that "[...]."99
- 82. PTSB submitted that "[...]."<sup>100</sup>
- 83. KBC submitted that "[...]."<sup>101</sup>
- 84. Avant submitted that "[...]".<sup>102</sup>
- **85**. Dilosk submitted that "[...]"<sup>103</sup>
- 86. Finance Ireland submitted that *"Finance Ireland would have concerns with [the] proposed* transaction as it has the potential to provide AIB with an even more dominant market position, both in terms of stock balances and new mortgage lending (flow). While the majority of loans under the TAM are tracker mortgages, this precludes AIB from subsidizing the rate at the expense of retail depositors. However, it could over time, lead to more market distortions as customers move off tracker rates or refinance to different products enabling AIB offer deposit subsidized prices."<sup>104</sup>
- 87. PIMCO submitted that "It seems questionable as to whether the Proposed Transaction would increase competition in the State: this seems to depend on whether there was a credible new and active lender ready to buy the loans at a fair price, and we do not know if this was the case. In addition, it should be considered whether the Potential Transaction could have any

<sup>&</sup>lt;sup>95</sup> AIB, Response to the AIB Phase 1 RFI, dated 23 November 2022, page 8.

 $<sup>^{96}</sup>$  AIB, Response to the AIB Phase 1 RFI, dated 23 November 2022, page 18.

 $<sup>^{\</sup>rm 97}$  AIB, Response to the AIB Phase 1 RFI, dated 23 November 2022, page 18.

<sup>&</sup>lt;sup>98</sup> AIB, Response to the AIB Phase 1 RFI, dated 23 November 2022, page 18.

<sup>&</sup>lt;sup>99</sup> BOI, Response to the third party bank competitor questionnaire, dated 14 December 2022, page 9.

<sup>&</sup>lt;sup>100</sup> PTSB, Response to the third party bank competitor questionnaire, dated 28 November 2022, page 29.

<sup>&</sup>lt;sup>101</sup> KBC, Response to the third party bank competitor questionnaire, dated 17 November 2022, page 12.

 <sup>&</sup>lt;sup>102</sup> Avant, Response to the third party non-bank competitor questionnaire, dated 22 November 2022, page 12.
 <sup>103</sup> Dilosk, Response to the third party non-bank competitor questionnaire, dated 17 November 2022, page 14.

<sup>&</sup>lt;sup>104</sup> Finance Ireland, Response to the third party non-Bank questionnaire, dated 15 November 2022, page 15.



theoretical detriment to product pricing in the State and the availability of pricing from a broader variety of providers."<sup>105</sup>

- **88**. M&G submitted that "[...]".<sup>106</sup>
- 89. Revolut submitted that "[t]his transaction will further improve AIB's dominant position in the state, enabling the profitable utilisation of AIB's surplus liquidity and capital and enlarging an already sizeable and profitable 'back book'. and facilitating a 'front book only' focus in terms of competitive offers to the market."<sup>107</sup>
- 90. MoCo submitted that:

"[...]."<sup>108</sup>

#### Competitive Assessment

Table 1 below sets out market share data for mortgage stock for the status quo; the Proposed
 Transaction; and the counterfactual assuming the sale of the Target Assets to a new entrant.<sup>109</sup>

	AIB	BOI	PTSB	Avant	Dilosk	Finance Ireland	Ulster Bank	New entrant
Status Quo	[25- 30]%	[30- 35]%	[25- 30]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%	0
Proposed Transaction	[35- 40]%	[30- 35]%	[25- 30]%	[0-5]%	[0-5]%	[0-5]%	0	0
Acquisition by new entrant	[25- 30]%	[30- 35]%	[25- 30]%	[0-5]%	[0-5]%	[0-5]%	0	[5-10]%

Table 1: Market structure (stock), acquisition by new entrant, as at Q3 2022<sup>110</sup>

<sup>&</sup>lt;sup>105</sup> Correspondence between PIMCO and the Commission, dated 16 December 2022.

<sup>&</sup>lt;sup>106</sup> M&G, Response to the third party questionnaire, dated 8 December 2022, page 1.

<sup>&</sup>lt;sup>107</sup> Revolut, Response to the third party potential entrant questionnaire, dated 21 December 2022, page 8.

<sup>&</sup>lt;sup>108</sup> MoCo, Submission of 7 September 2022, pages 2-3.

<sup>&</sup>lt;sup>109</sup> For the purposes of this exercise it is assumed that a new entrant is not an existing provider of mortgages in the State. The Commission notes that AIB is the only existing provider which participated in NatWest/Ulster Bank's competitive tender process.

<sup>&</sup>lt;sup>110</sup> KBC's share of stock has been assigned to BOI in light of the Commission's decision to clear <u>M/21/021 – Bank of Ireland/Certain Assets</u> of <u>KBC</u> with commitments, and Ulster Bank's non-tracker stock which is set to be transferred to PTSB has been assigned to PTSB in light of the Commission's decision to clear <u>M/21/076 - PTSB/Certain Assets of Ulster Bank</u>. See fn 27 for explanation of relevant cut-off date.



Source: The Commission, based on information provided by the Parties and third parties active in the mortgage market

- 92. As Table 1 shows, the market for the provision of mortgages in the State is highly concentrated. This would remain the case following the implementation of the Proposed Transaction, and in the counterfactual scenario, that being one whereby the Target Assets are acquired by a new entrant to the market for the provision of mortgages in the State. The three undertakings shortlisted by Ulster Bank for the acquisition of the Target Assets had all proposed to purchase the tracker mortgage book in its entirety. As a part of its Phase 1 review of the Proposed Transaction, the Commission was informed by third parties of additional interest from undertakings which proposed to purchase part or all of the tracker mortgage book. The level of concentration in the market would, in all possible scenarios, be highly concentrated within the meaning of the Commission's Merger Guidelines, which note that "[a]ny market with a post-merger HHI greater than 1,000 may be regarded as concentrated and highly concentrated if greater than 2,000".<sup>111</sup>
- 93. In its previous determinations considering the provision of mortgages in the State, the Commission considered shares of mortgage flow in addition to shares of mortgage stock when assessing market shares and structure. As explained above in footnote 28, mortgage flow measures new business acquisition and is a useful indicator of the competitive dynamic in the market. The Commission notes that the increase in ECB main refinancing operation rates has led to an increase in flow associated with tracker mortgages.<sup>112</sup> However, while there is a level of flow associated with tracker mortgages due to customers topping up or porting their mortgage, this is minimal and evidence indicates that less than [0-5]% of tracker mortgage customers port and/or top-up their tracker mortgage.<sup>113</sup> Further, there is no competition from other providers for additional revenue generated from a tracker mortgage. This is because it is not possible for a tracker customer to retain their tracker mortgage if they were to switch to another mortgage provider. For these reasons, the Commission considers that an analysis of flow is less relevant in its assessment of the Proposed Transaction.
- 94. The Commission notes third party views on the Proposed Transaction. The Commission's analysis of market shares and market structure shows that the accretion of market share to AIB following the Proposed Transaction is small ([5-10]%). Further, an acquisition by a new

<sup>&</sup>lt;sup>111</sup> The Commission, Mergers Guidelines, page 13.

<sup>&</sup>lt;sup>112</sup> Source: Commission analysis of bank lending data collected during the Phase 1 review of the Proposed Transaction.

<sup>&</sup>lt;sup>113</sup> Source: Commission analysis of bank lending data collected during the Phase 1 review of the Proposed Transaction.



entrant would provide an acquirer of the Target Assets with limited opportunities to develop new business based on the acquisition. This is to do with the nature of the Target Assets and applies irrespective of the identity of the acquirer.

95. The Commission notes that the alternative purchasers shortlisted by Ulster Bank were investment funds. According to evidence submitted by the Ulster Bank and NatWest [...].<sup>114</sup> This indicates that a sale to one of these alternative purchasers would have a minimal effect on the service provided to tracker mortgage customers.

#### Conclusion on unilateral effects

- **96**. 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.
- 97. The views set out by the Commission upon reaching its determination in *M*/21/040 *AIB/Certain Assets of Ulster Bank* and *M*/21/076 *PTSB/Certain Assets of Ulster Bank* remain relevant. International evidence shows that higher concentration in banking services is likely to have a detrimental effect on competition, leading to poorer outcomes for borrowers in terms of pricing, innovation and service.
- **98**. However, Ulster Bank had decided to exit the market under consideration before it embarked on the Proposed Transaction. The exit of Ulster Bank will lead to a high level of concentration in the markets in which it currently competes, and the Commission is concerned that there will not be sufficient competition 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.
- **99**. 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 under the counterfactual. 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

<sup>&</sup>lt;sup>114</sup> Response of Ulster Bank and NatWest to the Ulster Bank and NatWest Phase 1 RFI, dated 7 November 2022, page 41.



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Proposed Transaction, Ulster Bank would in any event have exited the market. Both scenarios therefore involve the exit of Ulster Bank from the State.

100. In both scenarios, the competition from Ulster Bank is lost. Both scenarios involve a high level of concentration in the relevant market, and both scenarios raise serious concerns about the adequacy of competition in this market. However, for the reasons outlined above there is no appreciable difference in competitive conditions between the two scenarios. Hence, 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 selling the Target Assets or a proportion of those assets, to an alternative purchaser. 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 following the exit of Ulster Bank.

## **Vertical Relationships**

101. The Parties have stated in the Notification that there is no vertical relationship between AIB and the Target Assets.<sup>115</sup> The Commission has not identified any vertical relationship between AIB and the Target Assets, or AIB and Ulster Bank. On this basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

## **Ancillary Restraints**

102. No ancillary restraints were notified as a part of the Proposed Transaction.

<sup>&</sup>lt;sup>115</sup> Notification, page 28.



## Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(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 a portfolio of performing residential mortgage assets which are predominantly "tracker" of Ulster Bank Ireland Designated Activity Company will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Patrick Kenny Member Competition and Consumer Protection Commission