



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

Mergers and Acquisitions Report 2023

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



Introduction

2023 has been another notable year for merger review in Ireland. As well as progressing or concluding a number of Phase 2 merger investigations, the CCPC updated our policies and procedures to reflect legislative developments under the Competition (Amendment) Act 2022. Ireland's merger regime has evolved and matured over the past two decades. What has been constant is its purpose: ensuring that mergers which threaten to substantially lessen competition only proceed where measures are put in place that address the CCPC's competition concerns. Where that does not happen, the CCPC will prohibit the merger. Our goal is to ensure that competition is protected to the benefit of consumers. The new merger control powers provided for by the Competition (Amendment) Act 2022 have given the CCPC a more comprehensive toolkit to realise this goal.

The total number of merger notifications received by the CCPC in 2023 was 68, which is the same number of notifications that was received in 2022. In 2023, merger notifications were received from a wide range of sectors with the Professional, Scientific and Technical Activities sector being the most prominent. The CCPC made 66 determinations in 2023, with seven of these being cases carried over from 2022. The average number of working days to reach a Phase 1 determination in non-extended cases was 18.8 which represents a small increase on 2022 (17.9 working days). 14 notifications required an extended Phase 1 investigation (meaning the CCPC issued a requirement for further information to one or more parties involved in the merger which stopped and re-started the merger review 'clock').

In 2023, we progressed or concluded five Phase 2 investigations. Two of these mergers were cleared unconditionally and one of these was cleared subject to legally binding

remedies agreed between the CCPC and the notifying parties. We issued an “Assessment” in two further Phase 2 investigations. While the issuing of an Assessment is an important procedural step in our merger review process, it is not the final Determination of the CCPC. The purpose of the Assessment is to clearly and comprehensively set out, in writing, the CCPC’s preliminary concerns regarding the effects of a proposed merger on competition. The Assessment allows the CCPC to formally put its preliminary competition concerns, and the evidence supporting those concerns, to the parties involved in a merger under review. The parties can then exercise their rights to: respond to the CCPC’s concerns in writing and orally; access the evidence in the CCPC’s file; submit further evidence in support of their views where appropriate; and make any proposals to address these preliminary concerns. Following the issuing of an Assessment, we cleared one of these cases subject to legally binding remedies. The fifth Phase 2 investigation remains ongoing.

While a small number of mergers require full (Phase 2) investigation, the vast majority of mergers do not raise competition concerns. It is particularly important to the CCPC that businesses have confidence that mergers raising no concerns can be dealt with as efficiently as possible. To this end, we’re pleased to report that our Simplified Merger Notification Procedure (SMNP), which is in its third full-year of operation, continues to deliver for both the CCPC and notifying parties. In 2023, approximately 52% of merger determinations were made under the SMNP meaning that these cases which clearly did not raise competition concerns in Ireland were cleared within less than 15 working days of notification. This is broadly in line with 2022.

Internationally, the CCPC continued to engage with our colleagues in the European Competition Network (ECN), in the Competition and Markets Authority (CMA) in the United Kingdom, and in other jurisdictions. We are co-chairs of the ECN Mergers Working Group for 2023/2024 and have enjoyed productive and insightful meetings with our European colleagues throughout 2023. We look forward to welcoming the group to Dublin in June 2024 to share practical knowledge and experience. Developments at EU level have continued to have relevance for Irish merger review. In July 2023, in its judgement in Case C-376/20 P European Commission v CK Telecoms UK Investments Ltd, the EU Court of Justice addressed key questions for EU merger control, including the standard of proof required to prohibit a transaction, the concepts of "closeness of competition" and

"important competitive force", and the assessment of efficiencies. The ECJ's judgement in this case endorsed the European Commission's approach and has delivered increased legal certainty for competition authorities and parties when dealing with these issues in merger review. We saw outcomes in respect of some cases in which the CCPC joined a request to refer a merger to the European Commission for review. Most recently, the parties in the Adobe/Figma merger announced that they had decided to abandon the deal following the expression of concerns by the European Commission and the UK's CMA.

We have continued to work closely with the Department of Enterprise, Trade and Employment, particularly in respect of the implementation of the Competition (Amendment) Act 2022 and the EU Foreign Subsidies Regulation. I would encourage all stakeholders to familiarise themselves with the CCPC's new policies and procedures resulting from the Competition (Amendment) Act 2022, particularly: the CCPC's Mergers and Acquisitions Procedures 2023, Access to File Procedures 2023, and our Guidance Note on Pre-Notification Merger Discussions.

Finally, I would like to thank businesses and their legal representatives for their cooperation throughout 2023. I would also like to acknowledge the effort and energy put in by CCPC staff across the organisation to deliver the results detailed in this report and express my gratitude to all for contributing to this busy and successful year.

Úna Butler

Member, Competition and Consumer Protection Commission

2023 mergers in numbers

68

Merger
Notifications
received

66

Merger
determinations
issued

28

Requirements for
Information issued

Merger Assessments
issued

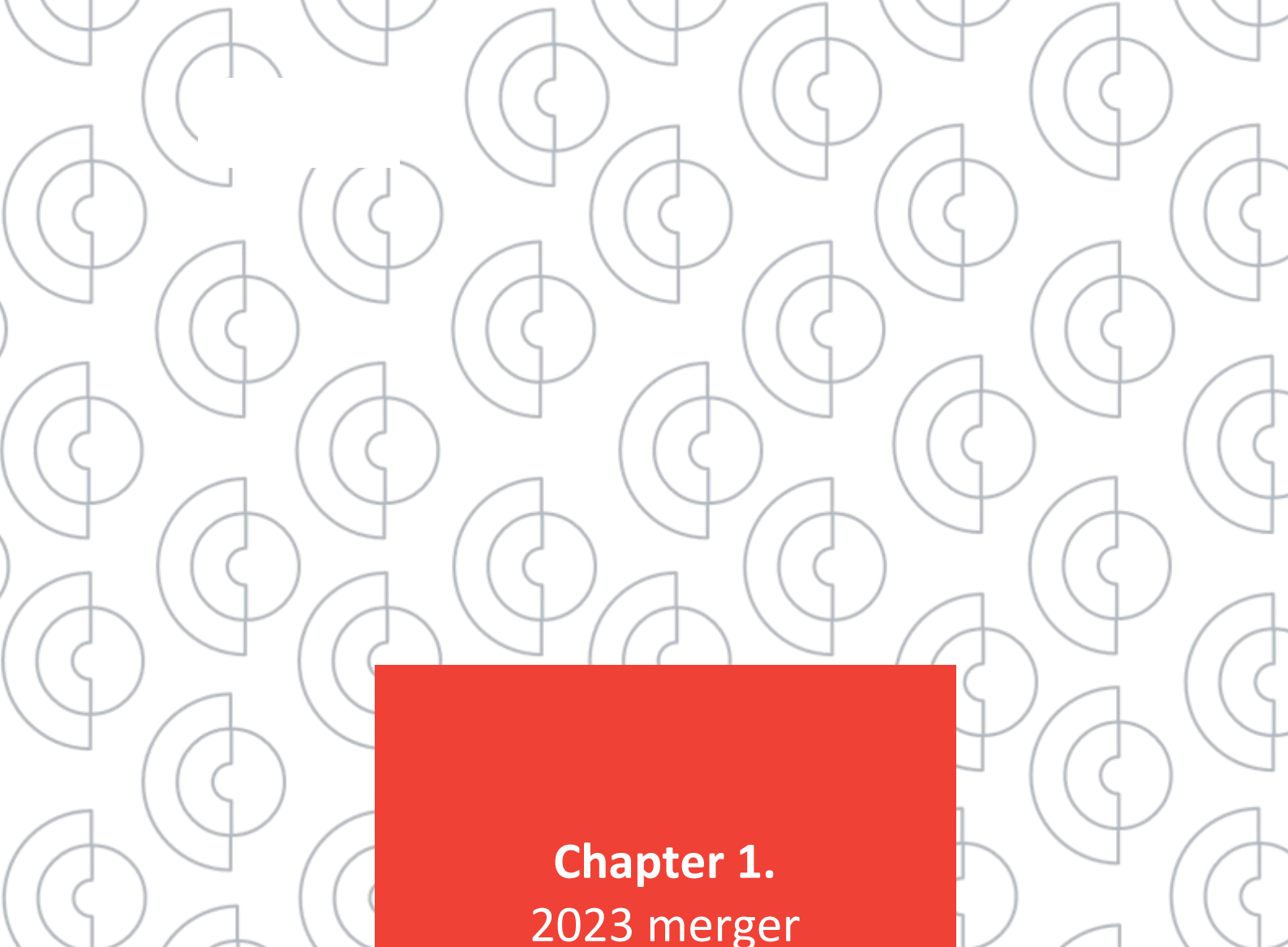
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Mergers
cleared with remedies

4

Completed
Phase 2
investigations

4



Chapter 1.
2023 merger
notifications and
determinations

Merger notifications in 2023

1.1 For the 2023 calendar year, the CCPC received 68 merger notifications. This is the same number of mergers which were notified in 2022.

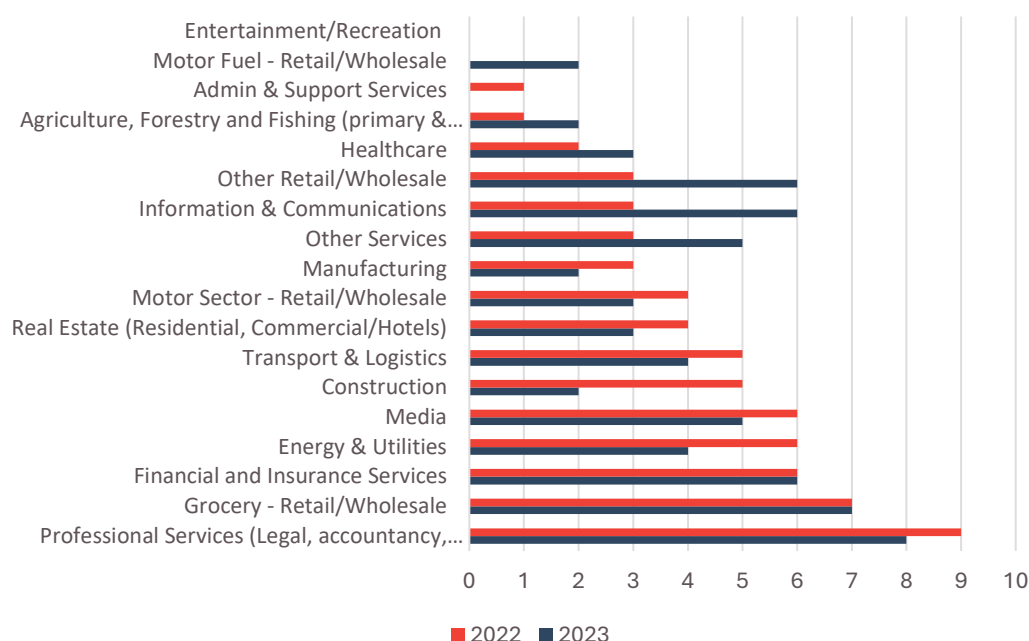
1.2 Of the 68 merger notifications received, 35 were notified under the simplified merger notification procedure (SMNP). This is roughly in line with 2022.

Sectoral breakdown of notified mergers

1.3 In 2023, Professional Services (including legal, accountancy, consultancy, engineering, veterinary, etc.) was the most prominent sector with eight notifications received in this sector. This was followed by Wholesale and Retail Trade with seven notifications received in this sector. This is a change from 2022, where the most prominent sectors were Grocery – Retail/Wholesale, Financial and Insurance Services, Energy & Utilities and Media.

1.4 The sectoral breakdown of mergers received in 2022 and 2023 are presented in Figure 1 below.

Figure 1: Number of Mergers by Sector: 2022 – 2023



Merger determinations in 2023

Overall trends

- 1.5 In 2023, the CCPC issued 66 Determinations. 59 of the determinations were issued in respect of proposed transactions notified during 2023 and the remaining seven were in respect of proposed transactions notified in 2022 which were carried over to 2023.
- 1.6 Of the 66 Determinations issued, 33 were issued under the Simplified Merger Notification Procedure, representing 50% of all determinations issued in 2023 (this compares to 56% of all determinations in 2022). Two of the merger notifications notified under the SMNP procedure were reverted to a standard Phase 1 through the issuance of an RFI.
- 1.7 Of the nine proposed transactions carried forward from 2022, Phase 2 Determinations were issued in relation to two and Phase 1 Determinations issued in relation to five. The remaining two notifications were withdrawn.
- 1.8 In 2023, 14 investigations involved an extended Phase 1 review – meaning the CCPC issued a requirement for further information to one or more parties involved in the merger which stopped and re-started the merger review ‘clock’. Six of these cases were carried forward from 2022. Table 1 below sets out the mergers which required an extended Phase 1 or Phase 2 investigation in 2023.

Table 1: Extended Phase 1 and Phase 2 cases

Merger Notification	Status
M/22/049 Uniphar/LXV Remedies (Sam McCauley)*	Cleared with remedies (Phase 1)
M/22/062 – Associated Hardware / National Hardware	Cleared (Phase 1)
M/22/065 – Musgrave/Caulfield Supermarket UC*	Cleared (Phase 1)
M/23/005 – John Laing/Towercom	Cleared (Phase 1)
M/23/010 – BWG/Tuffy Wholesale	Cleared with remedies (Phase 1)

M/23/045 – Proximus Opal/Route Mobile	Cleared (Phase 1)
M/23/056 – LloydsPharmacy/McCabes Pharmacy	Ongoing (Extended Phase 1)
M/23/059 – IFX/Blackhall Facilities Management	Cleared (Phase 1)
M/23/060 – Kilsaran/Certain Assets of Kilmurray	Ongoing (Extended Phase 1)
M/22/067 – Thorntons Recycling/Carducci Holdings (The City Bin Co.)*	Cleared with remedies (Phase 2)
M/22/040 – Q-Park/Tazbell*	Cleared with remedies (Phase 2)
M/23/006 – Dawn Meats/Kildare Chilling	Cleared (Phase 2)
M/23/008 – Aurivo Co-Op/Certain assets of Arrabawn Co-Op	Cleared (Phase 2)
M/23/011 – DAA/Certain Assets of Mr Gerard Gannon	Ongoing (Phase 2)

* Ongoing investigation carried over to 2023

Mergers cleared with remedies at Phase 1

1.9 In 2023, formal commitments to ameliorate competition concerns were obtained from notifying parties in respect of the following cases at Phase 1:

- **M/22/049 Uniphar/LXV Remedies (Sam McCauley):** a structural commitment by Uniphar to divest three specific pharmacies in areas in which both Uniphar and Sam McCauley pharmacies are active.
- **M/23/010 – BWG/Tuffy Wholesale:** a hybrid commitment by BWG to prevent the exchange of competitively sensitive information between BWG, Stonehouse and/or GRSL.

Phase 2 mergers reviewed by the CCPC

1.10 The CCPC progressed 5 Phase 2 investigations during the course of 2023. Of these:

- two were cleared unconditionally without an Assessment being issued;
- one was cleared subject to agreed remedies without an Assessment being issued;

- one was cleared subject to agreed remedies following the issuing of an Assessment; and,
- one has been carried over to 2024 following the issuing of an Assessment.

Unconditional Phase 2 clearances

1.11 In 2023, two Phase 2 investigations were cleared unconditionally without an Assessment being issued:

- **M/23/006 – Dawn Meats/Kildare Chilling:** Having progressed its full investigation, the CCPC determined that the proposed acquisition may be put into effect on the grounds that it will not result in a substantial lessening of competition in each of the markets for: (i) the purchase of live cattle for slaughter: in the State; and, within 100km of Kildare Chilling’s slaughterhouse; (ii) the sale of fresh beef meat to Grocery Retailers in the State; (iii) the sale of fresh beef meat to Industrial Processors in the State; (iv) the sale of fresh lamb meat to Grocery Retailers in the State; and (v) the sale of fresh lamb meat to Industrial Processors in the State.
- **M/23/008 – Aurivo Co-Op/Certain assets of Arrabawn Co-Op:** Having progressed its full investigation, the CCPC determined that the proposed acquisition may be put into effect on the grounds that it will not result in a substantial lessening of competition in each of the markets for: (i) the production and supply of branded and unbranded liquid milk in the State; (ii) the production and supply of branded and unbranded cream in the State; and, (iii) the supply of branded butter in the State.

Phase 2 mergers cleared with agreed remedies without issuing an Assessment

1.12 One Phase 2 merger was cleared without an Assessment being issued as the parties involved proposed remedies to the CCPC which addressed effects of the merger on competition in markets for goods and services in the State:

- **M/22/067 – Thorntons Recycling/Carducci Holdings (The City Bin Co.).** The CCPC cleared this merger subject to a structural commitment by

Thorntons Recycling to divest the entire increment of domestic waste customers within the areas in which both Thorntons Recycling and The City Bin Co are active. This commitment maintains the level of choice of waste collection service providers for domestic waste customers in these areas.

Phase 2 mergers in which the CCPC issued an Assessment

1.13 While the issuing of an Assessment is an important procedural step in our merger review process, it is not the final determination of the CCPC. Assessments allow the CCPC to clearly and comprehensively set out, in writing, its preliminary concerns regarding the effects of a proposed merger on competition and the evidence supporting those concerns. This allows the parties involved in a merger to fully understand the preliminary concerns identified by the CCPC and respond to them.

1.14 Following the issuing of an Assessment, the parties can exercise their rights to:

- respond to the CCPC's concerns in writing and orally;
- access the evidence in the CCPC's file;
- submit further evidence in support of their views where appropriate, and,
- make any proposals to address these preliminary concerns.

1.15 In 2023, the CCPC issued two Assessments in Phase 2 investigations. This is a decrease compared with 2022 where four Assessments were issued; but still more than the period 2019 to 2021 where only one Assessment was issued. Assessments were issued in the following cases in 2023:

- **M/22/040 – Q-Park/Tazbell Services.** In May 2023, the CCPC issued an Assessment to the undertakings involved setting out its preliminary concerns about how the proposed acquisition could reduce competition in the provision of car parking in certain geographic areas. Following the consideration of the parties' response to the Assessment and subject to a

hybrid commitment by Q-Park to exit a contract in respect of one car park in Dublin City Centre and to lease the top level of a car park in Galway City Centre, the CCPC cleared the merger.

- **M/23/011 – DAA plc / Certain Assets of Mr Gerard Gannon.** In December 2023, the CCPC issued an Assessment to the undertakings involved setting out its preliminary concerns about how the proposed acquisition could reduce competition in the provision of public car parking spaces in the vicinity of Dublin Airport. This case remains ongoing at the end of 2023 and no decision has been made by the CCPC.

Timeframes

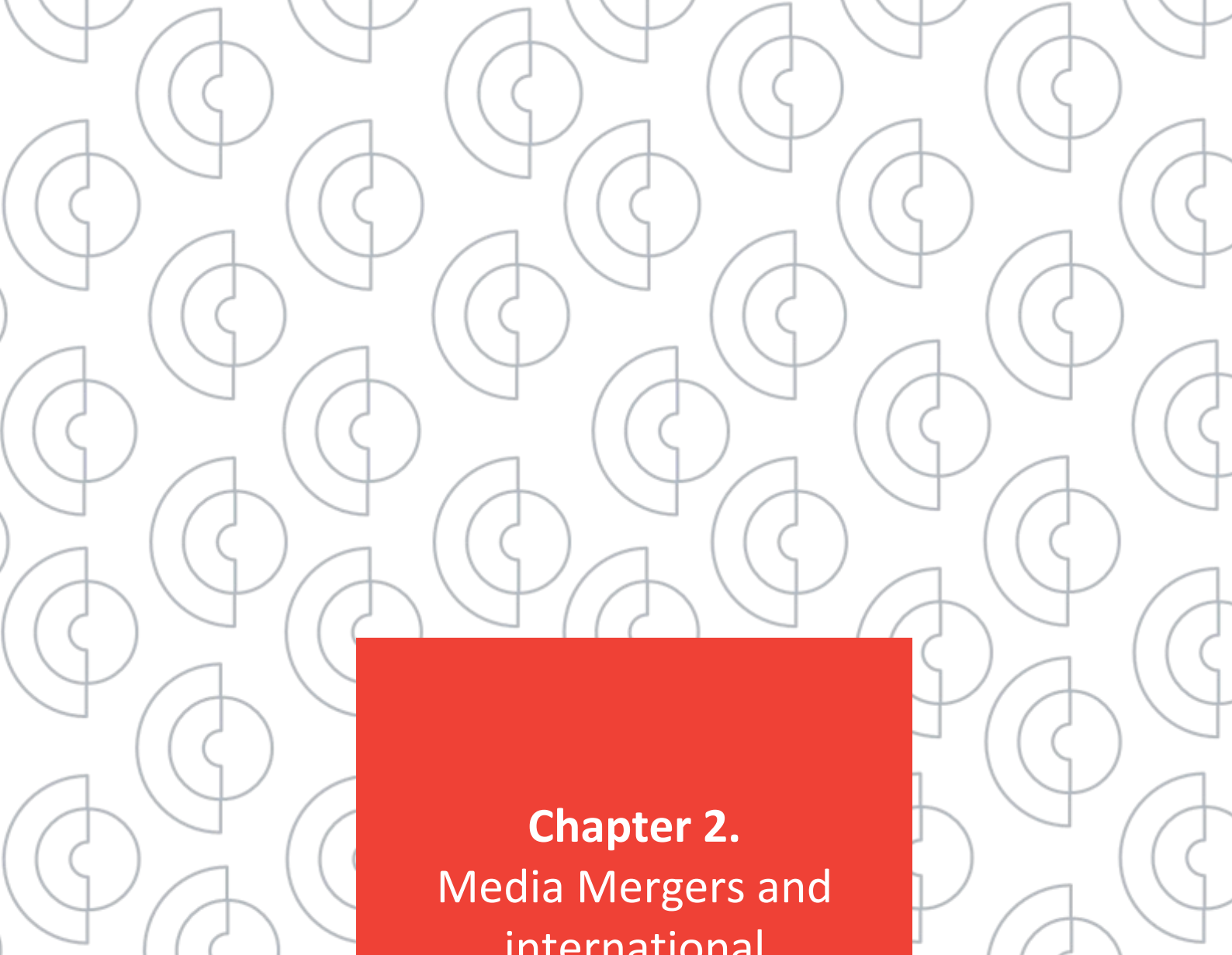
- 1.16 The CCPC always aims to make sure that it completes its merger review process in an efficient and effective manner so that mergers which do not raise competition concerns are not unduly delayed.
- 1.17 For mergers notified between 1 January 2023 and 31 December 2023, the CCPC took an average of 18.8 working days to issue a Phase 1 decision, the corresponding figure for 2022 was 17.9.¹ The CCPC took an average of 13.3 working days to issue a SMNP determination² and 28 working days to issue a standard Phase 1 decision.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.
- 1.18 As the CCPC's role is to actively protect the interests of consumers and businesses, there are some notified transactions which may need more intensive scrutiny and

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

² This excludes those SMNP merger reviews which were converted to a standard Phase 1 Investigation due to the issuance of a Requirement for Further Information.

³ A standard merger is a merger notification which does not satisfy the SMNP requirements. This figure excludes any extended Phase 1 reviews, or reviews which gained an additional 15 working days due to remedies being submitted.

thus an extended review period was required to enable the CCPC to issue a robust Determination in either Phase 1 or Phase 2 as appropriate.



Chapter 2.
Media Mergers and
international
cooperation

Media Mergers⁴

- 2.1 Under sections 18(1)(b) and 18(5) of the Competition Act 2002 as amended (2002 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 2023, the CCPC received five media merger notifications, and to date has issued determinations in relation to four media mergers as presented in Table 2 below.

Table 2: Media Mergers notified in 2023

Merger Notification	Determination
M/23/015 – Bauer Media/Certain Assets of Sunshine Radio	Cleared (Phase 1)
M/23/031 – Bauer Media/Certain Assets of Jack Media	Cleared (Phase 1)
M/23/038 – Mediahuis/Euractiv	Cleared (Phase 1)
M/23/039 – Bauer Group/Wilton Radio Limited t/a iRadio FM	Cleared (Phase 1)

International cooperation

International Mergers

- 2.3 The CCPC monitors 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 2023 to 31 December 2023, the CCPC

⁴ Part 3A of the 2002 Act, introduced substantial changes to the review of media mergers in the State. In addition to the mandatory notification requirement to the CCPC, media mergers are also required to be notified to the Minister for Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media who carries out an 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.

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


- **M.10188 - Illumina/Grail**
- **M.10615 - Booking Holdings/Etraveli Group**
- **M.10920 – Amazon/iRobot**
- **M.11212 - Qualcomm/Autotalks (Article 22 EUMR referral)**
- **M.11033 – Adobe/Figma (Article 22 EUMR referral)**

2.4 The CCPC will continue to monitor these cases, where relevant, throughout 2024 and will continue to engage with the European Commission on developments under Article 22 EUMR and other merger case and policy developments.

Co-chair of European Competition Network Mergers Working Group

2.5 From 1 January 2023, the CCPC has acted as co-chair of the ECN Mergers Working Group and will continue to do so in 2024. The CCPC looks forward to working further with our European colleagues in the ECN Mergers Working Group in 2024 to deliver an interesting programme of work.

2.6 The CCPC looks forward to co-hosting the ECN Mergers Working Group in Dublin in 2024.



Chapter 3.
Legislative developments
and policy changes

Competition (Amendment) Act 2022

3.1 The Competition (Amendment) Act 2022 (the “2022 Act”) was enacted on 29 June 2022 and became effective from 27 September 2023. The 2022 Act made a number of notable changes to the merger regime in Ireland, including:

- the ability for undertakings to voluntarily notify mergers after they have been put into effect.
- the power for the CCPC to require notification of mergers and acquisitions (‘call-in’) that do not meet or exceed the thresholds for automatic mandatory notification.
- the power for the CCPC to impose interim measures in respect of mergers notified to it (or in respect of call-in mergers where the parties fail to notify in the required period).
- a new offence for putting a merger into effect after notification but prior to clearance (consistent with the offence of putting a merger into effect prior to notification).
- the ability for the CCPC to issue statutory RFIs to third parties.
- a new statutory period for assessing RFI compliance.
- the ability for the CCPC to issue notice of compliance/non-compliance with RFIs and for non-compliance to be remedied.
- the express ability for the CCPC to order implemented mergers to be unwound upon finding of SLC.

Changes to the Merger Notification Form

3.2 The CCPC updated its *Merger Notification Form* to reflect new legislative provisions and to require the notifying parties or party to provide more detailed and more specific information when notifying a proposed transaction to the CCPC.

Changes to the Mergers and Acquisitions Procedures

3.3 Updated *Mergers and Acquisitions Procedures* were published by the CCPC in August 2023 and came into operation alongside the 2022 Act on 27 September 2023. The revised Procedures take account of the amendments made to Part 3 of the 2002 Act by the 2022 Act and build on the CCPC's recent experience.

New Access to File Procedures

3.4 A single *Access to File Procedure* was published by the CCPC in August 2023 which is applicable in both merger and competition enforcement investigations. Most of the provisions of this procedure will be familiar to merger practitioners as it does not radically alter the approach previously taken by the CCPC in respect of access to the file in merger cases.

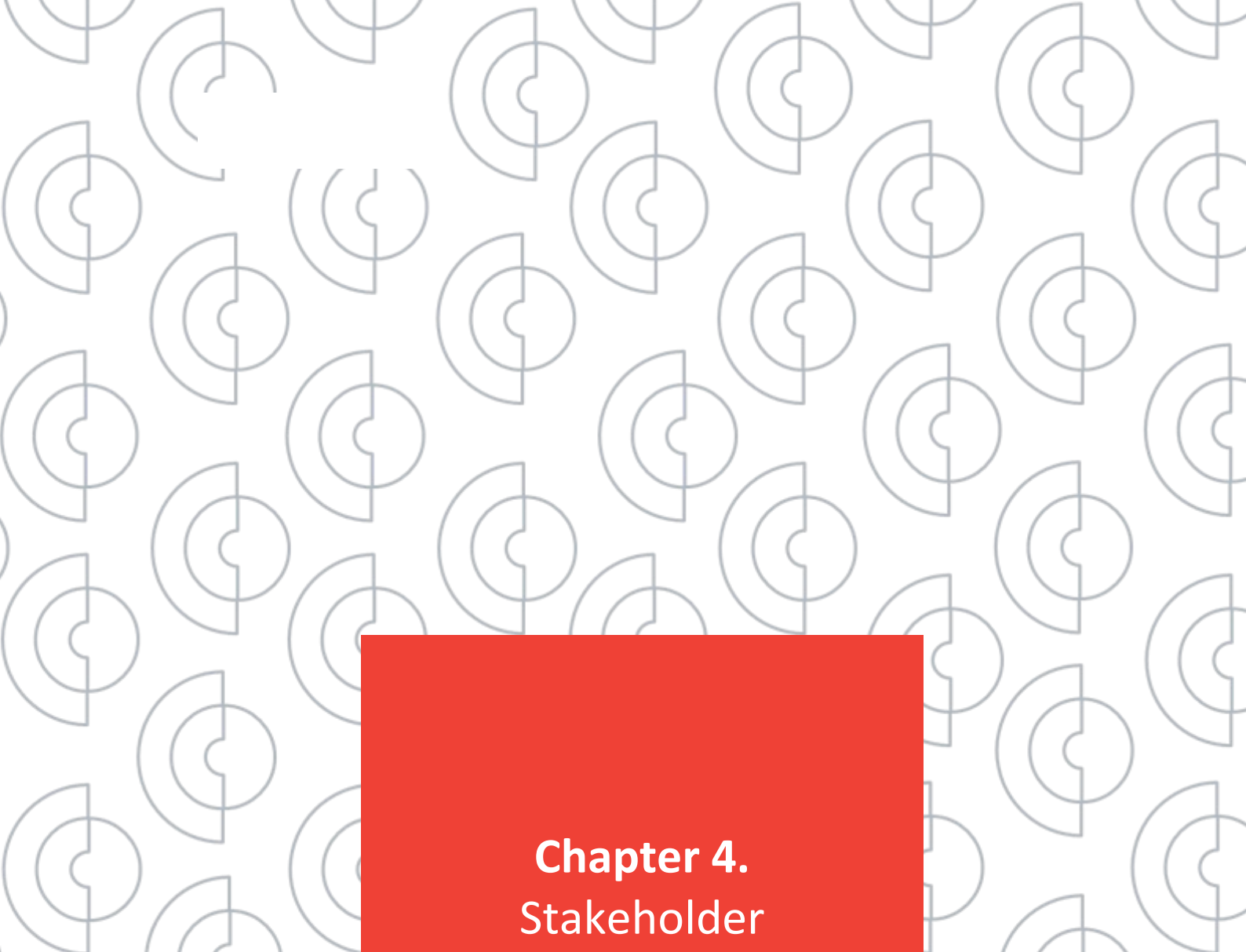
Pre-notification discussions

3.5 The CCPC also made a small number of updates to our *Guidance Note on Pre-notification Merger Discussions*. The principal changes here concern the information which the CCPC expects to be provided with in advance of pre-notification discussions and the timelines for providing that information.

3.6 Pre-notification discussions can enable the CCPC to identify information which may be required in order for it to be satisfied that "full details" are provided in the Merger Notification Form and to give undertakings involved in the merger the opportunity to provide an explanation to the CCPC's authorised officers about the nature of competition and any potential competition issues in the market(s), industry(ies) or sector(s) concerned.

Update to Guidelines for Merger Analysis in 2024

3.7 We plan to update our Guidelines for Merger Analysis in 2024 and look forward to our engagement with stakeholders as part of this process.



Chapter 4.
Stakeholder
engagement

Stakeholder engagement in 2023

4.1 Throughout 2023, the CCPC engaged actively with stakeholders in the legal and economic community through attendance at and participation in external conferences as well as through hosting our own events. We look forward to continuing this active engagement in 2024.

Conferences and panel discussions

4.2 Officials from the CCPC's Competition Enforcement and Mergers division, Legal Services division, and Members of the Commission spoke at a number of conferences throughout 2023 about merger control in Ireland. Thank you to all the organisers of these events.

Briefing on merger provisions in 2022 Act

4.3 In September 2023, officials from the CCPC's Competition Enforcement and Mergers division held an online briefing ahead of the 2022 Act coming in to operation. The purpose of this briefing was to give an overview of the changes to CCPC merger procedures and policies resulting from the 2022 Act.

Media briefings

4.4 The CCPC endeavours to improve public understanding of the reasoning which grounds our merger determinations and educate wider stakeholders on the role and purpose of the CCPC's merger review function. In 2023, we arranged a number of informal briefing events with the media to explain the CCPC's decision-making in notable mergers. These events allow the media the opportunity to further its understanding of the CCPC's review of mergers and the analysis of the issues and evidence that is typically undertaken when coming to decisions. We look forward to holding more such briefings in 2024.

Annual Mergers Breakfast

4.5 Each December, the CCPC holds its "Mergers Breakfast" stakeholder briefing event which provides an overview of the mergers and acquisitions reviewed by the CCPC

that year. On 12 December 2023, the CCPC welcomed stakeholders from the legal and economic community to the Spencer Hotel in Dublin for this year's edition.

- 4.6 At the event, Ibrahim Bah, Director of Competition Enforcement and Mergers, presented the key merger statistics from 2023 and highlighted some notable determinations made by the CCPC in 2023.
- 4.7 This was followed by a panel discussion chaired by Alan Scarlett, Deputy Director of Competition Enforcement and Mergers with insights from CCPC Member Úna Butler, Dr. Vincent Power from A&L Goodbody, Dr. Francis O'Toole from Trinity College Dublin, and Joanna Kay from the European Commission's Directorate General for Competition.



Ibrahim Bah, Director of the Competition Enforcement and Mergers division



Attendees at the CCPC Mergers Breakfast 2023



Officials from the CCPC's Competition Enforcement and Mergers Division



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