

Competition Act
20 YEARS 02

**CCPC Mergers and
Acquisitions Report 2022**

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





Introduction

The CCPC's merger review function is a crucial element in delivering our vision for open and competitive markets where consumers are protected and businesses actively compete. Merger review ensures that mergers which threaten to substantially lessen competition – and could in turn result in higher prices, reduced innovation and choice, or lower quality goods and services – are remedied or not put into effect.

As well as marking the 20th year of merger review under the 2002 Act, 2022 was a busy year for mergers in Ireland. Merger notifications were received from a wide range of sectors – perhaps most notably the banking sector, where the CCPC considered the impact on consumers and SMEs of the departure of key banks and raised competition concerns regarding the overall retail banking sector in Ireland.

The CCPC received 68 notifications and issued 30 requirements for information, four merger assessments, and 70 determinations (some notifications carried over from 2021), including six Phase 2 determinations. Four mergers were cleared with remedies and one was prohibited. The number of Phase 2 investigations concluded during the course of the year (with another opened) surpasses the previous record of four Phase 2 mergers in 2003 and 2006. Prior to 2022, the CCPC last issued a merger assessment (which sets out the CCPC's preliminary competition concerns regarding the result of a merger) in 2019; four were issued this year.

Where the CCPC identifies competition concerns, it only approves such mergers where remedies are identified which: (i) are comprehensive and effective; (ii) are capable of being implemented effectively within a short period of time; and (iii) eliminate the competition concerns entirely. In 2022, we received formal commitments to address competition concerns in respect of four mergers. This is broadly consistent with the level of commitments we have seen in recent years. In two cases, notified mergers did not proceed following the CCPC identifying serious concerns that those mergers would have each resulted in a substantial lessening of competition. One of these notifications was withdrawn following the issuing of an assessment and one was prohibited. This represents the CCPC's first prohibition determination since its establishment in 2014 and the first merger prohibition in Ireland since 2008.

Ensuring that mergers which may raise competition concerns are properly scrutinised and effectively dealt with does not preclude the operation of an efficient merger control regime. It is important that businesses can have confidence that merger notifications will be progressed in an effective and timely manner, particularly in respect of mergers which are unlikely to raise competition concerns. We are pleased to report that the CCPC's average timeframe for reaching a Phase 1 determination in respect of non-extended Phase 1s reduced again in 2022 – falling to an average of 17.9 working days from 20.2 in 2021. The Simplified Merger Notification Procedure (SMNP), which was introduced in July 2020, continues to deliver efficiencies for both the CCPC and businesses with over half of all 2022 determinations made under the SMNP.

Internationally, the CCPC continued to engage with our colleagues in the European Competition Network (ECN), in the Competition and Markets Authority in the United Kingdom, and in other jurisdictions. Changes in merger policy at a European level continued to have implications for Ireland.

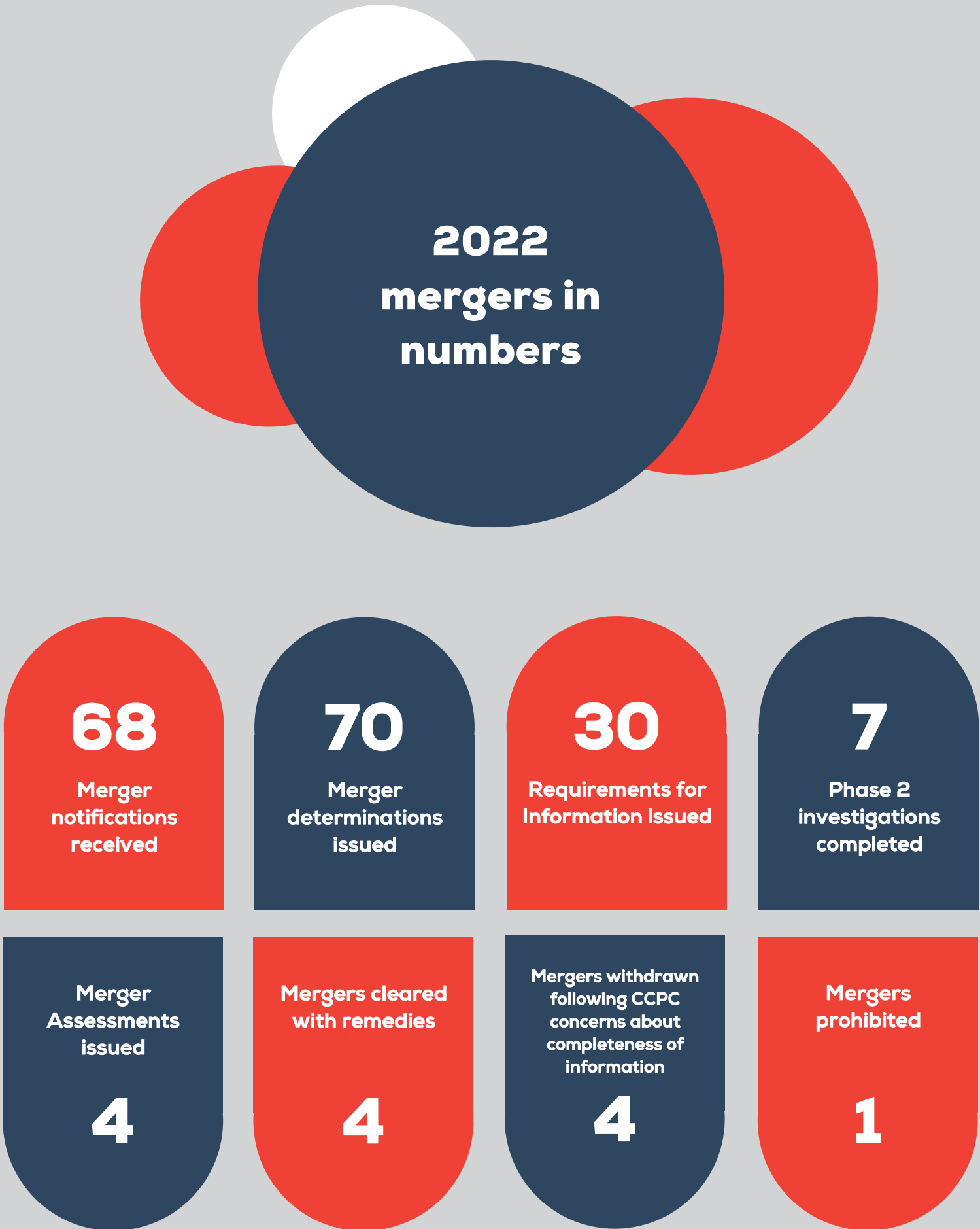
In July 2022, the General Court of the European Union confirmed the European Commission's jurisdiction to review the Illumina/Grail transaction following a referral pursuant to Article 22 of the EU Merger Regulation (EUMR). This followed updated guidance released by the European Commission in 2021 regarding such referrals. In 2022, the CCPC joined Article 22 EUMR referral requests initiated by other Member States in respect of M.10807 – Viasat/Inmarsat and M.10966 – Cochlear/Oticon Medical. The CCPC will continue to follow these investigations throughout 2023 and from 1 January, the CCPC will act as co-Chair of the ECN Mergers Working Group.

We have continued to work closely with the Department of Enterprise, Trade and Employment, particularly in respect of the Screening of Third Country Transactions Bill and the drafting of Part 3 of the Competition (Amendment) Act 2022. Once commenced, the Competition (Amendment) Act 2022 will further enhance the merger control regime in Ireland. Some of these amendments (such as third party RFIs) can be considered a formalisation of practices that have already been commonplace in CCPC merger review. Others represent new tools in the CCPC's merger toolkit which will further allow us to deliver effective outcomes for consumers and markets.

I would like to thank businesses and their legal representatives for their cooperation throughout 2022. I would also like to acknowledge the long hours worked by staff involved in mergers to deliver the results detailed in this report, and express my gratitude to all CCPC staff for contributing to this busy and successful year.

Brian McHugh

Member, Competition and Consumer Protection Commission



2022 mergers in numbers

68

Merger
notifications
received

70

Merger
determinations
issued

30

Requirements for
Information issued

7

Phase 2
investigations
completed

Merger
Assessments
issued

4

Mergers cleared
with remedies

4

Mergers withdrawn
following CCPC
concerns about
completeness of
information

4

Mergers
prohibited

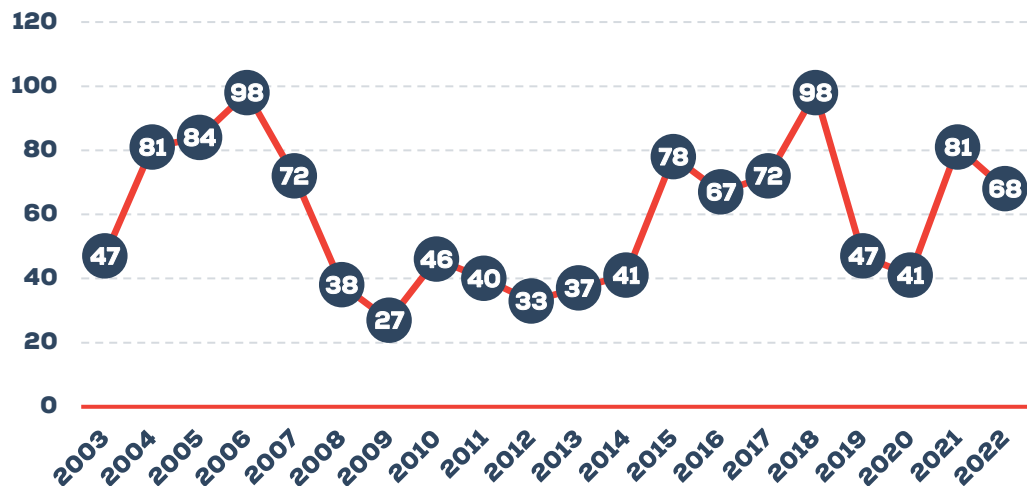
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1. 2022 Merger Notifications & Determinations

Notifications

1.1 For the 2022 calendar year, the CCPC received 68 merger notifications. This represents a decrease of approximately 16% on the number of mergers notified in 2021, which was 81. Of the 68 merger notifications received, 37 were notified under the simplified merger notification procedure (SMNP). Figure 1 presents the trend in the number of merger notifications to the CCPC and, previously, to the Competition Authority for the period 2003 to 2022.

Figure 1: Total Annual Merger Notifications Received: 2003-2022



1.2 On 1 January 2019 new financial thresholds¹ for the mandatory notification of proposed mergers or acquisitions to the CCPC came into effect. As can be seen from Figure 1, this change immediately reduced the number of merger notifications received. There was a substantial increase in the number of mergers received in 2021 due to increase in business activities following the removal of Covid-19

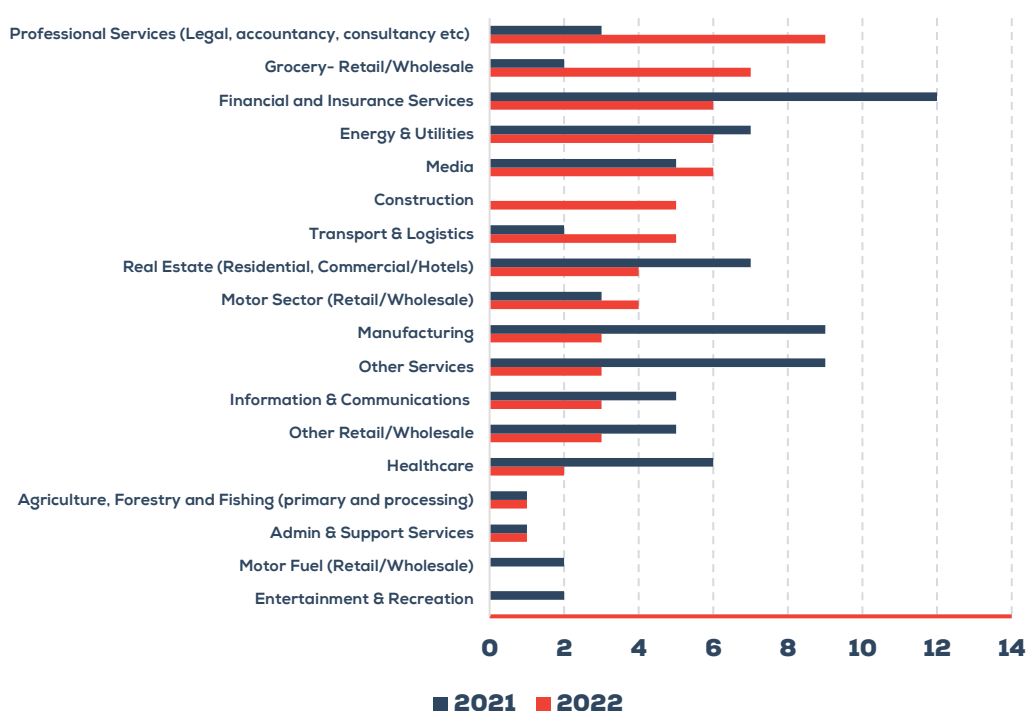
¹The new financial thresholds increased as follows: (i) the aggregate turnover in the State of the undertakings involved from being not less than €50,000,000 to being not less than €60,000,000 and (ii) the turnover in the State of each of 2 or more of the undertakings involved increased from not less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

restrictions. However, there has been a slight fall back in the numbers received in 2022.

Sectoral Breakdown of Notified Mergers

1.3 The sectoral² breakdown of mergers received in 2021 and 2022 are presented in Figure 2 below. In 2022, Professional Services (including legal, accountancy, consultancy, engineering, veterinary, etc.) was the most prominent sector with nine notifications received. This was followed by Grocery – Retail & Wholesale with seven notifications, while Financial and Insurance Services, Energy & Utilities and Media each had six notifications. This is a change from 2021, where the most prominent sectors were Financial and Insurance Services, Manufacturing and Other Services.

Figure 2: Number of Mergers by Sector: 2021 – 2022



² Sector description adapted from the CSO based on NACE classifications

Determinations

- 1.4 During the course of 2022, the CCPC issued 70 Determinations. 55 of the determinations were issued in respect of proposed transactions notified during 2022 and the remaining 15 were in respect of proposed transactions notified in 2021 which were carried over to 2022. Of the 70 Determinations issued, 39 were issued under the Simplified Merger Notification Procedure, representing approximately 56% of all determinations issued in 2022.
- 1.5 In 2022, 18 investigations involved an extended Phase 1 review, seven of which were carried forward from 2021. Of the seven carried forward from 2021, a Phase 2 determination was issued in relation to six and a Phase 1 determination issued in relation to the one. Of the remaining 11 extended investigations, Phase 1 determinations were made in respect of four, three were withdrawn, and four are still under consideration at the end of 2022.
- 1.6 Table 1 below presents a list of the mergers which required extended Phase 1 and Phase 2 investigations.

Table 1: - Extended Phase 1 and Phase 2 Investigations

Merger Notification	Status
M/21/004 – AIB/Bol/PTSB – Synch Payments JV	Cleared with remedies (Phase 2)
M/21/021 – Bank of Ireland/Certain Assets of KBC	Cleared with remedies (Phase 2)
M/21/040 – AIB/Certain Assets of Ulster Bank	Cleared (Phase 2)
M/21/068 – Heineken/Comans	Cleared (Phase 1)
M/21/071 – Tesco Ireland/Joyce’s Supermarkets	Cleared with remedies (Phase 2)
M/21/076 – PTSB/Certain Assets of Ulster Bank	Cleared (Phase 2)

M/21/079 – Uniphar/NaviCorp	Prohibited (Phase 2)
M/22/004 – Exponent/Xeinadin	Cleared (Phase 1)
M/22/006 – Glanbia Co-Op/Glanbia Ireland	Cleared (Phase 1)
M/22/007 – Assa Abloy/Arran Isle	Cleared (Phase 1)
M/22/015 – East Cork Oil/Misty Lane	Withdrawn (Phase 2)
M/22/017 – Linneaus Veterinary/Blackhall Facilities	Withdrawn and re-notified (Phase 1)
M/22/037 – Thorntons Recycling/Carducci Holdings (The City Bin Co.)	Withdrawn and re-notified (Phase 1)
M/22/040 – Q-Park/Tazbell Services*	Ongoing (Phase 2)
M/22/044 – AIB/Certain Mortgage (Tracker) Assets of Ulster Bank*	Ongoing (Phase 1)
M/22/047 – BWG/McCarrick Brothers Wholesale	Cleared with remedies (Phase 1)
M/22/049 – Uniphar/LXV Remedies (Sam McCauley)*	Ongoing (Phase 1)
M/22/052 – Linneaus Veterinary/Blackhall Facilities*	Ongoing (Phase 1)

*Ongoing investigations carried over to 2023

Mergers cleared with remedies

1.7 In 2022, formal commitments to ameliorate competition concerns were obtained from notifying parties in respect of the following cases:

- M/21/004 – AIB/Bol/PTSB – Synch Payments JV:**
 behavioural commitments whereby Synch has set out objective eligibility criteria for any banks or other financial institutions that wish to become participants in the Synch mobile payments service and Synch has also set out defined timelines for processing new applications by prospective licensees. Also, Synch will in due course also allow for interoperability by providing access to a software development kit (SDK) component which will allow licensees to

embed certain mobile payments functionalities within their own apps. In addition, a governance structure is put in place, including independent board members, which will allow Synch to operate with a greater level of independence from the founding shareholders and substantial safeguards to prevent the exchange or disclosure of commercially sensitive information.

- **M/21/021 – Bank of Ireland/Certain Assets of KBC:** a hybrid commitment by Bank of Ireland to make €1 billion in total funding available to certain non-bank lenders through the purchasing of securities issued by them, to increase their funding capacity and reduce their cost of funding, and also to make €1 million in funding available for distribution to companies involved in developing innovations relevant to the market for the provision of mortgages in the State. Bank of Ireland also made commitments to address the effects of the transaction on KBC mortgage customers including honouring the fixed rate included in the existing terms and conditions, honouring the 0.2% discount in mortgage rate of every eligible KBC customer and offering the variable rate equivalent to that of KBC migrated variable rate customers, as well as Bank of Ireland fixed rate options, to fixed rate KBC mortgage customers on their first roll-over post-migration.
- **M/21/071 – Tesco Ireland/Joyce's Supermarkets:** structural commitment by Tesco Ireland to divest Joyce's Supermarket in Oranmore, Co. Galway as a going concern to a suitable purchaser, who will be subject to CCPC approval.
- **M/22/047 – BWG/McCarrick Brothers Wholesale:** hybrid commitment by BWG to prevent the exchange of

competitively sensitive information between BWG, Stonehouse and/or GRSL.

Other Phase 2 mergers

1.8 One notification (M/22/015 – East Cork Oil / Misty Lane) was withdrawn during the CCPC’s Phase 2 investigation. On 25 November 2022, the CCPC issued an Assessment of the proposed acquisition as part of the merger review process. In its Assessment, the CCPC reached the preliminary conclusion that the proposed acquisition would have likely resulted in a substantial lessening of competition in certain geographic markets surrounding particular depots in respect of each of:

- The supply of kerosene (home heating oil) to small customers
- The supply of Sulphur Free Gas Oil (agricultural or ‘green’ diesel) to small customers and
- The supply of road diesel to small customers

East Cork Oil informed the CCPC that it does not agree with the preliminary conclusions reached by the CCPC in its Assessment.

However, following receipt of the Assessment, East Cork Oil informed the CCPC on 12 December 2022 that it had decided not to proceed with acquiring Misty Lane and that it considered the proposed acquisition to be withdrawn. Consequently, the CCPC closed the investigation without issuing a determination.

1.9 Having completed its full investigation in relation to M/21/079 – Uniphar/NaviCorp, the CCPC determined that the proposed acquisition may not be put into effect on the grounds that it will result in a substantial lessening of competition in each of the markets for: (i)

the provision of buying group services in the State³ and (ii) the provision of common management and branding services in the State.⁴ This determination represented the first time the CCPC has prohibited a merger since the CCPC's establishment in 2014.⁵

Timeframes

- 1.10 The CCPC aims at all times to make sure that it completes its merger review process in an efficient and effective manner so that mergers which do not raise competition concerns are not unduly delayed.
- 1.11 Between 1 January 2022 and 31 December 2022, the CCPC took an average of 17.9 working days to issue a Phase 1 decision, the corresponding figure for 2021 was 20.2.⁶ The timelines in individual cases that did not raise serious concerns varied from 11 to 30 working days depending, for example, on the complexity of the structure of the transaction and the nature of the competition issues involved.
- 1.12 Since our role is to actively protect the interests of consumers and businesses, there are some notified transactions which may need more intensive scrutiny and thus an extended review period was required to enable the CCPC to issue a robust Determination in Phase 1 or Phase 2 as appropriate.

³ Buying groups, in the context of this proposed acquisition, are businesses/groups who negotiate, on behalf of their member pharmacies, discounts and supply terms with multiple suppliers of pharmaceutical products including manufacturers and wholesalers.

⁴ Common management and branding (CMB) services are provided by pharmacy symbol/franchise groups. CMB services always include common branding, and may also include services such as store design, marketing, business intelligence and reporting, procurement, HR management, IT management, and accounting.

⁵ Prior to this, the most recent prohibition decision under the merger control regime in the State was *M/08/009 – Kerry/Breeo* in 2008 which was successfully appealed to the High Court.

⁶ This excludes those merger reviews which required an extended Phase 1 Investigation.

2. Media Mergers and International Cooperation

Media Mergers⁷

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.⁸

2.2 In 2022, the CCPC reviewed and issued merger determinations in relation to five media mergers as presented in Table 2 below.

Table 2: Media Mergers notified in 2022

Merger Notification	Determination
M/22/008 – Bauer / MCR	Cleared (Phase 1)
M/22/011 – Isle of Man FM/ 3FM	Cleared (Phase 1)
M/22/043 – Viaplay/ FreeSports & Premier Media	Cleared (Phase 1)
M/22/059 – Bauer Media / Siteridge Limited (RedFM)	Cleared (Phase 1)
M/22/060 – Formpress Publishing (Iconic) / Mayo News	Cleared (Phase 1)

⁷ Part 3A of the 2002 Act, introduced substantial changes to the review of media mergers in the State. In addition to the mandatory requirement to the CCPC, media mergers are also required to be notified to the Minister for Communications, Climate Action and Environment in order for the assessment of the impact of the merger on the plurality of the media in the State

⁸ 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.

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 2022 to 31 December 2022, the CCPC followed the European Commission's investigations into a number of proposed mergers, including the following:

- **M.10807 - Viasat/Inmarsat** (Article 22 EUMR referral)
- **M.10966 - Cochlear/Oticon Medical** (Article 22 referral)
- **M.10188 - Illumina/Grail**

2.4 The CCPC will continue to monitor these cases throughout 2023 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 will act as co-chair of the ECN Mergers Working Group for the period 2023/2024. The CCPC looks forward to working with our European colleagues in the ECN Mergers Working Group over the next two years to deliver an interesting programme of work.

3. Withdrawn Merger Notifications

3.1 2022 was a notable year for merger notifications which were withdrawn following expressions of concern by the CCPC that information provided by parties in the notification, or in response to an RFI, was false or misleading in a material respect, or that full details were not provided in the notification, or that all of the information required was not provided in response to an RFI.

3.2 Section 18(12) of the 2002 Act provides that:

“A notification for the purposes of subsection (1) or (3) [of section 18 of the 2002 Act] shall not be valid where any information provided or statement made under subsection (1) or (3) [of section 18 of the 2002 Act] or section 20(2) [of the 2002 Act] is false or misleading in a material respect, or if the Commission is of the opinion that the full details required under subsection (1) or (3) [of section 18 of the 2002 Act], or all the specified information requested under section 20(2) [of the 2002 Act], have not been provided, and any determination under this Part made on foot of such notification is void.”

3.3 In such circumstances, the CCPC may reject the notification as invalid or the parties may exercise their right to withdraw the notification. The parties may subsequently make a new notification which restarts the merger review process.

3.4 It is important that the parties provide the CCPC with reliable information so that the CCPC can undertake robust analysis which in turn grounds sound determinations. Incomplete, inaccurate, misleading, or false information impinges on the CCPC’s ability to make a sound determination and risks determinations being void.

3.5 On a number of occasions in 2022, parties withdrew merger notifications following the CCPC expressing the view that it was considering whether section 18(12) of the 2002 Act was applicable in

respect of that merger. These parties subsequently re-notified these transactions to the CCPC with updated information. This delays the merger review process and places additional costs and burden on both the CCPC and the parties involved.

- 3.6 The CCPC always welcomes merging parties to engage in pre-notification discussions. The purpose of pre-merger notification discussions is to: (a) assist parties in deciding whether a merger or acquisition is suitable for review under the simplified merger notification procedure; (b) assist parties in the preparation of the merger notification form; and, (c) give parties the opportunity to provide information to the CCPC about the nature of competition and any potential competition issues in the markets, industries or sectors concerned.

4. 20 Years of Merger Review under the 2002 Act

- 4.1 As well as being a busy year for Phase 2 mergers, 2022 marked the twentieth year of merger review under Part 3 of the 2002 Act. To mark this occasion, the CCPC hosted an expanded annual legal briefing event in December 2022 – the *CCPC Mergers Breakfast 2022: Celebrating Competition 20 Years of Merger Review*.
- 4.2 At this event, Ibrahim Bah, Director of the CCPC's Competition Enforcement and Mergers Division, presented on the 2022 trends set out in Chapter 1 of this Report, and also put these figures in a broader context of the last 20 years. This presentation was followed by a panel discussion on the *Evolution of Irish Merger Review* in which panel members Brian McHugh (Member of the CCPC); Úna Butler (Member of the CCPC); Patrick Massey (Director, Compecon – Competition Economics, and former Member of the Competition Authority); and Maureen O'Neill (Principal, MON Legal Consulting) reflected on their experiences working under the Irish merger control regime.
- 4.3 The panel discussed how the merger control regime in the State has developed over time, including: how the Mergers, Take-Overs and Monopolies (Control) Act, 1978 represented one of the first merger control regimes in the world; how the 2002 Act made merger review a non-political matter; legislative and policy changes regarding merger review; and the maturation of the approach to analysis. The panel also highlighted some notable cases from the past 20 years, including: the first case with a disposal commitment (M/06/098 – Premier Foods / RHM); early Competition Authority prohibition decisions (M/04/032 – IBM / Schlumberger; M/06/039 – Kingspan / Xtratherm; and, M/08/009 – Kerry / Breeo); and the interplay and proximity of recent mergers in the banking sector.



5. Legislative Developments in Merger Review

5.1 The Competition (Amendment) Act 2022 (the 2022 Act) was enacted on 29 June 2022. Upon commencement in 2023, Part 3 of the 2022 Act will make a number of notable changes to the merger control regime in the State.

5.2 The main changes introduced by the 2022 Act by way of amendments to the 2002 Act are:⁹

- the ability for undertakings to voluntarily notify mergers after they have been put into effect (section 18(3A) and 18(3B)).
- the power for the CCPC to require notification of mergers and acquisitions ('call-in') that do not meet or exceed the financial thresholds or do not fall within a specified class of merger (section 18A).
- the power for the CCPC to impose interim measures in respect of mergers notified to it (section 18B).
- a new offence for putting merger into effect after notification but prior to clearance (consistent with the offence for putting a merger into effect prior to notification) (section 19(10) and 19(11)).
- the ability for the CCPC to issue RFIs to third parties (section 20(2)(a)(ii))

⁹ The references below are references to the 2002 Act as amended by the 2022 Act rather than the 2022 Act itself.

- a new statutory period for assessing RFI compliance, and ability for CCPC to issue notice of compliance/non-compliance and for non-compliance to be remedied (section 20(2)(c)).
- the express ability for CCPC to order implemented mergers unwound upon finding of SLC (section 22(3A)).

5.3 These changes will complement the existing provisions of the merger control regime in the State and help to ensure that the merger control regime is comprehensive and effective. The changes to the merger control regime reflect international best practice and are similar to various provisions of the merger control regimes of other jurisdictions.

5.4 The CCPC intends to publish updated *Mergers and Acquisitions Procedures* in early 2023 which will account for the changes to the merger control regime brought about by the 2022 Act.



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission