

# Competition Law: Year in Review 2021

## Most Notable Cases and Developments



### CCPC Rejects a Merger Notification as Invalid

The notification relating to a joint venture between AIB, BOI, PTSB and KBC to implement a new industry-wide mobile payment system service, was rejected by the Competition & Consumer Protection Commission (CCPC) on the basis that full details of the proposed transaction were not provided. This move may signal that the CCPC is more closely scrutinising notifications for completeness and/or is increasingly willing to reject incomplete notifications, which it has only rarely done previously. The transaction was re-notified and the CCPC subsequently decided to carry out a full Phase II investigation.



### Link Group/Pepper Announce Intention to Abandon Transaction

The decision to abandon the Link Group/Pepper transaction is significant because deal abandonment due to competition law concerns is relatively rare in Ireland. The announcement was made after the CCPC identified preliminary competition concerns during its Phase II review. The parties were predominantly active in the markets for the provision of non-performing loans servicing and financial services outsourcing. The CCPC's increasingly interventionist approach to merger control may prompt further instances of deal abandonment as parties weigh up the potential costs and risks of Phase II investigations.



### CCPC Concludes RPM Investigation in the Household Furniture Market

The CCPC accepted commitments from Coach House to address the CCPC's concerns. The CCPC subsequently applied to the High Court to have the commitments made an order of the court. Shortly after the *Coach House* case, the CCPC published a resale price maintenance business guide (available [here](#)). RPM continues to be an enforcement priority for the CCPC, consistent with the approach of the CMA in the UK and the European Commission.



### CCPC Concludes Price Signalling Investigation in the Private Motor Insurance Industry

In 2016, the CCPC opened an investigation into the market for the provision of private motor insurance in the State, suspecting anti-competitive practices contrary to Section 4(1) of the 2002 Act, and Article 101(1) of the TFEU. According to the CCPC, the investigation related to industry participants openly signalling upcoming increases in motor insurance premiums in the State. Six of the parties under investigation agreed, between July and August 2021, legally binding commitments to address the CCPC's concerns. Each of those parties denied any breach of competition law. Read more about this investigation [here](#).





### CCPC Agrees Divestment Remedy in Phase I in Pandagreen/Exomex

Pandagreen submitted proposals during the CCPC’s Phase I review, which were accepted by the CCPC, including a commitment to divest certain Pandagreen commercial and industrial customers. In Ireland, the standard of proof for the CCPC to open a Phase II review is relatively low. Therefore, parties typically wait until the CCPC’s Phase II investigation is underway, when they are likely to have a better idea of the nature/extent of the CCPC’s competition concerns, to offer divestment remedies. However, it is not uncommon to see behavioural remedies agreed during Phase I.



### CCPC Opens Phase II Investigations in Two Banking Mergers

2021 saw a wave of consolidation in the finance sector, particularly in banking markets. In October, following an extended preliminary investigation, the CCPC opened a Phase II investigation into the proposed acquisition of certain assets and liabilities of KBC Bank Ireland plc by The Governor and Company of the Bank of Ireland.

In December, the CCPC also opened a Phase II investigation into the proposed acquisition by Allied Irish Banks plc of certain assets, consisting of a portfolio of performing commercial loans, of Ulster Bank Ireland DAC.



### CCPC Introduces Changes to the Merger Notification Procedure

Parties are now required as part of the CCPC’s Standard Notification Procedure to submit contact details for each of their top 20 largest customers, suppliers and competitors, where previously only five were required. Notifications are now to be submitted in electronic format only between 9am and 3pm, Monday to Friday.



### CCPC Concludes Investigation in the Ticketing Sector

The CCPC considered that long-term contracts with Ticketmaster may have hindered the ability of venues and live event organisers to work with any other ticketing services provider. Ticketmaster Ireland denied breaching competition law but agreed legally binding commitments to address the CCPC’s concerns.

## A Busy Year for the CCPC’s Mergers Division

**81** notifications

up from 47 & 41 in 2019 & 2020, respectively



**74** clearances



**73** clearances at Phase I



2 cleared with agreed measures at Phase I

**3** decisions to open a Phase II



**1** clearance at Phase II



1 clearance with agreed measures at Phase II

**1** merger notification rejected

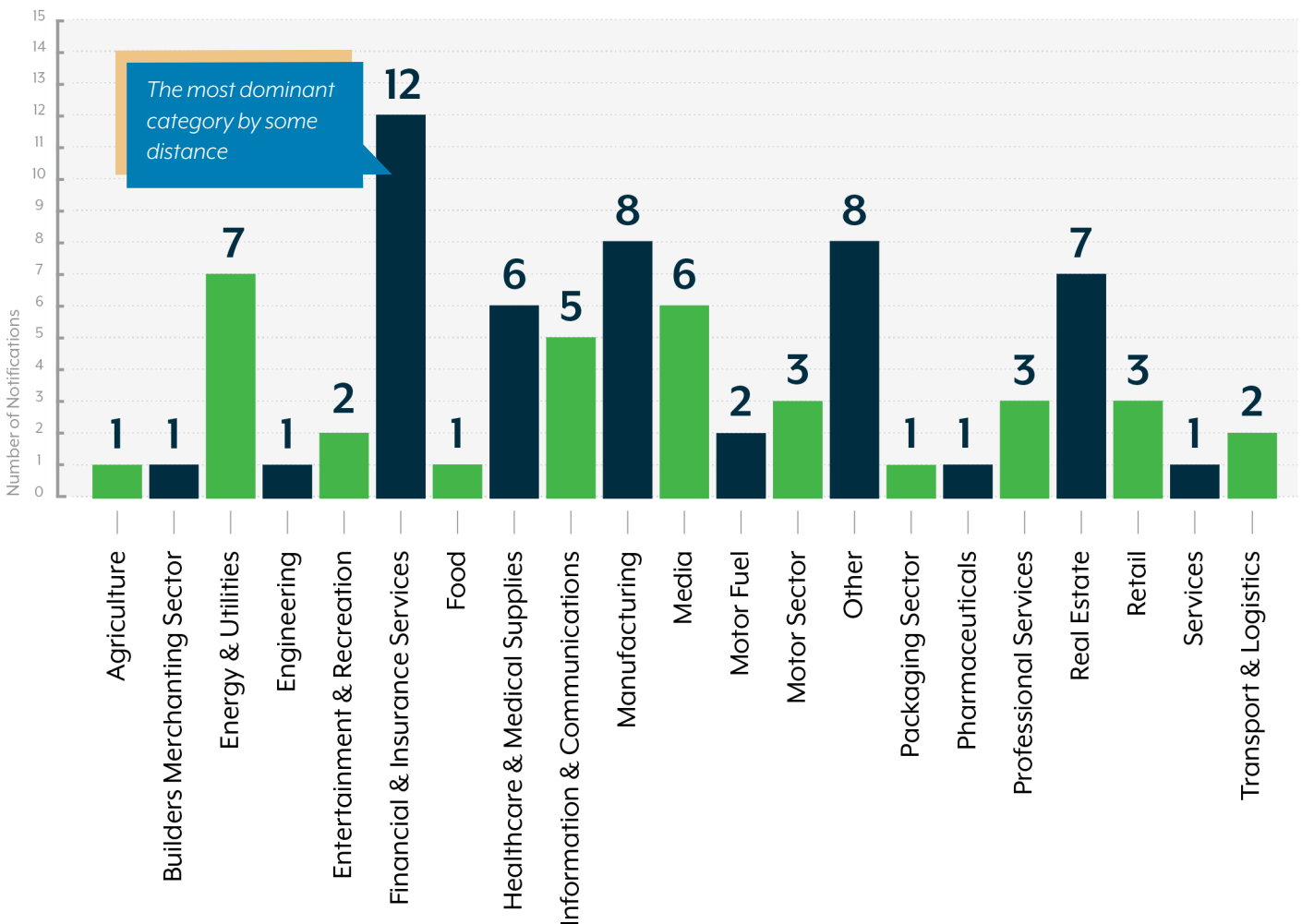


## CCPC's Average Review Times Show the Benefits of the Simplified Procedure



## Sectors Involved

*“A Flurry of Activity in the Banking Sector in 2021”*



## Looking Ahead to 2022

### Significant New Changes to the Irish Competition Law Landscape

The Competition (Amendment) Bill 2021 (the Competition Bill) is expected to be published in early 2022 and is anticipated to make some of the most significant changes to the Irish competition law landscape since the Competition Act, 2002 (as amended) (the Competition Act).

The Competition Bill will implement EU Directive 2019/1 (the ECN+ Directive) and introduces several additional amendments to the Competition Act.

Some of the key features of the Competition Bill that have been sign-posted by the Government include the introduction of a leniency programme for cartel offences that will provide the possibility for reduced fines and the introduction of a specific bid-rigging offence under the Competition Act.

Additionally, the Competition Bill is expected to give the CCPC the powers to:

- Impose administrative fines and periodic penalty payments, likely subject to judicial oversight
- Take summary proceedings for gun-jumping offences
- Unwind mergers and acquisitions which have completed without notification, and which have substantially lessened competition
- Impose interim measures during a competition law investigation, and
- Make legally binding decisions that there has been a breach of competition law

### Introduction of a New FDI Notification Procedure in Ireland

The forthcoming Investment Screening Bill, which is expected to be published in early 2022, will implement Regulation (EU) 2019/452, establishing a framework for the screening of foreign direct investments into the EU. It will also introduce the State's first screening regime for foreign direct investment.

The regime is expected to be flexible, with responses to the 2020 public consultation in favour of a regime that would operate similarly to the merger review process, particularly in terms of review timelines. Read more [here](#).



## Our Team

Our Competition & Antitrust team is internationally recognised, and widely regarded as market-leading in its field in Ireland. We are centrally involved in the most complex merger cases before the CCPC and have established new precedent in Irish merger control law and on media mergers in particular.

We help clients to address novel competition law issues, such as matters at the intersection of competition law and privacy, and successfully navigate the fast-evolving regulatory environment, including advising on the incoming Irish Foreign Direct Investment regime.

We have significant expertise in competition law enforcement and advised on the CCPC's recent investigations into the ticketing and insurance sectors. We are also at the forefront of competition litigation in Ireland.

This is an experienced team with diverse backgrounds. Many of our team have previously worked with leading US and magic circle competition/antitrust practices in both London and Brussels.

## Key Contacts



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## Our Expertise

- Merger control
- Antitrust investigations, immunity applications and dawn raids
- Follow-on actions for damages
- Competition law compliance
- Commercial contracts and competition law
- Foreign investment screening
- State aid
- Economic regulation/sector-specific regulation

## What Others Say About Us

*"They are extremely knowledgeable and their practical experience is crucial for the timely progress of our matters."*

”

Chambers & Partners, 2021

*"Excellent client service and strategic advice."*

”

Legal 500, 2021



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