

2021 MERGER CONTROL UPDATE



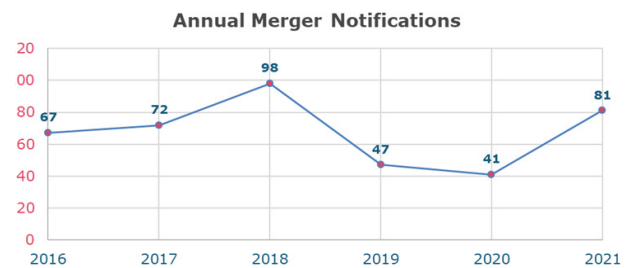
IRISH NOTIFICATIONS ALMOST DOUBLE IN 2021

Merger notifications to the Irish Competition and Consumer Protection Commission (CCPC) are almost back to the record levels seen in 2018, with 81 mergers being notified in 2021. While notifications decreased significantly in both 2019 and 2020, this was largely due to changes in the notification thresholds which came into effect from 1 January 2019, and 2021 saw a radical departure from this trend.

The 81 mergers notified in 2021 represent a 98% increase on 2020 numbers indicating an increase in commercial confidence in certain sectors in the economy. Unsurprisingly, some sectors which were most seriously hit by the pandemic did not follow the trend. These included motor fuel, consumer goods and retail pharmacy. However as the economy stabilises in 2022, we may see increases in notifications in these sectors.

Mergers and acquisitions must be notified to the CCPC where the following thresholds are met:

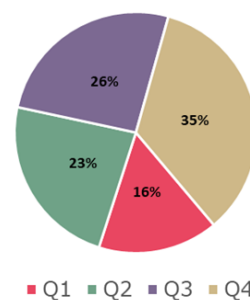
- a** the aggregate turnover of undertakings involved in a proposed merger or acquisition is €60 million (increased from €50 million), and
- b** the turnover of two or more undertakings involved in the proposed merger or acquisition is €10 million (increased from €3 million).



Of the 81 notifications to the CCPC in 2021, only 16% were notified in Q1 last year. By comparison with the previous year, 34% of total 2020 mergers were notified in Q1. This shift may reflect the high levels of uncertainty and disruption earlier in the year as a result of Covid-19 restrictions.

The introduction of the Simplified Merger Notification Procedure in July 2020 brought Ireland in line with the two thirds of EU Member States which operate an equivalent procedure. The Simplified Procedure has reduced the clearance time for mergers and acquisitions which do not raise competition concerns in the State from 13.4 working days in 2020 to 12.9 days in 2021. Almost 40% of all mergers in 2021 were cleared under the Simplified Procedure. The success of the procedure is a welcome development for clients and the CCPC given resources and financial burden that can arise from notifications.

% Notifications Per Quarter 2021



1. 2021 TRENDS - WHAT WAS NOTIFIED?

While there was an increase in notifications across most sectors, the most significant increases were in the Financial Services, Energy and Manufacturing sectors.

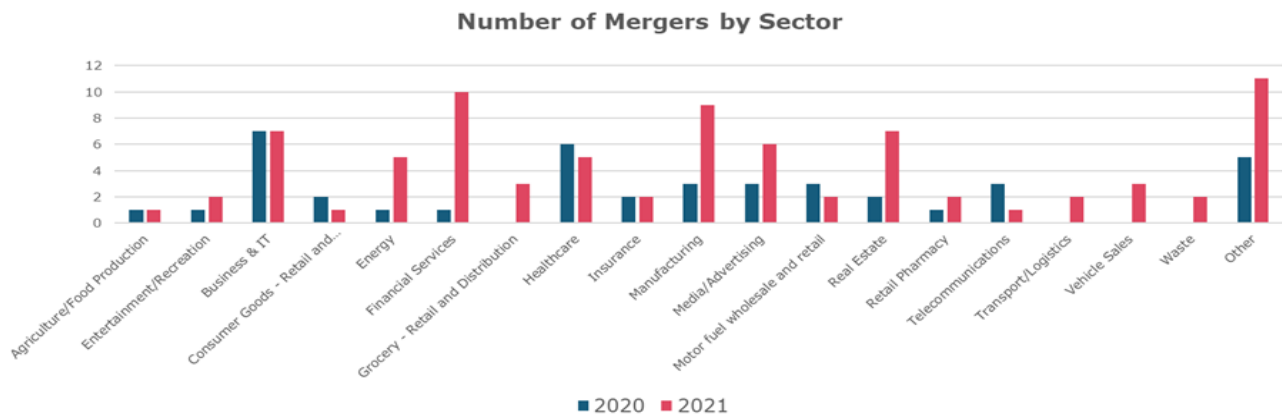
Industry Sector	Number of Notifications 2021(2020)	Increase/Decrease on 2020
Agriculture / Food Production	1 (1)	-
Entertainment / Recreation	2 (1)	+1
Business & IT services	7 (7)	-
Consumer goods - retail and distribution	1 (2)	-1
Energy	5 (1)	+4
Financial Services	10 (1)	+9
Grocery - retail and distribution	3 (0)	+3
Healthcare	5 (6)	-1
Insurance	2 (2)	-
Manufacturing	9 (3)	+6
Media / Advertising	6 (3)	+3
Motor fuel wholesale and retail	2 (3)	-1
Real Estate	7 (2)	+5
Retail Pharmacy	2 (1)	+1
Telecommunications	1 (3)	-2
Transport/Logistics	2 (0)	+2
Vehicle Sales	3 (0)	+3
Waste	2 (0)	+2
Other	11 (5)	+6
Total	81(41)	+40

The announcement by KBC Bank Ireland of its exit from the Irish market came as a surprise to many. It follows a number of high profile exits in the banking sector in recent years, including Ulster Bank. These exits were reportedly as a result of the higher capital against mortgage requirements than other EU jurisdictions, ultra-low interest rates and low loan demand. The exits meant a significant increase in the number of mergers in the **financial services sector** in 2021, in particular banking as three related to acquisitions of the assets of KBC and Ulster Bank alone. The CCPC has allocated significant resources to the review of these mergers. All of the five Phase 2 mergers in 2021 arose in the banking sector with three still ongoing in 2022. This suggests a high level of scrutiny by the CCPC where a sequence of mergers in a single sector could have a significant impact on the Irish economy.

Increases in the number of mergers in the **energy sector** are interesting in light of the recent gas supply issues faced by the EU and criticism in the gas industry that the continent has become too reliant on imported gas. Vermillion's acquisition of Equinor Energy Ireland further expands its interests in the Corrib Gas Field. Following its acquisition of 22 motor fuel stations from Tesco in 2020, DCC plc is diversifying its Irish interests with the acquisition of Naturgy, a supplier of renewable energy. Further consolidation in the gas sector can be expected in coming years as the EU reports decreased production and use of gas in 2021.

Acquisitions by Blackstone accounted for half of the **real estate** mergers notified in Ireland in 2021. These notifications involved prime commercial real estate in Dublin including the Burlington Plaza and properties at the Bank-centre in Ballsbridge. We can expect to see similarly high levels of real estate notifications in 2022 with employees continuing to work from home and employers downgrading their office space requirements, particularly in Dublin where commercial rents are at a premium.

The only sectors where there were decreases in notifications in 2021 were in the motor fuel, consumer goods, healthcare and telecommunications sectors. It will be interesting to see if these trends are reversed in 2022.

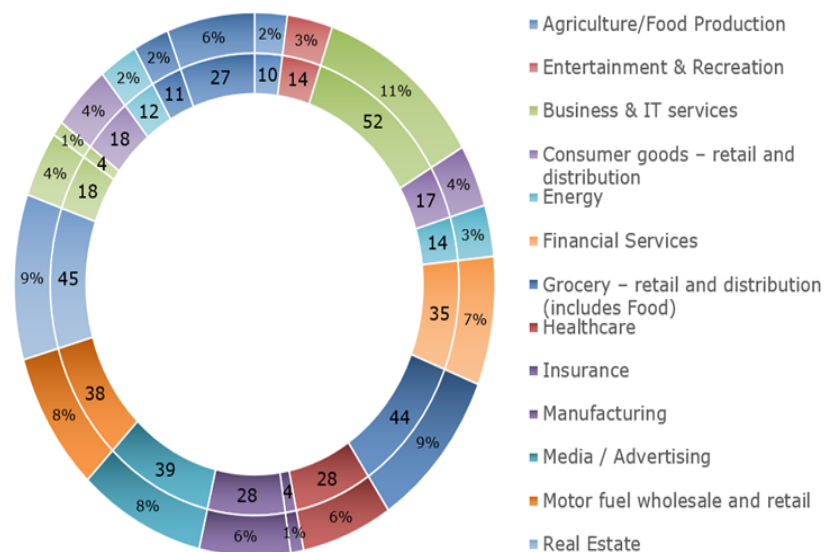


2. MOST POPULAR INDUSTRY SECTORS

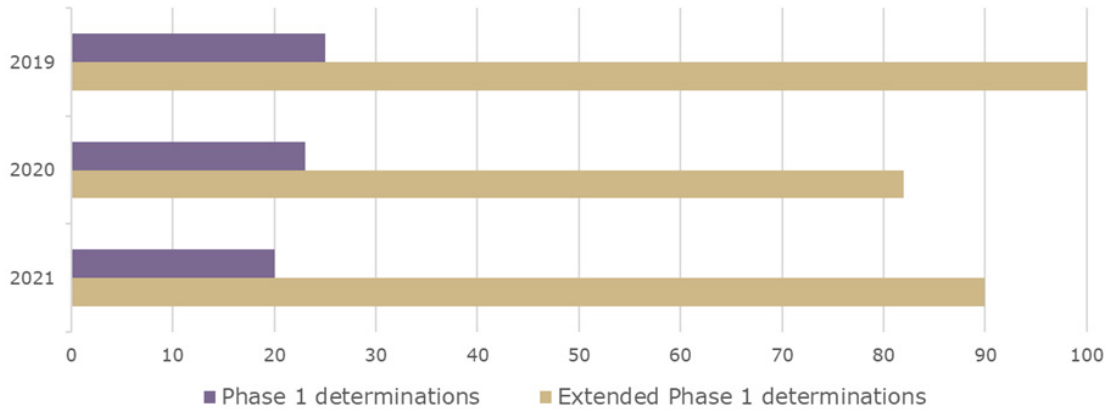
Industry Sector	2021	2020
Financial Services	10	1
Manufacturing	9	3
Real Estate	7	2

3. TOTAL NOTIFICATIONS 2016 - 2021 BY SECTOR

While the number of notifications almost doubled in 2021, the CCPC impressively ensured clearance times for Phase 1 determinations were not adversely affected. The average clearance time for a Phase 1 determination fell from 23 to 20 working days in 2021. This suggests that the Simplified Procedure is having benefits beyond those mergers falling within it. While the clearance time for extended Phase 1 determinations increased slightly from 82 days in 2020 to 90 days in 2021, this appears largely to be due to the complexity of the mergers being reviewed by the CCPC.



4. AVERAGE CLEARANCE TIMES (WORKING DAYS)

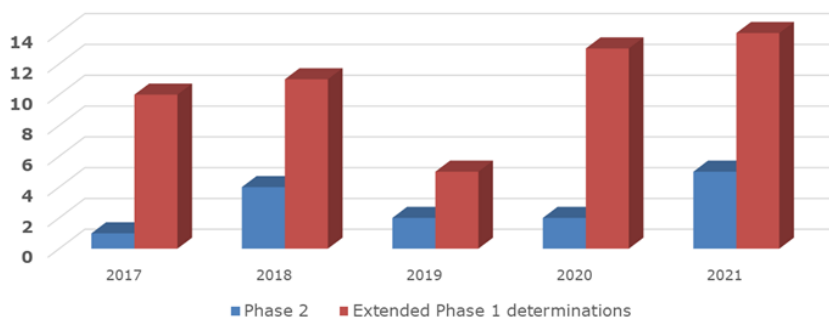


THE CCPC'S REVIEW

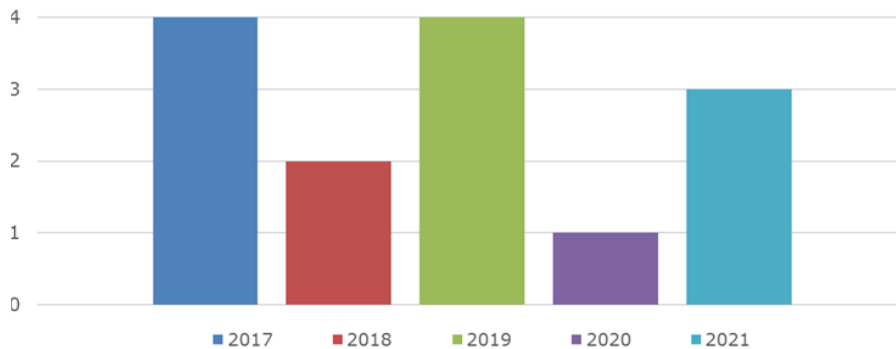
Three mergers were the subject of formal commitments in 2021 compared to 1 in 2021 namely:

- (i) *M/20/005 - ESB/Coillte (JV)* - behavioural commitments preventing JV directors from having access to and exchanging sensitive information between the JV and its parent companies;
- (ii) *M/21/016 - Pandagreen/Exomex* - structural commitments on Pandagreen to divest customers in certain areas of Co. Louth. Similar commitments were required by the CCPC in Panda's acquisition of Greenstar in 2016; and
- (iii) *M/21/024 - Orpea/FirstCare* - behavioural commitments by Orpea to inform and notify the CCPC of any future acquisitions of residential care or nursing homes in Co. Kildare for a period of two years. This right of review is preserved event where the transaction does not meet the threshold for mandatory notification.

5. NOTIFICATIONS THAT ENTERED AN EXTENDED PHASE 1 AND PHASE 2



6. NUMBER OF MERGERS CLEARED WITH COMMITMENTS



WHAT TO EXPECT FROM 2022

We expect that the Simplified Merger Notification Procedure will continue to have a welcome impact on timelines for review in transactions which do not raise competition concerns. As the economy continues to stabilise, an increase in the number of mergers in retail sectors in 2022 can be expected. 2022 is likely to deliver similarly high numbers of notifications with continued activity in the commercial real estate and potentially further consolidation in the energy sector.

Finally, with the publication of the [Competition \(Amendment\) Bill 2022](#) in January 2022, it looks likely that the CCPC will gain increased enforcement powers as a result of the implementation of the ECN+ Directive in Ireland. Once enacted, the Bill will strengthen the CCPC's existing powers and includes new powers in respect of mergers such as to require the notification of below threshold mergers and to 'unwind' such mergers, and to bring summary prosecutions in respect of 'gun-jumping' offences. This legislation is expected to come into force early in 2022.

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