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Directorate for Financial and Enterprise Affairs  
**COMPETITION COMMITTEE**

## Annual Report on Competition Policy Developments in Ireland

-- 2022 --

This report is submitted by Ireland to the Competition Committee FOR INFORMATION.

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## *Ireland*

### Executive Summary

1. 2022 was an important year for the CCPC which included the CCPC's first merger prohibition in over a decade and the passage into law of long-awaited legislation which will strengthen the CCPC's powers in the areas of competition enforcement and merger control.
2. In December 2022 the CCPC prohibited Uniphar Plc's proposed acquisition of pharmacy solutions business, NaviCorp Limited following a Phase 2 investigation found that the transaction would result in a Substantial Lessening of Competition in the markets for retail pharmacy buying group services and common management and branding services in Ireland. This prohibition was the first time in a decade that an Irish Competition Authority took a decision to block a transaction on competition grounds.
3. The CCPC cleared three significant banking mergers in 2022: Bank of Ireland/Certain Assets of KBC; AIB/Certain Assets of Ulster Bank; and PTSB/Certain Assets of Ulster Bank. These mergers were triggered by the withdrawal of KBC Bank and Ulster Bank from the Irish retail banking market.
4. 2022 saw the passage of the Competition (Amendment) Act 2022 through the Irish parliament which is expected to come into force in early 2023. The new legislation implements the ECN+ Directive (Directive 2019/1) and makes a number of substantial changes to Ireland's competition laws.
5. For example, the CCPC will for the first time have the power, subject to court approval, to impose administrative financial sanctions of up to €10 million or 10% of total worldwide turnover on parties that have participated in a competition law infringement. Our new fining powers will be accompanied by the power to introduce a new Administrative Leniency Policy (ALP), which enables the CCPC to grant immunity from, or a reduction of, administrative sanctions where the parties disclose their participation in the infringement and cooperate with the CCPC.
6. We look forward to the forthcoming commencement of the Competition (Amendment) Act and the changes it will bring to competition enforcement and the merger review process. The new powers will enhance our ability to ensure that competitive markets will work in the interests of consumers, businesses and all of Irish society.

## 1. Changes to Competition Laws and Policies, Proposed or Adopted

### 1.1. Summary of new legal provisions of competition law and related legislation

7. The year 2022 was a landmark mark year in Irish competition law with the enactment of the Competition (Amendment) Act 2022 ('the 2022 Act') which transposed Directive 2019/1 (ECN+ Directive). This piece of legislation greatly expands the CCPC's power to enforce European and Irish competition law as it ensures that the CCPC has the appropriate tools to enforce EU competition law.
8. Until the 2022 Act, Ireland was one of a very small number of European countries that only allowed for a company to be fined for breaching competition law if the case was proven in court to a criminal standard. The 2022 Act provides that fines can now be

imposed by the CCPC for breaches of Irish and EU competition law on an administrative basis. These fines will be set drawing on EU competition fining norms.

9. The 2022 Act also includes amendments to existing competition legislation, which are outside the scope of the ECN+ Directive to further bolster the CCPC's powers in the enforcement of EU and Irish competition law and for the statutory merger review regime.

10. These include:

- Providing for a specific offence of 'bid-rigging';
- Providing a specific offence of 'gun jumping' in merger cases. Gun-jumping is a criminal offence under Irish law. Currently, only the Director of Public Prosecutions can bring prosecutions for "gun-jumping" offences;
- Providing for the CCPC, when investigating serious criminal breaches of competition law and under specific conditions, have powers to:
  - carry out video and audio surveillance; and
  - to require interception and recording of electronic communications attached to such powers.

## 1.2. Other relevant measures, including new guidelines

11. The CCPC's new competition powers will only apply on commencement of the Act, key elements of which will be commenced in 2023. The implementation of the new powers requires the CCPC to adopt a number of new policies and guidelines. In 2022 the CCPC held a series of public consultations to seek the views of stakeholders and interested parties.

12. The first consultation on the CCPC's new policies and guidelines began on 14 February 2022 and considered an administrative leniency policy; a guidance note on the interaction between the cartel immunity programme and the administrative leniency policy; and a guidance note on the choice(s) of enforcement regime(s) for breaches of competition law.<sup>1</sup>

13. On April 4 2022 the CCPC opened a second series of public consultations which sought views from interested parties on the CCPC's guidelines on the determination of administrative financial sanctions and periodic penalty payments. The guidelines set out the procedures for the calculation of administrative financial sanctions and periodic penalty payments. The guidelines also provided further detail on the aggravating and mitigating factors which may be considered when any penalty is being calculated.

14. A third consultation was opened on 17 May, on the guidelines intended to provide undertakings and their legal advisors with further information on the CCPC's policy and practice in relation to access to the File in the course of an Investigation.

15. On 4 July a consultation was opened seeking views on the CCPC's proposal to allow for leniency applications to be made in respect of conduct involving Resale Price Maintenance.

16. All consultations are now closed and are helping inform the CCPC's updated policies in advance of the commencement of the Act.

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<sup>1</sup> <https://www.ccpc.ie/business/research/consultations/competition-law-developments-in-2022/>

### 1.3. Government proposals for new legislation

17. In 2022 the Digital Markets Act was finalised at EU level, the CCPC began preparations to assist the Department of Enterprise, Trade and Employment's implementing legislation.

## 2. Enforcement of Competition Laws and Policies

### 2.1. Action against anti-competitive practices, including agreements and abuses of dominant positions

#### 2.1.1. Summary of activities

18. One of the core functions of the CCPC is to enforce competition law and to take legal action when the CCPC believes that the law has been broken. Enforcement work can be divided into two categories:

19. The first category relates to hard-core cartels. In Ireland these are treated as criminal breaches of competition law. As cartels are criminal breaches of competition law they need to be proven beyond a reasonable doubt. Where the CCPC believes that it has enough evidence of a criminal cartel agreement, a file on that case is normally referred to the Director of Public Prosecutions ("DPP") for a prosecution on indictment in the Central Criminal Court or in some instances, the CCPC may initiate a summary prosecution in the District Court. On conviction before the courts, individuals can face prison sentences and both individuals and companies can be fined. The CCPC, in conjunction with the DPP, operates a Cartel Immunity Programme, which is aimed at helping to uncover cartels and providing witnesses for the criminal prosecution of cartel members. The programme means that a member of a cartel may avoid prosecution, including fines and jail time, if they are the first member to come forward and reveal their involvement in illegal cartel activity before the CCPC has completed any investigation and referred the matter to the DPP.

20. The second category relates to abuse of dominance and anti-competitive agreements which do not amount to a cartel, for example, vertical agreements. These are treated as civil breaches of competition law. The CCPC can seek a declaration in court that the behaviour is unlawful, and secure an injunction directing the undertaking to cease the behaviour. However, the commencement of the Competition Amendment Act will give decision making powers to the CCPC.

#### 2.1.2. Description of significant cases, including those with international implications.

- **Private Motor Insurance:** In 2022, the CCPC published the report<sup>2</sup> on its investigation into anti-competitive price signalling in the private motor insurance sector. The investigation resulted in AIG Europe S.A., Allianz PLC, AXA Insurance DAC, Aviva Insurance Ireland DAC, FBD Insurance PLC and AA Ireland Limited entering into commitment agreements in 2021 with the CCPC to implement and maintain an appropriate internal competition law compliance programme.

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<sup>2</sup> <https://www.cpc.ie/business/enforcement/civil-competition-enforcement/closed-investigations/private-motor-insurance/>

- **Bid-Rigging of Tenders for School Transport:** Summonses were issued to the thirteen suspects who were charged in 2021. The suspects appeared before the District Court where books of evidence were served. The matter was transferred to the Central Criminal Court.
- **Competition law and the war in Ukraine:** The CCPC is a member of the European Competition Network (ECN) who stated that it will not actively intervene against companies who have to cooperate to mitigate against disruptions caused by the crisis in Ukraine. The ECN also warned that it will act against companies that take advantage of the crisis by entering into cartels or abusing their dominant position.

## 2.2. Mergers and acquisitions

### *2.2.1. Statistics on number, size and type of mergers notified and/or controlled under competition laws;*

21. 2022 was a busy year for mergers in Ireland. Merger notifications were received from a wide range of sectors – 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 state of competition in the retail banking sector in Ireland.

#### *Merger activity 2022 statistics:*

- 68 mergers were notified in 2022 (down from 81 in 2021, a 16% decrease);
  - 70 determinations were issued, 4 of which required commitments to secure approval;
  - 7 Phase 2 investigations were completed (compared to 1 Phase 2 investigation completed in 2021 although 2 Phase 2s were carried over to 2022);
  - Professional Services (including legal, accountancy, consultancy, engineering, veterinary etc.) was the most prominent sector for notifications (9); and,
  - 17.9 working days was the average time for a determination on a non-extended Phase 1 investigation to issue.
22. The CCPC required commitments from parties in four proposed transactions in 2022:
- M/21/004 – AIB/BoI/PTSB – Synchron Payments JV
  - M/21/021 – Bank of Ireland/Certain Assets of KBC
  - M/22/047 – BWG/McCarrick Brothers Wholesale
  - M/21/071 – Tesco Ireland/Joyce’s Supermarkets

### *2.2.2. Summary of significant merger cases.*

#### *Decision to block M/21/079 - Uniphar/NaviCorp*

23. In December 2022, the CCPC blocked the proposed acquisition by Uniphar, a pharmaceutical wholesaler, of Navicorp, a pharmaceutical purchasing group. The decision to block the proposed transaction was the first time that the CCPC has prohibited a merger since the CCPC’s establishment in 2014.

24. After a full Phase 2 investigation, the CCPC determined that the proposed acquisition should not be put into effect on the grounds that it would have resulted in a substantial lessening of competition in each of the markets for: (i) the provision of buying group services in Ireland and (ii) the provision of common management and branding services in Ireland.

*Mergers cleared with remedies*

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

*M/21/004 – AIB/BoI/PTSB – Synch Payments JV: Behavioural*

26. Behavioural commitments were obtained whereby *Synch*, a joint venture established by the main commercial banks to provide contactless payment services, would 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: Hybrid*

27. This remedy involved 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*

28. 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*

29. Commitment by BWG, a wholesale distributor of grocery goods, buying to prevent the exchange of competitively sensitive information between BWG, Stonehouse and/or GRSL.

### 3. The Role of Competition Authorities in the Formulation and Implementation of other Policies

30. The CCPC promotes competition in many different ways. The CCPC highlights areas of the Irish economy where competition is restricted, publishes reports on how competition may be improved in certain sectors, advises Government Departments and other State agencies on competition issues relevant to their work, including procurement and tendering for public contracts, comments on proposed legislation and responds to public consultations.

#### 3.1. Key areas of focus in 2022 included;

- **Retail Banking Review:** The CCPC provided a submission to the Department of Finance (DoF) Retail Banking Review<sup>3</sup>. Our response was informed by a concern about competition issues due to the exits of KBC and Ulster Bank, where consumers will be harmed in terms of price, levels of service and innovation. The CCPC made a number of recommendations to promote competition and consumers' interests. We met with DoF to discuss our recommendations and we held a press briefing on our work. The report on the Retail Banking Review was published in November and the CCPC strongly supported its commitment to develop a national financial literacy strategy.
- **Digital Markets Act and Digital Services Act:** The CCPC supported Ireland's negotiations at the European Council on the proposed Digital Markets Act and Digital Services Act, which were finalised in 2022. Both proposals aim to create a safer and more open digital space, and to establish a level playing field to foster innovation, growth and competitiveness in the Single Market.
- **General Scheme of the Agricultural and Food Supply Chain Bill 2022<sup>4</sup>:** The CCPC provided our experience on implementing the Grocery Goods Regulations to support a smooth transition to the new Office of Fairness and Transparency in the Agri-Food Supply Chain<sup>5</sup>. At our appearance before the Joint Oireachtas Committee of Agriculture, Food and the Marine, we stressed the importance of safeguarding confidentiality for complainants who allege breaches of the law, and shared our enforcement experience to support the development of the proposed measures outlined in the Bill.
- **Foreign Subsidies Regulation:** The legislation aims to counteract market-distorting foreign subsidies from non-EU countries to companies operating in the EU. The CCPC engaged with the Department of Enterprise, Trade and Employment (DETE) on Ireland's negotiating position during 2022. The CCPC will continue to work with DETE on the implementation of the new rules, when they come into force in 2023.
- **Scrutiny of other Legislation:** The CCPC engaged with Departments, regulators and the European Commission on a wide range of legislation and policy proposals

<sup>3</sup> <https://www.ccpc.ie/business/ccpc-publishes-submission-to-the-department-of-finance-banking-review/>

<sup>4</sup> The General Scheme of the Agricultural and Food Supply Chain Bill 2022 will transpose the Unfair Trading Practices Directive.

<sup>5</sup> The CCPC's enforcement responsibilities under the 2016 Grocery Goods Regulations ceased in March 2022.



impacting on competition, consumer protection and product safety during 2022. This included the European Accessibility Act, the Data Act, the Data Governance Act, the Toy Safety Directive, the Gambling Regulation Bill, the Road Traffic Bill and ComReg's strategy on Over-the-Air provisioning for mobile phones.

- **Consumer Protection Code Review:** The CCPC provided initial views at the Central Bank of Ireland (CBI) Roundtable in advance of the planned review of the CBI Consumer Protection Code in 2023. We recommended that mortgage lenders are required to improve take up of cheaper offers by consumers and the CBI switching code is reviewed on foot of the problems encountered by consumers when switching current accounts. We will make further policy recommendations to improve competition and protect consumers' interests, in our submission to the CPC review in 2023.
- **Bid-rigging:** The CCPC continued to support the implementation of the bid-rigging recommendations of the Hamilton Review Group's 'Review of Structures and Strategies to Prevent, Investigate and Penalise Economic Crime and Corruption'. The CCPC's work supported bid-rigging<sup>6</sup> being defined as a standalone cartel offence by the Competition (Amendment) Act 2022. During the year, the CCPC brought a proposed system to detect and deter bid-rigging/tender collusion<sup>7</sup> to the Economic Crime and Corruption Forum. The CCPC will assist relevant stakeholders in 2023 on the required legislation that for screening bid-rigging in public procurement.
- **Legal Services Reform:** The CCPC made two submissions to the Legal Services Regulatory Authority (LSRA). The first covered the proposed creation of a new independent profession of conveyancer, which we strongly supported. This new profession, appropriately regulated, would be a positive step towards the reform of the sector and increased competition for consumers, which is a priority area for the CCPC. We also made a submission to the LSRA on the reform of education and training for legal professionals. We welcomed the establishment of an independent body to create standards for this type of training. This supports our position on strengthening competition by providing a broader range of pathways for admission to legal professions.
- **Veterinary Services Reform:** The CCPC supported the Higher Education Authority's calls for expressions of interest for new third-level training institution for veterinary practitioners in Ireland. This position reflected the CCPC 2008 report on competition in the veterinary profession which highlighted that Ireland had only one third-level institution and there was a reliance on vets trained outside of Ireland.

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<sup>6</sup> Recommendation 17: Amend competition law to create a specific offence of bid rigging or, in the alternative, specify bid-rigging as an offence as a form of market sharing.

<sup>7</sup> Recommendation 18: Introduce legislation to enable the collection, collation and analysis of all public procurement data to detect and deter bid-rigging.

## 4. Resources of the Competition and Consumer Protection Commission

### 4.1. Resources Overall (current numbers and change over previous year):

31. At the end of 2022, 148 staff members were employed by the CCPC, which represents approximately an 8 % increase on 2021.

#### 4.1.1. Annual budget:

32. The CCPC is funded by way of an annual grant from the Department of Enterprise, Trade and Enterprise, and also an industry levy in respect of specific consumer information and education functions in the financial services sector. The CCPC's budget allocation in 2022 was €17,118,000. As the CCPC is a dual agency for competition and consumer protection, many divisions' functions have a dual mandate including Criminal Enforcement, Policy & International, Legal Services, Corporate Services, Human Resources and Communications. Budgets are not apportioned between competition and other functions/activities.

**Table 1. Competition and Consumer Protection Commission Budget 2022**

Budget	2022 (€)	2022 (US\$) <sup>8</sup>
Exchequer	17,118,000	18,258,058
Levy	2,835,275	3,024,104
<b>Total</b>	<b>19,953,275</b>	<b>21,282,162</b>

#### 4.1.2. Number of employees

**Table 2.**

Lawyers/ Legal Qualification (primarily competition focused)	25
Economists (primarily competition focused)	23
Other professionals (primarily competition focused)	8 <sup>9</sup>
<b>Total (primarily competition focused)</b>	<b>56</b>
Other Staff (e.g. staff working in Consumer Protection, Communications, Product Safety, Corporate Services and Human Resource functions)	92 <sup>10</sup>
<b>Total Staff</b>	<b>148</b>

#### *Human Resources*

33. The staff numbers in the main CCPC divisions that are specifically responsible for competition enforcement are as follows:

- Competition Enforcement & Mergers – 18 staff.
- Cartel Enforcement – 12 staff.

- Legal Services – 8 staff.
- Other professionals: in 2022 the CCPC employed seven investigators of which four are forensic IT investigators whose roles are primarily concerned with competition enforcement investigations, 11 staff members worked in the CCPC’s Policy & International function. Legal Services and Policy staff members have a dual competition and consumer role.

*Period covered by the above information*

34. The above information covers the period 1 January 2022 to 31 December 2022.

## 5. New Reports or Studies on Competition Policy Issues in 2022

### 5.1. Price movements in retail motor fuel

35. The CCPC conducted an analysis of the retail motor fuel sector during March 2022 as petrol and diesel retail prices rose sharply at this time as a result of Russia’s invasion of Ukraine.<sup>11</sup> The Irish Government announced a “temporary reduction” of excise duty charged on petrol and diesel, which took effect on midnight 10 March 2022.

36. The CCPC found that the higher prices at the pumps before the excise duty cut were due to rising international prices rather than a lack of competition. There was no indication of co-ordinated pricing behaviour in the data for those stations where we received complaints. International evidence indicated that excise cuts take time to work through a market and are often not seen immediately.

37. The CCPC concluded that careful communication of the expectations and market realities is required when introducing these types of measures.

### 5.2. CCPC research on social media influencers

38. In December 2022 the CCPC published its *Social Media Influencers Report*, which found that failure to label ads is widespread throughout social media.

39. The study found that just 10% of consumers trust the information provided by social media influencers. However, while consumers distrust influencers in general, they do appear to trust the influencers that they follow.

40. Research found that consumers are reluctant to use the word “influencers” in reference to personalities they follow on social media platforms, preferring instead to use terms such as “interactive celebrities”, “people of interest”. That consumers did not readily agree that such terms were interchangeable with the term “influencer” suggests they may be overconfident in their ability to recognise influencer advertising and may be vulnerable to misleading practices.

41. The study also found that 48.4% of the commercial content reviewed by the CCPC was not labelled as advertising in any way. Poor levels of labelling relating to influencers’ marketing of their own brands was an area of particular concern identified in the research.

42. The CCPC’s wide-ranging research also reveals that many consumers who bought products as a result of influencer promotions feel they were misled in their purchases.

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<sup>11</sup> <https://www.ccpc.ie/business/ccpc-analysis-of-fuel-price-movements-finds-market-is-competitive-and-explains-delay-in-excise-cut-being-reflected-at-pumps/>

However, consumers say they can be reluctant to report such issues to a regulatory authority such as the CCPC, preferring instead to unfollow such influencers.

43. Consumers raised specific concerns around influencers promoting cryptocurrencies and other financial products, particularly when the influencer had no experience in the area.

44. Consumers and influencers interviewed for the research agreed that clear guidance would be beneficial for everyone, particularly for more vulnerable social media users (e.g. children and teenagers). This research also suggests that requiring influencers to use a small number of tags, such as #advertisement, #AD and #PaidPartnership, would reduce inconsistencies in labelling methods amongst influencers, particularly for when influencers promote their own brands.