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

## Annual Report on Competition Policy Developments in Ireland

-- 2023 --

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

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## *Ireland*

### Executive Summary

1. 2023 was a landmark year in competition law in Ireland with the introduction of a new civil fines regime which came into force in September 2023 following the commencement of the Competition (Amendment) Act 2022 (“the 2022 Act”). 2023 was also a busy year for merger control in Ireland. As well as progressing or concluding five Phase 2 merger investigations, the CCPC updated its policies and procedures for merger assessment to reflect the legislative developments under the 2022 Act.
2. Cartel enforcement saw a marked rise in investigation activity in 2023. However, as some ongoing cartel investigations were initiated before our new administrative competition law regime came into force, these cartel cases will not come before the courts until 2025.
3. On the competition advocacy front, the CCPC made several policy interventions in 2023, most notably a high-level analysis of the Irish groceries sector following a surge in supermarket prices in early 2023. The CCPC found no evidence of market failure in the supply of groceries to Irish consumers and therefore found no evidential basis for the introduction of price controls on consumer staples which was called for in some quarters.
4. Looking ahead to 2024 and beyond, our recently published Strategy Statement 2024-2026 states that the CCPC will employ an expanded set of enforcement powers across our competition, consumer protection, and product safety remit. Our increased competition
5. enforcement activity not only signals that breaches of the law will be penalised but acts as a potent deterrent, promoting greater compliance across the economy.

### 1. Changes to competition laws

6. The 2022 Act, which came into force in September 2023, amends competition law in Ireland to give more powers to the CCPC and the Irish telecoms regulator, the Commission for Communications Regulation (“ComReg”).
7. The purpose of the 2022 Act is to transpose EU Directive 2019/1 (“ECN+”) which aims to ensure that National Competition Authorities (“NCAs”) have guarantees of independence, sufficient resources, and appropriate powers of enforcement, including the ability to issue fines, for breaches of Articles 101 and 102 of the Treaty on the Functioning of the European Union (“TFEU”).<sup>1</sup> In addition to the introduction of administrative fines, the 2022 Act also introduced increased fines for breaches of competition law, leniency provisions and a marker system for immunity from administrative fines.
8. The 2022 Act also introduced further provisions beyond what is mandated by the ECN+ Directive to further increase the powers of the CCPC. The 2022 Act also contains

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<sup>1</sup> The ECN+ Directive only applies in circumstances where there is an element of inter-state trade involved. It was therefore decided that the 2022 Act should extend the Directive provisions to Irish competition law to ensure coherence between national and EU competition law.

an express provision that criminalises the practice of bid rigging where previously, the offence of bid rigging was implicitly covered under the statute prohibiting anti-competitive agreements. Finally, the 2022 Act provides the CCPC with additional powers for handling mergers and new surveillance powers.

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

### ***1.1.1. Introduction of administrative fines for breaches of competition law***

9. The 2022 Act provides that, for the first time in Irish law, breaches of competition law can be enforced through administrative actions taken by the Irish competition authority. Maximum fines are set at up to €10 million or 10% of total worldwide turnover, whichever is greater. Given the role of the courts in the Irish Constitution, a key feature of the drafting of this Act was to ensure that the investigative and adjudicative arms of the Competition Authorities are separate from each other and that the final sanction is confirmed by the High Court.

### ***1.1.2. Increasing Fines for Criminal Breaches of Competition Law***

10. The 2022 Act also increases the upper limit of fines that can be imposed in criminal cases for breaches of competition law pursued by Ireland’s public prosecution service, the Director of Public Prosecutions (“DPP”), through the Irish courts. Under the 2022 Act, fines of up to €50 million or 20% of an undertaking’s turnover in the previous financial year can be imposed.

### ***1.1.3. Introduction of leniency provisions***

11. The CCPC already operates an immunity programme in conjunction with the DPP in relation to investigations into cartels.

12. Under the new leniency programme, a leniency applicant must show that it satisfies a series of cumulative conditions: to end its involvement in the alleged cartel; shows genuine, continuous, and expeditious cooperation and does not destroy, falsify, or conceal evidence nor should it disclose the fact that it has applied for leniency apart from to the EU Commission or a third country competition authority. Therefore, the leniency programme provides the opportunity for other multiple members of a cartel to apply for leniency further destabilising the cartel.

13. Cartels continue to constitute a criminal offence under the 2002 Act with significant criminal penalties including fines for undertakings and both fines and imprisonment for individuals. For this reason, the existing Cartel Immunity Programme will continue to operate in parallel to the new leniency programme.

### ***1.1.4. Introduction of a ‘marker’ system for immunity from administrative fines***

14. The 2022 Act also provides for a ‘marker’ system. This allows a competent authority, when it is considering applications for immunity from administrative financial sanctions, to grant those applicants a ‘marker’ for a place in the queue for leniency. Such a marker gives applicants time to gather the necessary information and evidence required for their case.

### ***1.1.5. Introduction of a specific offence of bid-rigging as a type of cartel behaviour***

15. Up until the commencement of the 2022 Act the common legal practice to date had been to regard bid-rigging as a form of price fixing or market sharing. Price fixing and market sharing are specifically prohibited by sections 4(1)(a) and 4(1)(c) of the Competition Act 2002 (“the 2002 Act”).

16. However, this approach has led to some difficulties with court cases, where bid-rigging as a specific concept was considered to be beyond the existing scope of anti-competitive practices outlined in the 2002 Act as it was not specifically mentioned as an offence. The express provision for bid-rigging (in general) in the 2022 Act is intended to make it clearer that such concerted behaviour during the tender process is unlawful as it distorts competition.

### ***1.1.6. Introducing additional powers for merger control***

17. Under Irish competition law, mergers or acquisitions which reach certain financial thresholds in Ireland, must be notified to the CCPC.

18. However, the 2022 Act enables the CCPC to call-in on a mandatory basis any merger that it believes “may” have an effect on competition in Ireland, whether or not it has been put into effect. This is an important addition to the CCPC’s merger control toolkit and will take on particular significance in transactions involving local markets and acquisitions of businesses/business lines in their infancy but with potential to develop into significant competitive forces.

19. Failure to notify any such merger or acquisition or putting it into effect before clearance by the CCPC, is referred to as “gun-jumping”. The 2022 Act introduced provisions which will allow the CCPC to take summary prosecutions for gun jumping offences to reduce the burden on the public prosecution service and to increase the enforcement of the gun-jumping provision generally.

### ***1.1.7. Introduction of new surveillance powers***

20. The 2022 Act introduces provisions on surveillance to allow the CCPC to gather evidence as necessary in cartel investigations. Surveillance can only be conducted on foot of a court warrant.

## **1.2. Other relevant measures, including new guidelines**

21. Following a public consultation, the CCPC published a series of policies, guidelines, and procedures on the operation of its new Administration Enforcement Regime. Links to these guidelines and procedures are provided below:

- [Administrative Leniency Policy \(ALP\)](#)
- [CCPC ComReg Joint Policy on Leniency Applications in the electronic communications sector](#)
- [Guidance note on the interaction between the Cartel Immunity Programme \(CIP\) and Administrative Leniency Policy \(ALP\)](#)
- [Guidance note on the CCPC’s choice of enforcement regime for breaches of competition law](#)

- [Guidelines on the determination of administrative financial sanctions and periodic penalty payments](#), and
  - [Access to the file procedures](#).
22. New guidance on mergers and acquisitions under the 2022 Act.
- [Mergers and Acquisitions Procedures 2023](#)
  - [Access to the File Procedures 2023](#)
  - [Merger Notification Form 2023](#)
23. Comreg also published its own information and guidance on its new competition powers under the 2022 Act.
- [Information Notice - Competition Policies and Guidelines pursuant to the Competition Act 2002 \(as amended\) arising out of the adoption of the Competition \(Amendment\) Act 2022 \(no.12 of 2022\)](#)

## 2. Enforcement of competition laws and policies

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

#### 2.1.1. Civil competition enforcement cases

##### *Athletics Ireland*

24. The CCPC engaged with Athletics Association of Ireland (“AAI”) following complaints alleging anti-competitive behaviour due to AAI’s exclusive arrangement with EventMaster for online race registration services. The CCPC concluded that while the partnership with EventMaster did not inherently raise competition concerns, procedural changes were recommended to ensure the AAI’s processes are compliant with relevant competition law. The AAI agreed to implement a formal tender process, record stakeholder feedback, refrain from restricting members’ participation in non-permitted races, and remove references to such restrictions from its documentation.

##### *Provision of in-store travel card services*

25. The CCPC concluded engagement with the State-owned post office operator, An Post, regarding the provision of travel card services known as *Leap Card* in retail outlets after complaints raised concerns about the potential abuse of a dominant position. The CCPC found it was unlikely that there had been a competition law breach in this instance but engaged with An Post regarding certain terms and conditions for retailers. An Post agreed to review and revise its documentation to clarify deposit waiver conditions, review deposit waiver requests in a transparent way, allow for additional terminal requests based on business cases, and provide reasons for application rejections.

##### *Graduation gown procurement by technological universities*

26. The CCPC secured commitments from several Irish technological universities to change their procurement practices in the supply of graduation gowns. The CCPC proactively engaged with other recently established technological universities, namely Technological University Dublin, Technological University of the Shannon, Southeast Technological University, and Munster Technological University. These universities voluntarily committed to specific undertakings aimed at ensuring compliance and

promoting competition in the procurement of graduation gown service providers on behalf of students.

### *2.1.2. Criminal cartel investigations*

27. In 2023, the CCPC conducted search operations in two cartel investigations, under District Court authorised search warrants, covering four premises. Requirements for Information (“RFIs”) against a further three undertakings were also issued.

28. The prosecution for suspected bid-rigging in school transport involving 13 public transport operators before the Central Criminal Court continued to progress. During 2023, the CCPC assisted the DPP with disclosures and six court appearances for mention and case management. A preliminary trial date in the Central Criminal Court for a first group of five accused is set for 27 January 2025.

## **3. Mergers and acquisitions**

### **3.1. Statistics on number, size and type of mergers notified and/or controlled under competition law**

#### *3.1.1. Merger notifications in 2023*

29. For the 2023 calendar year, the CCPC received 68 merger notifications. This is the same number of mergers which were notified in 2022. Of the 68 merger notifications received, 35 were notified under the CCPC’s simplified merger notification procedure (“SMNP”). This is roughly in line with 2022.

30. 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.

31. Of the 66 Determinations issued, 33 were issued under the SMNP, 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.

32. 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.

33. 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.

34. Table 1 sets out the mergers which required an extended Phase 1 or Phase 2 investigation in 2023.

**Table 1. Significant merger investigations in 2023**

<b>Merger notification</b>	<b>Status</b>
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/Caufield 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 Lloyds Pharmacy/McCabies Pharmacy	Ongoing (Extended Phase 1) <sup>2</sup>
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) <sup>3</sup>

### 3.2. Summary of significant merger cases

35. 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.

36. 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 between service providers for domestic waste customers in these areas.

37. In 2023, the CCPC issued two Assessments in Phase 2 investigations.

<sup>2</sup> In 2024, during its Phase 1 assessment, the CCPC decided that the notification of this proposed transaction was invalid. <https://www.ccpc.ie/business/ccpc-declares-merger-notification-relating-to-lloydspharmacy-takeover-of-mccabies-pharmacy-as-invalid/>

<sup>3</sup> This proposed transaction was blocked by the CCPC in 2024 following a Phase 2 investigation. <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m-23-011-daa-plc-certain-assets-of-mr-gerard-gannon/>

- **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 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.<sup>4</sup>

## 4. The role of the CCPC in the formulation and implementation of other policies

### 4.1. Analysis of the Irish retail grocery sector

38. The CCPC conducted a high-level analysis of the grocery sector in Ireland using publicly available data. This analysis found that while food prices remain high when compared internationally, food inflation in Ireland has been the lowest in the EU in recent years. The CCPC also found that market concentration in the sector has reduced, while competition on price, quality, location, and service has improved in recent years. This has resulted in more choice for consumers, who can switch easily between competitors. The CCPC found no indication to suggest market failure or “excessive pricing” because of an abuse of dominance by any grocery undertaking at the time of publication.

### 4.2. Compare and Switch Study

39. This CCPC study looked at consumers who remain with the same provider without switching in the energy, telecommunications, retail banking and insurance sectors.<sup>5</sup> The CCPC found that while a large proportion of consumers are comfortable shopping around, some struggle to engage with products and services that are often essential in their daily lives and may not be getting the best value available to them. The report highlighted further areas for consideration relating to information transparency, fear of loss of service/coverage, digital divide, and vulnerable consumers.

### 4.3. Retail banking reforms

40. In 2023, the CCPC had several engagements with the Irish Department of Finance and the Central Bank of Ireland (“CBI”) on the implementation of recommendations of the Department’s *Retail Banking Review* following its publication in November 2022.<sup>6</sup> Those recommendations call for greater cooperation between the CCPC and CBI on the orderly functioning of markets, consumer protection and competition in the retail banking sector as well as the facilitation of increased information sharing. The CCPC also engaged with

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<sup>4</sup> This proposed transaction was subsequently blocked in 2024.

<sup>5</sup> <https://www.ccpc.ie/business/research/market-research/compare-and-switchunderstanding-consumer-behaviour-in-regulated-markets/>

<sup>6</sup> <https://www.gov.ie/en/publication/28cf9-retail-banking-review-november-2022/>

the Department of Finance on implementing the recommendation that the CBI consider the impact on competition when exercising its regulation-making powers.

#### **4.4. Legal services reform**

41. High legal costs, and a lack of price transparency, can undermine access to justice. The CCPC made a submission to the Irish Legal Services Regulatory Authority (“LSRA”) on the reform of education and training for legal professionals as well as supporting consumers in making legal cost comparisons. The CCPC also recommended that the LSRA establish a method of tracking the evolution of legal costs over time and issuing annual reports on cost and price trends. In addition, the CCPC also suggested that the LSRA should explore ways that enable consumers to review and compare information about legal services and help consumers understand the quality of service offered by competing providers of legal services.

#### **4.5. Regulating data**

42. The Data Governance Act (“DGA”) took effect in September 2023. The CCPC engaged with the Department of Environment, Climate and Communications and other stakeholders on the DGA and began preparations for acting as the competent authority for data governance. The CCPC also was appointed to the coordinating body for the DGA, the European Data Innovation Board.

#### **4.6. Foreign subsidies regulation**

43. The EU Foreign Subsidies Regulation (FSR), which came into force in January 2023, is intended to capture potentially distortive financial contributions by third countries in the EU. The CCPC engaged with the Department of Enterprise, Trade and Employment during 2023 on the drafting of legislation to give effect to the FSR in Ireland and to give the CCPC the powers it needs to assist the European Commission in its enforcement role.

#### **4.7. Engagement with other legislation**

44. The CCPC engaged with government departments, regulators, and the European Commission on a wide range of legislation and policy proposals impacting on competition, consumer protection, product safety and financial education during 2023. These included the European Accessibility Act, the Digital Services Bill, Access to Cash, the Data Act, the AI Act, and the updated Transition Year Curriculum (relating to financial education).

## **5. Resources**

### **5.1. Human resources**

45. At the end of 2023, 190 staff members were employed by the CCPC, which represents approximately a 28% increase on 2022.

#### **5.1.1. Annual budget 2023**

46. The CCPC is funded by way of an annual grant from the Department of Enterprise, Trade and Enterprise, and an industry levy in respect of specific consumer information and education functions in the financial services sector. The CCPC’s total budget in 2023 was

€20.315 million. As the CCPC is a dual agency for competition and consumer protection, many divisions' functions have a dual mandate including Criminal Enforcement; Policy, Research & International; Legal Services, Corporate Services; Human Resources; and Communications. Budgets are not apportioned between competition and other functions/activities.

**Table 2. Competition and Consumer Protection Commission Budget 2023**

Budget	2022 (€)	2023(€)
Exchequer	17,118,000	19,757,000
Levy	2,835,275	1,258,000 <sup>7</sup>
Total	19,953,275	20,315,000

### 5.1.2. Number of employees

**Table 3.**

Lawyers/ Legal Qualification (primarily competition focused)	36
Economists (primarily competition focused)	28
Other professionals (primarily competition focused)	7 <sup>8</sup>
Total (primarily competition focused)	71
Other Staff (e.g. staff working in Consumer Protection, Communications, Product Safety, Corporate Services and Human Resource functions)	119 <sup>9</sup>
<b>Total Staff</b>	<b>190</b>

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

- Competition Enforcement & Mergers – 25 staff.
- Cartel Enforcement – 11 staff.
- Legal Services – 16 staff.<sup>10</sup>
- Other professionals: in 2023 the CCPC employed three forensic IT investigators whose roles are primarily concerned with competition enforcement investigations.

<sup>7</sup> In 2022, the CCPC began a process of moving forward the collection of the levy incrementally, with a view to moving to a model where levies are collected from firms in advance rather than in arrears. This process involved two collections in 2022 which overstates the levy amount for 2022. Further information on the CCPC levy funding model is available on the CCPC's website at:

<https://www.ccpc.ie/business/about/finance-and-payments/levy-financial-services-firms/>

<sup>8</sup> 4 Criminal investigators, three forensic IT investigators.

<sup>9</sup> Other staff are not assigned specifically to competition functions but work across the organisation.

<sup>10</sup> The CCPC's Legal Services Division is a centralised division which provides legal services to all the CCPC's divisions. Within the legal services division, a competition unit comprising four staff specialises in competition work, but the number of doing competition work may vary throughout the year depending on business need.

## 5.2. Period covered by the above information

48. The above information covers the period 1 January 2023 to 31 December 2023.