

# Briefing

## Irish Merger Control 2022: Greater Regulatory Risk for Deal Makers



INSTITUTE OF DIRECTORS  
IN IRELAND

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A review of merger notifications for 2022 shows a continuing trend of greater regulatory risk for deal-makers: deals are subject to greater scrutiny, conditions and indeed risk of prohibition. This year will see the introduction of a separate regime of Irish foreign direct investment screening.

### By the Numbers

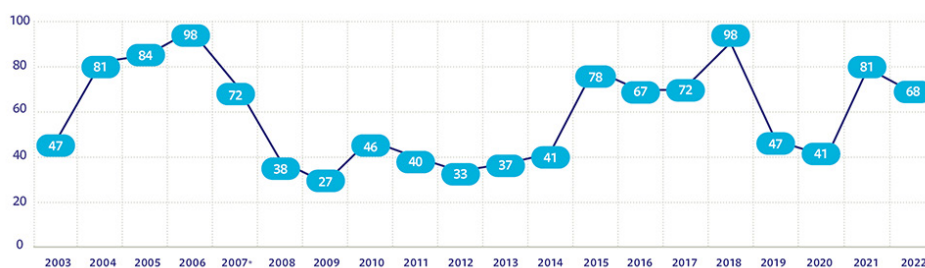
**2** – How many deals the Competition and Consumer Protection Commission (“CCPC”) effectively blocked this year: 1 by outright veto; 1 after the parties abandoned their deal on receipt of written objections from the CCPC.

**2006** – When the agency last successfully blocked a deal. Never before has CCPC intervention prevented 2 deals in a single year.

**4** – The number of filings rejected by the CCPC, requiring full re-notification, for incomplete responses to RFIs.

**8** – How many weeks an average Phase 1 clearance took, excluding ‘no issue’ deals assessed under the CCPC’s simplified procedure.

**Number of Deals Notified 2003-2022:**



### Increased CCPC Deal Scrutiny & Scepticism

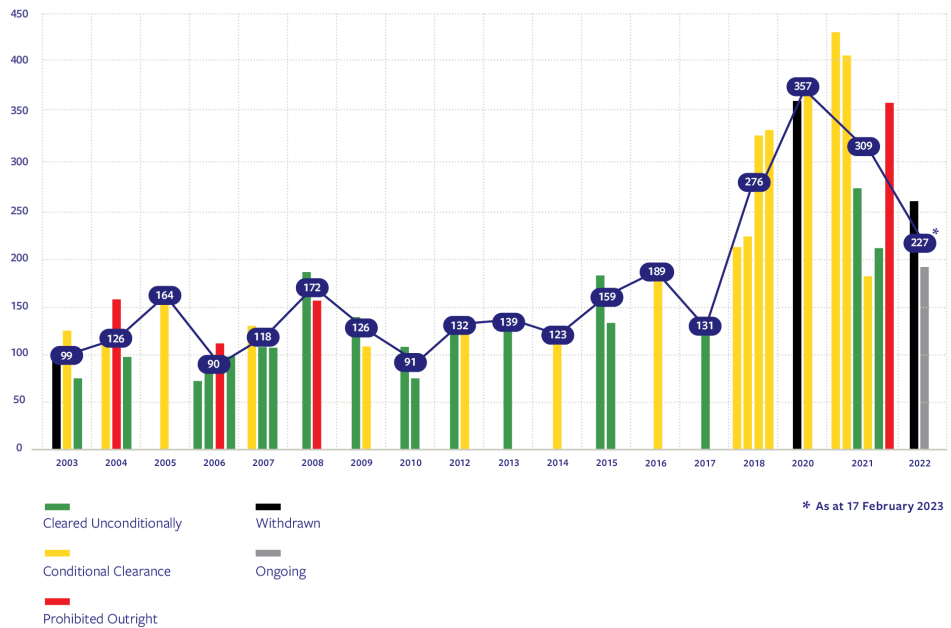
For the first time in over a decade, and only the third time in 20 years of Irish merger control, the CCPC prohibited a deal outright. Following a 12-month review, the CCPC concluded that acquisition by leading Irish drug wholesaler and pharmacy

group, Uniphar, of a pharmacy solutions business, Navi, would substantially lessen competition. According to the CCPC, the deal would unduly restrict competition on Irish markets for provision of “buying group services” and “common management and branding services.”

A second deal, involving two regional heating oil and diesel distributors, was abandoned following CCPC issuance of a written assessment (Irish equivalent to a Statement of Objections) after a 9-month merger review. A significant uptick in the number of filings rejected for incomplete information reflects the CCPC’s heightened scrutiny of deals.

### Timeframes

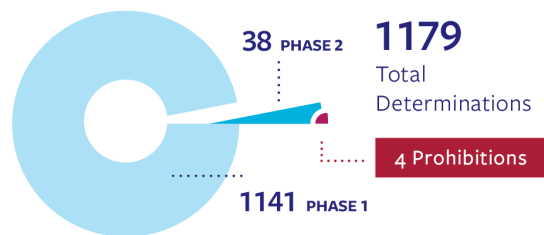
Average Phase 2  
Timeframes 2003–2022



### More Demanding Remedies Required to Clear Deals

A more robust approach to merger control enforcement is equally clear from the remedies required by the CCPC to clear deals. In Bank of Ireland’s €8 billion acquisition of rival KBC, a 4-to-3 bank deal, the CCPC required Bank of Ireland to commit €1 billion funding to non-bank lenders at a stipulated price.

### Decision Types 2003 – 2022



From 2003 to 2022, the CCI initiated 41 Phase 2 investigations and blocked 4 deals outright. 4 investigations were withdrawn and 4 investigations are ongoing as of 17 February 2023, one of which is a Phase 2.

\* As at 17 February 2023

## New & Greater Regulatory Risk for Deal-Makers

In addition to increased scrutiny of below-threshold deals following 2022 changes to Irish merger control rules, deal-makers need to be aware of potential filing requirements under new EU foreign subsidies rules, Irish foreign direct investment rules, and the EU's DMA.

### Key Investigations 2003-2022

* 2 to 1 - monopoly	3 to 2	4 to 3	5 to 4 (and above)	Other
<b>ENVA / RIALTA</b> (#1 and #2 = 100%)	<b>UNIPHAR / LXV REMEDIES</b> (Local area overlap divestment)	<b>BOI / KBC</b> (€1bn quasi-structural remedy)	<b>AIB / ULSTER BANK 2</b> (#1 and #4) (local area overlap divestment)	<b>EAST CORK OIL / MISTY LANE</b> (Determination awaited)
<b>EASON / ARGOSY</b> (#1 and #2 in the relevant market)	<b>UNIPHAR / NAVICORP</b> (Determination awaited)	<b>LINK GROUP / PEPPER</b> (#1 and #2 = ?%)	<b>PTSB / ULSTER BANK</b> (#3 and #4 = <30%)	<b>AIB / BOI / PTSB - SYNCH PAYMENTS JV</b> (extensive behavioural remedies)
<b>IBM / SCHLUMBERGER</b> (#1 and #2 in the relevant market)	<b>AIB / ULSTER BANK 1</b> (#1 and #3)	<b>FLUTTER / STARS</b> (#1 and #3 = 60%)	<b>TESCO / JOYCE'S SUPERMARKET</b> (local area overlap divestment)	<b>ESB / COILLTE (JV)</b> (extensive behavioural remedies)
* Number of participants pre- and post-merger	<b>BERENDSEN (ELIS) / KINGS LAUNDRY</b> (#1 and #3 = 60-70%)	<b>UNITED CARE / PHARMEXX</b> (#1 and #3 in highly concentrated market)	<b>BARNETT / ORIGIN / HALL</b> (#2 and #4 = <40%)	<b>FORMPRESS / MIDLANDS TRIBUNE</b> (extensive behavioural remedies)
	<b>TOPAZ / ESSO</b> (#1 and #2 in highly concentrated market with high entry barriers)	<b>UNIPHAR / WHELEHAN</b> (#2 and #4 = 35%)	<b>C&amp;C / LARGO</b> (#1 and #2 = 45%)	<b>BAXTER HEALTHCARE / FANNIN COMPOUNDING</b> (failing firm defence)
	<b>UNIPHAR / CAHILL MAY ROBERTS</b> (#2 and #3 = c. 45%)	<b>STENA / P&amp;O</b> (#1 and #4 = 50%)	<b>GALCO / SPERRIN</b> (#1 and #2 = 50%)	<b>BWG / 4 ACES</b> (minority cross-ownership)
	<b>HEINEKEN / S&amp;N</b> (#2 and #3 = 55%)	<b>GRAFTON / HEITON</b> (#1 and #2 = 70%)	<b>C&amp;C / BRITVIC</b> (#1 and #2 = 65%)	<b>VHI / SWIFTCARE</b> (vertical overlap)
	<b>KINGSPAN / XTRATHERM</b> (#1 and #2 = 85%)	<b>PREMIER FOODS / RHM</b> (#1 and #2 = 90%)	<b>COMMUNICORP / EMAP</b> (#1 and #2 = 80%)	<b>UGC (CHORUS) / NTL</b> (minority cross-ownership)
		<b>KERRY GROUP / BREEO *</b> (#1 and #2 = 40%)		<b>COILLTE / WEYERHAEUSER</b> (vertical overlap)

\* Overturned on appeal

- Cleared Unconditionally
- Conditional Clearance
- Prohibited Outright
- Withdrawn

*Further information is available from*



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