

Competition Law: Year in Review 2022

Most Notable Cases and Developments



CCPC Issues First Prohibition Decision in a Decade

Following a Phase II investigation, the Competition and Consumer Protection Commission (CCPC) prohibited Uniphar Plc's proposed acquisition of pharmacy solutions business, NaviCorp Limited. The CCPC's investigation found that the transaction would result in a Substantial Lessening of Competition (SLC) in the markets for retail pharmacy buying group services and common management and branding services in Ireland. While Uniphar and NaviCorp have until 12 February 2023 to appeal the CCPC's determination to the High Court, Uniphar has announced that it has abandoned the transaction.

This marks the first time in a decade that the Irish Competition Authority has taken steps to block a transaction. In 2012, the CCPC's predecessor, the Competition Authority, sought to challenge Eason and Son Limited's proposed acquisition of book wholesaler and distributor, Argosy Libraries Limited, in the Irish courts, causing the parties to abandon the transaction.



East Cork Oil Abandons Proposed Acquisition Due to Substantive Concerns

East Cork Oil (ECO) abandoned its plans to acquire competing fuel distributor, Misty Lane, causing the CCPC to close its Phase II investigation. This decision was taken after the CCPC issued an assessment alleging that the proposed transaction would likely result in a SLC in the supply of kerosene, agricultural diesel and road diesel to small customers in certain parts of Ireland.



CCPC Clears Three Retail Banking Mergers

KBC and Ulster Bank are in the process of withdrawing from the Irish banking market, reducing the number of retail banks with physical branch networks in Ireland from five to three. Against this backdrop, the CCPC cleared three 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 cases involved lengthy Phase II reviews and are noteworthy in several respects. First, the CCPC adopted different counterfactuals for KBC and Ulster Bank and cleared the Ulster Bank transactions unconditionally, whereas BOI/KBC was cleared subject to commitments. The CCPC's approach was underpinned by the fact that KBC had not made a firm decision to leave the market before the proposed transaction with BOI, whereas the CCPC accepted the argument that Ulster Bank would have exited the State irrespective of whether or not the transactions with AIB and PTSB proceeded. The commitments agreed by BOI were novel and include a commitment to make €1 billion in total funding available to certain non-bank lenders by purchasing securities issued by them.

Second, the CCPC followed the European Commission's approach in relation to transactions that are notified in close temporal proximity. Indeed, in PTSB/Ulster Bank, the CCPC took into consideration the earlier notifications in BOI/KBC and AIB/PTSB, but not vice versa. However, the CCPC clarified that it could take into account future transactions if they could be reasonably predicted when assessing an earlier notified merger.



Clearance of New Mobile Payments Service

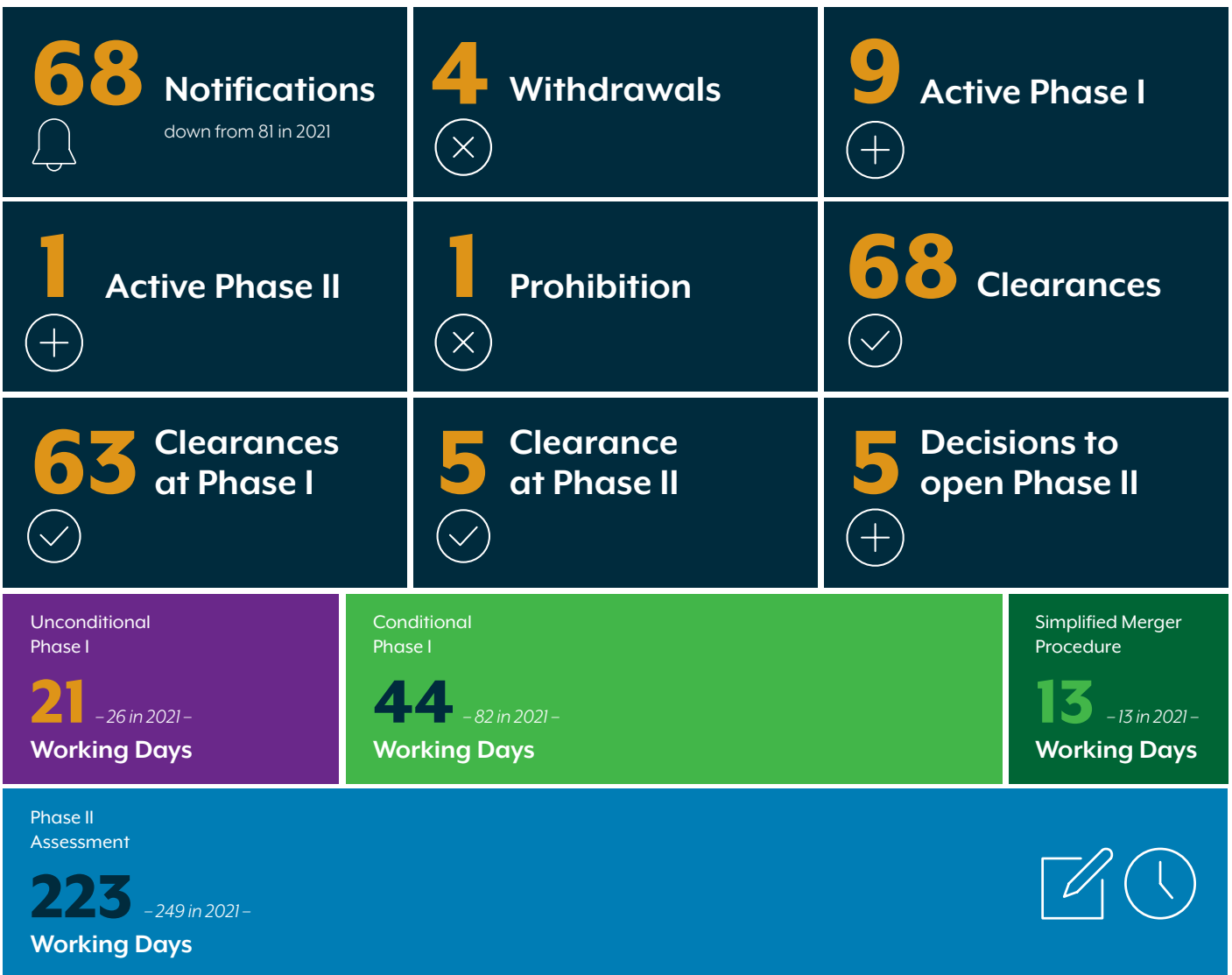
Following a Phase II investigation, the creation of a joint venture between Ireland's three main retail banks to establish a new industry-wide mobile payment system service was cleared by the CCPC, subject to legally binding behavioural commitments. The commitments agreed by the parties include the amendment of certain corporate governance provisions, including the appointment of directors independent of the JV parents, and the introduction of objective eligibility criteria for competitors that wish to participate in the Synch mobile payments service.



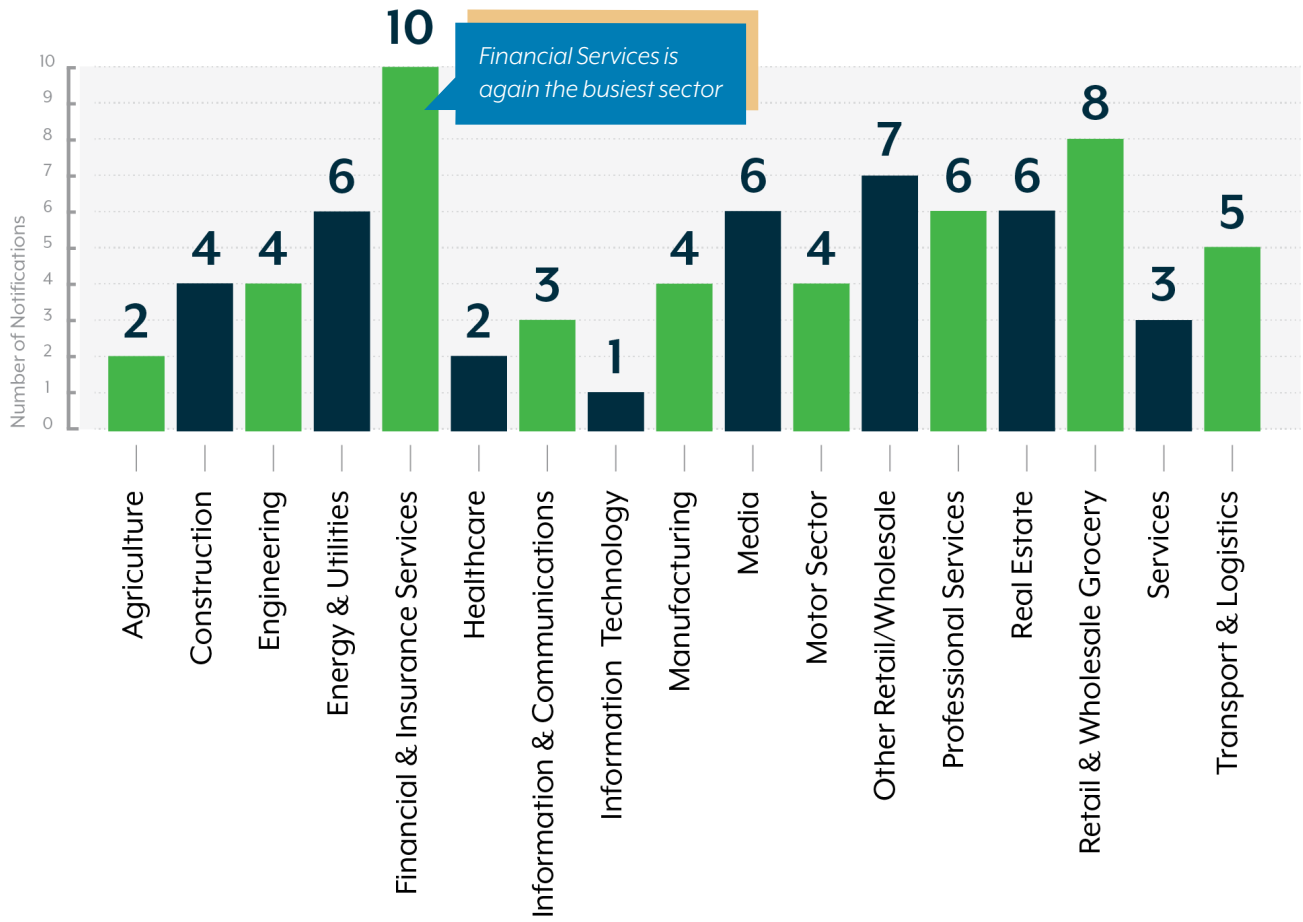
CCPC Agrees Phase II Divestment Remedy in Tesco/Joyce

The CCPC cleared the acquisition of 10 Joyce's Supermarkets in Galway by Tesco, provided that Tesco divests one of Joyce's supermarkets and commits not to buy the business back for a period of ten years following its sale. The transaction marks Tesco's first significant investment in a portfolio of supermarkets in Ireland.

A Busy Year for the CCPC's Mergers Division



Sectors Involved



Looking Ahead To 2023



Competition (Amendment) Act 2022

The Competition (Amendment) Act 2022 is expected to come into force in Q1 of 2023. The Act implements the ECN+ Directive (Directive 2019/1) and makes a number of other substantial changes to Ireland's competition laws.

As outlined in our earlier Insight – [‘Go Easy on Me’](#) – 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. Against this backdrop, it is anticipated that the CCPC will resume dawn raid activity, which largely fell by the wayside during the Covid-19 pandemic. Information about our dedicated Dawn Raid Response Team is available on [our webpage](#).

This administrative fining power is 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. As highlighted in our recent Insight – [Spotlight on Resale Price Maintenance Conduct](#) – the CCPC has proposed to extend the ALP to cover non-cartel conduct in the form of resale price maintenance.

The ALP will exist alongside the existing Cartel Immunity Programme (CIP), creating the possibility for parties to a cartel infringement to make parallel applications for immunity under both the ALP and the CIP. Therefore, we expect to see a significant uptick in leniency applications, including in relation to non-cartel conduct in 2023 and beyond. For further insights on leniency applications under Irish law, see the contribution that our Competition & Antitrust team made to the [Q&A guide to cartel leniency law in Ireland](#) accessible on Thomson Reuters Practical Law.

The Act also gives the CCPC significant powers in relation to merger control, including the ability to:

- call in below threshold mergers for review
- impose interim measures
- initiate proceedings for gun-jumping offences, and
- unwind mergers or acquisitions

Our Insight [‘A New Era of Intervention by the CCPC in Below Threshold Mergers?’](#) explores the potential scope and implications of the CCPC's new call-in power.



Screening of Third Country Transactions Bill 2022

The [Screening of Third Country Transactions Bill 2022](#) (the Bill) proposes to introduce the State's first investment screening regime, which will be implemented alongside Regulation (EU) 2019/452 (the EU Screening Regulation). The Bill, which is expected to come into force by mid 2023, will enable the Minister for Enterprise, Trade and Employment to review certain transactions that may present risks to the security or public order of the State. Our [Insights on the Screening of Third Country Transactions Bill](#) outline the key features of the Bill. Our Competition & Antitrust team has also contributed to the [International Comparative Legal Guide on Foreign Direct Investment Regimes 2023](#).

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.

Our Expertise

- Merger control
- Antitrust investigations, immunity applications and dawn raids
- Digital regulation
- 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

*Clients describe the team as
"responsive and business-focused."*

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Chambers & Partners, 2022

*"We find they are the most
knowledgeable practice we have dealt
with in Ireland."*

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Legal 500, 2022

Key Contacts



Tara Kelly
Partner,
Head of Competition & Antitrust
+353 86 145 5201
tarakelly@mhc.ie



Laura Durning
Partner,
Competition & Antitrust
+353 87 776 2593
ldurning@mhc.ie



Liam Heylin
Partner,
Competition & Antitrust
+353 86 031 6955
lheylin@mhc.ie



Michael Madden
Partner,
Competition & Antitrust
+353 87 956 7326
mmadden@mhc.ie

Dublin

London

New York

San Francisco

