

Trends and Highlights 2021

Public M&A

This report, which we intend to publish annually, provides a round-up of public M&A transactions involving Irish incorporated companies in 2021 and the trends, developments and highlights which can be derived from them. We have focused on transactions that completed or were terminated in 2021 and which were subject to the supervision of the Irish Takeover Panel.

The transactions mentioned concern Irish incorporated public companies whose shares are traded on NASDAQ or NYSE or on Euronext Dublin or the London Stock Exchange. Non-Irish incorporated companies are not generally subject to the Irish Takeover Rules (subject to some exceptions, none of which applied during the period under review).

By way of comparison with the UK, there were 55 firm offers (an announcement under Rule 2.7 of the City Code on Takeovers and Mergers, equivalent to Rule 2.5 of the Irish Takeover Rules) announced in the UK in 2021 versus three announced in Ireland (others were announced in 2020 which completed or were terminated in 2021, however). This numerical disparity makes a direct comparison difficult to make, particularly in relation to trends and sectoral focus.

We also comment on the outlook for regulatory and other developments in 2022, which include substantive amendments to the Irish Takeover Rules which will align the Irish Takeover Rules in some respects with the City Code and in terms of potential for shareholder activism.

We hope you will find our conclusions interesting.

1 February 2022



1. Overview of Public M&A in Ireland in 2021

By way of overview there were:

- four public Irish M&A transactions which announced prior to 1 January 2021 which completed or were terminated in 2021;
- two public M&A transactions which were both announced and completed during 2021; and
- one further transaction which was announced in late 2021 and completed early in 2022.

The total of seven transactions compares with only one public M&A transaction during 2020 (concerning Allergan plc), which was completed, although a number of transactions were announced and were underway by year end as mentioned below.

Willis Towers Watson – Rule 2.5 Announcement 9 March 2020, terminated 26 July 2021

- » **Offer consideration:** 1.08 Aon plc shares for each WTW share
- » **Offeree sector:** Financial Services/Insurance
- » **Offeror type:** Strategic
- » **Listing venue:** Nasdaq
- » **Scheme/offer:** Scheme
- » **Recommended:** Yes

This was an offer by Aon to combine with Willis Towers Watson by means of a scheme of arrangement with an implied combined equity value of \$80bn, under which each Willis Towers Watson shareholder was to receive 1.08 shares in Aon plc for each share held in Willis Towers Watson plc. On closing, based on the Rule 2.5 Announcement, Willis Towers Watson shareholders would have owned approximately 37% of the combined company and Aon shareholders would have owned approximately 63%. On 26 July 2021, the parties agreed to terminate the merger on account of having “reached an impasse with the US Department of Justice” in regard to a necessary regulatory clearance. Aon agreed to pay a termination fee of \$1bn to Willis Towers Watson and the scheme of arrangement lapsed.

Abbey plc – Rule 2.5 Announcement 10 December 2020, offer document 22 December 2020, completed 22 April 2021

- » **Offer consideration:** £14.4 million (for 4.38 per cent)
- » **Offeree sector:** Home Construction
- » **Offeror type:** Strategic
- » **Listing venue:** Euronext Growth and AIM
- » **Scheme/offer:** Offer
- » **Recommended:** Yes

This recommended offer was by Gallagher Holdings for the 4.38 per cent of Abbey plc not already owned by Gallagher Holdings. While it valued the entire issued share capital of Abbey plc at £328.8 million, the value of the offer itself was £14.4 million. The offer was closed after acceptances in respect of 3.2 per cent of Abbey’s share capital, and 73.13 per cent of the shares subject to the offer, were received.

CPL Resources plc - Rule 2.5 announcement 4 November 2020, Scheme Circular 25 November 2020, completed 21 January 2021

- » **Offer consideration:** €317.8 million
- » **Offeree sector:** Human Resources
- » **Offeror type:** Strategic
- » **Listing venue:** Euronext Growth and AIM
- » **Scheme/offer:** Scheme
- » **Recommended:** Yes

This cash offer by an affiliate of Japanese trade buyer, Outsourcing Inc. was by means of a recommended scheme of arrangement which valued CPL Resources at €317.8 million. This offer represented a premium of 36.4% over the market price of CPL shares on the last business day before the Rule 2.5 announcement.

Applegreen plc - Rule 2.5 announcement 22 December 2020, Scheme Circular 25 January 2021, completed 10 March 2021

- » Offer consideration: €718.1 million
- » Offeree sector: Retail
- » Offeror type: Private Equity and Founder consortium
- » Listing venue: Euronext Growth and AIM
- » Scheme/offer: Scheme
- » Recommended: Yes

This cash offer by a consortium formed between Blackstone Infrastructure Partners and Applegreen's founders was by means of a recommended scheme of arrangement which valued Applegreen at €718.1 million. This offer represented a premium of 48.2% over the market price of Applegreen shares on the last business day before the announcement of a possible offer.

UDG Healthcare plc – Rule 2.5 announcement 12 May 2021, revised Scheme Circular 7 July 2021, completed 16 August 2021

- » Offer consideration: £2.757 billion
- » Offeree sector: Healthcare
- » Offeror type: Private Equity
- » Listing venue: London Stock Exchange Main Market
- » Scheme/offer: Scheme
- » Recommended: Yes

This cash offer by an affiliate of private equity firm Clayton, Dubilier & Rice LLC was by means of a recommended scheme of arrangement, originally valuing UDG Healthcare at £2.611 billion. This was subsequently increased to £2.757 billion after it became clear that certain shareholders were not willing to accept the original price recommended by the board of UDG Healthcare. The final offer represented a premium of 28.3 per cent over the market price of UDG shares on the last business day before a possible offer was announced.

Strongbridge Biopharma plc - Rule 2.5 announcement 24 May 2021, Scheme Circular 30 July 2021, completed 5 October 2021

- » Offer consideration: 0.7840 Xeris Biopharma share and 1 CVR for each Strongbridge share
- » Offeree sector: Healthcare
- » Offeror type: Strategic
- » Listing venue: Nasdaq
- » Scheme/offer: Scheme
- » Recommended: Yes

The offer for Strongbridge Biopharma by means of a scheme of arrangement was by a publicly quoted trade buyer, Xeris Pharmaceuticals, Inc. for Xeris Pharmaceuticals stock and contingent value rights (CVRs). The offer valued Strongbridge Biopharma at \$267m, based on the closing price of Xeris Pharmaceuticals stock just prior to the announcement of the offer. The offer represented a 12.9% premium to the market price of Strongbridge Biopharma on the last business day before a possible offer was announced, not including the possible \$1 value of each CVR payable to Strongbridge Biopharma shareholders for each share in cash or Xeris Pharmaceuticals shares (at its election) on the happening of certain events relating to the performance of certain products of the combined group after closing. On closing, based on the Rule 2.5 Announcement, Xeris Pharmaceuticals shareholders would own approximately 60% of the combined company and Strongbridge Biopharma shareholders would own 40%. This transaction was unusual in that it was an all securities exchange offer and included a high proportion of the acquisition consideration in CVRs.

Yew Grove REIT PLC - Rule 2.5 announcement 19 November 2021, Scheme Circular 30 November 2021 completed 11 January 2022

- » **Offer consideration:** €127.8 million
- » **Offeree sector:** Real Estate
- » **Offeror type:** Strategic
- » **Listing venue:** Regulated market of Euronext Dublin and AIM
- » **Scheme/offer:** Scheme
- » **Recommended:** Yes

This recommended cash offer by a trade buyer, Slate Office REIT, valued Yew Grove at €127.8 million, representing a small premium of 1.7% to Yew Grove's shares' closing price just prior to the announcement of the offer but permitted Yew Grove shareholders to retain a dividend which increased the effective share price from €1.017 to €1.029. This represented a small premium to net asset value also and was recommended by Yew Grove on the basis that "the Company has found it increasingly difficult to raise sufficient capital to meet our aspirations, and our shareholders' expectations, for growth."

2. Comparison with the UK in 2021

As mentioned above, due to the small number of deals in Ireland, it is not easy to draw any meaningful comparisons with the UK, but some comparative comments are made below.

Competitive situations

There were no competitive bids in Ireland or competitive auction processes as opposed to several competitive situations and auctions as occurred in the UK.

Scheme v offer

In relation to offer structuring, the scheme of arrangement was by far the most popular structure in the UK, with 45 deals announced in the UK structured as schemes and 18 as contractual offers. This is consistent with Irish practice where only one offer, the offer for Abbey plc, proceeded by way of a contractual offer, and that was in effect a "sweeping up" of a small minority shareholding.

Shareholder Activism

In terms of shareholder activism, this was a notable feature of public M&A in the UK in 2021, for example in relation to such companies as Blue Prism plc, where shareholders acted as a catalyst for a sale of the company, resulting ultimately in a competitive process, KAZ Minerals plc where shareholder opposition led to an offer increase and William Hill plc where a hedge fund shareholder acquired scheme shares with a view to voting against the scheme of arrangement and opposed the sanction of the scheme. In Ireland, the offer for UDG Healthcare plc notably had to be increased to secure shareholder support.

Switches

There were no "switches" from schemes to offers or vice versa in Ireland in 2021, although there were several in the UK.

Hostile bids

There were no hostile bids in Ireland in 2021, as opposed to three in the UK. There were nine hostile approaches which did not result in a bid in the UK in 2021, and none such in Ireland.

Private equity v other funded bids

Of the 55 deals announced in the UK in 2021, 33 were funded by private equity bidders. The situation in Ireland is that, of the seven transactions noted above, two (Applegreen and UDG Healthcare), were funded or part funded by a private equity buyer or a consortium including a private equity participant, two (the terminated Aon Willis Towers Watson combination and Strongbridge Biopharma) were securities exchange mergers and three (Abbey, CPL Resources and Yew Grove REIT) were trade or shareholder acquisitions.

Terms of transactions

With the exception of Abbey plc, all of the transactions in Ireland involved, as is customary in scheme of arrangement based transactions, transaction, combination or merger agreements. In addition, as permitted by the Irish Takeover Rules, expenses reimbursement agreements were entered into in most cases, under which, in certain circumstances, a bidder could be reimbursed its acquisition costs up to a value of 1% of the offer. In most instances, undertakings to vote in favour of the relevant scheme were also obtained.

3. Predictions for 2022

Panel Rules consultation

The Irish Takeover Panel published a consultation paper proposing extensive changes to the Irish Takeover Rules on 21 December 2021. Submissions are due to close on 28 February 2022. A number of the proposed Rule changes are in the nature of updating, such as to take account of migration of participating securities to the Euroclear Bank system of intermediated share ownership completed with respect to the Irish equity securities market as a whole in 2020, to update statutory references and update the position in relation to the use of electronic communications, websites, social media, videos and information (including financial information) disclosed by weblink. However, a number of material changes, which will more closely align the Irish Takeover Rules in some respects with the City Code on Takeovers and Mergers, are being proposed, together with attendant changes to the relevant Notes, including the following (non-exhaustive) changes:

- **Strategic review announcements:** Rule 2.2(f) will be amended to treat a strategic review announcement which includes reference to an offer as an option as normally involving the commencement of an offer period.
- **PUSU:** Rule 2.4 & 2.6 will be amended to include a new 28 day PUSU (put up or shut up) regime for any identified offeror, as has been in place in the UK under the City Code for some time.
- **Contents of 'firm intention' announcement:** Rule 2.7 (existing Rule 2.5) will require the offeror to address in the firm intention announcement certain matters (a number of which are provided for in the current Rule 24.1) regarding its intentions for the offeree and its employees and with respect to itself and its employees.
- **Restriction on certain share acquisitions:** Rule 4.6 will be amended to restrict acquisitions of interests in shares in an offeree by an asset acquirer in competition with an offer.
- **Dividend retention:** Rule 6.2(c) & (d) will be amended to set out in greater detail the position under Rule 6.1 in relation to the scenarios where shareholders are entitled under an offer to receive and retain a dividend but the ex-dividend date has not yet occurred and where shareholders are not entitled under the offer to receive and retain a dividend which has been announced by the offeree.
- **Disclosure of dealings:** Rule 8.3 requiring disclosure of interests is being amended to require an opening position disclosure by the offeree, a securities exchange offeror, a 1%+ shareholder in the offeree or securities exchange offeror and certain exempt principal traders connected with the offeror or offeree.
- **Mandatory offers:** While no major changes to Rule 9.1 relating to mandatory offers are being made, the note to Rule 9.1 is being amended to draw attention to the fact that the Panel will when considering whether shareholders voting together are acting in concert have regard to any statement by ESMA on shareholder co-operation and acting in concert with respect to the EU Takeover Bids Directive. This has been the case in practice in any event.
- **Financing Conditions:** A new Rule 13.4 is proposed which requires that an offer may be made subject to a financing condition by means of an offer of new securities may only itself be subject to the condition required, as a matter of law or regulatory requirement, in order to issue such securities or to have them listed or admitted to trading and that the Panel must be consulted in advance in relation to such conditions.
- **Shareholder approval of frustrating action:** Rule 21.1(b) is being replaced by a more detailed rule which sets out the requirements with which an offeree is required to comply when seeking shareholder approval as an exception to the prohibition on frustrating actions in Rule 21.1.

- **Profit forecasts:** Rule 28 is proposed to be completely revised and the new Rule is, in the main, based on the principles underpinning Rule 28 of the City Code.
- **Asset valuations:** Rule 29 relating to asset valuations again is being broadly brought into line with the asset valuation rules under the City Code
- **Distribution of announcements and documents:** Rule 30 is a new Rule which amends the requirements for making announcements and distributing documentation.

We expect that the consultation will result in changes to the Irish Takeover Rules materially as proposed, which will align practice with the UK in certain important areas, including PUSU, opening position disclosures, profit forecasts and asset valuations.

[Public interest interventions](#)

[The Investment Screening Bill 2020 may be enacted in 2022](#) and if enacted, would empower the Minister for Enterprise, Trade and Employment to respond to threats to Ireland's security and public order posed by particular categories of foreign investment, and to prevent or mitigate such threats. Under the proposed legislation, the Minister will be able to assess, investigate, authorise, condition, prohibit or unwind foreign investments from outside of the EU, based on a range of security and public order criteria. We expect that this will result in additional conditionality to offers.

[Transaction structuring and other features](#)

We expect schemes of arrangement to continue to be the preferred transaction execution method as the view is that it is easier to give transaction certainty with the threshold for a scheme of arrangement approval vote (75% and a majority in number of those attending and voting) as opposed to 80% of all shares subject to an offer (90% for an issuer whose shares are listed on a main securities market) in order to be able to achieve a statutory squeeze-out of a non-assenting minority.

[Activism](#)

As noted in the [MHC AGM Season Report 2021](#), there has been a marked decline in shareholder engagement in 2021. This may allow activist shareholders with smaller shareholdings to wield a disproportionate influence. We expect that an activist shareholder who wishes to disturb the progress of a transaction will be alive to this possibility.

4. MHC in Public M&A



Advised **Goldman Sachs International** in connection with the €718m offer by way of recommended scheme of arrangement by Causeway Consortium Limited for Applegreen plc.



Advised **Wells Fargo Securities International Limited** on its role as financial adviser to Henderson Park NV in connection with its recommended offer by way of scheme of arrangement for Green REIT plc.



Advised **Nomura International plc** in connection with the €318m offer by way of recommended scheme of arrangement by Outsourcing Inc. for CPL Resources plc.



Advised **Dragon Oil plc** in relation to the recommended £3.7bn cash offer by Emirates National Oil Company.



Advised **JP Morgan Securities plc** on its role as financial adviser to Mediahuis NV in connection with its recommended offer by way of scheme of arrangement for Independent News & Media plc.



Advised **Deutsche Bank A.G.** in relation to the recommended €1.4bn offer by IAG for Aer Lingus.



Advised **SCISYS** on its inversion under an Irish holding company and admission to AIM and Euronext Dublin and on the recommended offer by way of scheme of arrangement by CGI, Inc.



Acted for **Activision Blizzard, Inc.** in its \$5.9bn recommended offer by way of scheme of arrangement for King Digital Entertainment plc.

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