

2021

Review of Irish merger control in 2020

At a glance

Merger Control in Ireland

- The Competition and Consumer Protection Commission (the **CCPC**) is Ireland's competition and consumer protection agency.
- Under the Competition Act 2002 (as amended) (the **Act**), it is mandatory to notify a merger or acquisition to the CCPC if, in their most recent respective financial years, the combined turnover in Ireland of all the undertakings involved is at least €60m and the turnover in Ireland of each of two or more of the undertakings involved is at least €10m.
- Media mergers (as defined under the Act) must be notified either to the European Commission under the EU Merger Regulation or, if not, to the CCPC under the Act irrespective of the turnover of the undertakings involved (as well as being separately notified to the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media (the **Minister**)).

Number of mergers notified to the CCPC in 2020

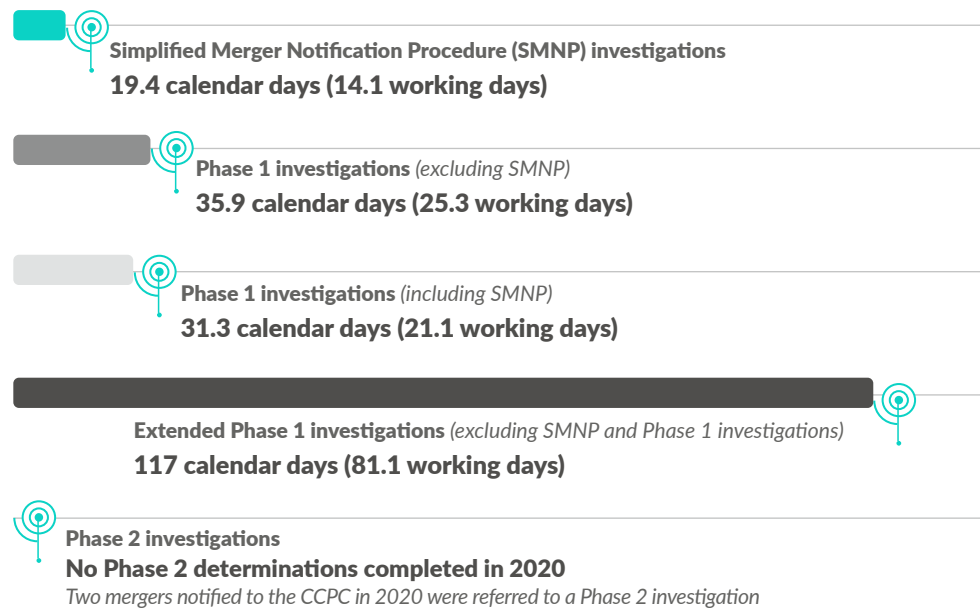


41 notifications to the CCPC in 2020

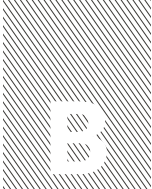


decrease in the number of notifications in 2019

Average time periods for CCPC investigations

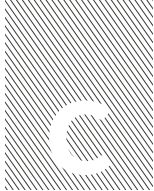


This review of Irish merger control in 2020 is based on information that was available at the date of publication. Public determinations were not available for every transaction decided in 2020



What do we see happening in 2021?

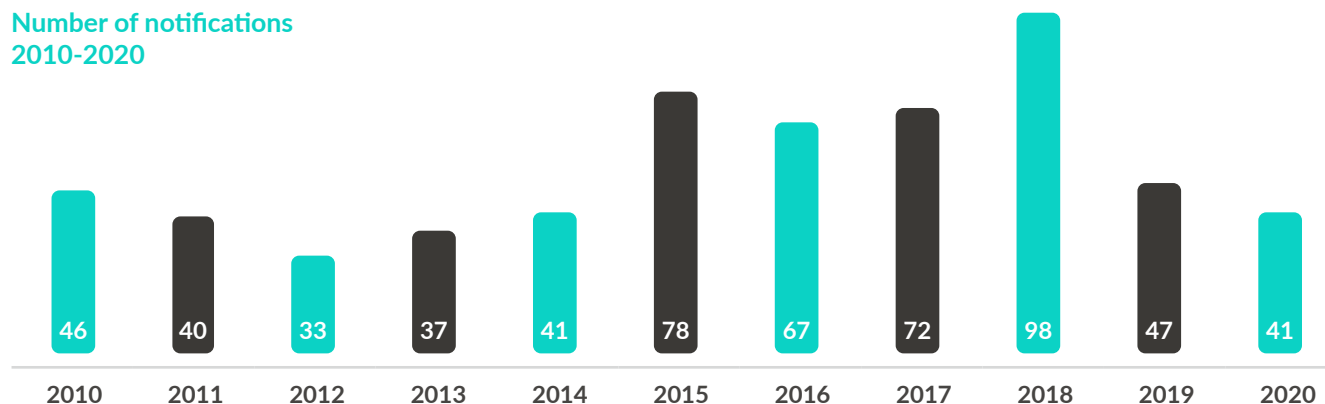
- The SMNP will be tested over the course of a full year in 2021, and its effectiveness will become clearer.
- The CCPC's heightened focus on procedural issues will likely continue into 2021 with a particular focus on gun-jumping (i.e. not notifying a transaction which is notifiable compulsorily or implementing a notified transaction before CCPC clearance).
- The COVID-19 pandemic could have reduced the turnover in Ireland of various businesses. Notification is compulsory when businesses have turnovers above particular thresholds. It is possible that businesses could have had lower turnovers in 2020 because of COVID-19 and therefore not have to notify in 2021 certain transactions to the CCPC. If the impact of COVID-19 were to be a reason for the reduction in the number of compulsory merger notifications, the CCPC may undertake more voluntary investigations of below-threshold transactions to assess their effect on competition in Ireland.
- Now that the EU Merger Regulation no longer applies in the UK following Brexit, some transactions which would have been notifiable in the past to the European Commission (and not to Member State merger control agencies such as the CCPC) could now lack an "EU dimension" and be notifiable to merger control agencies such as the CCPC. This means that some large transactions, which would have otherwise gone to the European Commission, could be notifiable to the CCPC (and some other Member State merger control agencies).
- The easing of the COVID-19 pandemic may result in increased merger activity in Ireland. Early CCPC notification activity indicates this – there were as many notifications in the first 13 days of 2021 as in the first 43 days of 2020.
- There may also be significant changes to Irish merger control as a result of proposals by the Irish Government to introduce legislation in 2021 which would allow the CCPC:
 - » to take summary (i.e., non jury-trial) prosecutions for gun-jumping offences (at present, only the Director of Public Prosecutions may take such prosecutions)
 - » impose interim orders to prevent premature integration of mergers
 - » unwind implemented mergers
 - » obtain legislative clarity about its power to accept notifications of transactions which have been completed and notified on a voluntary basis
 - » widen the number of persons to whom it may oblige the provision of information to the CCPC on a notified merger.
- However, there are no suggestions that transaction-value thresholds or any changes to the current substantive standard of review of mergers will be introduced.

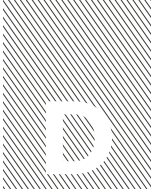


Procedural trends in 2020

- The [SMNP](#) commenced in July 2020, shortening review periods for mergers or acquisitions which do not raise significant competition concerns. The CCPC also published [Simplified Merger Notification Procedure Guidelines](#). The CCPC cleared seven mergers using the SMNP in 2020.
- In March 2020, the CCPC cleared a media merger (DMG/JPI Media) that had originally been notified to it in 2019 but that was declared void for having been put into effect before receiving clearance from the CCPC (typically referred to as “gun-jumping”). The CCPC stated that by putting the notified transaction into effect prior to receiving CCPC clearance, the parties had breached section 19(1) of the Act and, accordingly, the notified transaction was void.
- The CCPC continued to be rigorous in its merger control scrutiny in 2020 with detailed assessments of notified mergers as evidenced by the material increase in the number of extended Phase 1 reviews from 2019. There were ten such notifications and 12 such clearances in 2020 compared to six notifications and five clearances in 2019. In this context, there was a significant number of requests for further information that materially extended the clearance process for the businesses involved.
- 2020 saw the re-notification of a transaction which had already been notified to and cleared by the CCPC. In 2019, the Applied Materials/Kokusai transaction was approved by the CCPC. Section 19 of the Act provides in effect that a CCPC clearance determination is only valid for 1 year. As the transaction was not implemented within a year of the determination it was notified again (and cleared).

Number of notifications
2010-2020





Irish merger control in 2020 – the detail

General timelines



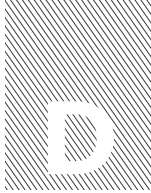
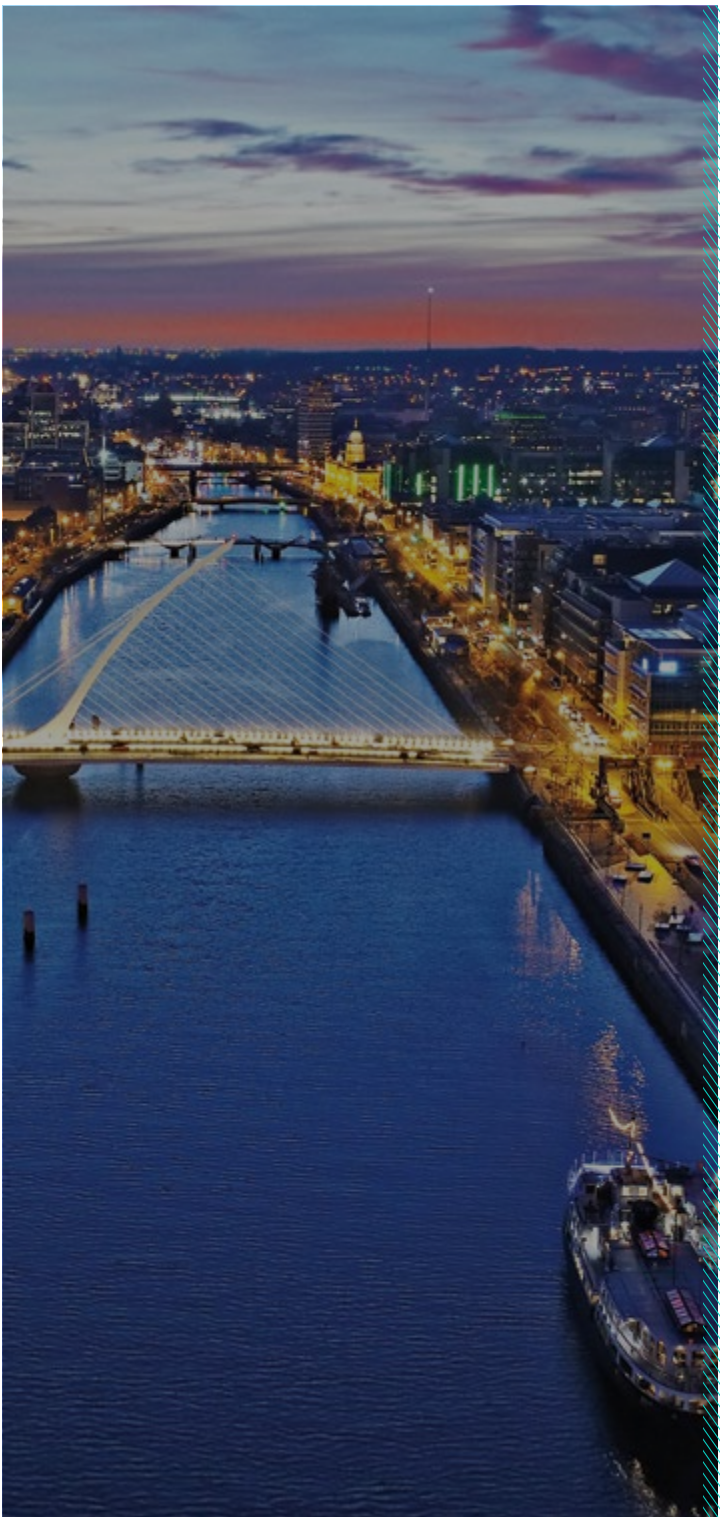
- 41 merger notifications were made to the CCPC in 2020, compared to 47 notifications in 2019 (a decrease of 13%). The tally of 41 is the lowest number of notifications since 2014.
- The lower number of merger notifications in 2020 continues the trend that saw a material drop in the number of notifications in 2019. This was likely due, in large measure, to the increased merger notification thresholds that entered into force in January 2019.
- Of the 41 merger notifications made in 2020, the CCPC had issued clearances in 32 of these cases by 31 December 2020.
- There were 11 merger clearances by the CCPC in 2020 that related to notifications notified in 2019. All of these were cleared within the first two months of 2020, with the exception of:
 - » DMG/JPI Media (cleared on 10 March 2020)
 - » Portlón (Parma)/Galway Clinic (cleared on 24 April 2020)
 - » Timac Agro (Holdings) (Groupe Roullier)/Grassland Agro (cleared on 27 May 2020)¹.

Voluntary notifications to the CCPC



- There was one voluntary notification to the CCPC in 2020 (Eason/Dubray Books).
- Businesses are only required to notify mergers to the CCPC if they reach the mandatory merger control thresholds under Part 3 of the Act (or otherwise constitute a media merger as defined under the Act in which case they must be notified either to the European Commission under the EU Merger Regulation or, if not, notified to the CCPC irrespective of the turnover of the undertakings involved) (as well as being notified to the Minister).
- However, parties may decide to notify a deal to the CCPC on a voluntary basis under the Act because the CCPC can still investigate below-threshold deals under its general competition law powers. Businesses still need to consider whether their deals raise competition issues in Ireland irrespective of the size of their most recent respective financial years.

¹ According to the public determination [M/19/044 - Timac Agro \(Holdings\) \(Groupe Roullier\)/Grassland Agro](#) "at the suggestion of the [CCPC], the [parties] voluntarily withdrew [a notification originally made on 18 December 2019] and, on a precautionary basis, re-notified the [transaction] to the [CCPC] on 17 April 2020."

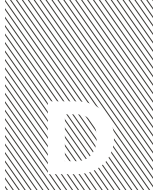
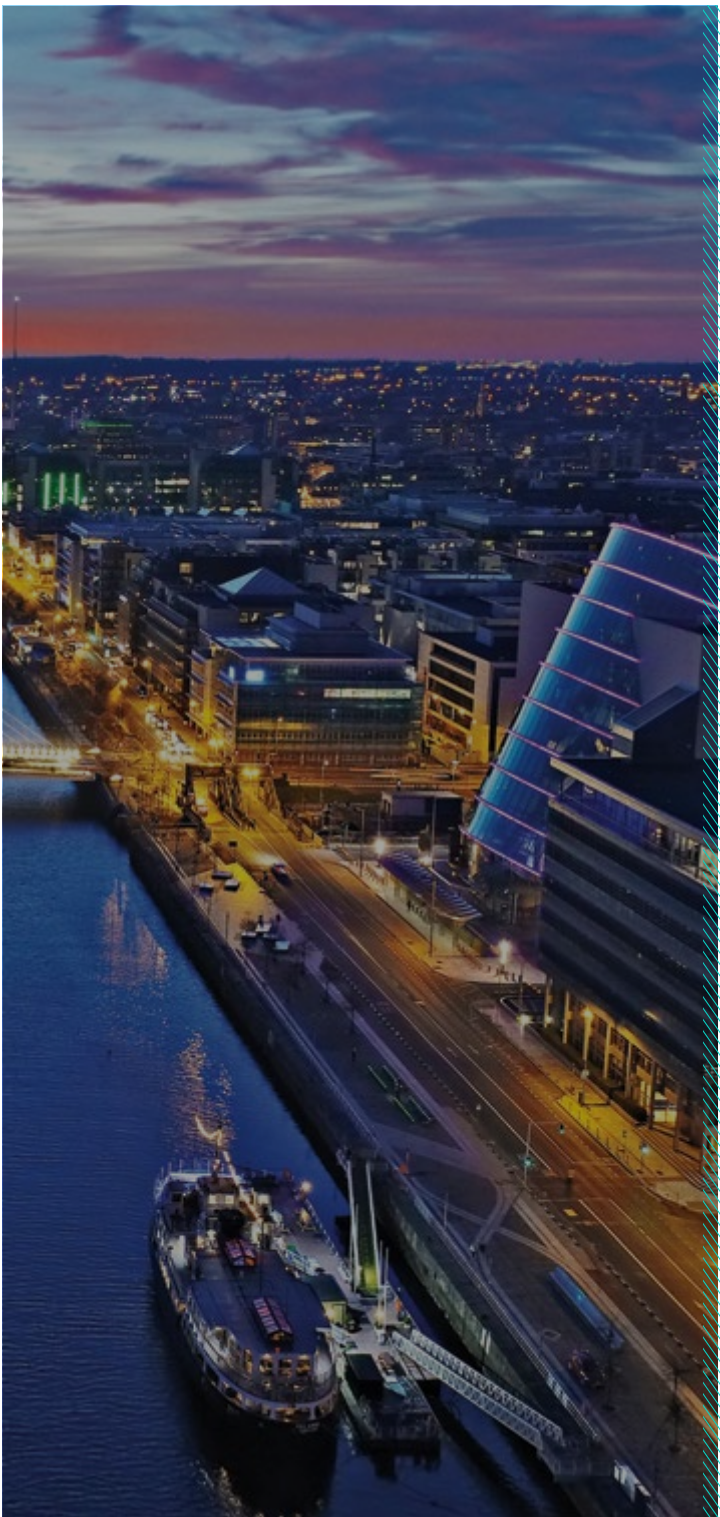


Time periods for investigation



- In 2020, the CCPC took an average of 19.4 calendar days (14.1 working days) to clear a merger notified using the SMNP.
- In 2020, the CCPC took on average 35.9 calendar days (25.3 working days) to clear no-issues transactions following a Phase 1 investigation (an increase from 35 calendar days (24.6 working days) in 2019, and 33 calendar days (23.7 working days) in 2018).
- There were ten notifications in 2020 in which the CCPC undertook an extended Phase 1 investigation. Two of these investigations progressed to Phase 2 investigations (i.e. ESB/Coillte (JV) (cleared in February 2021) and Link/Pepper (withdrawn in 2021)). In 2019, two clearances were issued following Phase 2 investigations (both of which had been notified to the CCPC in 2018). Another extended Phase 1 investigation remained active at the end of 2020 and was cleared in January 2021 (Brookfield (Greenenergy)/Amber Oil).
- In regard to the other seven extended Phase 1 investigations undertaken by the CCPC in transactions notified in 2020, the CCPC took on average 117 calendar days (81.1 working days) to issue a clearance determination.
- 12 clearances in total were issued by the CCPC in 2020 following extended Phase 1 investigations (including five extended Phase 1 investigations that had been notified in 2019). This was a considerable increase from 2019, when five clearances in total were issued following extended Phase 1 investigations. Taking into account four of the notifications made in 2019, the average length for clearance by the CCPC in 2020 following an extended Phase 1 investigation was 110.9 calendar days (76.5 working days).²

² For reasons stated at FN 1, the time period for Timac Agro (Holdings) (Groupe Roullier)/Grassland Agro has not been included in this calculation.



Sectors involved in mergers which were notified to the CCPC

- The most active sectors for mergers notified to the CCPC in 2020 included:
 - » Information, communications and media (nine)
 - » Healthcare (eight)
- There was little or no activity in the motor retail sector, unlike in 2019 when motor retail was one of the most active sectors.

Media mergers

- Three media mergers were notified to the CCPC in 2020 (four media mergers were notified to the CCPC in each of 2019, 2018 and 2017). Four media mergers were cleared by the CCPC in 2020, including one which had been notified in 2019 (DMG/JPIMedia).
- Four media mergers were notified to the Minister - all of which were cleared after short Phase 1 media merger investigations.



Commitments to the CCPC

- A commitment was given to the CCPC in one merger in 2020 which had been notified in 2019 (CVC Funds/Celtic Rugby DAC).³ In 2019, commitments were given to the CCPC in four cases (including in three cases which had been notified in 2018).



Prohibitions by the CCPC

- No transactions were prohibited by the CCPC in 2020 (the same as in 2019). In total, since 2003, there have been three prohibitions – with one of those CCPC prohibitions being annulled by the High Court on appeal.



³ The commitment in question related to possible future merger notifications to the CCPC.



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Irish merger control in 2020 – the detail

Notifications by quarter

Number of notifications to the CCPC

	2020	Month	No. of notifications	% change from 2020/2019	2019	Month	No. of notifications
Q1	14	JAN	1	+133%	6	JAN	3
		FEB	5			FEB	1
		MAR	8			MAR	2
Q2	4	APR	2	-64%	11	APR	2
		MAY	1			MAY	6
		JUN	1			JUN	3
Q3	11	JUL	5	+10%	10	JUL	6
		AUG	1			AUG	3
		SEP	5			SEP	1
Q4	12	OCT	2	-40%	20	OCT	4
		NOV	4			NOV	10
		DEC	6			DEC	6
TOTAL	41			-13%	47		

Key time periods for the investigation of notifications by the CCPC in 2020

- **Simplified Merger Notification Procedure** – The CCPC took an average of 19.4 calendar days (14.1 working days) to clear the seven transactions approved using the SMNP. There was an eighth transaction which was notified under the SMNP but became a standard notification following a third party complaint. The shortest period for an SMNP investigation was 16 calendar days (12 working days).
- **No-issues Phase 1** – The average duration for a no-issues Phase 1 investigation by the CCPC in 2020 (excluding SMNP) was 35.9 calendar days compared to 35 calendar days in 2019. The average length of time in working days was 25.3 compared to 24.6 in 2019.
- **Shortest Phase 1** - The shortest period for a no-issues Phase 1 clearance by the CCPC in 2020 was 20 calendar days (14 working days) (Kyanite/Keppel) compared to 19 calendar days (13 working days) for the shortest period in 2019.
- **Longest Phase 1** - The longest period for a no-issues Phase 1 clearance by the CCPC in 2019 was 43 calendar days (29 working days). In 2019, the longest period for a no-issues Phase 1 clearance was 29 working days.
- **Extended Phase 1** – There were ten notifications in 2020 in which the CCPC undertook an extended Phase 1 investigation. Two of these investigations progressed to Phase 2 investigations (i.e. ESB/Coillte (JV) (cleared in February 2021) and Link/Pepper (withdrawn in 2021)). In 2019, two clearances were issued following Phase 2 investigations (both of which had been notified to the CCPC in 2018). Another extended Phase 1 investigation remained active at the end of 2020 and was cleared in January 2021 (Brookfield (Greenenergy)/Amber Oil).
 - » In regard to the other seven extended Phase 1 investigations undertaken by the CCPC in transactions notified in 2020, the CCPC took on average 117 calendar days (81.1 working days) to issue a clearance determination.
 - » 12 clearances in total were issued by the CCPC in 2020 following extended Phase 1 investigations (including five extended Phase 1 investigations that had been notified in 2019). This was a considerable increase from 2019, when five clearances in total were issued following extended Phase 1 investigations. Taking into account four of the notifications made in 2019, the average length for clearance by the CCPC in 2020 following an extended Phase 1 investigation was 110.9 calendar days (76.5 working days).⁴

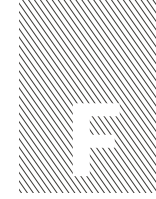
⁴ For reasons stated at FN 1, the time period for Timac Agro (Holdings) (Groupe Roullier)/Grassland Agro has not been included in this calculation



Media mergers

Notified to the CCPC

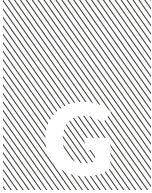
- Three media mergers were notified to the CCPC in 2020 (compared to four notified in 2019).
 - » Rocketsports/BenchWarmers
 - » Greencastle/Maximum Media Network
 - » Reach/ISL
- Two clearances were issued by the CCPC under the SMNP in respect of media mergers notified in 2020 (Rocketsports/BenchWarmers and Greencastle/Maximum Media Network). While the third media merger was initially notified under the SMNP, following receipt of a third party submission which raised a competition concern, the CCPC decided to review the transaction under the standard merger notification procedure.
- A media merger notified to the CCPC under the SMNP in 2020 took an average of 17.5 calendar days (13 working days).
- The single no-issues Phase 1 investigation into a media merger in 2020 took 36 calendar days (25 working days), compared to an average of 37.5 calendar days (26 working days) in 2019.
- There were no extended Phase 1 investigations by the CCPC into media mergers notified in 2020. There was one extended Phase 1 determination issued in 2020 relating to a media merger notified in 2019 (DMG/JPIMedia). This is compared to two extended Phase 1 investigations by the CCPC into a media merger notified in 2019 (DMG/JPIMedia (as mentioned) and FormPress Publishing (Iconic)/assets of Midland Tribune).
- At the date of publication, 16 calendar days (12 working days) was the shortest period in 2020 for a clearance to be issued by the CCPC following the notification of a media merger under the SMNP.



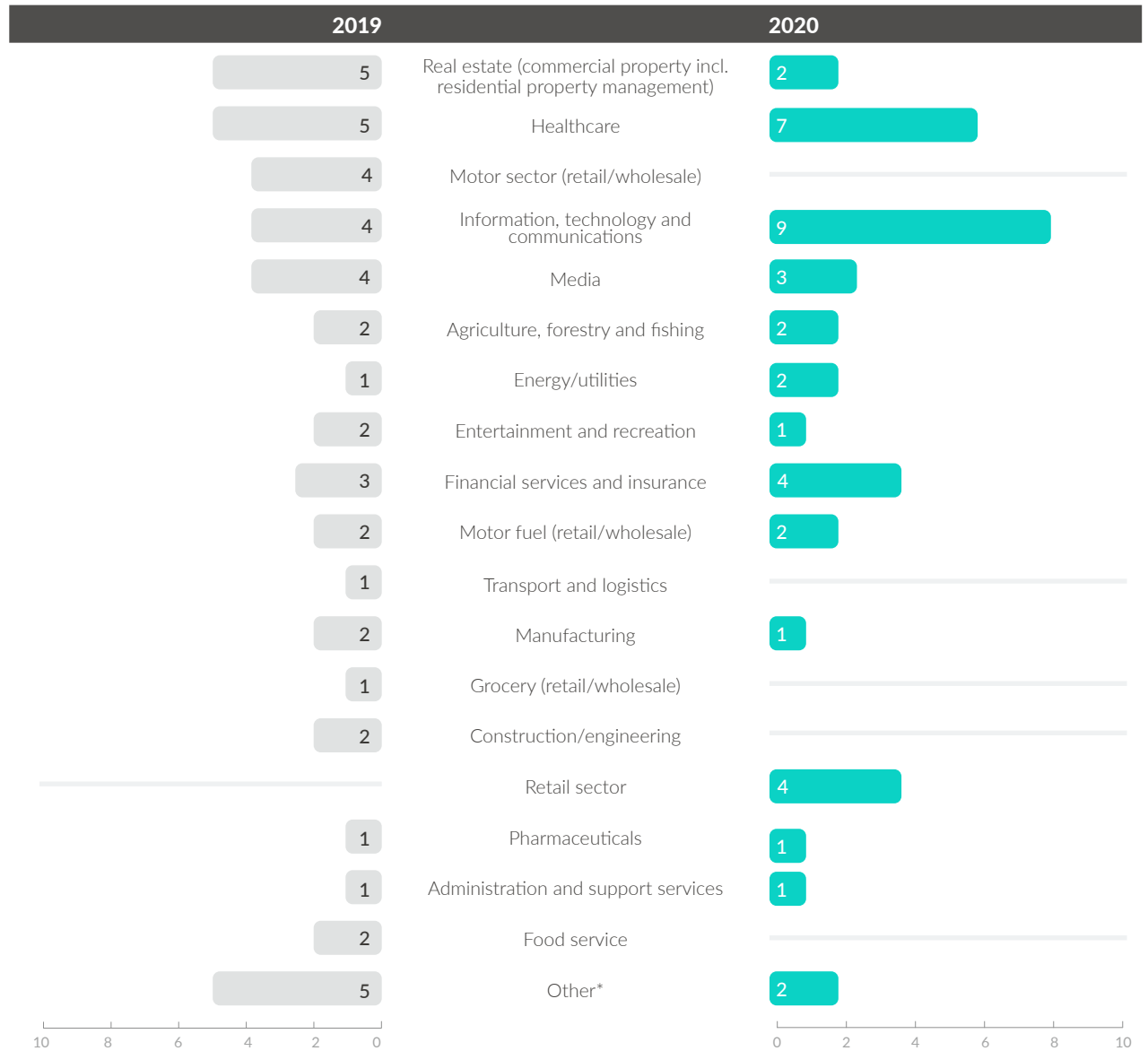
Media mergers

Notified to the Minister

- Four media mergers were notified to the Minister for examination in 2020 and were cleared following a short Phase 1 investigation:
 - » Rocketsports/BenchWarmers
 - » Reach/ISL
 - » Greencastle / Maximum Media Network
 - » DMG/JPIMedia
- In March 2020, the CCPC cleared a media merger (DMG/JPIMedia) that had originally been notified to it in 2019 but that was [declared void](#) for having been put into effect before receiving clearance from the CCPC.
- The Minister took, on average, 52.3 calendar days (36.8 working days) to clear a media merger notified in 2020 (compared to an average of 36 calendar days (26 working days) in 2019).
- The shortest period for a clearance to be issued by the Minister following a Phase 1 media merger investigation was 31 working days (47 calendar days) (DMG/JPIMedia).
- The longest period for a clearance to be issued by the Minister following a Phase 1 media merger investigation was 71 calendar days (50 working days) (Reach/ISL).



Notifications by sectoral activity in 2020



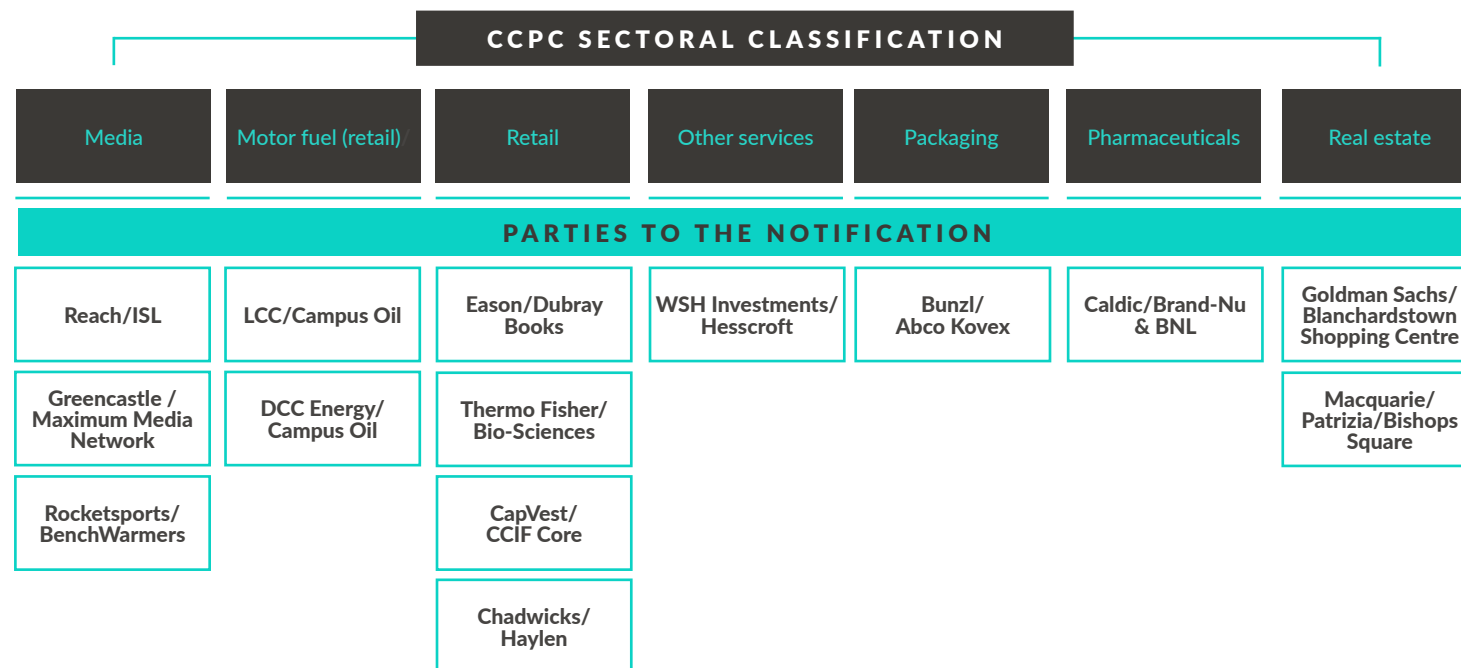
* In 2019 "Other" included Business Process Outsourcing, MRO Services, Waste Sector, Supply of Parking Management Services and Travel Agency Services. In 2020 "Other" includes Packaging and Other Services.

CCPC SECTORAL CLASSIFICATION

Administration and support services	Agriculture, forestry and fishing (primary and processing)	Energy and utilities	Entertainment and recreation	Financial and insurance services	Healthcare	Information technology and communications	Manufacturing
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PARTIES TO THE NOTIFICATION

SS&C/CAPITA	CapVest/M&M Walshe	Brookfield (Greenery)/ Amber Oil	Flutter/Stars	Link Group/ Pepper	Portlon (Parma)/ Hermitage	Kyanite/Keppel	Experience Technology/CG Power
	United Molasses/ Premier Molasses and Kruden	ESB/Coillte (JV)		Phoenix/ ReAssure	Portlon (Parma)/ Blackrock	BM Investments/ Vulcan	
				Kiwi/IPSI	Portlon/ Blackrock (Tullycorbett/ Xroon)	EQT/EdgeConnex	
				Monument/ GreyCastle	Arthropoda (Orpea)/ Brindley	Applied Materials/ Kokusai Electric	
					Uniphar/Hickey's	Speed Fibre/ Magnet Networks	
					Cardinal Ireland Partners Fund SCSp/Mowlam Healthcare	Presidio/Arkphire	
					UPMC/Aut Even	Version1/ Singlepoint	
						Cube Telecom/GTT Communications	
						Phoenix Tower/ Emerald (eir)	



If you would like further information on any aspect of this guide, please feel free to get in touch with your usual A&L Goodbody contact, or any member of our EU, Competition & Procurement [team](#).

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