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Reforming Non-Notifiable Mergers in Ireland: the Kantar Media/Newsaccess Transaction

By

Paul K Gorecki

Abstract

In January 2021 the government department with responsibility for competition policy in Ireland proposed that for mergers notified to competition agency on a voluntarily (as opposed to mandatory) basis that the agency be empowered: (i) to make interim orders preventing the implementation of the transaction; and, (ii) to unwind a completed merger so as to restore pre-merger status quo. No rationale or justification was offered. This paper examines the proposed powers in relation to the record of the competition agency's long standing procedure for dealing with non-notifiable mergers, and, the possible hypothetical use of the powers in a two-to-one merger notified on a voluntary basis in 2017. The competition agency procedure for dealing with non-notifiable mergers that raise competition concerns has worked well. The case study reinforces this conclusion. Government needs to furnish a compelling rationale for the proposals to go forward.

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Acknowledgments: The author was Adjunct Lecturer at Trinity College Dublin between 2013 and 2019 and a member of the Competition Authority between 2000 and 2008, where he was responsible for merger control. For the Kantar Media/Newsaccess transaction the author was not involved for the CCPC or the parties to the merger or for any third party. The paper has benefited from comments and suggestions from Francis O'Toole, while Philip Andrews and Niall Fitzgerald supplied the list of voluntary merger notifications. The usual disclaimer applies. All links were valid as of 15 March 2021.

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I. Introduction

In January 2021 the Irish government department with responsibility for competition policy issued proposals to address problems that may arise due to the implementation of non-notifiable mergers before the Competition and Consumer Protection Commission (CCPC), Ireland's competition agency with responsibility for merger control, has had an opportunity to assess such transactions.[1] Under the Department of Enterprise, Trade and Employment's (the Department) proposals, the CCPC will:

- "*have the power to make interim orders, which prevent any action (for example integrating the merging businesses) that may prejudice or impede its review of any voluntary notifications received*;" and,
- "*in the event that the CCPC finds that an already completed merger gives rise to a … [substantial lessening of competition] …, the CCPC has the power to require that the merger must be unwound and the pre-merger status quo restored to safeguard competition.*"[2]

A leading Irish law firm stated that the latter power "*is a potentially very significant development in Irish competition law*."[3]

The purpose of this paper is to present a case study of what appears to be the only non-notifiable merger between 2003 and 2020 where both of these powers could have been applied, the acquisition of Newsaccess Limited (Newsaccess) by Kantar Media: the transaction was voluntarily notified, albeit at the request of the CCPC; steps had already been taken to implement the transaction when the CCPC intervened; the CCPC requested that further implementation cease; and, the CCPC concluded that this two-to-one merger would likely have led to a substantial lessening of competition (SLC), the statutory competition test under the Competition Act 2002, as amended (the 2002 Act). The SLC finding might have provided grounds for unwinding the merger. Since, however, steps had already been taken to implement the merger this may have constrained the range of available remedies.[4] The case study thus should be able to cast light on the issue of whether or not these new powers will assist the CCPC in dealing with non-notifiable mergers that raise SLC concerns.

The paper is divided into five sections. Sections II set outs the CCPC's current procedure for dealing with transactions that fall below the mandatory notification thresholds (i.e. non-notifiable mergers), while at the same providing the background to the selection of the Kantar Media/Newsaccess transaction as a case study. In Section III the CCPC's analysis of the competitive effects of the Kantar Media/Newsaccess merger is presented, Section IV Kantar Media's Proposals that became binding commitments (i.e. the remedy). Section V analyses the proposed new CCPC powers, both in relation to the CCPC's current long standing procedure for dealing with non-notifiable mergers and in relation to the Kantar Media/Newsaccess transaction.

[1] On the merger provisions of Ireland's competition law, see Andrews, Gorecki & McFadden (2015, pp. 247-378).
[2] DETE (2021, p. 5).
[3] McCann FitzGerald (2021b).
[4] For example, in the case of an already consummated US hospital merger, although the retrospective challenge to the merger as anticompetitive proved successful, the merger was not dissolved but rather an ineffective conduct remedy was imposed instead, in part because the merger had been in effect for several years. For details see Hass-Wilson (2014).

II. Non-Notifiable Mergers: Current Procedure

a. CCPC Guidance, Policy, & Practice

Ireland, like a number of other jurisdictions including the European Union, has a mandatory notification regime for mergers that exceed certain turnover thresholds.[5] Below threshold or non-notifiable mergers in Ireland, can, however, be notified on a voluntary basis.[6] No matter where the threshold is drawn between mandatory and voluntary notifications, there is a risk that anti-competitive below threshold mergers may slip through the net; however, if the notification threshold is too low then competition agency resources are needlessly devoted to examining mergers that likely raise no competition concerns.[7]

Where the CCPC believes, however, that a below threshold merger may lead to a SLC, the CCPC can request the merging parties to voluntarily notify the merger. The CCPC may also request, at the same time, that the merging parties give an undertaking not to take further steps implementing the transaction.

If, however, the parties decide not to voluntarily notify the merger, the CCPC may investigative the transaction as an illegal anti-competitive agreement and/or as an abuse of a dominant position under the 2002 Act.[8] Where the CCPC deems it necessary the agency may issue an injunction to restrain implementation of the merger; if it is already implemented then the CCPC "*may invoke the courts' equitable jurisdiction to restore the status quo ante. This may result in the merger being reversed.*"[9]

The CCPC approach to non-notifiable mergers that may raise competition concerns is long standing. It was first articulated by the Competition Authority in 2003,[10] the year that merger control was assigned to the agency.[11] It was reaffirmed by the CCPC (2104a), the successor body to the Competition Authority, in 2014.

The number of below threshold mergers that raised possible competition concerns for the Competition Authority/CCPC between 2003 and 2020, as set out in Table 1 based on agency publications, is small:

- three of the voluntarily notified mergers raised such concerns, accounting for 6 per cent of all notified mergers that raised competition concerns; and,

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[5] OECD (2021, p. 7). The current merger notification thresholds in Ireland, which came into effect on 1 January 2019 are: (i) the aggregate turnover in the most recent financial year in the State of the undertakings involved in the transaction is not less than €60 million, and, (ii) the turnover in the most recent financial year in the State of each of the two or more of the undertakings involved in the transaction is not less than €10 million. (The legislative basis is set out in S.I. No. 288 of 2018, Competition Act 2002 (Section 27) Order 2018). Between 2014 and 2018 the notification thresholds were: €50 million and €3 million, respectively. For a discussion of the merger thresholds since 2003 under the 2002 Act see Andrews, Gorecki & McFadden (2015, pp. 272-274).

[6] Once notified, there is no difference in the treatment of a voluntary as compared to a mandatory notification. For example, the same competition test is used to assess the merger.

[7] There is no hard and fast rule concerning the line between voluntary/mandatory merger notification. For discussion see OECD (2016) and ICN (2008).

[8] A similar situation is present in some other jurisdictions. See OECD (2014, pp. 7-9).

[9] CCPC (2014a, para. 1.8).

[10] Competition Authority (2003).

[11] Prior to that date merger control was the responsibility of the relevant Minister using a public interest test to assess the merger.

- four mergers were investigated as being potentially an anti-competitive agreement and/or an abuse of a dominant position.

In other words, over the period 2003 to 2020 a non-notifiable merger raised competition concerns once every two to three years.

Table 1
Non-Notifiable Mergers, Competition Concerns, Ireland, 2003-2020

Period[a]	Proportion of Notified Mergers That Raise Competition Concerns That Were Voluntarily Notified[b]	Investigations of Mergers as Anti-Competitive Agreements and/or Abuse of a Dominant Position[c]
2005-2005	0/10	1[d]
2006-2010	1/16	0
2011-2015	0/7	3[e]
2016-2020	2/17	0[f]
Total	**3/50**	**4**

a. For mergers dated by year of notification; for anticompetitive agreement/abuse of dominance, by year reported in the competition agency's *Annual Report* and/or press releases.
b. Mergers that raise competition concerns defined as: all Phase II and Phase I cleared with conditions. The following were notified voluntarily: M/07/031-*Galco/Sperrin/Sperrin*; M/17/012 – *Kantar Media/Newsaccess*; and, M/17/036 – *Sean Loughnane/Crinkle*.
c. As recorded in the competition agency's *Annual Report*. References to preliminary investigations or inquiries are not included. There are references to such investigations/inquiries for 2003-2006 but not in later years.
d. Monaghan Mushrooms/Carbury Mushrooms.
e. *Easton/Argosy*; *Corrib Oil/Suttons Oil*; and, *Kilsaran & Roadstone/Cemex*.
f. The CCPC *Annual Report* for 2020 is unpublished at the time of writing. Hence for this year reference was made to CCPC, *Press Releases*.

Source: Competition Authority, *Annual Reports*, various issues; CCPC, *Annual Reports*, various issues; CCPC, *Mergers & Acquisitions Report*, various issues; and, CCPC, *Press Releases*, various.

b. Voluntary Merger Notifications

One of the difficulties with the current approach to non-notifiable mergers in Ireland, as noted above, is that when such mergers come to the CCPC's attention the transaction may have been partially or completely implemented. However, as detailed in column (2) of Table 2, of the eleven mergers that were notified on a voluntary basis between 2003 and 2020, nine were voluntarily notified on the initiative of the parties themselves. In only two instances was the merger voluntarily notified by the parties at the request of the CCPC. In these two cases, column (3) of Table 2 shows that in only one instance, the Kantar Media/Newsaccess transaction, did the CCPC also request the parties not to take further steps implementing the transaction.

c. Anti-competitive Agreements and/or Abuse of Dominant Position

Attention next turns to the four non-notifiable mergers identified in Table 1 that raised competition concerns that the CCPC investigated as anti-competitive agreements and/or abuse of a dominant position rather than being voluntarily notified. In one instance, the merger agreement had not been signed so that the merger could not be notified to the CCPC; in the remaining three, although there is no evidence that the CCPC requested the mergers to be voluntarily notified, it appears that the parties cooperated with the CCPC investigation (Table 3). While the CCPC explicitly requested the parties to cease implementation of the merger in only one of the four cases, in the three other the evidence suggests that the merger had not been implemented at the time of the CCPC investigation.

Table 2
Voluntary Merger Notifications, Competition & Consumer Protection Commission Role, Ireland, 2003-2020

Voluntary Merger Notification (Column 1)	Evidence CCPC Requested Voluntary Notification (Column 2)[a]	Evidence CCPC Requested Parties Cease Implementation of Transaction (Column 3)[a]	Outcome of CCPC Merger Investigation (Column 4)[a]
M/03/012 – *Smurfit Ireland/Lithographic Universal*	No	No	Approved
M/05/004 – *IBM/Equitant*	No	No	Approved
M/07/031 – *Galco/Sperrin/Sperrin*	No	No	Approved
M/11/004 – *Glanbia/Dawn Dairies*	No	No	Approved
M/15/016 – *PRL/MFS*	No	No	Approved
M/15/049 – *AIB/Gerard Gannon*	No	No	Approved
M/17/012 – *Kantar Media/Newsaccess*	Yes	Yes[b]	Approved, Sale of Selected Assets
M/17/036 – *Sean Loughnane/Crinkle*	No	No	Approved, Deletion of Non-Compete & Non-Solicitation Clauses
M/19/012 – *APCOA Parking/NCPS*	No	No	Approved
M/19/017 - *Duke Street / DCC Vital (UK) & Kent Pharma UK*	No	No	Approved
M/20/012 – *Eason/Dubray*	Yes	No	Approved

d. The evidence used for columns (2), (3) & (4) is drawn from the CCPC merger determination.
e. The CCPC request was made on 17 February 2017; the Share Purchase Agreement was dated 1 February 2017; on 23 February 2017 the parties gave undertakings not to take further steps towards implementing the proposed transaction.

Source: Col (1), Philip Andrews & Niall Fitzgerald; Cols (2), (3), & (4), www.ccpc.ie

In terms of the outcomes of the CCPC's investigation into the mergers, in three out of the four cases the CCPC closed the investigation on the grounds that the merger was not anti-competitive; in the remaining case the CCPC initiated legal proceedings since it formed the view that the Eason/Argosy merger was an anti-competitive agreement. As a result the merging parties abandoned the merger. This appears to be the only instance where the CCPC has taken such action concerning a non-notifiable merger, not voluntarily notified, that it viewed as anti-competitive.

d. Comment

Non-notifiable mergers that raise competition concerns in Ireland are rare: seven over 17 years. Nonetheless, the CCPC, using the existing powers in the 2002 Act, has developed two mechanisms to deal with such mergers: requesting voluntary notification; or anti-competitive agreement/abuse of dominance investigations. The evidence to date, summarised in Tables 1 to 3, suggests that by and

large that the CCPC's use of these mechanisms has worked well in that mergers where the CCPC has SLC concerns have either been approved with conditions that mitigate the competitive harm of the merger or abandoned once the agency initiated legal proceedings. It may be, however, that such a high level treatment of non-notifiable mergers that raise competition concerns does not present the complete picture; nuance, colour and qualification are missed. To address this possible lacuna the Kantar Media/Newsaccess transaction is explored in more depth.

Table 3
Mergers Below Mandatory Threshold Notification, Investigated by CCPC as Anti-Competitive Agreements and/or Abuse of a Dominant Position, Ireland, 2003-2020[a]

Below Threshold Merger (Year) (Column 1)	**Evidence CCPC Requested Voluntary Notification** (Column 2)	**Evidence CCPC Requested Parties Cease Implementation of Transaction** (Column 3)	**Outcome of CCPC Investigation** (Column 4)
Monaghan Middlebrook Mushrooms Ltd/Carbury Mushrooms Ltd (2004)	Parties offered to notify on a voluntary basis; but agreement to merge not signed, so could not notify.	Not relevant. CCPC investigation concluded shortly after merger agreement signed.	CCPC decided that there was "*not sufficient likelihood of anti-competitive effects*."
Eason/Argosy (2012)	No, but Eason's informed the CCPC of the merger agreement on 27 August 2012.	No, but evidence in column (4) suggests merger had not been implemented.	CCPC initiated legal proceedings, anti-competitive agreement, merger abandoned; parties committed to inform CCPC of any similar arrangement for 12 months.
Corrib Oil Ltd/Suttons Oil Ltd (2013)	No, but parties "*voluntarily cooperate[d] with … [the CCPC] investigation*."	No, but see wording in next column (4) suggesting transaction not completed.	CCPC decided that "*it did not intend to challenge or object to the completion of the proposed transaction*."
Kilsaran & Roadstone/Cemex ROI Limited (2014)	No, but parties appear to have cooperated with CCPC investigation.	Yes	CCPC decided that "*it did not intend to challenge or object to the completion of the proposed transaction*."

a. The CCPC *Annual Report* for 2020 is unpublished at the time of writing. Hence for this year reference was made to CCPC, *Press Releases*

Source: Competition Authority (2004; 2013, pp. 30-31; 2014a, p. 28; 2014b, paras. 1.10-1.12;1.15-1.16; 2015, pp. 17-18); and, CCPC, *Press Releases*, various.

III. Kantar Media/Newsaccess Transaction: CCPC Merger Analysis[12]

a. Timelines

Mediawatch Limited trading as Kantar Media, an indirectly wholly owned subsidiary of WWP plc (WPP), acquired Newsaccess pursuant to a Share Purchase Agreement (SPA) dated 1 February 2017.[13] On 17 February 2017 the CCPC requested Kantar Media and Newsaccess (the parties) not to take any further steps pursuant to the SPA implementing the merger and to voluntarily notify the transaction.

The CCPC request reflected the fact that it had "*reached the preliminary view that the [merger] … could potentially raise competition concerns*" in media monitoring.[14] In a letter dated 23 February 2017 the parties agreed: not to take further steps towards implementing the transaction; and, to voluntarily notify the merger. The notification was filed on 9 March 2017.

The CCPC cleared the merger on 11 July 2017 after an extended Phase I, subject to a fix-it-first remedy. The remedy involved a purchaser selecting from an a la carte menu, *inter alia*, of tangible assets (Newsaccess Fixed Assets) and gaining access to a number of Newsaccess customers (Selected Newsaccess Customer Contracts). In other words, the divestment of selected assets. The CCPC determined that given this remedy the merger would not lead to a SLC. There was no appeal from the CCPC's decision.[15]

b. The Parties

Kantar Media, like Newsaccess, is a private company limited by shares registered in the State. Both undertakings were involved in media monitoring and evaluation services. Media channels monitored included: print (e.g. national and regional newspapers); broadcast (e.g. television, radio); online/digital (e.g. online news portals); social media (e.g. Twitter, Facebook); and, international. In 2017 Kantar was owned by WPP, a media giant with turnover of €17.6 billion in 2016.[16] While Newsaccess's turnover, which was less than €3 million in 2016, was generated entirely within the State, Kantar's turnover exceeded €3 million, some of which was generated outside the State.

c. Market Definition

Kantar Media and Newsaccess physically monitored – typically using keywords - various media channels on behalf of customers (i.e. public relations firms, government agencies and departments, firms and so on) to whom reports are furnished. Based on internal documents and tender data, the CCPC noted that customers preferred to purchase the full spectrum of media monitoring services. A subset of customers, however, confined their media monitoring purchases to social media. The parties were the principle providers of media monitoring services in the State.[17]

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[12] Sections II and III are based on the CCPC merger determination: M/17/012 – *Kantar Media/Newsaccess*. All CCPC merger determinations can be found on its website: www.ccpc.ie.

[13] Newsaccess's turnover in the financial year ending 31 December 2016, its most recent financial year, was below the €3 million mandatory notification threshold relevant between 2014 and 2018. (M/17/012 – *Kantar Media/Newsaccess*, para. 4).

[14] M/17/012 – *Kantar Media/Newsaccess,* para. 5.

[15] Only the parties to the merger can appeal under the 2002 Act.

[16] WPP (2019) announced the sale of 60 per cent of its share in Kantar, "*its global data, research, consulting and analytics business*," to Bain Capital Private Equity in late 2019. This transaction was not notified to the CCPC.

[17] The parties also provided evaluation reports based on media monitoring. No third party complaints were received by the CCPC concerning this secondary activity, which was not widely purchased. (M/17/012 – *Kantar Media/Newsaccess,* para. 31).

Product Market

The CCPC conclusion as to the competitive effects of the merger was unaffected whether a narrow (i.e. the provision of print and broadcast media monitoring services) or wide (i.e. the provision of the full spectrum of media monitoring services, including online) product market definition was used. However, monitoring print and broadcast media confirmed a competitive advantage on a provider, which suggests that "*it is the print and broadcast media segment that is of foremost strategic importance*."[18] The CCPC found that [80-90]% of Newsaccess and [70-80]% of Kantar Media's turnover in 2015 was accounted for by this media segment. Therefore, CCPC used a narrow product market definition in assessing the competitive effects of the merger.[19]

Geographic Market

The CCPC conclusion as to the competitive effects of the merger was unaffected whether a narrow (i.e. the State) or wide (i.e. the State and the UK) geographic market definition was used. The CCPC noted that there were few media monitoring service providers operating outside the State, mainly in the UK. But these relied of local service providers in the State "*as far as it relates to print and broadcast monitoring and especially regional print and broadcast monitoring*."[20] Media monitoring service customers "*are normally interested in national coverage in the media and whether it is a local Irish business or a multinational with local presence, domestic news and coverage of their business and/or products nationally is of importance*."[21]

The CCPC argued that service providers located in the State possessed a competitive advantage over those located in the UK and elsewhere "*due to the practicalities of monitoring print and broadcast media, such as for example the need to mainly physically gather and scan newspapers every morning.*"[22] Almost all – [90-100]% - of the customers of Newsaccess were based in the State.[23] Therefore, the CCPC used a narrow geographic market definition in assessing the competitive effects of the merger.

d. Market Structure

The CCPC determined that the proposed Kantar Media/Newsaccess transaction was a two-to-one merger in the provision of print and broadcast media monitoring services in the State. The CCPC came to this conclusion based on: submissions made by third parties and customers; tender data; and, the party's identification of their closest competitor. For example, the Public Relations Institute of Ireland (PRII), the representative body of "*Irish communications and PR practitioners*," stated that following the transaction that "*there would not be any credible alternative to Kantar*."[24]

[18] M/17/012 – *Kantar Media/Newsaccess,* para. 33.
[19] In the analysis below, unless otherwise specified, the same narrow market definition is used.
[20] M/17/012 – *Kantar Media/Newsaccess,* para. 36.
[21] M/17/012 – *Kantar Media/Newsaccess,* para. 37.
[22] M/17/012 – *Kantar Media/Newsaccess,* para. 37.
[23] In other words, a hypothetical monopolist of media monitoring services in the State could profitably raise the price of these services. Providers located outside the State would be at a competitive disadvantage.
[24] M/17/012 – *Kantar Media/Newsaccess,* para. 25. The lack of alternatives applied "*particularly when it comes to Ireland's important regional media*."

e. Theory of Harm: Horizontal Unilateral Effects

Ability & Incentive

According to the CCPC *Merger Guidelines*, unilateral effects occur "*when a merger results in the merged entity having the ability and the incentive to raise prices at its own initiative and without coordination with its competitors*."[25] The CCPC found that post-merger Kantar Media/Newsaccess would have both the ability and the incentive to raise price.

The merged entity will have the *ability* to raise prices since it is a merger to monopoly. There were no competitors – actual or potential - to which customers can switch. Although a couple of competitors were identified it transpired that Newsaccess "*was … [their] provider of media monitoring services for Irish print titles*."[26]

Absent entry, the merged entity would find it profitable to raise prices (i.e. it would have the *incentive*). Customers would have no alternative to the merged entity for the provision of print and broadcast media monitoring services. Furthermore, because the provision of these services is negotiated on a bilateral basis for individual customers the merged entity would be a position to "gauge" customer willingness to pay (i.e. act as a discriminating monopolist).

Entry

A price rise by the merged entity might be mitigated if, according to the CCPC's *Merger Guidelines*, entry is likely, timely and sufficient.[27] These three conditions are cumulative. The CCPC was concerned that, absent binding commitments from Kantar Media, that entry "*could be hampered by*:"[28]

- non-compete contractual restrictions on Newsaccess staff;
- the difficulty of sourcing necessary equipment, thus delaying timely entry;
- Kantar Media negotiating favourable contracts for itself with Newsaccess customers by, for example, longer contracts, thus making access by entrants more difficult; and,
- Newsaccess customers "*on long-term contracts being precluded from switching to any new service provider*."[29]

The CCPC argued that "*should any of the above factors prevent or delay entry that is timely, likely or sufficient, the Proposed Transaction could be expected to result in a*" SLC.[30]

The CCPC were of the view that all of the factors in the preceding paragraph were present. The CCPC thus concluded "*that the Proposed Transaction may therefore raise significant concerns*."[31] The CCPC did not, however, have to come to a definitive conclusion; Proposals were submitted that "*had the potential to replace the competition that would have been lost as a result of the Proposed Transaction in the potential market for the provision of print and broadcasting media monitoring services.*"[32]

[25] CCPC (2014b, para. 4.8).
[26] M/17/012 – *Kantar Media/Newsaccess,* para. 45.
[27] CCPC (2014b, paras. 6.4-6.10).
[28] M/17/012 – *Kantar Media/Newsaccess,* para. 55.
[29] M/17/012 – *Kantar Media/Newsaccess,* para. 55.
[30] M/17/012 – *Kantar Media/Newsaccess,* para. 56.
[31] M/17/012 – *Kantar Media/Newsaccess,* para. 56.
[32] M/17/012 – *Kantar Media/Newsaccess,* para. 56. It is not clear why the market definition is qualified by the word "potential" given the earlier discussion of market definition.

IV. Remedy: Fix-it-First

a. The Proposals

Kantar Media submitted Proposals to the CCPC.[33] These were accepted by the CCPC as mitigating its competition concerns. Accordingly, the Proposals became binding commitments upon Kantar Media. The Proposals were summarised by the CCPC, in particular, as follows:

> "*a. to sell to a prospective new entrant into the market all scanners, computers, servers, printers and related equipment owned and used by Newsaccess in the monitoring of print and broadcast media ('Newsaccess Fixed Assets');*
>
> *b. to offer a specified number of customers of Newsaccess on fixed term contracts the option to be released from the remainder of their contracts in order to facilitate market entry by the purchaser of the Newsaccess Fixed Assets referred to in part a) above;*
>
> *c. to procure that Newsaccess will not unilaterally amend or vary the prices agreed between Newsaccess and customers of Newsaccess (including any Contract Customer) for the provision of print or broadcast media monitoring services prior to the termination of the customer's contract; and*
>
> d. *not to enforce any contractual obligation on current or former staff of Newsaccess, excluding its directors and shareholders, which would prevent such staff from working for another provider of media monitoring services in the State*."[34]

Newsaccess customers that switched would continue to have access the relevant Archive Facility.[35] Kantar Media also had, under the Proposals, to notify the CCPC of any below threshold mergers for two years.

The Proposals largely mirror the factors identified in the CCPC's competitive effects analysis that could hamper entry. In other words, the remedy is congruent with the problem, at least as far as entry is concerned. The Proposals are a mixture of structural, quasi-structural and behavioural remedies.

The Proposals were market tested by the CCPC with potential entrants. The responses suggested that the Proposals were "*adequate to facilitate entry, which is both timely and likely.*"[36] The CCPC also came to the view that entry was likely to be sufficient since customers, in response to CCPC market enquiries, "*showed a willingness to consider alternative service providers*," while there was a record of customer switching.[37]

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[33] The detailed formal Proposals were set out in M/17/012 – *Kantar Media/Newsaccess,* pp. 14-22.

[34] M/17/012 – *Kantar Media/Newsaccess,* para. 57. In relation to condition (b) Kantar Media undertook not to actively canvas or solicitor such customers for a period of twelve months, but Kanata Media could respond to unsolicited requests. (M/17/012 – *Kantar Media/Newsaccess,* Proposals, para. 5).

[35] Defined as: "a repository of the media content that has been provided to a Customer by Newsaccess during the period up to and including the 30th of April 2017, in accordance with such Customer's current contract with Newsaccess for the provision of a Media Monitoring Service." M/17/012 – *Kantar Media/Newsaccess,* Proposals, p. 14.

[36] M/17/012 – *Kantar Media/Newsaccess,* para. 58.

[37] M/17/012 – *Kantar Media/Newsaccess,* para. 59.

b. Implementation[38]

On 28 June 2017 Newsaccess entered into a binding sale and purchase agreement with respect to Newsaccess Fixed Assets with a purchaser currently providing or intending to provide a media monitoring service in the State (the purchaser). The purchaser, whose identity was not revealed in the CCPC's merger determination, was unconnected and independent of Kantar Media.[39]

Kantar Media also selected, with CCPC agreement, Selected Newsaccess Customer Contracts that would not be enforced for their remaining term should the Newsaccess customer decide to switch to the purchaser. An undertaking was given by Kantar Media to distribute, on a one off basis, advertising material from the purchaser of Newsaccess Fixed Assets to these customers. Timelines and compliance mechanisms were set out in the Proposals to assist in their transfer.[40]

Hence prior to the CCPC clearing the merger on 11 July 2017, Newsaccess Fixed Assets had been divested to a purchaser, while Kantar Media had committed to releasing a number of Newsaccess's customers if they expressed a preference for switching to the purchaser. In other words, condition (a) had been implemented, while condition (b) could be triggered at the discretion of the purchaser.

c. Commentary

Entry is the mechanism that the CCPC relied upon to mitigate its competition concerns. It seems reasonable to assume, based on the CCPC's merger determination, that entry will be likely and timely. The purchaser, for example, had already acquired the Newsaccess Fixed Assets prior to the CCPC's clearance of the transaction.[41] There are, however, grounds for arguing that entry may not be sufficient. Thus the remedy may not eliminate entirely the competition concerns raised by the merger.[42]

First, the number and importance of the Selected Newsaccess Contract Customers that may switch to the purchaser is not stated. The very use of the word 'Selected' suggests that not all Newsaccess customers were given an opportunity to switch prior to any existing contractual obligations expiring. If the purpose of the remedy is to restore the pre-merger level of competition then surely *all,* or substantially all, of Newsaccess customers should have been given the opportunity to switch to the purchaser.[43]

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[38] It should be noted that the body of the Kantar Media/Newsaccess written determination only summarises the eight page Proposals which are appended to the determination (i.e. conditions (a) to (d) set out in the text above). There is, however, no mention in the body of the determination that the remedy is a fix-it-first remedy. It is only by reading the Proposals that this becomes clear. The fix-it-first nature of the remedy is confirmed by the CCPC in other related merger publications (e.g. CCPC, 2018, para. 3.8).

[39] M/17/012 – *Kantar Media/Newsaccess,* Proposals, para. 2. The CCPC confirmed, in an email dated 15 January 2021, that the purchaser was NR Media Intelligence Limited trading as TrueHawk.

[40] M/17/012 – *Kantar Media/Newsaccess,* Proposals, paras. 3-7.

[41] The evidence is consistent with this prediction. The purchaser started canvassing for business in the media monitoring market in September 2017 (Sexton, 2017).

[42] The CCPC does not publish guidance on merger remedies. Reliance is thus placed on European Commission (2008, para. 9) guidance – often relied upon by the CCPC - which states that the remedy should eliminate entirely the competition concerns.

[43] In general structural remedies consisting of the divestment of a standalone viable business are preferred by competition agencies in addressing SLC concerns in merger cases. In other words, if firm A acquires firm B and there is a SLC concern in a particular market then either firm A's or firm B's operations in that market would be divested; not firm A's (or firm B's) operations in that market less (say) 40 per cent of its customers. The latter option is analogous to the remedy in the Kantar Media/Newsaccess transaction.

The media monitoring market shares of Kantar Media and Newsaccess are not detailed by the CCPC, nor is the importance of the Selected Newsaccess Contract Customers. It is not a case of such information being partially redacted in the CCPC's determination – as is often the case with market shares; it is not there in the first place.[44] Nonetheless, using various sources, in 2015 Newsaccess accounted for 31.7 per cent of the media monitoring market, Kantar Media the remaining 68.3 per cent.[45] If the purchaser is to restore competition this suggests that Selected Newsaccess Contract Customers should account for at least 20 to 25 per cent, if not a third, of the media monitoring market. However, the market share of the Selected Newsaccess Contract Customers cannot be estimated based on available information.

Second, the purchaser's capacity to market its services to the Selected Newsaccess Contract Customers is arguably too limited. Under the Proposals Kantar Media undertakes that "*it will procure that Newsaccess will distribute on a once off basis, advertising material on behalf of the Purchaser to each of the Selected Contract Customers of Newsaccess.*"[46] Kantar Media incentives are not aligned with those of the CCPC nor the purchaser. The former does not want to lose Newsaccess customers,[47] while the CCPC and the purchaser want these customers to switch.

Third, there is no mechanism that ensures a certain minimum number of Selected Newsaccess Contract Customers switch to the purchaser. While clearly it is up to each customer to decide whether or not to switch to the purchaser, the remedy could have included a provision that Kantar Media would facilitate switching and if not all of the initial set of Selected Newsaccess Contract Customers switched, then Kantar Media will add further customers until the minimum is attained. At this point the merger could have been completed. This provides the appropriate set of incentives for Kantar Media.

Fourth, reliance on entry to resolve competition concerns flowing from a merger does not have a good track record while the evidence suggests that there are better alternative remedies than the sale of selected assets. A recent ex post study of eight UK merger cases, where entry and expansion played an important role in the UK competition agency's decision to clear the merger, in only three cases was entry timely, likely and sufficient.[48] The US Department of Justice's *Antitrust Division Policy Guide to Merger Remedies*, states "*[T]he Federal Trade Commission Divestiture Study found that divestitures of on-going businesses succeeded at a higher rate than divestitures of selected assets*."[49] The 2020 US Department of Justice's *Merger Remedies Manual* makes a similar claim based on a more recent Federal Trade Commission remedy study.[50]

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[44] Typically in competition agency merger determinations such as those of the CCPC or the European Commission market shares are redacted but placed within 5 or 10 percentage point intervals.

[45] For details see Annex A.

[46] M/17/012 – *Kantar Media/Newsaccess,* Proposals*,* para. 3. By accessing such information Kantar Media potentially has access to market sensitive information that can be used to better compete with the purchaser.

[47] As a result those Newsaccess customers least likely to switch might be selected and/or "difficult" customers such as those that are tardy in paying or constantly complaining.

[48] KPMG (2017).

[49] US, DoJ (2011, pp. 8-9).

[50] US, DoJ (2020, p. 8, & fn 30).

V. Would the Proposed New CCPC Powers Have Made A Difference?

a. Introduction

Typically, a merger to monopoly would be prohibited by a competition agency or alternatively cleared with the divestment of a viable, existing business covering the area of the overlap.[51] Up until the Kantar Media/Newsaccess transaction all two-to-one mergers in Ireland had either been prohibited by the CCPC (M/04/032 – *IBM/Schlumberger*) or the parties had withdrawn the merger following the initiating of legal proceedings by the CCPC (*Eason/Argosy*). None had been cleared by the CCPC with or without conditions. In 2017 Kantar Media/Newsaccess was the first example in Ireland of a two-to-one merger being cleared, albeit with conditions.[52]

The CCPC were, it could be argued, in a difficult position in terms of agreeing a suitable remedy with the parties in the Kantar Media/Newsaccess transaction. Steps had already been taken to implement the transaction by 23 February 2017, when Kantar Media agreed not to take further steps towards implementation:

- on 1 February 2017 the three Directors of Newsaccess together with the Secretary had resigned;[53]
- employment (including directors) levels in Newsaccess were more than halved in 2017; from 20 (on average) in 2016 to seven in 2017; and,
- Newsaccess customers migrated to the centralised London based Kantar Media platform for media monitoring purposes from 1 February 2017.[54]

Unwinding the merger would therefore seem to have been impractical. In other words, neither retrospective prohibition of the transaction nor Kantar Media divesting itself of Newsaccess (i.e. a viable existing business covering the area of overlap) seemed to be feasible remedies. Since the merger was below the compulsory notification thresholds, gun jumping was not an issue.

Thus, the CCPC appears to have had little option but to accept a remedy that arguably suffered from a number of shortcomings (Section IV). This raises the question of whether or not the new powers that the Department proposes to grant the CCPC with respect to mergers that are notified on a voluntary basis: (i) to make interim orders preventing the implementation of a transaction; and, (ii) to unwind a completed merger so as to restore pre-merger competition, would have made a difference in the Kantar Media/Newsaccess merger.

b. Rationale for New CCPC Powers?

Before answering this question, the Department's grounds for the proposed changes with respect to below threshold mergers are considered. The rationale should inform the discussion of the Kantar Media/Newsaccess case study; it should also point to shortcomings in the current long standing approach of the CCPC to below threshold mergers which may raise competition concerns. However,

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[51] Of course, if barriers to entry are low and customers are not in some way locked into the incumbent, then the merger to monopoly may not lead to a SLC.

[52] Based on McCann FitzGerald (2021a), which refers to, "*Key Investigations 2003-2020*." It should be noted that this source does not include the Kantar Media/Newsaccess transaction in this tabulation.

[53] On this and the next point see Newsaccess Limited, *Unaudited Abridged Financial Statements for the Year Ended 31 December 2016*. These accounts are filed with the Companies Registration Office. (For details see: www.cro.ie).

[54] For details see Paul (2017) and, PRII (2017).

what is striking is that the Department offers in its consultation document no justification, explanation and/or context for the proposed new CCPC powers.[55,56]

Indeed, the evidence cited in Section II suggests that the current approach of the CCPC to below threshold or non-notifiable mergers that may raise competition concerns is working well. In autumn 2012, for example, the CCPC were concerned that the two-to-one Eason/Argosy below threshold merger would lead to increased prices and reduced choice. However, as noted in Section II, after the CCPC initiated legal proceedings on the basis that the merger was an anti-competitive agreement, the merger was abandoned.

Nonetheless, the proposed new CCPC powers may have reflected a concern that raising the merger thresholds on 1 January 2019 would lead to an increase in the incidence in the below threshold mergers that raised competition concerns.[57] However, there is no evidence that this is the case. There was no upsurge in such cases (Table 1).[58] The CCPC's annual *Mergers & Acquisitions Reports* for 2019 and 2020 does not highlight or even mention below threshold notifications as an issue nor does it feature in the CCPC's *Annual Report* for 2019.[59] The CCPC also files, at the OECD, an *Annual Report on Competition Policy Developments in Ireland.* While the most recent, for 2019, refers to the increase in merger thresholds in 2019 there is no mention of difficulties arising with respect to below threshold mergers raising competition concerns.[60]

c. New Powers, Better Outcome for Consumers?

In the Kantar Media/Newsaccess transaction it is difficult to see how the proposed new powers would have been deployed such that consumer welfare would have increased. The SLC test is a consumer welfare test. Hence the benchmark for assessing the proposed new CCPC powers for below threshold mergers is whether their introduction improves consumer welfare.

Although Kantar Media agreed to take no further steps towards implementing the transaction on 23 February 2017, the notification was not made until 9 March 2017. It would only have been at that stage that the CCPC could have issued an interim order preventing further implementation of the transaction. In other words, the interim order would not have come into effect until two weeks after the voluntary undertaking already given by Kantar Media.[61] Admittedly an interim order has greater

[55] DETE (2021, p. 5). Neither has the CCPC provided a justification. See, for example, the CCPC's testimony on 23 February 2021 during the pre-legislative scrutiny of the General Scheme of the Competition (Amendment) Bill 2021 before the Joint Committee on Enterprise, Trade and Employment. In part this is explained by the fact that the focus of the proposed legislation is on the transposition of the ECN+ Directive. https://www.oireachtas.ie/en/debates/debate/joint_committee_on_enterprise_trade_and_employment/2021-02-23/2/.

[56] The issue of killer acquisitions has raised questions concerning the appropriate merger thresholds and the power of competition agency's to compel notification for below threshold mergers. (For further discussion see OECD (2020)). However, it is not at all clear how the Department's proposals relate to such acquisitions.

[57] For details of the change in merger notification thresholds see footnote 5 above.

[58] It should be noted that the merger thresholds were also raised in 2006, which it was anticipated would also lead to a substantial decline in merger notifications. However, Tables 1 to 3 show no upsurge in below threshold mergers that raise competition concerns followed . For discussion of this 2006 change in thresholds see Andrews, Gorecki & McFadden (2015, pp. 272-274) and Gorecki (2011).

[59] All these publications may be found on the CCPC's website: www.ccpc.ie.

[60] CCPC (2020, paras. 1, 3 & 10).

[61] Such a lag is likely to be the rule in cases where the CCPC has requested voluntary notification.

legal weight than an undertaking in terms of enforceability, but there is no evidence that Kantar Media did not comply with its undertaking to the CCPC.

In terms of the second power, to unwind the merger, such a move by the CCPC would, as noted above, be difficult in view of the fact that substantial steps had already been undertaken to implement the transaction. Furthermore, the centralisation of operations in London suggests certain indivisibilities, inhibiting the creation of a standalone business. Nonetheless, abstracting from these practical problems, assume that the merger could have been unwound at minimal cost, would this have made a difference to the outcome of the Kantar Media/Newsaccess in terms of the remedy?

If the CCPC were to have ordered the unwinding of the Kantar Media/Newsaccess transaction then this implies that:

- the merger is likely to lead to an SLC. If the merger raises no competition concerns then there are, of course, no grounds for unwinding the merger; and,
- prohibition is the appropriate remedy. If the SLC can be cured by the merged entity divesting itself of the overlap activities where the SLC arises, then this can be achieved without necessarily unwinding the merger.

In the Kantar Media/Newsaccess transaction, the first condition is satisfied for reasons set out in Section III. Whether or not the second condition is satisfied requires more discussion.

If CCPC precedent concerning two-to-one mergers is used as guide then the CCPC would likely in 2017 have prohibited the Kantar Media/Newsaccess transaction. This conclusion is strengthened by the fact that the remedy agreed between the CCPC and Kantar Media suffers a number of shortcomings that raise questions concerning its efficacy. In other words, it is arguable that the CCPC had to settle for a second best solution due, in part at least, to the exigencies of the situation in which it found itself.

This is, however, an untenable argument. First, notwithstanding the points raised in Section IV concerning the shortcomings in the remedy, there is no evidence that the CCPC considered the remedy in the Kantar Media/Newsaccess merger was inadequate. Several of the criticisms of the merger remedy could have been easily accommodated. The CCPC concluded, based on market testing the remedy with potential entrants and responses from customers, that entry would be likely, timely and sufficient.[62] The CCPC explicitly state that in light of the Proposals that the merger "*will not substantially lessen competition*."[63]

Second, if the CCPC had decided to prohibit the Kantar Media/Newsaccess merger the transaction would have been void and would, of necessity, have to be unwound. Kantar Media might well have appealed the CCPC decision, with the courts having to decide on the merits of the CCPC's intervention. It is not clear how the situation would have been any different if the Department's proposal had been in existence and the CCPC decided to unwind the merger using this new power. Again Kantar Media might well have appealed the CCPC decision with the issue once again ending up in the courts.[64]

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[62] M/17/012 – *Kantar Media/Newsaccess*, paras. 58-59.
[63] M/17/012 – *Kantar Media/Newsaccess*, para. 61.
[64] But the burden of proof may, of course, be different. Matters will become cleared when the legislation underpinning the Department's proposals is published.

Third, there are grounds for arguing that even if the Kantar Media/Newsaccess transaction had been a notifiable transaction a similar, if not the same, remedy would have been adopted. The next two-to-one notifiable merger after Kantar Media/Newsaccess, M/18/036 - *Enva/Rilta*, was also cleared with conditions, rather than prohibited.[65] In July 2019 the CCPC cleared M/18/063 - *Berendsen (Elis)/Kings Laundry*, a three-to-two merger, with remedy similar to that in Kantar Media/Newsaccess. Arguably, given the strong grounds for finding a SLC, the Berendsen (Elis)/Kings Laundry should have been prohibited.[66]

Fourth, more generally, the CCPC has recently shown a marked reluctance to prohibit mergers and has typically cleared notified mergers where there were SLC concerns, but with conditions. Since 2009 the CCPC has not prohibited a single notifiable transaction.[67] Arguably, as noted above, at least one of these notified transactions should have been prohibited. In contrast, between 2003 and 2008 the CCPC prohibited three notified transactions.[68,69]

In sum, had the new powers proposed by the Department been available to the CCPC in the Kantar Media/Newsaccess case it seems that little purpose would have been served. Certainly, there is no evidence that consumer welfare would have been enhanced.

d. New Powers: Influencing Notification Behaviour?

The discussion so far has assumed that the introduction of these new CCPC powers with respect voluntary notifications will have no influence on the notification behaviour of merging parties. This is unlikely to be the case. These new powers – depending on what legislative constraints are placed on the CCPC in exercising the powers - arguably give the CCPC draconian powers in relation to below threshold mergers that are notified voluntarily. The very existence of such powers, especially in the absence of any justification, is likely to generate considerable uncertainty.

In contemplating whether to notify a below threshold merger it seems likely that there will be an increase in the number of voluntary merger notifications, out of an abundance of caution by, for example, legal advisors and the merging parties themselves. This is likely to reimpose some of the burdens on business that the raising of the merger notification thresholds effective from 1 January 2019 was designed to remove.[70] On the other hand, if a below threshold merger likely to raise competition concerns has already been partially or fully implemented and the CCPC requests the firm to notify voluntarily, there is likely to be considerable reluctance to do so, given the new CCPC powers.

[65] M/18/036 – *Enva/Rilta*. In this merger there were a number of markets in which both of the merging parties participated. In one of these, the treatment of hazardous oily tank and interceptor waste, it was a two-to-one merger.

[66] For a discussion of the remedy in this case see Gorecki (2020; 2021).

[67] Although, as noted above, when the CCPC challenged the *Eason/Argosy* below threshold merger in 2012 as an anti-competitive agreement the parties abandoned the merger.

[68] The CCPC assumed responsibility for merger control on 1 January 2003. The three prohibited transactions were: M/04/032 - IBM/Schlumberger; M/06/039 - *Kingspan/Xtratherm*; and, M/08/009 – *Kerry/Breeo.* In the case of M/08/009 – *Kerry/Breeo,* however, the CCPC's merger determination was subsequently overturned on appeal to the High Court and the merger allowed to proceed. For further discussion of the latter merger see Gorecki (2009).

[69] This pattern of merger enforcement is consistent with concerns, albeit expressed with reference to the US, of under enforcement of merger law. See, for example, Kwoka (2020).

[70] DBEI (2017).

e. Conclusion

No rationale has been advanced by the Department for the CCPC to be given powers to: (i) make interim orders preventing the implementation of a transaction; and, (ii) unwind a completed merger so as to restore pre-merger competition. This is not perhaps surprising in view of the fact that the existing long standing CCPC procedure for dealing with below threshold or non-notifiable mergers that are likely to lead to competition concerns is not only more than adequate but appears to be working well. The lack of rationale for the Department's proposals is inconsistent with the better regulation agenda of government[71] and the movement towards a more evidence based policy formulation.[72]

[71] See, for example, Department of the Taoiseach (2004).

[72] See, for example, the opening paper in Lunn & Ruane (2013).

Annex A: Estimating Kantar Media & Newsaccess Market Shares

Kantar Media operates in both Northern Ireland with an office established in 2007 in Belfast and in Ireland, with an office in Dublin established in the 1990s. In other words, Kantar Media operates on an all-Ireland basis. As a result, the aggregate data for Kantar Media needs to be decomposed by geographic area in order to isolate the Ireland component. Kantar Media's annual *Abridged Financial Statements* filed with the Companies Registration Office (CRO) in Dublin separates out the firm's activities by geographic region – Northern Ireland and Ireland - with respect to sales or turnover but only for 2015 (i.e. €4.952 million sales in Ireland) and 2016 (€4.676 million sales in Ireland).[73]

In contrast, Newsaccess's annual *Abridged Financial Statements* filed with the CRO do not detail its sales or turnover. However, in an article in the *Irish Times* commenting on the Kantar Media/Newsaccess transaction, O'Halloran (2017) states that Newsaccess's sales in 2015 were €2.3 million and that it employed 20 persons. These estimates are consistent with the CCPC stating that the turnover of Newsaccess fell below the €3 million notification threshold,[74] and, WPP (2017, Slide 63), the ultimate parent of Kantar Media, in commenting on the acquisition of Newsaccess stating that its employment was "*around 20 people*."

Given that Newsaccess and Kantar Media were the only two print and broadcast media monitoring firms in the State, then in 2015 Newsaccess accounts for 31.7 per cent of the market (i.e. €2.3 million/(€4.952million + €2.3million)); Kantar Media, 68.3 per cent (i.e. €4.952 million/(€4.952million + €2.3million)).

Employment is one of the only metrics that, using the *Abridged Financial Statements*, can be used to compare the size of Newsaccess and Kantar Media. For the years 2013, 2014 and 2015 for Kantar Media the average number of employees was: 54; 57; and 52 respectively; and for, Newsaccess: 17; 20; and 20, respectively.[75]

If employment had been used instead of sales to estimate market shares then the results for 2015 would have been similar: for Kantar Media, 72 per cent (i.e. 52/(52+20)); for Newsaccess 28 per cent (i.e. 20/(72+20)).

[73] These *Abridged Financial Statements* are for Mediawatch Limited for reasons set out in Section III of the paper. The *Abridged Financial Statements* can be downloaded from the CRO website: www.cro.ie.
[74] M/17/012 – *Kantar Media/Newsaccess,* para. 4.
[75] The estimate for 2015 is taken from the sources in the second paragraph of this Annex.

References

Andrews, Philip, Paul K Gorecki & David McFadden (2015) *Modern Irish Competition Law* (The Netherlands: Kluwer law International).

Competition and Consumer Protection Commission (CCPC) (2014a) *Notice in Respect of the Review of Non-Notifiable Mergers and Acquisitions*, 31 October (Dublin: CCPC).

Competition and Consumer Protection Commission (CCPC) (2014b) *Guidelines for Merger Analysis,* 31 October (Dublin CCPC).

Competition and Consumer Protection Commission (CCPC) (2018) *CCPC Mergers & Acquisitions Report 2017* (Dublin: CCPC).

Competition and Consumer Protection Commission (CCPC) (2020) *Annual Report on Competition Policy Developments in Ireland 2019,* DAF/COMP/AR(2020)15 (Paris: OECD).

Competition Authority (2003) *Notice in Respect of the Review of Non-Notifiable Mergers and Acquisitions,* Decision No. N/03/001, September 30 (Dublin: Competition Authority).

Competition Authority (2004) *Investigation into a Proposed Agreement/Arrangement in Principle Whereby Monaghan Middlebrook Mushrooms Limited would Acquire 100% Shareholding in Carbury Mushrooms Limited.* Enforcement Decision No. E/04/001 (Dublin: Competition Authority).

Competition Authority (2013) *Annual Report 2012* (Dublin: Competition Authority).

Competition Authority (2014a) *Annual Report 2013* (Dublin: Competition Authority).

Competition Authority (2014b) *Submission to the Roundtable on the Investigation of Consummated and Non-Notifiable Mergers.* OECD Competition Commission Working Party 3, Submission S-14-008 (Dublin: Competition Authority).

Competition Authority (2015) *Annual Report 2014* (Dublin: Competition Authority).

Department of Business, Enterprise & Innovation (DBEI) (2017) *Consultation on a Review of Certain Provisions under the Competition Act 2002, as amended, Relating to Mergers and Acquisitions*. (Dublin: DBEI).

Department of Enterprise, Trade & Employment (DETE) (2021) *Public Consultation on Aspects of the Competition (Amendment) Bill 2021* (Dublin: DETE).

Department of the Taoiseach (2004) *Regulating Better* (Dublin: Stationery Office).

European Commission (2008) *Commission Notice on Remedies Acceptable under Council Regulation (EC) No. 139/2004 and Under Council Regulation (EC) No 802/2004*, 2008/C 267/01.

Gorecki, Paul K (2009) "The Kerry/Breeo Merger: Two Views of Countervailing Buyer Power – The Competition Authority and the High Court," *European Competition Law* Journal, Vol. 5, No. 2, pp. 585-612.

Gorecki, Paul K (2011) "Too Many Unnecessary Merger Notifications in Ireland?" *Journal of Competition Law and Economics*, Vol. 7, No. 3, pp. 651-670.

Gorecki, Paul K (2020) "Procedural Versus Competition Perspectives on a Recent CCPC Merger Remedies: the Berendsen (Elis)/Kings Laundry Transaction." *Competition Law Journal*, Vol. 19, Issue 3, pp. 128-135.

Gorecki, Paul K (2021) "Contract Divestment as a Merger Remedy: The Berendsen (Elis)/Kings Laundry Case." Unpublished Paper.

Hass-Wilson, Deborah (2014) "Revisiting a Merger: FTC v. Evanston Northwestern Healthcare (2007)" in John E Kwoka & Lawrence J. White, (eds) (2014) *The Antitrust Revolution*, Sixth Edition (New York: Oxford University Press), pp. 117-143.

International Competition Network (ICN) (2008) *Setting Notification Thresholds for Merger Review,* Report to the ICN Annual Conference, Kyoto, Japan, April. http://old.internationalcompetitionnetwork.org/uploads/library/doc326.pdf.

KPMG (2017) *Entry and Expansion in UK Merger Cases. An Ex-Post Evaluation* (London: Competition & Markets Authority).

Kwoka, John (2020) *Controlling Mergers and market Power: A Program for Reviving Antitrust in America.* (Boston MA: Competition Policy International).

Lunn, Pete & Frances Ruane, (eds) (2013) *Using Evidence to Inform Policy* (Dublin: Gill & Macmillan).

McCann FitzGerald (2021a) *Irish Merger Control 2020 – Your 3-minute Update*. 15 January. https://www.mccannfitzgerald.com/knowledge/antitrust-competition/irish-merger-control-2020-3-minute-update.

McCann FitzGerald (2021b) "Department of Enterprise, Trade and Employment Launches Consultation on Reform of Irish Competition Law," *Knowledge,* 15 January. https://www.mccannfitzgerald.com/knowledge/antitrust-competition/department-of-enterprise-trade-and-employment-launches-consultation-on-reform-of-irish-competition-law.

O'Halloran, Barry (2017) "Kantar Media Must Sell Part of Irish Rival as Condition of Takeover." *Irish Times*, 12 July. https://www.irishtimes.com/business/media-and-marketing/kantar-media-must-sell-part-of-irish-rival-as-condition-of-takeover-1.3152732.

Organisation for Economic Co-operation and Development (OECD) (2014) *Investigations of Consummated and Non-Notifiable Mergers*, Note by the Secretariat (Paris: OECD). http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WP3(2014)1&doclanguage=en.

Organisation for Economic Co-operation and Development (OECD) (2016) *Local Nexus and Jurisdictional Thresholds in Merger Control*, Background Note by the Secretariat, Working Party No. 2 on Co-operation and Enforcement, DAF/COMP/WP3(2016)4. (Paris: OECD). https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WP3(2016)4&docLanguage=En.

Organisation for Economic Co-operation and Development (OECD) (2020) *Start-ups, Killer Acquisitions and Merger Control* (Paris: OECD). Start-ups, Killer Acquisitions and Merger Control (oecd.org).

Organisation for Economic Co-operation and Development (OECD) (2021) *OECD Competition Trends 2021, Volume II, Global Merger Control* (Paris: OECD). http://www.oecd.org/competition/oecd-competition-trends.htm

Paul, Mark (2017) "PR body asks competition regulators to intervene following Kantar row." *Irish Times*, 24 June. https://www.irishtimes.com/business/media-and-marketing/pr-body-asks-competition-regulators-to-intervene-following-kantar-row-1.3131648).

Public Relations Institute of Ireland (PRII) (2017) "PRII Welcomes Decision of the Competition and Consumer Protection Commission on Irish Media Monitoring Market," Press Release, July. https://www.prii.ie/news/2017/july-2017/prii-welcomes-decision-of-ccpc-on-media-monitoring-market.html.

Sexton, Colette (2017) "Truehawk Media, set up in response to a change in the market, will go live in September." *Sunday Business Post*, 27 August. https://truehawkmedia.ie/2017/09/21/media-monitoring-ireland/.

US, Department of Justice (US, DoJ) (2011) *Antitrust Division Policy Guide to Merger Remedies* (Washington DC: US DoJ). https://www.justice.gov/sites/default/files/atr/legacy/2011/06/17/272350.pdf.

US, Department of Justice (US, DoJ) (2020) *Merger Remedies Manual* (Washington DC: US DoJ). https://www.justice.gov/atr/page/file/1312416/download.

WPP (2017) *Trading Statement for First Quarter 2017*. https://www.wpp.com/-/media/project/wpp/files/imported-reports/2017/wpp_q1_presentation_apr17.pdf.

WPP (2019) "Completion of Kantar Transaction." *Press Release*. 5 December. https://www.wpp.com/news/2019/12/completion-of-kantar-transaction.