A Change in Direction for Merger Control in Ireland: An Ex Ante/Ex Post Case Study Evaluation

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By

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Abstract

Since 2017 Ireland's competition agency, the Competition and Consumer Protection Commission (CCPC), has cleared two merger to monopoly transactions, albeit both subject to the divestment of selected assets to an entrant. One of these transactions was Kantar Media's 2017 acquisition of Newsaccess. Prior to 2017 the CCPC had prohibited mergers to monopoly. Does this apparent relaxation mark a sea change in CCPC merger policy? Taking the Kantar Media/Newsaccess merger as a case study, the paper explores this question. The paper finds that there has been a relaxation of merger enforcement by the CCPC. On an ex ante basis the Kantar Media/Newsaccess merger should have been prohibited or the remedy substantially strengthened. However, ex post, due to business difficulties of the merger entity consequent upon a major pre-merger restructuring, the market has self-corrected through successful entry facilitated in large part by these business difficulties. Such rapid self-correction in restoring competition is very much the exception rather than the rule. If it were otherwise there would be no need for merger control.

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I. Introduction

Typically a merger to monopoly would be prohibited by a competition agency[1] or alternatively approved subject to the divestment of a viable standalone existing business covering at least the area of the overlap.[2] Ireland up until the March 2017 notification of the Kantar Media/Newsaccess transaction had followed this pattern. All two-to-one mergers had either been prohibited (M/04/032 – *IBM/Schlumberger*) or the parties had withdrawn the merger following the initiation of legal proceedings (Eason/Argosy).[3] None had been cleared, with or without conditions, by the State's competition agency, the Competition and Consumer Protection Commission (CCPC), which has had responsibility for merger control since 2003.[4]

The Kantar Media/Newsaccess transaction was the first example in Ireland of a two-to-one merger being conditionally cleared.[5] However, the condition was not the divestment of a viable standalone existing business, but rather the facilitation or sponsoring of an entrant through the sale of selected assets. This raises the question of whether or not the CCPC has adopted a more permissive attitude towards potentially anti-competitive mergers. In other words, has the agency been willing to assume a much greater risk of a Type II error (i.e. clearing a merger that is anti-competitive)?

This paper, which seeks to answer this question, is divided into five sections. Section II details the CCPC's analysis of the Kantar Media/Newsaccess transaction, together with the remedy designed to mitigate the competitive harm that the agency thought would likely flow from the merger. In a number of instances the CCPC's assessment is supplemented by additional information and analysis. In one instance, for example, a new theory of harm is posited.

Next attention turns to the merits of the remedy. This is a two stage analysis. In Section III an ex ante analysis of the remedy is conducted: i.e. would you have expected the remedy to cure the competitive harm identified in the CCPC's assessment? Four years has passed since the merger was approved by the CCPC on 11 July 2017. Section IV presents an ex post analysis of the remedy by sketching the evolution of both the market structure and the state of competition in the media monitoring market: i.e. did the remedy cure the competitive harm?

Section V concludes by addressing the question of whether or not the CCPC's treatment of the Kantar Media/Newsaccess signals a more permissive or relaxed attitude to merger control in Ireland.

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[1] Of course, if barriers to entry are low and customers are not locked into the incumbent, then the merger to monopoly may not lead to a substantial lessening of competition, the competition test under the Competition Act 2002, as amended (the 2002 Act).

[2] For a discussion of this position see, for example, CMA (2018, para. 5.12) or European Commission (2008, paras. 15-17) merger remedy guidance.

[3] The size of the Eason/Argosy transaction was below the mandatory merger notification sales thresholds of the 2002 Act. Although Eason did not voluntarily notify the merger, it did inform the CCPC that it had signed an agreement dated 27 August 2012 under which it would acquire certain assets of Argosy. The CCPC investigated the merger as an anti-competitive agreement. The investigation raised concerns in terms of increased prices and reductions in service quality. As a result the CCPC decided to initiate legal proceedings; however, when the parties to the merger were informed the proposed transaction was abandoned. For details see Competition Authority (2013, pp. 30-31).

[4] The CCPC was created in October 2014 through a merger between the Competition Authority (which was created in 1991) and the National Consumer Agency (which was created in 2007) . The CCPC will be used, unless otherwise indicated, to refer to the administration of competition law by both itself and the Competition Authority.

[5] Based on McCann FitzGerald (2021), which refers to, "*Key Investigations 2003-2020*." The Kantar Media/Newsaccess transaction is not included in this tabulation.

II. Kantar Media/Newsaccess Transaction: Competitive Assessment & Agreed Remedy

Timelines

The Kantar Media/Newsaccess transaction was notified on 9 March 2017 and cleared four months later on 11 July 2017, subject to a fix-it-first remedy: Kantar entering into a binding agreement for the sale of selected assets (Newsaccess Fixed Assets) on 28 June 2017, with the option of the purchaser gaining access to selected Newsaccess customers (Selected Newsaccess Customer Contracts) (Table 1). The CCPC had requested the parties to voluntarily notify the merger on 17 February 2017, since it had *"*reached the preliminary view that the [merger] … could potentially raise competition concerns."[6]

Table 1
Kantar Media/Newsaccess Transaction, Key Dates in CCPC Investigation[a]

Date	Event
01.02.2017	MediaWatch Ltd t/a Kantar Media, an indirect wholly owned subsidiary of WPP plc (WPP),[a] media giant with turnover of €17.6 billion in 2016, acquired Newsaccess Ltd (Newsaccess) pursuant to a Share Purchase Agreement (SPA).
17.02.2017	CCPC requested the parties: (i) not to take further steps implementing the transaction pursuant to the SPA; and, (ii) voluntarily notify the transaction since it fell below the mandatory notification thresholds.[b]
23.02.2017	The parties agreed to the CCPC's two requests.
09.03.2017	The parties notified the merger.
28.06.2017	Fix-It-First Remedy: Kantar entered into a final & binding sale & purchase agreement with the purchaser for Newsaccess Fixed Assets.
11.07.2017	The CCPC cleared the transaction, subject to conditions, after an extended Phase I merger investigation.

a. In late 2019 WPP announced the sale of 60 per cent of its share in Kantar to Bain Capital Private Equity.
b. Newsaccess's turnover in the financial year ending 31 December 2016, its most recent financial year prior to the signing of the SPA, was below the €3 million mandatory notification threshold relevant between 2014 and 2018. All of Newsaccess's turnover was generated within the State.

Source: M/17/012 - *Kantar Media/Newsaccess*, paras. 2-9, Proposals para. 2(i); and WPP (2019).

Implementation

Although the CCPC does not provide details, measures were taken to put into effect the merger in the three weeks between the signing of the SPA and Kantar Media agreeing to cease taking further implementation steps: on 1 February 2017 the three Directors of Newsaccess together with the Secretary resigned; [7] employment (including directors) levels in Newsaccess were more than halved from 20 (on average) in 2016 to seven in 2017;[8] and, Newsaccess customers migrated to the centralised London based Kantar Media IT platform for media monitoring purposes from 1 February 2017.[9]

[6] M/17/012 – *Kantar Media/Newsaccess,* para. 5.
[7] On this and the next point see Newsaccess Limited, *Unaudited Abridged Financial Statements for the Year Ended 31 December 2016*. These accounts as well as those of MediaWatch Limited (t/a Kantar Media) are filed with the Companies Registration Office (CRO). (For details see: www.cro.ie).
[8] It is not clear if and when notice was given to the non-Director employees that left Newsaccess in 2017.
[9] For details see Paul (2017) and PRII (2017a).

Market Definition

Kantar Media and Newsaccess's activities overlapped in: monitoring – typically using keywords - various media channels: 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; and, preparing evaluation reports based on the media monitoring. Competition concerns were only raised in relation to the former area of overlap.[10]

The CCPC defined the product market as print and broadcast media monitoring (media monitoring). Although customers preferred to purchase the full spectrum of media monitoring channels, print and broadcast media monitoring confirmed a competitive advantage on a provider, which suggests that "it is the print and broadcast media segment that is of foremost strategic importance."[11] 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.[12]

Ireland was the relevant geographic market. The CCPC noted that 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."[13] Almost all – [90-100]% - of the customers of Newsaccess were based in the State.[14]

The CCPC stated that their analysis of the competitive impact of the merger was unaffected if a wider product market (i.e. including all media channels) or a wider geographic market (i.e. Ireland and the UK) was used.[15]

Market Structure

The CCPC determined that the proposed Kantar Media/Newsaccess transaction was a two-to-one merger in the provision of media monitoring services. The Public Relations Institute of Ireland (PRII), the representative body of "Irish communications and PR practitioners," stated, for example, in a third party submission, that following the transaction "there would not be any credible alternative to Kantar."[16]

The CCPC presented no market share data nor a summary measure of market structure, such as the Herfindahl-Hirschman Index (HHI). Such information is not partially redacted in the CCPC's determination – as is often the case with market shares; it is not there in the first place.[17] Nonetheless,

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[10] No third party complaints were received by the CCPC concerning the latter secondary activity, which was not widely purchased. (M/17/012 – *Kantar Media/Newsaccess,* para. 31).

[11] M/17/012 – *Kantar Media/Newsaccess,* para. 33. Newspaper Licensing Ireland Limited and NLA Media Access license commercial use of print media, which is subject to copyright, for Ireland and UK titles, respectively.

[12] M/17/012 – *Kantar Media/Newsaccess,* para. 33. The data presented in this paper, unless otherwise stated or it is clear from the context, refers to all media channels. However, given the overwhelming importance of print and broadcast media monitoring, all media channel media monitoring should largely reflect print and broadcast media monitoring.

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

[14] 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.

[15] M/17/012 – *Kantar Media/Newsaccess,* paras. 32 & 35, respectively.

[16] M/17/012 – *Kantar Media/Newsaccess,* para. 25. The lack of alternatives applied "particularly when it comes to Ireland's important regional media."

[17] 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.

using various sources, in 2015 Newsaccess accounted for 31.7 per cent of the media monitoring market in Ireland, Kantar Media the remaining 68.3 per cent.[18] The pre-merger HHI, 5,670, was substantially above the CCPC (2104, para. 3.10) HHI threshold of 2,000 for 'highly concentrated' markets.

Theory of Harm I: Prospective Price Increase

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."[19] 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. Although a couple of competitors were identified it transpired that Newsaccess "was … [their] provider of media monitoring services for Irish print titles."[20]

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 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.[21] The CCPC was concerned that, absent binding commitments from Kantar Media, that entry "could be hampered by:"[22]

- 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."[23]

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" substantial lessening of competition (SLC).[24]

The CCPC were of the view that all of these factors were present and thus concluded "that the Proposed Transaction may therefore raise significant concerns."[25] Reaching a definitive conclusion was not necessary; proposals were submitted by Kantar Media that "had the potential to replace the

[18] For details see Annex A.
[19] CCPC (2014, para. 4.8).
[20] M/17/012 – *Kantar Media/Newsaccess,* para. 45.
[21] CCPC (2014, paras. 6.4-6.10).
[22] M/17/012 – *Kantar Media/Newsaccess,* para. 55.
[23] M/17/012 – *Kantar Media/Newsaccess,* para. 55.
[24] M/17/012 – *Kantar Media/Newsaccess,* para. 56.
[25] M/17/012 – *Kantar Media/Newsaccess,* para. 56.

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."[26]

Theory of Harm II: Contemporaneous Quality Decline

The PRII expressed concern that the centralisation of Kantar Media's Irish operations in London, combined with the use of a new IT platform, was leading to a decline in the firm's quality of service.[27] MediaWatch (t/a Kantar Media) characterised the centralisation, which was announced on 25 January 2017, as a 'major restructuring … whereby all back office operations are moving abroad putting the majority of employees … at risk of redundancy."[28] Beyond stating that the CCPC took the PRII's concerns into account, there is no discussion of the issue in the agency's merger assessment.[29] Nonetheless, the PRII raises the important question of whether Newsaccess customers, which had also been switched to the new platform in February 2017, experienced a decline in service quality.

The PRII undertook a Print and Broadcast Media Monitoring Survey (the 2017 Survey) in early June 2017. Thirty per cent of its 903 members, drawn from the public and private sectors, responded. The 2017 Survey found that "92 per cent those who were customers of Kantar Media said that the service they received got worst over the past few months. While 83.5 per cent of those who are customers of Newsaccess said the same thing."[30] The overall quality decline was reflected across each of five measures of quality (Table 2).

Table 2
Media Monitoring Service Quality, Kantar Media and Newsaccess, February/April-June 2017[a]

Question: If the service has got worst which – if any – of the following issues have you experienced? (multiple selection possible).				
Print Stories Being Missed	**Broadcast Stories Being Missed**	**Account Manager Not Accessible**	**Access to Archive of Print Stories Reduced**	**Nature & Timing of Alerts Changed & No Longer Suit**
	Panel A: Kantar Media			
93.8 per cent	66.9 per cent	89.7 per cent	73.1 per cent	74.5 per cent
	Panel B: Newsaccess			
88.3 per cent	55.8 per cent	81.8 per cent	71.4 per cent	81.8 per cent

c. The past few months is not defined. The 2017 Survey was answered between 8th -15th June 2017.

Source: PRII (2017b).

Kantar Media suffered the loss of a key management and other personnel: all five Kantar Media directors, including the Managing Director, resigned on 18 April 2017.[31] The average number of Kantar

[26] 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.
[27] M/17/012 – *Kantar Media/Newsaccess,* para. 25.
[28] MediaWatch Limited, *Reports and Financial Statements for the financial year ended 31 December 2016,* p. 4. These accounts are dated 22 June 2017.
[29] M/17/012 – *Kantar Media/Newsaccess,* paras 25 & 26.
[30] PRII (2017a). The question asked was as follows: "If a customer of Kantar Media, over the past few months, has the service; improved; stayed the same; got worse; not a customer." The same question was asked for Newsaccess's customers, but with Newsaccess replacing Kantar Media in the question.
[31] MediaWatch Limited, *Reports and Financial Statements for the financial year ended 31 December 2017*, p. 4. These accounts are dated 10 September 2019. Under 'Principal Risks and Uncertainties:' was listed "-

Media employees dropped from 44 in 2016 to 19 in 2017.[32] In June 2017 Kantar Media stated that staff are "doing everything they can to address them [service quality problems] as soon as possible."[33] While the expected duration of the service problems was not clear, these developments made rectifying such problems more challenging.

The CCPC (2014, para. 1.9), in its *Merger Guidelines,* states that in applying the statutory SLC test, it "analyses not only the effect on price … but also other effects that can impact on consumers, such as changes to … quality .." Newsaccess customers experienced a decline in service quality as a direct result of the merger. In contrast, for Kantar Media customers the impact was indirect: Newsaccess was no longer an option once their existing Kantar Media contract had expired.

In sum, while the price increase relied upon in the first theory of harm was *prospective,* the *contemporaneous* decline in service quality as a result of the implementation of the transaction was already in train while the CCPC was conducting its merger assessment.

Remedy: Sale of Selected Assets

The Remedy

The CCPC accepted Kantar Media's Proposals as mitigating its competition concerns, which then became binding commitments on Kantar Media.[34] The Proposals were summarised by the CCPC:

> "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 [Selected Newsaccess Customer Contracts];
>
> 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."[35]

[S]ignificant changes in the market place in which the business operates; and - [L]oss of key management and other personnel."

[32] Paul (2017) reports that Kantar Media "axed" 30-40 staff in May 2017.

[33] Paul (2017).

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

[35] 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).

Newsaccess customers that switched would continue to have access the relevant Archive Facility.[36] Kantar Media also had, under the Proposals, to notify the CCPC of any below threshold mergers for two years.

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."[37] 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.[38] No details of such were provided.

Implementation: Fix-it-First[39]

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 to and independent of Kantar Media.[40]

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.[41]

III. An Ex Ante Assessment of the Remedy: Was it Likely to Work?

Introduction

This section presents an ex ante assessment of the remedy: was it likely to have mitigated the CCPC's competition concerns? Based on the European Commission's *Remedies Notice* the assessment examines the suitability of the purchaser and the degree to which the competition concerns were eliminated.[42]

A Suitable Purchaser?

The European Commission (2008, para. 48) sets out three cumulative conditions that need to be satisfied in order for the purchaser of the selected assets to be considered suitable:

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[36] 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.

[37] M/17/012 – *Kantar Media/Newsaccess,* para. 58. Little information was presented on the nature of the market testing and the results.

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

[39] It should be noted that the body of the Kantar Media/Newsaccess determination only summarises (i.e. conditions (a) to (d) set out in the text above) the eight page Proposals which are appended to the determination. 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, 2018a, para. 3.8).

[40] M/17/012 – *Kantar Media/Newsaccess,* Proposals, para. 2.

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

[42] The CCPC does not publish guidance on merger remedies. Reliance is thus placed on European Commission (2008) guidance – often cited by the CCPC.

"— … independent of and unconnected to the parties,

— … must possess the financial resources, proven relevant expertise and have the incentive and ability to maintain and develop the divested business as a viable and active competitive force in competition with the parties and other competitors, and

— … must neither be likely to create new competition problems nor give rise to a risk that the implementation of the commitments will be delayed."

Although, as noted in Section II, the CCPC stated that purchaser met the first condition, no statements were made concerning the latter two conditions.

Desk research identified the purchaser as two individuals that had proven expertise in the media monitoring business in Ireland, with both having been executives in Kantar Media.[43,44] One had also purchased, in December 2015, and subsequently developed the Belfast-centred Northern Ireland Media Monitoring Services (NIMMS).[45] The CCPC identified NIMMS as an online and media monitoring service with clients in Ireland.[46] However, NIMMS relied on Newsaccess for its print and broadcast monitoring service.[47]

In August 2017 the purchaser registered NR Media Intelligence Limited (NR Media) t/a TrueHawk Media (TrueHawk).[48] In September 2017 TrueHawk was ready to solicit clients. The pair that founded NR Media/TrueHawk reportedly invested €100,000 in the business.[49] One is currently TrueHawk's CEO while the other is the Executive Director.[50]

It would thus appear that the purchaser met the three cumulative conditions as to suitability.

Eliminate Competition Concerns Entirely?

The European Commission (2008, para. 9) sets out the basic conditions for acceptable commitments. In short the remedy has to "eliminate competition concerns entirely" as well as being "comprehensive and effective from all points of view." This is a high bar.

Entry was the mechanism that the CCPC relied upon to mitigate its competition concerns in this case. Entry was likely and timely given the fix-it-first nature of the remedy. The issue thus becomes whether or not entry was likely to be sufficient.

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[43] Sexton (2017). Unless otherwise indicated the information in this paragraph concerning NR Media, TrueHawk and the purchase of Newsaccess Fixed Assets is taken from this article. It is felt that this newspaper article is reliable since it is posted on TrueHawk's website: https://truehawkmedia.ie/2017/09/21/media-monitoring-ireland/.

[44] Hence they would not necessarily need to hire executives and personnel from Newsaccess, condition (c) of the Proposals set out in Section III.

[45] https://www.nimms.co.uk/index.html. NIMMS dated back to 1998.

[46] M/17/012 – *Kantar Media/Newsaccess,* para. 30.

[47] M/17/012 – *Kantar Media/Newsaccess,* paras. 36, 45.

[48] The CCPC confirmed that TrueHawk was the purchaser of the Newsaccess Fixed Assets. (Email to author from CCPC dated 15 January 2021). Although the information in this paragraph relates to events after 11 July 2017 when the CCPC approved the merger, it seems reasonable to assume that the CCPC would have been aware of the plans of the purchaser.

[49] Sexton (2017).

[50] Derek Finnegan and Peter Fyffe-McFadden are the only Directors of NR Media while the latter is also the Secretary. Based on NR Media Intelligence Limited's *Unaudited Abridged Financial Statements for the Period Ended 31 December 2019*, filed with the CRO.

The CCPC does not indicate the number nor the importance of the Selected Newsaccess Contract Customers that were given the option to switch to the purchaser. 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 was 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?[51]

In M/18/063 – *Berendsen (Elis)/Kings Laundry*, a three-to-two merger, the CCPC also relied on the transfer of contracts as a remedy. However, in contrast to Kantar Media/Newsaccess, estimates of the market share of the divested contracts were available. Applying Berendsen (Elis)/Kings Laundry as a hypothetical benchmark, suggests that the Selected Newsaccess Contract Customers would have accounted for between 1.5 and 6 per cent of the media monitoring market.[52] In either case, this would have been substantially short of Newsaccess's 32 per cent market share.

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."[53] Kantar Media has an incentive to select Newsaccess customers that are unlikely to provide a firm foundation for the entrant's success, including: those customers least likely to switch; and/or be 'difficult' customers such as those that are tardy in paying or constantly complaining; and/or those with only a few months left on their contract. Hence only a subset of the Selected Newsaccess Contract Customers is likely to have switched to the purchaser and of those some at least may be costly for the purchaser to service.

In sum the CCPC did not establish that entry would have been sufficient to have entirely eliminated the competition concerns raised by the Kantar Media/Newsaccess transaction.

Is the Remedy Likely to Work?

The evidence suggests, at least when viewed on an ex ante basis, entry through the purchase of selected Newsaccess assets was unlikely to mitigate the adverse competitive impacts of the Kantar Media/Newsaccess transaction. The CCPC should have either prohibited the merger or alternatively strengthened the remedy.

There should, for example, at least have been a mechanism that ensured a certain minimum number of Selected Newsaccess Contract Customers accounting for a substantial market share switched 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 would add

[51] 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) 60-80 per cent of its customers. The latter option is analogous to the remedy in the Kantar Media/Newsaccess transaction.

[52] The target of the merger (Kings Laundry) had a market share of [10-20] per cent in the market where competitive concerns arose. Estimates of the market share of the customers to be transferred to an entrant were between 1 and 2 per cent. Assuming that Newsaccess accounted for 30 per cent of the media monitoring market leads to the estimates in the text.

[53] 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.

further customers until the appropriate minimum was attained. At this point the merger could have been completed. This provides the appropriate set of incentives for Kantar Media.[54]

Reliance on entry to resolve competition concerns flowing from a merger does not have a good track record of success, 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.[55] The US Department of Justice's *Merger Remedies Manual* states that has it has "a preference for requiring the divestiture of an existing standalone business, because it has demonstrated success competing in the relevant market." [56]

IV. Ex Post Assessment of the Remedy: Did it Work?

Introduction

It is now four years since the Kantar Media/Newsaccess transaction was cleared by the CCPC on 11 July 2017. This should be sufficient time to determine the success of the remedy. The key parameter for entry to be timely in the CCPC's *Merger Guidelines*, for example, is for it to occur within two years.[57] A much longer timeframe raises the possibility that other factors, independent of the merger remedy, determine the competitive landscape, making it difficult to isolate the contribution and effectiveness of the remedy.

There are a number of quantitative and non-quantitative methodologies or techniques that have been employed to analyse the impact of mergers on competition, irrespective of whether or not a remedy has been accepted by the competition agency to cure any competitive harm.[58] Almost of necessity the case study methodology is used to analyse the effectiveness of the remedy in the Kantar Media/Newsaccess transaction. However, the results of ex post merger evaluations, irrespective of the methodology used, will be drawn upon at various stages of the analysis and discussion. Indeed, reference has already been made to such studies in Section III.

The purpose of the ex post merger analysis is not only to determine the success of the merger remedy in restoring competition, but also to develop a compelling narrative. What the case study lacks in terms of generalisation that the quantitative methodologies more readily lend themselves is offset by the insight and nuanced factors that quantitative analysis may overlook or be unable to satisfactorily capture. In other words, the case study and quantitative approaches to ex post merger analysis can be seen to some extent as substitutes, but also as complements.

The case study approach relies on examining the evolution of the market subsequent to the merger in terms of the change in market structure, the behaviour of the incumbent, together with any extant rivals, whether entry occurs and if it is successful in constraining any market power that the merged entity might possess. Insight is obtained through quantification of these features such as market structure and entry, combined with interviews with key participants such as the merged entity, its rivals (including entrants) and customers.

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[54] Such an approach was adopted in M/18/063 – *Berendsen (Elis)/Kings Laundry.*

[55] KPMG (2017).

[56] US, DoJ (2020, p. 8, & fn. 30), which relied on a Federal Trade Commission divestiture study. Earlier US, DoJ (2011, pp. 8-9) took the same position with respect to a preference for the divestiture of a standalone business compared to the sale of selected assets.

[57] CCPC (2014, para. 6.5).

[58] See, for example: Buccirossi et al (2008); Ormosi et al (2015); and Shapiro (2019, pp. 76-77).

In this section the evolution of market structure together with the success of entrants in capturing customers is investigated. Attention is paid first to the public sector through an examination of the outcome of bidding for media monitoring contracts before the results of a survey of media monitoring customers involved in public relations are presented. The quantitative analysis is complemented by interviews with representatives including but not limited to those from Kantar Media, the Office of Government Procurement (OGP), PRII and Rue Point Media (Rue Point).

Customers: Public Sector

Introduction

In July 2017, when the Kantar Media/Newsaccess merger was cleared by the CCPC, Kantar Media and Newsaccess were the only firms that had qualified under the OGP's Multi Supplier Framework Agreement (FWA) with respect to media monitoring services.[59] Indeed, only two firms entered tenders to qualify for inclusion on the FWA, affirming CCPC's characterisation of the transaction as two-to-one merger in media monitoring.

The FWA, dated 22 February 2016, provides a structure under which the public sector, including government departments, universities, State agencies and local authorities, could contract for media monitoring services.[60] The duration of the FWA was four years: an initial contract for a year, with the option of three annual extensions.[61] The OGP's FWA expired in February 2020. However, the OGP has not, as yet, tendered for a fresh FWA.[62]

The tenderers to the FWA submit maximum or ceiling prices. Individual public sector organisations, however, run so-called 'mini' competitions amongst the suppliers that qualify under the FWA. The public sector buyer sets the terms of the contract such as the duration. Notwithstanding the existence of the FWA public sector contracting authorities are not precluded from switching to firms not included in the FWA where "more advantageous terms can be obtained outside the [FWA] framework."[63]

Public sector customers are divided in the analysis into two groups of customers: government departments;[64] and, State agencies and similar organisations that award media monitoring tenders valued at €25,000 or more through the eTenders website (www.etenders.gov.ie).[65] Only one government department – the Department of Social Protection (DSP) - used the eTenders website for the purposes of procuring its media monitoring services while the FWA was valid.[66] Since DSP had by

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[59] https://irl.eu-supply.com/ctm/Supplier/PublicTenders/ViewNotice/178735. Attention is confined to Lot 1 ('Monitoring of all Sources - Print, Online, Social Media & Broadcast Media') not Lot 2 ('Monitoring of Online and Social Media only'), given the market definition used in this paper.

[60] For further discussion of government procurement see OGP (2019).

[61] https://irl.eu-supply.com/app/rfq/publicpurchase_docs.asp?PID=94050&LID=98940&AllowPrint=1, document titled, 'IMPORTANT UPDATED RFT_MediaMonitoring (13.11.15).docx,' for information concerning the FWA. The overall value was between €0 and €3.5 million.

[62] Based on an examination of www.etenders.gov.ie.

[63] OGP (2017, para. 3.4).

[64] Excluding the Department of the Taoiseach for which no information was available.

[65] The vast majority of State media monitoring contracts are for State agencies such as Enterprise Ireland and the Sustainable Energy Authority of Ireland, but also include third level educational institutions such as the National University of Ireland, Galway. (A full list of State agencies may be found at: https://www.audit.gov.ie/en/about-us/who-we-audit/state-bodies/).

[66] The Department of Social Protection posted invitations to tender for media monitoring services on 12 December 2016 and 17 August 2018.

far the largest media monitoring expenditure of any government department it may have felt that it could obtain more advantageous terms from going outside the FWA.[67]

Government Departments

Whether entry is sufficient is assessed for government departments (except the Department of the Taoiseach) by examining the pattern of media monitoring purchasing annually over the period 2017 to 2020.[68] The information is derived from the written answers to Parliamentary Questions (PQs) dated September/October 2020. Further information on the data source, together with the underlying data on which Tables 3 and 4 are based, is provided in Annex B.

Table 3
Media Monitoring Services Suppliers, Market Shares, Sixteen Government Departments, Ireland, Annually, 2017-2020.

Supplier	2017	2018	2019	2020[a]
	Panel A: Market Share, Percentage of Contract Costs[c]			
Kantar Media	94.3	89.8	65.7	47.2
Rue Point	-	-	14.1	25.6
Self-supply	5.7	4.4	3.3	0.9
TrueHawk	-	4.9	14.8	26.3
Total[b]	**100**	**100**	**100**	**100**
HHI	**8925**	**8107**	**4745**	**3576**
	Panel B: Market Shares, Number of Gov't Departments[d]			
Kantar Media	15/16	14/16	10/16	9/16
Rue Point	-	-	1/16	3/16
Self-Supply	1/16	1/16	1/16	0/16
TrueHawk	-	1/16	4/16	4/16
Total	**16/16**	**16/16**	**16/16**	**16/16**

a. For 2020 the contract costs for 2019 were used. Data for 2020 was available to August or September, but it was not always specified or clear which month was used.
b. Totals do not add to 100 for 2018 and 2019 due to the omission of Meltwater UK Limited from the list of suppliers. For details see footnotes o and p of Table B.1, Annex B.
c. Where there was a switch between suppliers in a given year, contract costs were available for each of the suppliers.
d. The supplier listed for a particular department reflects the situation at the end of the year. Hence although Newsaccess supplied the Department of Enterprise, Trade & Employment, and the Department of Social Protection prior to the merger in 2017, at the end of that year, after the completion of the merger, Kantar Media is identified as the supplier of media monitoring services. In the case of 2020 the year ends in August or September, rather than December.

Source: Table B.1, Annex B, based on written answers to Dail Questions by Deputy Matt Carthy and Deputy Catherine Murphy, 30 September 2020 & 6 October 2020.

In 2017, apart from one government department that self-supplied, Kantar Media supplied media monitoring services to the remaining fifteen government departments; two of these departments had,

[67] Table B.1, Annex B contains details of government department expenditure on media monitoring.
[68] As noted above there were no data for the Department of the Taoiseach.

however, been supplied pre-merger by Newsaccess (Panel B, Table 3). In a number of instances in departmental responses to the PQs, specific mention is made of the FWA in selecting Kantar Media.

By 2020 the situation had changed dramatically. Kantar Media experienced a gradually erosion of market share, losing one government department media monitoring contract in 2017, four in 2019 and three in 2020. These Kantar Media losses were offset by gaining in 2020 the one government department that switched from self-supply to contracting out its media monitoring services.

In sum over 2017-2020 Kantar Media moved from supplying the media monitoring services of 15 out of 16 departments to nine out of 16 departments. In 2017 Kantar Media accounted for 94.3 per cent of government media monitoring contracts by value; in 2020, 47.2 per cent (Panel A, Table 3).

Kantar Media's loss of market share is due not only to the purchaser of the Newsaccess Fixed Assets (i.e. TrueHawk), but also to LFMI Media Services Limited (LFMI) t/a Rue Point Media. Rue Point entered the media monitoring market in August/September 2017.[69]

Although entry occurred for both Rue Point and TrueHawk in the second half of 2017, large scale success only came in 2019 (24.1 percentage point gain for both entrants taken together) and 2020 (a further 18.5 percentage point gain). The delay probably reflects the fact the departments under the FWA would had have to have worked out the remaining part of their existing Kantar Media monitoring contract. In 2020 the two entrants accounted for 51.9 per cent of department media monitoring expenditure, supplying such services to seven of the 16 government departments.

There is little to separate the performance of the two entrants, Rue Point and TrueHawk. In 2020, Rue Point accounted for 25.6 per cent of department media monitoring expenditure, TrueHawk, 26.3 per cent; Rue Point accounted for three of the 16 government departments in 2020, TrueHawk, four out of 16. Perhaps the only difference of note is that TrueHawk secured its first department media monitoring contract in 2018, while for Rue Point it was not until 2019. Nevertheless, notwithstanding this difference, the data in Table 3 suggests that Rue Point and TrueHawk are vibrant effective competitors winning market share at the expense of the incumbent, Kantar Media.

One way of characterising the change in market structure is to measure the HHI over the period 2017 to 2020. As shown in Panel A of Table 3 this declines from 8,925 in 2017 to 3,576 in 2017. This is more than halving in the level of concentration. It is the equivalent of moving from close to a monopoly to three equal sized firms. Nonetheless, the HHI remains above the CCPC's (2014, para. 3.10) threshold of 2,000 for a market to be considered highly concentrated.

An alternative method of characterising the market position Kantar Media is by dividing annual departmental media monitoring contracts into large (above €25,000), medium (less that €25,000/greater than €12,500) and small (less than €12,500). Attention is confined in Table 4 to only those 15 departments that contracted out their media monitoring services throughout 2017 to 2020.

There are five departments in each of the three size categories. Kantar Media experiences market share loss mainly amongst medium and large rather than small sized government media monitoring contracts. It may be that for small sized departmental media monitoring contracts reliance on the FWA is more convenient; the transaction costs of organising a tender outside of the FWA do not outweigh the possible benefits.[70]

[69] LFMI and Rue Point are discussed below under 'Did the Remedy Work?'
[70] Deviation requires a value for money justification. For details see OGP (2013, para. 4).

Table 4
Kantar Media's Share of the Number of Government Department Media Monitoring Contracts,[a] by Contract Size, Ireland, Annually, 2017-2020.

Department Contract Size[b]	2017	2018	2019	2020[c]
	Number of Media Monitoring Government Department Contracts Accounted for Kantar Media, Measured at Year End			
Large[d]	5/5	5/5	3/5	3/5
Medium	5/5	4/5	2/5	1/5
Small[e]	5/5	5/5	5/5	4/5
Total	**15/15**	**14/15**	**10/15**	**8/15**

e. The Department of Transport, which self-supplied up until 2020, is excluded from the table. Hence there are fifteen not sixteen government departments.
f. The departmental media monitoring contracts are divided into three equal groups of five departments using 2019 contract cost values.
g. For 2020 data was available to August or September, but it was not always specified or clear.
h. Greater than €25,000.
i. Less than €12,500.

Source: Table B.1, Annex B, based on written answers to Dail Questions by Deputy Matt Carthy and Deputy Catherine Murphy, 30 September 2020 & 6 October 2020.

The OGP's 2016-2020 media monitoring FWA has expired. Until a new FWA is in place, Departments will have to seek fresh contractual arrangements for contracting media monitoring services. In late 2020 two departments – Enterprise, Trade and Employment and Environment, Climate and Communications – posted notices on eTenders, with the contract awards yet to be made in 2021.

Government Agencies

The success of Rue Point and TrueHawk in competing for government agency media monitoring tenders with the incumbent Kantar Media is examined for 10 such tenders posted on the eTenders website from 1 January 2018 until 31 December 2020. In one case, however, certain key information is unavailable because, according to the eTenders website, the tender has not yet been awarded. Further discussion of the data source, together with the underlying data on which Tables 5 to 8 are based, is provided in Annex B

Table 5
Contract Duration, Government Agency Media Monitoring Contracts, eTenders, 2018-2020

Initial Contract	Frequency	Options for Extension
1 year	3/10	two twelve month (2); and, three twelve month (1).
2 years	5/10	one twelve month (1); maximum four years (1); twenty four month (2); and, two twelve month (1)
3 years	1/10	None
4 years	1/10	None

Source: Table B.2, Annex B, based on information on eTenders and selected government agencies.

The annual value of the media monitoring contract is skewed towards small-valued contracts compared to government departments (Table 4). The duration of the contracts typically consisted of an initial fixed term usually but always with the option for one or more extensions. The initial fixed terms are set out in Table 5, together with the extensions, where appropriate. Eighty per cent of the media monitoring tenders are for an initial period of two years or less, but when combined with extensions could be as long as four years.

Although the identity of the bidders is not publicly available, it seems reasonable to assume – based on Table 3 - that they are only three credible bidders: the incumbent, Kantar Media, together with the two entrants, Rue Point and TrueHawk.[71] The evidence is to a considerable degree consistent with this observation: for five of the nine contracts where information is available, there were three or less bidders (Table 6). However, in four cases there were four bidders, suggesting that there was a fourth media monitoring supplier, albeit one that has to date not been awarded a media monitoring contract.[72]

Table 6
Number of Bidders, Government Agency Media Monitoring Contracts, eTenders, 2018-2020

Number of Bidders	Frequency
Two	1/10
Three	4/10
Four	4/10
Not known	1/10
Total	10/10

Source: Table B.2, Annex B, based on information on eTenders and selected government agencies.

In the seven instances where the incumbent was Kantar Media it was successful in retaining the government agency as a customer for its media monitoring service in only two instances (Table 7). In both cases where Kantar Media retained the contract this occurred for contracts listed on eTenders in late 2020.[73] In the remaining five instances the entrants, either Rue Point or TrueHawk, were successful in winning the government agency media monitoring tender.

In the two instances, however, TrueHawk or Rue Point were the incumbent. This reflects the fact that these entrants had dislodged Kantar prior to the particular tender under consideration in Table 7. In both cases Rue Point was awarded the tender: in one case retaining a customer, in the other winning a customer from TrueHawk.

In sum, of the nine media monitoring contracts posted between 2018 and 2020 for which the outcome is available, TrueHawk and Kantar Media each won two of these contracts, accounting for slightly less than a fifth of the total annual contracts costs of these nine contracts (Table 8). The big winner was Rue Point that was awarded five of the nine contracts and slightly less than two-thirds of the total annual contract costs of the nine contracts.[74]

[71] The contracting authority is not permitted to provide the answer.

[72] It is possible that this is Meltwater, which is an online media monitoring supplier. (For details see M/17/012 – *Kantar Media/Newsaccess,* para. 30). In some instances the tender is broken down into Lots. In these instances the agency can either award all of the Lots to a single supplier or to more than one supplier.

[73] For details see Table B.2.

[74] The disparity between the two market share measures for Rue Point reflects the fact that it won the NUIG contract, which is worth an estimated €40,000 per year, substantially more than any of the other media monitoring contracts that are the subject of Table 8.

Table 7
Government Agency Media Monitoring Contracts, Incumbent, Tender Winner, eTenders, 2018-2020

Incumbent	Tender Winner	Frequency
Kantar Media (including Newsaccess)	Kantar Media[a]	2
(N=7)	Rue Point	3
	TrueHawk	2
TrueHawk	True Hawk	0
(N=1)	Kantar Media	0
	Rue Point	1
Rue Point	Rue Point	1
(N=1)	Kantar Media	0
	TrueHawk	0
Not Known		1
Total	**-**	**10**

a. In the case of the contract for EirGrid, Kantar Media is listed as the incumbent and Rue Point as the tender winner.

Source: Table B.2, Annex B, based on information on eTenders and selected government agencies.

Table 8
Media Monitoring Services Suppliers, Market Shares, Nine Contracts, Government Agencies, eTenders, Ireland, 2018-2020

Tender Winner	Number of Contracts	Annual Contract Costs
Kantar Media	2/9 or 22.2 per cent	18.6 per cent
Rue Point	5/9 or 55.6 per cent	62.3 per cent
TrueHawk	2/9 or 22.2 per cent	19.2 per cent
Total	9/9 or 100 per cent	100 per cent

Source: Table B.2, Annex B, based on information on eTenders and selected government agencies.

Taking the public sector in the round, the evidence suggests that the incumbent monopolist in the provision media monitoring in 2017, Kantar Media, has experienced substantial loss in market share among both government departments and government agencies: to below 50 per cent in terms of contract costs one case and to around 20 per cent in the other. Entrants have successfully captured the residual. However, in 2020 Kantar Media began winning contracts again. The combined market share of the two entrants for either group of public sector customers, substantially exceeded the 32 per cent of the media monitoring market accounted for by Newsaccess prior to the merger.

Customers: Public Relations & Communications

Introduction

In this section attention shifts from the public sector to a more private sector focus. Reliance is placed on the PRII which distributed a survey, designed by the author in conjunction with the PRII. The survey not only provides an indication of the state of competition in media monitoring in 2021, but also facilitates comparisons with the 2017 Survey in terms of whether or not service quality has improved.

According to its Memorandum and Articles of Association, the objective of the PRII is:

> "To promote a full appreciation within Ireland of the practice and principles of Public Relations and to promote these principles through the establishment, recognition and maintenance of standards of professional practice within the profession."[75]

The PRII is both a representative organisation for public relations professionals while also providing educational and training courses including Diploma in Public Relations and Certificate Courses. The PRII was founded in 1953. It has approximately 1,000 members, drawn from those working "in consultancies, industry, government, semi-state, voluntary and business organisations."[76]

For PRII members media monitoring is an important service, irrespective of whether the member is employed in-house in the public or private sector or works for a public relations firm that provides media advice to clients. The importance is demonstrated by the PRII representations to the CCPC concerning the likely adverse effects of the Kantar Media/Newsaccess transaction.[77]

The PRII agreed to distribute the Media Monitoring Survey 2021 (the 2021 Survey) via its weekly E-zine to 2,000 recipients in April 2021. The 2021 Survey questionnaire together with other details are set out in Annex C.

Suffice to say is that 80 completed questionnaires were received, a response rate of 4 per cent. Although the 95 per cent confidence interval +/-11 per cent,[78] it is nevertheless the case that in many instances the differences in Tables 9 to 13 are statistically significant.

Although the PRII's weekly E-zine is circulated to persons in the public and private sectors, only 30 per cent of those that responded to the 2021 Survey were classified as part of the public sector. In other words, the 2021 Survey results largely reflect the situation in the private sector. As such the findings of the 2021 Survey complement the earlier results concerning government departments and agencies.

Media Monitoring Survey 2021 (2021 Survey): Findings

The 2021 Survey affirms the CCPC finding cited in Section II concerning the importance of national and local print and broad media monitoring as compared to online/digital and social media (the latter is included under 'Other' in Table 9). For example, while 95 per cent of respondents engaged a media monitoring service provider for print media monitoring at a national level, less than 30 per cent did so for 'Other' media monitoring services.

The distribution of annual media monitoring costs for public relations and communications customers is similar to that of government agencies (Table 10). For both media monitoring customer groups, 50-56 per cent incur annual media monitoring costs are less than €12,5000. In contrast, government departments tend to be more skewed towards large annual contract costs: a third of government

[75] https://www.prii.ie/assets/uploads/documents/PRII%20Memorandum%20&%20Articles%20of%20Association%202020.pdf.
[76] https://www.prii.ie/about/.
[77] PRII (2017a).
[78] Using Survey Monkey: https://www.surveymonkey.com/mp/margin-of-error-calculator/

departments spent more than €25,000 a year on media monitoring, compared to 14 per cent for public relations and communications.

Table 9
Demand for Media Monitoring Services, Public Relations & Communications Customers, Ireland, 2021

Media Monitoring Service	Per cent Using the Service
Print Media Monitoring (National)	94.8
Print Media Monitoring (Regional & Local)	87.0
Broadcast Media Monitoring (National)	80.5
Broadcast Media Monitoring (Regional & Local)	77.9
Other (e.g. online/digital & social)	27.3

Source: 2021 Survey, Q3.

Table 10
Annual Cost of Media Monitoring, Three Customer Groups,[a] Ireland.

Annual Cost of Media Monitoring	Government Departments	Government Agencies	Public Relations & Communications
	Distribution/Total		
Large (>€25,000)	33.3 per cent	9.1 per cent	13.6 per cent
Medium	33.3 per cent	33.3 per cent	36.4 per cent
Small (<€12,500)	33.3 per cent	55.6 per cent	50.0 per cent
Total	**100 per cent**	**100 per cent**	**100 per cent**

a. N=15 for Government Departments; N=9 for Government Agencies; N=77 Public Relations and Communications. In the latter case 'Don't Know' responses (14.3 per cent) were excluded in estimating the distribution.

Source: Table 4; Table A.2; and 2021 Survey, Q4.

As with government agencies and departments, Kantar Media has experienced a loss in market share due to the entry of Rue Point and TrueHawk (Table 11). Kantar Media after it acquired Newsaccess in 2017 accounted for 100 per cent of the media monitoring market. Amongst public relations and communications customers by 2021 Kantar Media accounted for only just in excess of one in ten customers, with TrueHawk accounting for around to six out of every ten customers, and Rue Point, slightly in excess of two out of every ten customers. Judged by the results for government agencies and departments, the results for Table 11 would not change materially if customer contract cost was employed to measure market share.

Table 11
Media Monitoring Service Suppliers, Market Shares Measured in Terms of Number, Public Relations & Communications Customers, 2021, Ireland.

Kantar Media	TrueHawk	Rue Point	Meltwater[a]	Other[b]
Media Monitoring Service Providers Share of Number of Public Relations & Communications Customers[c]				
11.8 per cent	56.6 per cent	22.4 per cent,	2.6 per cent	6.6 per cent
Excluding Meltwater & Other				
13.0 per cent	62.3 per cent	24.6 per cent	-	-

a. Meltwater is primarily an online media monitoring service provider.

b. 'Other' includes Google Alerts, Zenark but also respondents that used several media monitoring providers.
c. The 2021 Survey question was: 'Which Supplier Does Your Organisation Mainly Use?'

Source: 2021 Survey, Q5.

As noted in Section II an important concern of public relations and communications customers with respect to the Kantar/Newsaccess transaction was its impact on service quality. As a result in the 2021 Survey respondents were asked to compare service quality in 2021 with 2017. The results, presented in Table 12, show a marked improvement. Just over half of respondents judge that quality had improved; but if those who were not customers in either year are removed, then two thirds felt that service quality had improved.

Table 12
A Comparison of Media Monitoring Service Quality, 2017 Versus 2021, Public Relations & Communications Customers, Ireland, 2021

Improved	Stayed the Same	Got Worse	Not a Customer in 2017 or 2021[a]
Service Quality in 2021 Compared to 2017			
54.7 per cent	22.7 per cent	5.3 per cent,	17.3 per cent
Excluding Not a Customer in 2017 or 2021			
66.1 per cent	27.4 per cent	6.5 per cent	-

Source: 2021 Survey, Q7.

In order to provide a more granular picture of the change in service quality, a comparison is presented in Table 13 across five dimensions, separately, using comparable results from the 2017 Survey and the 2021 Survey. Respondents indicated in which of these quality dimensions difficulties or problems had been experienced. The question is phrased slightly differently in the two PRII surveys to reflect the context within which the respective surveys were conducted.

Table 13
Media Monitoring Service Quality, Public Relations & Communications Customers, Five Dimensions, 2017 & 2021, Ireland.

Question: If the service has got worst which – if any – of the following issues have you experienced? (multiple selection possible).				
Print Stories Being Missed	**Broadcast Stories Being Missed**	**Account Manager Not Accessible**	**Access to Archive of Print Stories Reduced**	**Nature & Timing of Alerts Changed & No Longer Suit**
Question: If the service has got worst which – if any – of the following issues have you experienced? (multiple selection possible). (2017)[a]				
92.0 per cent	63.5 per cent	87.1 per cent	72.5 per cent	77.2 per cent
Question: Have you experienced any of the following issues recently? (tick any that apply). (2021)[b]				
36.0 per cent	32.0 per cent	5.3 per cent	13.3 per cent	6.7 per cent

a. The responses for Kantar Media and Newsaccess, presented in Table 2, were combined, using as weights the number of respondents to each quality characteristic.
b. There was a sixth option on the 2021 Survey: 'None of the Above.' 49 per cent of respondents ticked this response. There was no corresponding option in the 2017 Survey.

Source: Table 2 & 2021 Survey, Q8.

In 2017, as noted in Section II, there were very high levels of concern that service quality had worsened. Fast forward four years, there is much less concern; indeed for some dimensions of quality there is little or no concern.[79] In 2017, 92 per cent of respondents reported that print stories were being missed, while, although still a concern in 2021, the level had dropped to 36 per cent of respondents. The decline was even greater for access to the account manager and issues to do with the nature and timing of news alerts.

The evidence from the 2021 Survey of public relations and communications customers reinforces the conclusions drawn from the assessment of media monitoring services purchased by the public sector. There are three significant media monitoring firms, notwithstanding Kantar Media's loss of market share to Rue Point and TrueHawk. The 2021 Survey also enriches our understanding of the evolution of the competitive landscape since 2017 by demonstrating an improvement – sometimes dramatic - in service quality. In other words, entry was sufficient to mitigate SLC based on a decline in service quality, one of the theories of harm advanced in Section II.

Did the Remedy Work?

A comparison of the state of competition in media monitoring in Ireland at the time of the CCPC merger determination and today, more than three years later suggests that competition has not only been restored to its pre-merger level, but that it has been substantially enhanced. Pre-merger the market was a duopoly, with Kantar Media accounting for 68 per cent of the market, Newsaccess the remaining 32 per cent.

Today there are three significant media monitoring firms: the former incumbent, Kantar Media, that acquired Newsaccess in 2017; and the two entrants, Rue Point and TrueHawk, that set up business in the second half of 2017. Although Kantar Media has lost market share and customers since 2017 recently it won a number of contracts. Nonetheless, Kantar Media's market share is below its pre-merger share; the corollary is that Rue Point and TrueHawk's combined market share is in excess of Newsaccess's pre-merger market share. Furthermore service quality has improved comparing 2021 with 2017.

On the face of it the evidence thus suggests that the CCPC's remedy has worked well. The remedy relied on entry to mitigate the potential SLC of the merger. Entry has been timely, likely and sufficient. However, correlation does not necessarily indicate causation. The ex ante analysis of the remedy presented in Section III raised serious doubts about its likely efficacy. In other words, there may be alternative explanation(s) for the success of entry in mitigating any SLC that might have flowed from the Kantar Media/Newsaccess transaction.

The business difficulties experienced by Kantar Media as a result of its major restructuring in 2017 provide a compelling alternative explanation that accounts not only for the entry of Rue Point (and TrueHawk), but also the success of both entrants in gaining market share and the corresponding substantial decline in Kantar Media's market share. These difficulties, which were identified in Section II, were listed by MediaWatch (t/a Kantar Media) in their *Reports and Financial Statements for the financial year ended 31 December 2017* under 'Principle Risks and Uncertainties.'[80] The evidence

[79] The lack of concern may be reflected in the much lower response rate to the 2021 Survey as compared to the 2017 Survey: 4 per cent vs 30 per cent, respectively. I am grateful to the PRII for this observation.
[80] See fn 31 above.

suggests that it took several years for Kantar Media to successfully mitigate these risks and uncertainties.

The business difficulties of Kantar Media impacted on the media monitoring competitive landscape through several channels. First, one of the five directors that resigned from Kantar Media in April 2017 is currently Rue Point's CEO and is a cofounder of Rue Point. Prior to resigning from Kantar Media he had spent nine years and seven months with Kantar Media in various roles, including Managing Director for the three years eight months immediately prior to his resignation, including at the time of the announcement of the Kantar Media/Newsaccess merger in February 2017. [81,82] The other cofounder of Rue Point and currently COO also has extensive experience in media monitoring with Kantar Media: four years and two months as Global Services Director of Kantar Media.[83]

Second, an important aspect of entering a market is the availability of knowledgeable personnel with customer facing experience. In the media monitoring market the merger of Kantar Media and Newsaccess, combined with Kantar Media's contemporaneous major restructuring, resulted in the release of a large number of such personnel. As noted above Kantar Media's employment declined, on average, from 44 persons in 2016 to 19 in 2017 while for Newsaccess the corresponding numbers were 20 and seven, respectively.

Such persons were available and were indeed hired by Rue Point and TrueHawk. For example: the current Head of Sales and Marketing at Rue Point has been with the firm since August 2017, prior to that she held a similar position at Newsaccess.[84] In the case of TrueHawk a person currently in operations has been with the firm since September 2017, having previously been with Kantar Media for eight years.[85]

Third, the decline in the quality of Kantar Media and Newsaccess media monitoring service following the merger's implementation in 2017 and the reaction of customers, as evidenced through the PRII 2017 Survey, suggests that customers would have been more than willing to consider switching to a credible entrant (e.g. Rue Point or TrueHawk). The analysis of contract length in Table 5 for government agencies finds that 30 per cent of contracts are for a year, 80 per cent two years or less, indicating that a substantial share of the market is contestable over quite a short time frame.

Fourth, although TrueHawk was assisted by the Kantar Media/Newsaccess merger remedy in that it purchased the Newsaccess Fixed Assets and had preferential access to selected Newsaccess

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[81] Kevin Fagan, a director of LFMI, has been the CEO of Rue Point since August 2017 to the present. Prior to that he spent nine years and seven months with Kantar Media in various roles, including Managing Director for three years eight months to May 2017. Based on: https://www.linkedin.com/in/kevin-fagan-b8a01746/?originalSubdomain=ie.

[82] Kantar Media, 2017,' Kantar Media Announces Acquisition of Newsaccess.' Press Release, 1 February. For details see: https://www.kantarmedia.com/global/newsroom/press-releases/kantar-media-announces-acquisition-of-newsaccess.

[83] Raina Lazcrova, a Director of LFMI, has been COO of Rue Point since August 2017. Immediately prior to that she spent four years and two months as Global Services Director of Kantar Media. Based on: https://www.linkedin.com/in/raina-lazarova-a7906a4/?originalSubdomain=uk.

[84] Laura Gunnery, for details see: https://www.linkedin.com/in/laura-gunnery-8501236a/?originalSubdomain=ie. See also the current Client Services Manager, Colm Hanlon, at Rue Point, who had previously been employed by Newsaccess, for details see: https://www.linkedin.com/in/colmhanlon/?originalSubdomain=ie.

[85] Padraic Traynor, for details see: https://www.linkedin.com/in/padraic-traynor-9bbab2116/.

customers, the entry and growth of Rue Point suggests that neither is necessary for successful entry. Indeed, if these advantages were that important it would have placed Rue Point at a significant competitive disadvantage, which Rue Point's record in terms of market share growth strongly suggests is not the case.

In an interview in September 2017 TrueHawk stated that it always intended to invest in the State in the media monitoring business.[86] In other words, given the propitious circumstances presented by the business difficulties experienced by Kantar Media/Newsaccess, it seems reasonable to assume that TrueHawk would have entered the media monitoring market sooner rather than later.

In sum, the Kantar Media's business difficulties were sufficient to overcome the barriers to entry that the CCPC identified as likely to hamper entry into the media monitoring market. On the supply side these business difficulties (e.g. staff exits) facilitated the entry of Rue Point and TrueHawk; on the demand side they provided customers eager to switch to a credible alternative provider.

V. A Relaxation in Merger Control?

To determine whether or not a merger will result in a SLC the CCPC is primarily concerned with predicting or forecasting from an ex ante perspective how competition will evolve with and without the transaction. Using the terminology in the CCPC's *Merger Guidelines*, the "'counterfactual' refers to the state of competition without the merger or acquisition."[87] In contrast, the actual situation is state of competition with the merger being put into effect. As the CCPC notes the counterfactual "provides the reference point …, for assessing the competitive effects of the merger."[88]

Typically the counterfactual is the status quo prior to the merger: Kantar Media and Newsaccess competing with one another. In the actual situation, where, as in the Kantar Media/Newsaccess case, there are barriers to entry with no extant competition, then a merger to monopoly is likely to lead to a SLC compared to the counterfactual. Such was the CCPC finding, albeit not definitive because of the commitments offered by Kantar Media.

In the Kantar Media/Newsaccess transaction the CCPC's expectations with respect to the counterfactual and the actual situation were confounded by the business difficulties that Kantar Media faced as a result of its major restructuring in 2017. These difficulties, albeit self-imposed, facilitated entry that was timely, likely and sufficient; mitigating the competitive concerns raised by the transaction. In other words, the merger could in retrospect have been cleared by the CCPC without conditions.

The business difficulties of Kantar Media ensured that it did *not* have the ability to raise price. The evidence is consistent with this prediction. The decline in service quality from early in 2017 was, in effect, a price rise which resulted in entry and a restoration of service quality. The price rise was unsustainable.

Competition agencies do not have a crystal ball in which the evolution of markets can be predicted with certainty. Instead, agencies have to make their best judgment based on the case specific material in their possession. In other words, it is no criticism of the CCPC that it did not anticipate the events

[86] Sexton (2017).
[87] CCPC (2014, para. 1.12).
[88] CCPC (2014, para. 1.12).

that resulted from the major restructuring of Kantar Media. Nonetheless, as argued in Section III, the response of the CCPC to the Kantar Media/Newsaccess transaction, based on the available information, was inadequate: the transaction should either have been prohibited or the remedy strengthened considerably.

The evidence thus suggests, based on the Kantar Media/Newsaccess transaction, that the CCPC has adopted a more relaxed approach to mergers. The agency has been willing to assume a much greater risk of a Type II error (i.e. clearing a merger that is anti-competitive). In the Kantar Media/Newsaccess case, of course, events turned out differently than expected and the media monitoring market is arguably more competitive today than it was prior to the transaction. Customers and consumers cannot always rely on such benign scarcely predictable developments such as those in this case to result in the market rapidly self-correcting. Indeed, Baker (2019, pp. 82-83) argues that it is erroneous to rely on the presumption that if a firm(s) exercises market power that markets will self-correct through entry.

The issue thus arises as to the degree to which the CCPC's treatment of the Kantar Media/Newsaccess transaction is a one-off, an exception, and hence does not portend any relaxation in merger control. In one respect the Kantar Media/Newsaccess transaction was unusual. Ireland has a mandatory notification regime.[89] The Kantar Media/Newsaccess transaction fell below these thresholds. As noted in Section II Kantar Media agreed, at the request of the CCPC, not only to voluntarily notify the transaction, but also to take no further steps to implement it.

The partial implementation of the merger, details of which were also presented in Section II, may have narrowed the scope of the CCPC's options with respect to merger remedies. In particular prohibition may have been a challenging option. The CCPC does not, however, allude or discuss the implications of the partial implementation of the transaction either in the Kantar Media/Newsaccess merger determination itself nor in subsequent CCPC (2018a, pp. 8-10; 2018b, p. 10) discussions of the Kantar Media/Newsaccess merger. Indeed, the Chair of the CCPC (2018a, p. 10) stated that "[W]e are satisfied following our extensive investigation, and in the light of the binding commitments which we have sought and secured, that we have safeguarded competition in this sector."[90]

Notwithstanding the arguably atypical circumstances characterising the notification of the Kantar Media/Newsaccess transaction, there are indications that it is not a one-off relaxation of merger control, but perhaps part of a wider policy shift. The next two-to-one merger, M/18/036 – *Enva/Rilta*, was cleared after Enva had agreed to the sale of assets to an entrant as a remedy. Equally the next three-to-two merge, M/18/063 – *Berendsen (Elis)/Kings Laundry*, was also cleared through the sale of assets to an entrant.[91] In both cases the acquiring firm, unlike Kantar Media, does not appear to have had business difficulties. It is beyond the scope of this paper to assess the adequacy of the sale of assets remedy in these two cases, but a separate examination of the latter merger strongly suggests that the merger should have been prohibited, given the shortcomings in the remedy.[92]

[89] For further discussion of the mandatory notification thresholds see Andrews, Gorecki & McFadden (2015, pp. 272-274).
[90] The CCPC recently made a number of suggestions concerning non-notifiable mergers, but it is not at all clear that they would prevent a situation such as the Kantar Media/Newsaccess transaction developing in a similar manner. The proposals are presented in DETE (2021) and commented on in Gorecki (2021a; 2021b).
[91] See McCann FitzGerald (2021, p.4)
[92] For details see Gorecki (2020).

Annex A: Estimating Kantar Media & Newsaccess Market Shares [93]

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. MediaWatch Limited t/a Kantar Media files with the CRO an annual *Reports and Financial Statements For the Financial Year* that 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).

In contrast, Newsaccess's filed only an annual *Abridged Financial Statements* that did 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,[94] 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, in 2015 Newsaccess accounted 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 *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.[95]

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)).

[93] The Annex is a slightly revised version of Gorecki (2021a, p. 18).

[94] M/17/012 – *Kantar Media/Newsaccess,* para. 4.

[95] The estimate for 2015 is taken from the sources in the second paragraph of this Annex. It should be noted that the estimate of employment for Kantar Media appears to refer to Ireland and Northern Ireland, taken together. Hence it is likely to be an overestimate of Kantar Media's employment in Ireland.

Annex B: Public Sector Media Monitoring Contracts

Government Departments

In the written answers to Parliamentary Question (PQs) dated 30 September 2020 and 6 October 2020 each government department (apart from the Department of the Taoiseach) provided, annually for 2017 to date in 2020: the departmental cost of media monitoring; and, the departmental supplier(s) of media monitoring services. In some instances, there were omissions and/or ambiguity. The relevant department was contacted by the author for clarification. The PQs were independent of the author's research into the media monitoring market. It is a case of serendipity.

The underlying data is presented in Table B.1. The overall size of the government's cost of media monitoring services increased from just over €200,000 in 2017 to €263,000 in 2018 before levelling off at around €350,000 in 2019 and 2020.[96] Departmental expenditure on media monitoring services varied considerably. In 2019, for example, although average department expenditure was €22,061, DSP had the largest single departmental expenditure on media monitoring services at €68,760, the Department of Children, Disability, Equality and Integration the lowest, at €3,815.

All departments, except the Department of Transport (DoT), contracted out their media monitoring services over the period 2017-2020. However, due to the exigencies of Covid-19, the DoT switched to an external supplier in 2020. Finally, in some instances social media is not included in the media monitoring service provided and/or the departmental press office undertakes a certain amount of social media monitoring.

Government Agencies

Over the period 1 January 2018 to 31 December 2020 an initial set of nineteen media monitoring tenders were selected from the eTenders website using the search term 'media monitoring.' Nine were excluded for various reasons including, for example, that the geographic media monitoring market was Denmark, Finland, Norway and Sweden, not Ireland.[97]

For each tender competition the following information was typically available: the contract value; the contract length; the incumbent; the winner of the tender; and, the number of bids or tenders submitted including the winning tender. In some instances, however, the information was missing and the author had to contact the relevant agency. The information collected is presented in Table B.2.

At the present time not all of the data is available for one government agency tender. In that instance the NTMA appears to be in the process of selecting a media monitoring provider, since no 'Contract Award Notice' has been posted on eTenders.

[96] Data for 2020 covers the year to August or September 2020. If it is assumed that media monitoring expenditure is distributed equally throughout the year and that all departments reported costs to the end of September 2020, then total annual departmental expenditure in 2020 would have been €322,102; if the end of August then €362,366.

[97] For more details see footnote b, Table B.2, Annex B.

Table B.1
Media Monitoring Services Suppliers, Contract Costs, Government Departments, Ireland, 2017-2020

Department	2017	2018	2019	2020[a]
	Media Monitoring Supplier[b] (€, Contract Cost)[c]			
Agriculture	Kantar (11,197)	Kantar (16,688)	Kantar/TrueH[d] (26,259)	TrueHawk[e] (13,552)
Children, Disability, Equality & Integration	Kantar (5,990)	Kantar (4,298)	Kantar (3,815)	Kantar (4,261)
Communications, Climate Action & Environment	Kantar (22,730)	Kantar (22,730)	Kantar (26,683)	Kantar (16,531)
Defence	Kantar (16,044)	Kantar (16,044)	Kantar (16,044)	Kantar (10.696)
Education[f]	Kantar (17,645)	Kantar (26,032)	Kantar (25,756)	Kantar (15,024)
Enterprise, Trade & Employment	Kantar[g] (7,486)	TrueHawk (12,884)	TrueHawk (19,557)	TrueHawk (13,038)
Finance	Kantar (13,782)	Kantar (8,418)	Kantar (9,988)	Kantar (5,688)
Foreign Affairs	Kantar (6,618)	Kantar (10,967)	Kantar+TrueH[h] (23,726)	TrueHawk (16,988)
Health	Kantar (17,280)	Kantar (24,279)	Kantar/TrueH[i] (16,331)	TrueHawk (18,088)
Housing, Planning, & Local Government	Kantar (8,280)	Kantar (7,895)	Kantar (8,720)	Kantar (10,454)
Justice & Equality	Kantar (14,755)	Kantar (9,888)	Kantar[j] (38,048)	Kantar (32,501)
Media, Tourism, Arts, Culture, Sport & the Gaeltacht	Kantar (12,093)	Kantar (11,159)	Kantar (13,860)	Kantar/Rue Point[k] (5,263)
Public Expenditure & Reform	Kantar (3,920)	Kantar (3,616)	Kantar (4,689)	Kantar/RuePoint[l] (4,893)
Rural & Community Development	No Provider[m] (0)	Kantar (7,181)	Kantar (12,130)	Kantar (9,259)
Social Protection	Kantar[n] (35,070)	Kantar[o] (68,842)	Kantar/Rue Point[p] (68,760)	Rue Point (56,629)
Transport	Self-supply[q] (11,616)	Self-supply[q] (11,616)	Self-supply[q] (11,616)	Self-Supply/Kantar[q] (8,712)
Total Contract Cost of Media Monitoring	€204,506	€262,627	€352,982	€241,577

a. Year to August or September 2020, but not always specified.
b. TrueH=TrueHawk; Kantar=Kantar Media.
c. Including VAT.

d. Kantar/TrueH = a switch from Kantar Media to TrueHawk. Assumed split equally between Kantar Media and TrueHawk, €13,130 each.
e. Source did not state when TrueHawk became the supplier to the department so assumed 2019. The department failed to respond to clarify the issue.
f. Excluded are departmental payments to Newspaper Licensing Ireland+NLA Media Access of €4,296, €4,425, €4558 with no cost presented for 2020. In May 2020 the Department of Education and Skills was created. It had incurred no cost for media monitoring as of 30 September 2020.
g. For 2017 the supplier was Newsaccess, which was acquired by Kantar Media in 2017.
h. In 2019 both Kantar Media and TrueHawk were billing for overlapping months. The spilt for the year was Kantar/€16,205; TrueHawk/€7,521. However, in December 2019 only TrueHawk billed the department for media monitoring services.
i. The switch occurred in mid-2019. The split was thus: €8,156 each.
j. The increase in costs in 2019 and 2020 reflects the extension of media monitoring to regional as well as national publications.
k. Kantar Media provided media monitoring until February 2020 when service provision switched to Rue Point.
l. It is not stated when the department switched from Kantar Media to Rue Point in 2020, but the media monitoring costs were split: €3,875; €1,018. This suggests the switch occurred on 1 August 2020.
m. The department was not established until 19 July 2017. The department did not use a third party contract for media monitoring until 2018.
n. For 2017 the supplier was Newsaccess, which was acquired in 2017 by Kantar Media
o. It should be noted that the sum also includes broadcast monitoring by Meltwater UK Limited. However, Kantar Media accounted for the vast majority of the costs of media monitoring: 96.5 per cent in 2018. Kantar Media provided print media monitoring; Meltwater broadcast monitoring.
p. It should be noted that the sum also includes broadcast monitoring by Meltwater UK Limited up until October 2019. However, Kantar Media and Rue Point accounted for the vast majority of the costs of media monitoring: 90.7 per cent in 2019. In 2019 the media monitoring costs billed by Kantar Media was €16,974; Rue Point, €45,954.
q. The department's in-house press office supplied media monitoring services. However, due Covid-19 the department decided to procure an external provider from April 2020. The monthly rate for print and broadcast monitoring is €968 per month. This monthly rate is used to derive estimates for dates prior to April 2020.
   Source: Written Answers to Dail Questions by Deputy Matt Carthy and Deputy Catherine Murphy, 30 September 2020 & 6 October 2020.

Table B.2

Media Monitoring Service Suppliers, eTenders,[b] Contract Costs, Government Agencies,[b] Ireland, 2018-2020

Agency (eTenders Publication Date)	Contract Cost[c] (annual, ex VAT)	Contract Length[d]	Incumbent[e]	Winner[e] (# of Bids)
Office of Public Works (OPW) (16 May 2018)	€15,000	One year, option two 12 month extensions	Kantar Media	TrueHawk (N=3)
EirGrid (9 August 2018)	€16,000	Two years, option one 12 month extension	Kantar Media True Hawk	Rue Point (N=3)
Horse Racing Ireland (HRI) (22 March 2019)	€10,000	Two years, maximum of four years	Kantar Media (Newsaccess)	Rue Point (N=3)
Safefood (4 June 2019)	€10,000-€12,000	Two years, option two year extension	Kantar Media	TrueHawk (N=4)
National University of Ireland, Galway (NUIG) (12 Sept. 2019)	€40,000	Two Years, option two year extension	Kantar Media (Dec 2016-July 2018) Rue Point (July 2018-Sept 2020)	Rue Point (N=4) -
Bord lascaigh Mhara (BIM) (13 December 2019)	€7,640 -	One year, option three 12 month extensions	TrueHawk	Rue Point (N=4)
Enterprise Ireland (EI) (2 May 2020)	€6,500-€15,000	Two years, option two 12 month extensions	Kantar Media	Rue Point (N=2)
National Treasury Management Agency (NTMA) (17 July 2020)	-	Three years	-	-
Sustainable Energy Authority of Ireland (SEAI) (29 Sept. 2020)	€12,650	One year, option for two 12 month extensions	Kantar Media (Newsaccess)	Kantar Media (N=3)
Commission for Communications Regulation (ComReg) (30 October 2020)	<€25,000	Four years	Kantar Media -	Kantar Media (N=4) -

a. "The [eTenders] site displays, on a daily basis, all Irish public sector procurement opportunities currently being advertised in the Official Journal of the European Union (OJEU), as well as other lower-value contracts uploaded to the site from awarding authorities." https://www.etenders.gov.ie/about_us_main_en-GB. The threshold for notification in the OJEU for government departments and offices from 1 January 2018 was €144,000, from 1 January 2020 €139,000. The lower-value threshold is €25,000.
b. The sample of government agencies was selected as follows: the initial sample was selected using the keywords 'media monitoring' on the eTenders website. Attention was confined only to notifications that were published from 1 January 2018 to 31 December 2020. The yielded a set of nineteen agencies. However, nine of these eTenders were eliminated for various reasons: the tenderer was a government department rather than a government agency (N=3); the geographic remit of the tender not Ireland, but for example Denmark, Finland, Norway & Sweden (N=4); and, the tender related to social or online media monitoring (N=2). The latter two reasons for exclusion reflected the geographic and product market definition of the media monitoring market.
c. The contract cost or tender value should be regarded as indicative, rather than necessarily the actual amount billed. In all instances the value is ex VAT. In some instances the cost is taken from the tender documents posted on the eTenders website (OPW, NUIG, SEAI, ComReg); while in other instances the amount was supplied by the government agency awarding the tender (EirGrid, HRI, Safefood, EI, BIM, ComReg).
d. Contract length as per the tender documentation posted on the eTenders website. The length is normally expressed as an initial contract duration, with options for subsequent extension(s).
e. Details of the incumber and the tender winner were obtained from the government agency awarding the tender. In the case of EirGrid two incumbents were cited. It is probably the case that Kantar Media lost the contract to TrueHawk, which in turn lost to Rue Point. In the case of the NTMA at the time of writing details of the award of the tender had, as yet, not been posted in eTenders.

   Source: www.eTenders.ie and information supplied by OPW, EirGrid, HRI,NUIG, BIM, EI, NTMA, SEAI and ComReg.

Annex C: Media Monitoring Survey 2021 (2021 Survey)

The PRII distributed the Media Monitoring Survey 2021 (the 2021 Survey), reproduced in Table C.2, via the organisation's weekly E-zine. The circulation is 2,022, which includes both PRII members (approximately a 1,000) and non-members. Responses to the 2021 Survey were received by the PRII between 6 April 2021 and 21 April 2021. Eighty responses were received, a response rate of 4 per cent, and tabulated using Survey Monkey.

The PRII undertook two earlier surveys: first, the 2017 Survey, referred to in Sections II and IV, which surveyed PRII's 903 extant members; and second, a census of those employed in public relations and communications commissioned by the PRII from Amarach Research (2019, p. 3) that estimated the population as numbering 2,824 (2019 Census). The 2021 Survey thus surveyed a population about mid-way between the size of the population of the 2017 Survey and that of the 2019 Census. The response rates varied considerably across the three surveys: the 2017 Survey, 30 per cent; the 2019 Census, 16.7 per cent; and, the 2021 Survey, 4 per cent.

There a small number of metrics in which comparisons can be made across the three surveys (Table C.1). The comparisons suggest that the 2021 Survey is overrepresented with respect to those that are in-house and underrepresented by those that are consultants in an agency or that are independent (Table C.1). However, a difficulty arises in interpreting these comparisons in that in the 2021 Survey was conducted when the State was in the midst of the Covid-19 pandemic. In other words, economic conditions could have impacted the composition of respondents in 2021 compared with 2017 and 2019.

Table C.1
A Comparison of Three Surveys of PRII Members and Non-Members, 2017-2021

Place of Work	**2017 Survey**	**2019 Census**	**2021 Study**
In-house	54.8 per cent	52 per cent	70.1 per cent
Consultant in an Agency	31.5 per cent	38 per cent	23.4 per cent
Independent Consultant	11.9 per cent	9 per cent	3.9 per cent
Other	1.9 per cent	1 per cent	2.6 per cent
Total	**100 per cent**	**100 per cent**	**100 per cent**
Sector of Work[a]			
Public	n.a.	26 per cent	30 per cent
Private	n.a.	74 per cent	70 per cent
Total	n.a.	100 per cent	100 per cent

a. The definitions are not entirely consistent between 2019 and 2019. For 2019 the definition of public sector is 'In-house public sector' and 'PR Education;' everything else is private sector. For 2021 public sector is 'public sector'; everything else is private sector, which includes 'Commercial Semi-State.'

Source: Amarach Research (2019, p. 5); PRII (2017b, Q1); and, 2021 Survey, Qs 1&2.

The in-house category is divided equally between the public and private sector according to Amarach Research (2019, p. 3). Public sector employees are much more likely to have retained their positions than consultants during 2020/2021. This may explain, in part at least, the change in the composition of the responses to the 2021 Survey compared to earlier surveys. On the other hand, the public: private sector split remains much the same as between 2019 and 2021 suggesting that this explanation has limited validity.

Nonetheless, the changed economic situation does raises a broader issue in terms of assessing the response rate. The 2021 Survey is aimed at those employed or self-employed in public relations and communications. These individuals are the customers for the services offered by media monitoring service providers. However, to the extent that those persons on the E-zine distribution list are unemployed or retired then they are unlikely to be customers of media monitoring service providers. Hence the 2021 Survey response rate of 4 per cent is likely an underestimate of those employed or self-employed in public relations and communications and hence likely to be customers of media monitoring providers.

Table C.2
PRII Media Monitoring Survey 2021 (2021 Survey)

Media Monitoring Survey 2021

Introduction

The purpose of this survey is to assess the state and quality of print and broadcast media monitoring in the Irish market.
The survey is also designed to measure how the media monitoring landscape has evolved since 2017.
The present survey is being conducted among PRII members by Dr Paul Gorecki, a specialist in competition economics. It is purely for research purposes. It has not been commissioned or paid for by a third-party.
A summary of the survey results will be distributed to PRII members.
All responses are anonymous.

Survey Questions

1: Are you working

In-house	
Consultant in an agency	
Independent consultant	
Other (please specify)	

2: In which sector do you work?

Public Sector	
Commercial Semi-state	
Charity/NGO	
Consumer/FMCG	
Lifestyle	
Financial	
B2B	
Public Affairs	
Other (please specify)	

***3: Does your organisation engage the following media monitoring services (Tick all that apply)**

Print Media Monitoring (National)	
Print Media Monitoring (Regional & Local)	
Broadcast Media Monitoring (National)	
Broadcast Media Monitoring (Regional & Local)	
Other - please specify below	

***4: What is the annual cost of your media monitoring?**

Less than €12,500	
€12,500 to €25,000	
Greater than €25,000	
Don't Know	

***5. Which supplier does your organisation mainly use?**

Kantar	
TrueHawk Media	
Rue Point Media	
Meltwater	
Other (please specify)	

***6: How long has your organisation been a customer?**

Less than a year	
1 to 3 years	
3 years or more	

***7. How would you assess the quality of service in 2021 compared with 2017?**

Improved	
Stayed the same	
Got worse	
Not a customer in 2017 or 2021	

***8. Have you experienced any of the following issues recently? (Tick any that apply)**

Print stories being missed	
Broadcast stories being missed	
Account managers not accessible	
Access to archive of print stories reduced	
Nature & timing of alerts changed and no longer suit	
None of the above	
Other (please specify)	

9: What other methods or services do you use to monitor national, regional and/or local print and broadcast media in Ireland?

10.Any other comments?

Thank you for co-operation and participating in this survey.

The feedback from this survey will be shared with PRII members soon.

*This question requires an answer.

FMCG= Fast Moving Consumer Goods (usually includes food, beverages, toiletries, cosmetics, etc)

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