GLI GLOBAL LEGAL INSIGHTS

Mergers & Acquisitions

2022

11th Edition

Contributing Editors: **Scott C. Hopkins and Lorenzo Corte**

glg global legal group

CONTENTS

Ireland

Alan Fuller & Joseph O'Rourke
McCann FitzGerald LLP

Overview

Despite significant disruption caused by the COVID-19 pandemic, 2021 proved to be an extraordinary year for the Irish Mergers & Acquisitions ("**M&A**") market. M&A activity reached its highest level in more than four decades and was driven by investor optimism in the market underpinned by the successful vaccine rollout, capital availability and improved political stability. The level of transactions was remarkable both in terms of volume and valuations achieved. Over the course of 2021, Ireland saw a record 690 transactions, a 58% rise on 2020, itself a record-breaking year, and the total value of M&A increased from €31 billion in 2020 to a staggering €96 billion, being the second-highest total since 1980.

The year 2021 saw one of the largest deals in Irish M&A history, with the acquisition by Dublin-headquartered AerCap of GE Capital Aviation Services for €26 billion in cash and shares (AerCap and GE Capital being the world's two largest aircraft leasing companies). This highlights Ireland's reputation as a global leader in the aviation industry. A significant deal in the healthcare space in 2021 was the €9.9 billion acquisition by Dublin-based biotechnology and pharmaceutical firm ICON Plc of US-based PRA Health Sciences. The M&A activity in 2021 was strongly driven by these two mega deals, which accounted for nearly half of the outbound deals recorded in 2021.

Ireland's performance should also be considered in the context of the European Union (the "**EU**"). Ireland's economy was the only economy in the EU to grow in 2020. This was in contrast to an EU average of a 6.8% slump. The European Commission (the "**EC**") estimated that Irish GDP grew by 13.5% in 2021, making Ireland the best-performing economy in the EU. High growth rates are not expected to be sustained in 2022 given high inflation, Russia's invasion of Ukraine and supply chains and commodity price issues.

The Competition and Consumer Protection Commission (the "**CCPC**") experienced a 98% increase in merger notifications in 2021 compared to 2020. Eighty-one mergers were notified during 2021, which is up from 41 in 2020. The increase in merger control activity mirrored the wider global trend of increased levels of deal making. The CCPC observed that the financial and insurance services were the most prominent sectors for notifications, in particular, the banking sector. Three of the CCPC's five Phase 2 investigations related to proposed acquisitions in the banking sector. As banking acquisitions have the potential to fundamentally impact on such a key sector of the Irish economy, the CCPC has dedicated significant resources to ensuring these notifications are considered very carefully.

Broadly speaking, there was strong performance across all sectors last year. The market was once again dominated by the technology, media and telecommunications ("**TMT**") and pharma, medical and biotech ("**PMB**") sectors, with other high performing sectors including financial and business services and consumer goods. TMT was the top performing sector by deal volume, accounting for over a quarter of all deals carried out in Ireland in 2021, while the financial services sector accounted for 29% of deals by value. The performance of the financial services sector can be attributed in part to the expansion of the three domestic banks through the carve-ups of Ulster Bank, KBC Ireland and the sale of Davy Goodbody Stockbrokers. The acquisition of Valeo Foods by Bain for €1.7 billion demonstrated the value in consumer foods. Private equity continued to play an important and growing role in the Irish M&A market. The private equity sector was behind 66 M&A transactions in Ireland last year.

Key developments during the period include the continuation of the "interim period" for The Companies (Miscellaneous Provisions (COVID-19)) Act 2020, changes to the Irish merger notification procedure and other tax-related changes.

Significant deals and highlights

The following table, produced by MarketIQ, sets out the top 10 deals that took place in Ireland last year:

Date	Consideration (€m)	Deal Type	Acquiror	Country	Target	Country
10/03/2021	26,000	Acquisition	AerCap Holdings NV	Ireland	GE Capital Aviation Services LLC	USA
24/02/2021	9,900	Acquisition	ICON Plc	Ireland	PRA Health Services Inc.	USA
03/02/2021	6,100	Acquisition	Jazz Pharmaceuticals Plc	Ireland	GW	UK
12/01/2021	3,900	Acquisition	Steris Plc	Ireland	Cantel Medical Corp	USA
12/05/2021	3,225	IBO	Clayton Dubilier & Rice	USA	UDG Healthcare Plc	Ireland
12/05/2021	2,961	Acquisition	Arthur J Gallagher & Co	USA	Certain Operations of Willis Towers Watson Plc	Ireland
01/02/2021	2,580	Acquisition	Horizon Therapeutics Plc	Ireland	Viela Bio Inc	USA
01/02/2021	2,400	Acquisition	Eaton Corporation Plc	Ireland	Cobham Mission Systems Wimborne Ltd	UK

Date	Consideration (€m)	Deal Type	Acquiror	Country	Target	Country
29/03/2021	2,000	IBO	Carlyle Aviation Partners	Ireland	FLY Leasing Ltd	Ireland
23/12/2021	1,910	Acquisition	Flutter Entertainment Plc	Ireland	Sisal SpA	Italy

(Source: MarketIQ United Kingdom and Republic of Ireland M&A Review, 2021)

The year 2021 proved to be a bumper year for M&A activity in Ireland. As in 2020, the majority of M&A deals in 2021 according to deal size were mid-market deals. Eighty-one per cent of all deals with a disclosed value recorded over the year were between €5 million and €250 million. This demonstrates the underlying strength in the rebounding domestic economy. There were also a series of megadeals in 2021, the 10 largest of which can be seen in the above-mentioned table. Irish businesses were involved in 16 deals valued in excess of €1 billion. This is a significant increase in comparison to the three megadeals in 2020.

The largest deal by far was AerCap's €26 billion acquisition of GE Capital Aviation Services from US conglomerate General Electric. This is one of the largest M&A transactions ever seen in Ireland and positions AerCap as the worldwide industry leader across all areas of aviation leasing. The combined company will serve 300 customers around the world and will be the largest client of Airbus and Boeing. Under the terms of the transaction agreement, General Electric will own approximately 46% of the combined company.

The AerCap acquisition was not the only significant deal in the aviation industry in Ireland last year. Global investment firm, Carlyle, was involved in a €2 billion institutional buyout ("**IBO**") of Dublin based FLY Leasing Limited. The IBO was completed through the commercial aviation investment and servicing arm of Carlyle's $61 billion Global Credit platform, Carlyle Aviation Partners. In addition to this, Eaton Corporation Plc, the power management company, acquired Cobham Mission Systems Wimborne Ltd for €2.4 billion. Cobham Mission Systems specialises in air-to-air refuelling, fuel tank inerting, life support, space propulsions, weapons carriage and missile actuation.

The pharmaceutical, health and biotech sector played a very important role in the M&A market, representing half of the top 10 deals. These five deals represent about €25.7 billion of the Irish M&A market last year. The largest of such deals was the €9.9 billion acquisition by Dublin based biotechnology and pharmaceutical firm ICON Plc of US based PRA Health Sciences. By acquiring PRA Health Sciences as a wholly owned subsidiary, ICON claims the deal has created the world's most advanced healthcare intelligence and clinical research organisation. The institutional buyout by private equity firm Clayton Dubilier & Rice of UDG Healthcare, a global leader in healthcare advisory, communications, commercial, clinical and packaging services for €3.225 billion was another significant transaction in the sector. This deal involved the Dublin firm's delisting from the London Stock Exchange and highlights the growing role of private equity in the Irish M&A market.

The top 10 deals were rounded out by a significant acquisition in the insurance sector. In May, global insurance brokerage and risk management heavyweight Arthur J Gallagher & Co. agreed to acquire certain operations of Willis Towers Watson Plc for €2.9 billion.

The year ended on a high note with the acquisition by Flutter Entertainment, the holding company of betting brands including Paddy Power and Skybet of Italy's leading online gaming operator, Sisal S.p.A from CVC Capital Partners for a consideration of €1.9 billion.

Key developments

Corporation tax

In the 2021 Irish budget, the Irish Government reaffirmed its commitment to Ireland's headline 12.5% corporation tax rate.

However, in October 2021, the Minister for Finance and the Minister for Public Expenditure announced as part of the 2022 Irish budget that the Irish Government had agreed to the long-negotiated OECD proposals for a global minimum effective tax rate of 15% for certain multinationals designed to come into effect in 2023. An agreed guarantee that Ireland could continue to offer the 12.5% corporation tax rate for businesses with revenues less than €750 million was an important achievement for Ireland. Accordingly, the vast majority of businesses in Ireland, estimated as approximately 160,000 businesses employing 1.8 million people, will remain outside the scope of the OECD deal and will continue to be taxed at 12.5% for corporation tax. Among the companies likely to be affected by the change in tax rate are Eir, Musgraves, Dunnes Stores and a number of other big retailers and consumer firms.

Corporation tax relief for certain start-up companies

The existing corporation tax relief for certain start-up companies will be extended to 31 December 2026, and will be available for the first five years (rather than three years) of trading. This tax relief, also known as Section 486C tax relief, is a reduction of Corporation Tax ("**CT**") for the first five years of trading for a start-up company.

The relief can be applied to the profits from a company's new trade and on chargeable gains made on assets used in that trade. The company's corporation tax due must be €40,000 or less in a tax year. If a company's corporation tax due is between €40,000 and €60,000, you may be entitled to partial relief. Tax relief for start-up companies also depends on the amount of employer's Pay Related Social Insurance ("**PRSI**") you pay. This must be a maximum of €5,000 per employee and €40,000 overall.

Tax credit for digital gaming companies

A new tax credit for digital gaming companies was introduced in Budget 2022. This will provide a refundable corporation tax credit for expenditure incurred on the design, production and testing of a game at a rate of 32% on eligible expenditure of up to a maximum limit of €25 million per project (subject to a per project minimum spend requirement of €100,000). The gaming industry is estimated to be worth over €100 billion globally and it is hoped that this new tax credit will promote Ireland as a global hub in the digital gaming sector.

VAT rate for hospitality and tourism sector

The VAT rate of 9% (from 13.5%) for the hospitality and tourism sector, which was introduced in November 2020, will be extended until 30 August 2022.

Updates to companies legislation

The Companies (Corporate Enforcement Authority) Act 2021 commenced in February 2022. The purpose of the Act is to transform the Office of the Director of Corporate Enforcement into a statutory and independent agency (to be known as the Corporate Enforcement Authority or "**CEA**") with additional resources to investigate and prosecute economic and white-collar crime in Ireland. In addition to this, the Act makes a number of welcome changes to the Companies Act 2014 (the "**2014 Act**") designed to clarify certain matters and remove anomalies that existed in the 2014 Act.

The Act and the establishment of the CEA will serve to further bolster Ireland's regulatory framework for the conduct of business and provide more legal certainty for clients transacting in Ireland.

COVID-19 developments

The Companies (Miscellaneous Provisions (COVID-19)) Act 2020 was enacted on 21 August 2020 to introduce measures to provide entities with some flexibility in relation to operation and governance matters during the COVID-19 pandemic. The Act temporarily amends the Companies Act 2014 and the Industrial and Provident Societies Act 1893, with most provisions applying for an initial interim period up to 9 June 2021. The Irish Government has further extended the interim period to 31 December 2022.

The Act provides that, notwithstanding a company's constitution: (a) companies may hold a general meeting by electronic means, provided all attendees have a reasonable opportunity to participate; (b) company directors can cancel, change venue or change the means of holding the general meeting in order to comply with public health guidance; (c) the chairperson may conduct a vote to decide on a resolution by a show of hands of participating members or by an alternative method depending on the particular technology; and (d) each member and proxy who participates in a general meeting by electronic means will be counted in the quorum. "General meetings" include AGMs, EGMs, meetings of a particular class of shareholder and scheme of arrangement meetings. The Act also eases the law in respect of document execution, allowing documents to which the company seal is applied to be signed and sealed in different counterparts. The changes have displayed the flexibility of Irish company law to react to the unprecedented challenge of the pandemic and have facilitated the move by many companies to carry out their business remotely at distance.

Merger notification process

An important change to the Irish merger notification regime commenced on 1 July 2020, with the introduction of the simplified notification regime ("**Simplified Procedure**") by the CCPC. The Simplified Procedure was a welcome development in Ireland, in relation to M&A transactions that do not raise competition concerns in Ireland.

In 2021, a substantial percentage of Irish deals qualified for the Simplified Procedure. Of the 74 determinations issued by the CCPC in 2021, 32 mergers (43%) were cleared using this process.

The procedure involves the parties continuing to notify the CCPC using the standard merger notification form; however, the notifying parties are exempt from completing certain sections of the form (sections 4.5–4.10 and 7.3 of the notification form). Following receipt of a notification, the CCPC will decide whether it is appropriate to apply the Simplified Procedure. It is important to be aware that the CCPC may revert to the standard procedure at any point during the notification process. They can do this by issuing a requirement for more information or declaring the notification submitted to be involved. Thus, the parties will be required to submit a fresh notification using the standard procedure. The CCPC has identified three categories of merger, acquisition or joint venture, which are unlikely to raise competition concerns and will apply under the Simplified Procedure:

- M&A with no competitive overlap;
- M&A with a limited competitive overlap; and
- changes from joint to sole control (subject to exceptions).

The CCPC has not indicated how quickly it intends to process deals notified under the Simplified Procedure, but has said it "*will endeavour to make a determination as soon as practically possible following the expiration of the deadline for third party submissions*" (10 working days after notification of the merger). While this should see a reduction in review times, it should be borne in mind that the highly encouraged pre-notification discussions will also have to be factored in.

Regulations under the Gender Pay Gap Reporting Information Act 2021 ("Pay Gap Act")

In March 2022, the Minister for Children, Equality, Disability, Integration and Youth, Roderic O'Gorman announced details of the introduction of gender pay gap reporting under the Pay Gap Act. Regulations under the Pay Gap Act will require organisations with over 250 employees to report on their gender pay gap in 2022. This will reduce to 150+ employees in 2024 and 50+ employees in 2025.

For companies now in scope of the regulations, employers will choose a "snapshot" date of their employees in June 2022 and will report on the hourly gender pay gap for those employees on the same date in December 2022. Employers are also required to publish a statement setting out, in the employers' opinion, the reasons for the gender pay gap in their company and what measures are being taken or proposed to be taken by the employer to eliminate or reduce that pay gap.

The purpose of the Pay Gap Act is to provide for mandatory reporting on the remuneration differences between female and male employees, including any bonuses, together with a statement to explain the reason for differences and the measures (if any) being taken or proposed to be taken to eliminate or reduce the differences.

Industry sector focus

While there was strong activity across all sectors in 2021, the TMT and financial services sectors were the most active, with TMT representing 28% of deal volume, and financial services representing 29% of deals by value, according to *Mergermarket.* These sectors were, perhaps unsurprisingly, the most resilient sectors throughout the pandemic and this translated into investor confidence.

The TMT sector was an integral part of Ireland's M&A market last year, as investors were keen to snatch opportunities for growth in software, fintech and health-tech and capitalise upon the impact of the COVID-19 pandemic. Whilst the majority of these deals were small in value, the sector did also notably account for four of the top 20 largest deals of 2021. Amongst the largest of these deals was the €1.8 billion acquisition of a stake in the Galway-based fintech company Planet by the private equity firm Advent International. This was followed by Dublin-based Navitas' merger with US company Live Oak at a €785 million valuation.

The strong performance of the financial services sector was led by a number of large deals in addition to Allied Irish Bank's €4.1 billion acquisition of Ulster Bank Ireland's commercial loan book. This illustrates an increase in the size of deals from preceding years in the financial services sector as noted in the ninth and 10th editions of *Global Legal Insights – Mergers & Acquisitions*.

The pharmaceutical, health and biotech sector was particularly busy in 2021. This is another sector in which Ireland has a strong global reputation. The sector saw 41 transactions take place in 2021, being the second busiest sector in the market. With the exception of the €9.9 billion acquisition of PRA Health Sciences by ICON Plc and the acquisition of the Healthcare 21 Group by Addlife for €240 million, the value of individual deals in this sector was generally on the smaller side.

Business service companies took up 15% of the M&A market by value last year, according to *Mergermarket*. The most notable deal in this sector was the €3.4 billion deal where Clayton Dubilier & Rice acquired UDG Healthcare, a global leader in healthcare advisory, communications, commercial, clinic and packaging services.

Ireland's dominance in the aviation sector was once again reinforced by a number of notable M&A deals in 2021. The acquisition of General Electric's plane leasing unit by Dublin-headquartered Aercap for €26 billion in cash and shares was one of the largest deals ever seen in Ireland. Other significant deals in the sector included Carlyle Aviation Partners' €2 billion purchase of Dublin-based FLY Leasing and Eaton Corporation Plc's acquisition of Cobham Mission Systems Wimborne Ltd for €2.4 billion.

The continued appetite in the food sector in Ireland was reflected by the deal activity seen in 2021. The largest deals in the sector included the acquisition of Valeo Foods by Bain for €1.7 billion, the acquisition of the Kerry Group's consumer foods business by Pilgrim's Pride and the spin out of the Glanbia Ireland milk-processing business by Glanbia plc to Glanbia Co-Op.

Private equity continued to play an important and growing role in the Irish M&A market. According to *MergerMarket*, nine of the top 20 largest deals of 2021 were private equity-based. These deals included two buyouts and seven exits. Private equity groups with unprecedented levels of capital drove the surge in deal making in the market. The institutional buyout by Clayton, Dubilier & Rice of UDG Healthcare for €3.225 billion and the sale by Eurazeo of its stake in Planet to Advent were two such transactions.

Sectors that saw a downturn in transaction volumes include utilities, construction, transport and hospitality. Transport and hospitality deals may have been impacted by the residual impact of the pandemic.

The year ahead

The year 2021 saw the M&A market grow by an impressive amount, even though Ireland and many countries around the world continued to have stringent public health measures in place as a result of the COVID-19 pandemic. A successful vaccination programme and a gradual re-opening resulted in improved public and consumer confidence. This can be seen in the marked increased in M&A activity when compared with 2020.

In the year ahead it may be difficult to maintain the level of deal making as seen in 2021, which is likely to have included some pent-up demand from 2020. As of April 2022, the M&A market in Ireland has performed well, with 60 deals and a total combined value of almost €3.1 billion. Compared to the same period in 2021 there has been somewhat of a global slump in M&A activity. Irish M&A volume softened by 24% *versus* a 42% decline in the UK, meanwhile the wider Europe, Middle East and Africa ("**EMEA**") region saw a 23% fall in deal volume. Industry insiders are keen to point out that deal volume in Ireland in the first four months of 2022 is still up when compared to two years ago and that the M&A market is still performing strongly in light of recent challenges.

Possible headwinds to continued M&A growth in 2022 involve surging inflation and central banks globally raising interest rates in addition to uncertainty arising from the war in Ukraine. The low interest rate environment of almost a decade is coming to an end. The US Federal Reserve has indicated that it will raise interest rates by another 50 basis points by the end of the year and market pricing sees the Federal Reserve heading towards a benchmark rate of between 2.5% and 2.75%. The European Central Bank has also indicated that it will end its era of cheap money and begin raising interest rates once more, albeit from a much lower rate of -0.5% as of May 2022.

M&A at a global level was a recent topic of discussion at the recent World Economic Forum in Davos. Luisa Gómez Bravo, Global Head of BBVA Corporate & Investment Banking said that "*we have to be careful about comparing our current state of play to exceptionally good years like 2021*". The panel noted that, in light of recent geopolitical events and the upcoming trends within the industry, alongside the energy transition, there will be exciting infrastructure, technology and supply chain projects. Gomez Bravo believes that the tough international context will strengthen the idea of "friend-shoring" whereby companies will seek out business allies in terms of company location and the supply chain. She believes that strategic autonomy will play a key role in future M&A flows.

The Chinese economy has also slowed significantly in recent months as the Chinese Government continues to pursue a "zero COVID" policy. This policy has seen major economic hubs under strict lockdown conditions. Baker McKenzie have said that Chinese state-owned enterprises have been reviewing the overseas targets they have acquired in the last few years and are refocusing on their core-business in light of geopolitical tensions and regulatory restrictions from countries such as the US. In light of these developments Zhang Hong, Head of Private Equity at Baker McKenzie FenXun, says that she believes Western Europe is expected to be a strong alternative to the US for tech, due to its comparative levels of economic development, talent availability and market size. Ireland's important role in the tech and pharmaceutical industry could benefit from this refocusing of Chinese M&A interest.

Alan Fuller
Tel: +353 1 607 1372 / Email: alan.fuller@mccannfitzgerald.com
Alan is a Partner in the firm's Corporate Group whose practice includes mergers and acquisitions, private equity and venture capital, joint ventures, corporate reorganisations and equity capital markets.

Joseph O'Rourke
Tel: +353 1 607 1232 / Email: joseph.orourke@mccannfitzgerald.com
Joseph is a Senior Associate in our Corporate Group who trained with McCann FitzGerald. Joseph advises on a broad range of corporate matters, including mergers and acquisitions, private equity and venture capital, joint ventures, and corporate reorganisations. He has worked on a range of matters in the energy sector, where he has significant experience acting for acquirers and sellers in the M&A sphere.

McCann FitzGerald LLP
Riverside One, Sir John Rogerson's Quay, Dublin 2, DO2 X576, Ireland
Tel: +353 1 829 0000 / URL: www.mccannfitzgerald.com