

Mergers and Takeovers (Control) Acts, 1978 to 1996

Twenty-Second Annual Report

To be laid before both Houses of the Oireachtas under Section 15 of the Mergers and Takeovers (Control) Acts, 1978 to 1996.

Being the Report for the year ended 31 December, 2000.

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Introduction

Section 15 of the Mergers and Takeovers (Control) Acts, 1978 to 1996 (“the Mergers Act”) requires an Annual Report to be made to each House of the Oireachtas stating the number and nature of investigations under Section 8 of the Mergers Act. Investigations under Section 8 of the 1978 Act are undertaken by the Competition Authority as provided for by the Competition Acts, 1991 and 1996.

This Report, which is in respect of the year ended 31 December, 2000, also deals with -

- (a) the total number of merger or takeover proposals notified under Section 5 of the Mergers Act in the year under review; and
- (b) the operation of the Mergers, Take-overs and Monopolies (Newspapers) Order, 1979.

The level of merger and take-over activity continued to increase with a record 319 proposals being notified to me in 2000. Since the end of 1996 the number of fully notifiable cases nationally has more than doubled, a trend which was replicated at EU level.

Mary Harney T.D.

Tánaiste and Minister for Enterprise, Trade and Employment

July, 2001

1. Merger Control

- 1.1 Merger control in Ireland is governed by the Mergers and Take-overs (Control) Acts, 1978 to 1996 (“the Mergers Act”). The Act provides for the control of mergers between “enterprises” which are defined as “a person or partnership engaged for profit in the supply or distribution of goods or the provision of services”.
- 1.2 A merger or take-over is defined as being taken to exist when two or more enterprises, at least one of which carries on business in the State, come under common control (Section 1 (3) (a)).
- 1.3 Enterprises are deemed to come under common control when, inter alia, the decision as to how or by whom each shall be managed can be made either by the same person or group of persons acting in concert (Section 1 (3) (b)).
- 1.4 The Acts apply to every proposed merger or take-over where (a) the value of the gross assets or the annual turnover of each of two or more of the enterprises involved is not less than IR£10,000,000 or IR£20,000,000 respectively or (b) regardless of the size of turnover or gross assets where one of the enterprises involved is a newspaper or magazine.

- 1.5 Where a proposal is deemed to come within the scope of the Acts, each of the enterprises involved is required to notify the Minister for Enterprise, Trade and Employment in writing of the proposal, and provide full details of the proposal within one month (or such other period as the Minister may specify) of the “offer capable of acceptance” having been made. (Section 5(1)).
- 1.6 The Minister under Section 5 (1)(a) - as inserted by the Competition (Amendment) Act, 1996 – prescribed a fee of £4,000 to accompany each notification under Section 5 of the Act.
- 1.7 A merger or take-over cannot be concluded until the Minister has stated that she does not propose to prohibit it either absolutely or subject to conditions, or in the absence of such a statement, until a period of three months has elapsed from the date of notification or from the date of receipt of such further information as the Minister may require.
- 1.8 The Minister has discretion to approve a proposal without referral to the Competition Authority (a statutory body with investigative powers). Alternatively, the Minister may, within 30 days of receipt of the notification, or from the date of receipt of any additional information requested, refer the proposal to the Competition Authority for investigation.

1.9 The Authority is obliged to investigate every proposal referred to it and to report to the Minister on its investigation. The report of the Authority must state its opinion as to whether or not the proposed merger or take-over concerned would be likely to prevent or restrict competition or restrain trade in any goods or services and would be likely to operate against the common good. The report must also give the views of the Authority on the likely effect of the proposed merger or take-over on the common good in respect of the criteria attached at Appendix 1. The Minister, having considered the report of the Authority may, if she thinks that the exigencies of the common good so warrant, by order prohibit a proposed merger or take-over either absolutely, or subject to conditions.

2. Investigations under Section 8

- 2.1 Under Section 8 of the Mergers Act, the Competition Authority shall investigate any proposed merger or take-over referred to it by the Minister. The Minister may specify a date, allowing at least 30 days after the reference, by which the Authority must furnish its Report. The Authority may avail of the powers conferred on it by the Competition Acts, 1991 and 1996 in relation to the inspection of premises and records for the purposes of its investigation of a proposal referred to it.
- 2.2 Having considered the Authority's Report, the Minister may, if she thinks the exigencies of the common good so warrant, and following consultations with any other Minister of the Government appearing to her to be concerned, prohibit, by means of an Order under Section 9 of the Mergers Act, a proposed merger or take-over either absolutely or except on specified conditions. The Minister shall publish any such report by the Authority, with due regard to commercial confidentiality, within two months of it being furnished to her by the Authority.
- 2.3 No investigations were carried out by the Competition Authority under the Mergers Act in 2000.

3. Referrals under Section 7

- 3.1 On 7 July, 2000, An Tánaiste decided to refer, under Section 7 of the Mergers Act, the proposed acquisition by Golden Vale plc of the Northern Ireland dairy business of Express Dairies plc to the Competition Authority for investigation. However, prior to investigation by the Competition Authority, the proposal was withdrawn.

4. Competition and Mergers Review Group

4.1 The Competition and Mergers Review Group was established by the then Minister for Enterprise and Employment in September, 1996. The Group was chaired by Mr. Michael Collins SC and comprised representatives of IBEC, ICTU, ISME, the Consumers Association of Ireland, the Law Society, the Bar Council, the Office of the Attorney General, the Department of Enterprise, Trade and Employment and a specialist in economics.

4.2 The Review Group's terms of reference were : -

To review and make recommendations on : -

- The mergers legislation in the context of a legislative consolidation;
- The effectiveness of competition legislation and associated regulations;
- Cultural matters in the context of the 1991 Act and in particular section 4(2) of that Act; and
- Appropriate structures for implementing the above legislation.

In setting up the Group, the then Minister said that it would also review the position of the Restrictive Practices (Groceries) Order, 1987. In October, 1997, the Tánaiste also requested the Group to advise her on how certain recommendations of the Commission on the Newspaper Industry could best be implemented.

4.3 Following the publication of a number of discussion papers, the Group reported to the Tánaiste on 23rd May, 2000 making some forty recommendations on a variety of aspects of Competition and Mergers legislation, the enforcement of competition law and the administration of mergers law. The report also recommended certain changes to mergers legislation in so far as it relates to the media sector.

Proposed Changes to Merger Law

4.4 The Government decided in October 2000, further to the CMRG Report, that the existing body of legislation relating to competition and mergers (including the Mergers Act) will be replaced by new consolidated legislation. The proposed new legislation will contain a number of significant changes to the Mergers Act, in particular:

- transfer of responsibility for deciding upon mergers (other than newspaper/media mergers) from the Minister to the Competition Authority;
- decisions on those mergers to be based solely on competition criteria;
- in the case of newspaper/media mergers, additional public interest criteria to be taken into consideration;

- the “substantive test” to apply to mergers to establish whether a merger would lead to “a significant weakening of competition”;
- the turnover threshold to be increased to €40m (from €25.38m, the equivalent of the present threshold of IR£20m) and the gross assets threshold to be removed. These thresholds trigger the requirement to notify and the proposed change will relieve firms involved in smaller size mergers of this requirement.

4.5 Work on the preparation of the new legislation is in progress and the Tánaiste has indicated that she expects to be in a position to publish a Bill later this year.

5. Proposed Mergers or Takeovers notified under the Mergers Act : -

- 5.1 A total of 319 merger and take-over proposals were notified to An Tánaiste in 2000. In addition, 20 proposals were carried forward from 1999. The Mergers Act was deemed to apply in 123 of these 339 cases.
- 5.2 However, five of these proposals were later withdrawn and decisions on a further 13 were outstanding at the end of the year. In total 105 proposals were considered under the Mergers Act, all of which were allowed to proceed.
- 5.3 Of the proposals notified and considered in 2000, seven were notified pursuant to the Mergers, Take-overs and Monopolies (Newspapers) Order, 1979 and all were allowed to proceed. (This Order applies the provisions of the Mergers Act to any proposed merger or take-over involving at least one enterprise engaged in newspaper printing or publication regardless of the size of the enterprises involved).

6. Appendices

- 6.1 The tables appended to this report provide further information on proposals processed in 2000. The information covers a sectoral breakdown of both the target (or acquired) enterprises and the purchasing (or acquiring) enterprises together with a table setting out an analysis of mergers and take-overs according to nationality. Merger data from 1991 to 2000 is provided in chart form.

6.2 Also appended is a list of enterprises involved in all proposals deemed notifiable and processed under the Mergers Act in 2000.

Appendices

**Appendix 1 : Criteria as inserted by Section 17 (4) of the Competition Act,
1991**

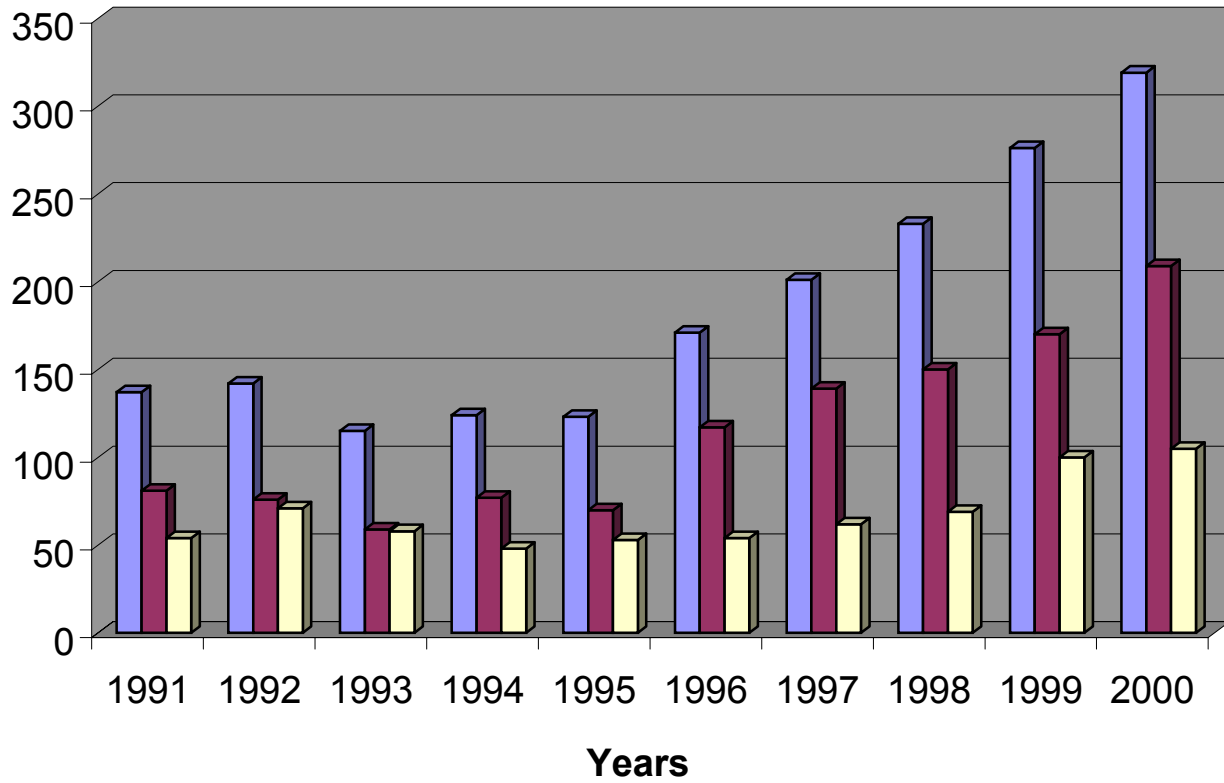
- (i) continuity of supplies or services,
- (ii) level of employment,
- (iii) regional development,
- (iv) rationalisation of operations in the interests of greater efficiency,
- (v) research and development,
- (vi) increased production,
- (vii) access to markets,
- (viii) shareholders and partners,
- (ix) employees,
- (x) consumers.

Appendix 3

Mergers and Take-overs analysed according to nationality

1.	Irish companies acquiring Irish companies:	15
2.	Irish companies acquiring non-Irish companies:	21
3.	Companies trading in Ireland already under non-Irish control coming under different non-Irish control:	43
4.	Non-Irish companies directly acquiring Irish companies:	26
		—
	Total:	105

- Total Received
- Outside Scope of Mergers Act/Not proceeded with
- Total Processed under Mergers Act (incl. carry overs)



Appendix 4: Number of notifications received 1991-2000

**Appendix 5: - Merger and Takeover proposals processed under
the Mergers Act in 2000**

Purchaser(s)/ Parent of Purchaser	Target/ Parent
Tintarent Parent: Trend Holdings Inc	Trend Technologies Europe Ltd
Verlaagsgruppe Georg Von Holtzbrinck GmbH & Dow Jones & Company Inc.	The Wall Street Journal Europe & Handelsblatt
Rentsch Dublin Ltd Parent: Amcor Ltd	Tobacco Packaging Business of Smurfit Ireland Ltd
The Royal Bank of Scotland Group plc	National Westminster Bank plc
Premier Proteins (2000) Ltd & Money By-Products (2000) Ltd Parent: Irish Agricultural Wholesale Society Ltd	Premier Proteins Ltd & Money By-Products
Bank of Scotland	National Westminster Bank plc
Royal Liver Assurance Ltd	GRE Life Ireland & Caledonian Insurance Company
Banca Intesa SpA	Banca Commerciale Italiana SpA
Kerry Holdings Inc./Kerry Group BV Parent: Kerry Group plc	Certain business of Shade Foods Inc.

Purchaser(s)/ Parent of Purchaser	Target/ Parent
Mr. Frederico Tralli & Morgan Stanley Dean Witter & Co.	Area SpA
Chesapeake Corporation	Boxmore International plc
Thomas Crosbie Holdings Ltd	The Kingdom Newspaper
Grafton Group plc	EJ Thompson Ltd
Vigilant Holdings Ltd	Trend Holdings Inc
Capde Company & Bloomberg Ltd	Corbuild Ltd
Flextronics International Ireland Ltd Parent: Flextronics International Ltd	Acquisition of certain assets of Cabletron Systems Inc
STADA	Clonmel Healthcare Ltd
Gruppo Bancario CAER SpA	Casse Vente Banca SpA
British Telecommunications Plc	Ocean Communications Ltd
Eircell Ltd	20:20 Logistics Ireland Ltd
Oakhill Group plc	The Astron Group Ltd

Purchaser(s)/ Parent of Purchaser	Target/ Parent
Cradder Ltd	Glenveigh Properties Ltd
Air France Finance/Air Foyle	Proposed Share Transfer in Cityjet
Shamrock Foods Ltd Parent: IAWS Group plc	Frozen Foods Distribution & Food Service Business of Green Isle Foods Ltd
Argentaria Caja Postal y Banco Hipotecario SA	Banco Bilbao Vizcaya SA
Dairy Crest Group plc	Unigate plc's Dairy Business
Restucturing of Philip Services Corp	Phencorp International Financial Inc & Centaur Holdings
Banca Monte Dei Poschi Di Siena SpA	Banca del Salento-Credito Popolare SpA
Deutsche Bank Luxembourg SA/ Landesbank Baden-Wurttemberg	Compuserve Interactive Services Ltd
Flextronics International Ltd	DII Group Inc
The Coca-Cola Company	Certain business of Cadbury Schweppes plc
The St Paul Companies Inc.	MMI Companies Inc.

Subscription by Salisbury Holdings Investments Ltd/Pan-European Food Fund	Hibernia Foods plc
Purchaser(s)/ Parent of Purchaser	Target/ Parent
Bank of Ireland /Tockhill Ltd	Trustcase
Toyota Motor Corporation	Hino Motors Ltd
Morgan Stanley Dean Witter & Co	Nordstress Ltd/ Nordstress Australia Pty / TNT Holdings (South-east Asia) Ltd / Ansett Worldwide Aviation Ltd / Alltransair Nevada Inc / News Air HK Ltd / News Air Nevada Inc / Ansett Worldwide Aviation Netherlands BV
Elan Corporation plc	The Liposome Company Inc
Periera Ltd	Meadows & Byrne Ltd / Blarney Woolen Mills Ltd
Allen McGuire Private Equity Fund III & other Subscribers	Securistyle Ltd
Compart SpA	Montedison SpA
Kirikee Investment Company/CRH plc	50% of Shares in Monastery Holdings Ltd/William Cox Ireland Ltd
Huttonread	Meelick Holdings
East Jordan Iron Works Inc.	Cavanagh Group Ltd

Grangewood Taverns Ltd/T & S Taverns Ltd	Silversprings Hotel
Purchaser(s)/ Parent of Purchaser	Target/ Parent
Northern Trust Corporation	Ulster Bank Investment Services Ltd / Ulster Bank Fund Services Ltd / Ulster Bank Custodial Services / Ulster Bank (Ireland) Ltd
Apex Inc.	Cybex Computer Products Corp.
Slaney Meats Group	Certain assets of Irish Country Meats Ltd
Grafton Group plc	Essex Heating Supplies Ltd
Independent News & Media plc	Belfast Telegraph Newspapers Ltd
Score Press Ltd/ Scottish Radio Holdings plc	Kilkenny People Holdings Ltd/Twinlink Holdings
Halifax Group plc	St James Place Capital plc
Telenor As/British Telecommunications plc	Esat Telecom Group plc / Esat Digifone
Trouw Aquaculture Ltd/ Nutreco Holding BV	Comhlucht Iascaireachta Fanad Teo.
Musgrave Group Ltd	Budgens plc

Galen Holdings plc	Warner Chilcott plc
Purchaser(s)/ Parent of Purchaser	Target/ Parent
Falck AS	Group 4 Securitas (International) BV
Slaney Foods Ltd & Linden Foods Ltd	Joint Venture
Banca Commerciale Italiano	Toys 'R' Us
Score Press Ltd/ Scottish Radio Holdings plc	Title Media Ltd
PNY Technologies SA	Memory Module Business of NEC Semiconductors Ireland Ltd
Banco Espirito Santo SA	Banco Espirito Santo de Investimento
KBC Bank & Insurance Holding Co. NV	Ulster Bank Investment Managers Ltd
The Mersey Docks & Harbour Company	Imari Ltd
The Leinster Leader Ltd	The Dundalk Democrat Ltd / Thomas Roe Ltd (parent)
Nevada Telecom Ltd	Stentor plc
Iceland Group plc	Booker plc

BWG Foods Ltd	Certain business of Vantage Wholesale Ltd
Purchaser(s)/ Parent of Purchaser	Target/ Parent
Princes Holdings Ltd	Liberty Ireland CMI Ltd
Princes Holdings Ltd	Switchcom Holdings Ltd
Worms & Cie	Arjo Wiggins Appleton plc
Riyad Bank (London Branch)	RBE Ijara Fund plc
Hibernian Group plc	Certain assets and business of Friends First Holdings Ltd
Alcon Labs Inc.	Summit Autonomous Inc.
Aer Co	3 Aircraft of Aerfi Group plc
Elan Corporation plc	Zealand Pharmaceuticals A/S
Furdo Ltd	Waterford Stanley Ltd
Karami Holdings Ltd	Waterford Stanley Ltd
Flextronics International Ltd	Lightning Metal Specialities Group

Flextronics International Ltd	Irish Express Cargo Holdings Ltd
Purchaser(s)/ Parent of Purchaser	Target/ Parent
OBE Insurance Group plc	Limit plc
Qualceram plc	Shires Ltd & Shires Ireland Ltd
Banco Bilbao Vizcaya Argentaria SA & Terra Network SA	enba plc
Aramark Holdings Ltd	Campbell Catering Ltd
NAPG Ltd	Adare Group Printing plc
Compagnie de Saint Gobain	Chemfab Corporation
Bristol & West plc/ Bank of Ireland	Chase de Vere Investments plc
Partek Cargotec Holding Ltd Parent: Powerscreen International plc	Moffet Engineering Ltd
Barclays plc	Woolwich plc
Elan Corporation	Dura Pharmaceuticals Inc
Campbell Bewley Group Ltd	Cucina Holdings Inc

Thomas Crosbie Holdings Ltd	Joterce Ltd (The Newry Democrat, Down Democrat, The Armagh Advertiser)
Purchaser(s)/ Parent of Purchaser	Target/ Parent
Gores Technology Group	The Learning Group
debis AerFinance BV	Aerfi Group plc
Daimler Chrysler AG	Acquisition of 34% of Mitsubishi Motor Corporation
SMTC Corporation	Qualtron Teo
Corus Entertainment Inc.	Nelvana Ltd
Margaret Doyle & others	Increase in shareholding in Jury's Hotel Group plc
MacFarlane Group plc	British Polythene Industries plc
Granada Media Group Ltd	Acquisition of 45% shareholding in TV3 Television Network Ltd
De Sammenslutte de Vognmaend	DFDS Dan Transport Group A/S
Georgia Pacific Corporation	Fort James Corporation
CIT Leasing Corporation	Airbus A330-220 Aircraft/ debis Celtavia Ltd

Elan Corporation plc	Quadrant Healthcare Ltd
Purchaser(s)/ Parent of Purchaser	Target/ Parent
General Electric Capital Corporation	Frusco Ltd
Trintech Group plc	J. O'Driscoll & Associates Inc & certain other assets of Globeset Inc.