

Mergers and Takeovers (Control) Acts, 1978 to 1996

Twenty-Third 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 31st December, 2001.

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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 31st December, 2001, 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.

Mary Harney T.D.

Tánaiste and Minister for Enterprise, Trade and Employment

August, 2002

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 €12.69m (IR£10m) or €25.38m (IR£20m) 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 €5078.95 (£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. 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. Referrals under Section 7 & Investigations under Section 8

- 2.1 On 14th December, 2001, An Tánaiste decided to refer, under Section 7 of the Mergers Act, the proposed acquisition by Gehe Ireland Limited of the Unicare chain of pharmacies to the Competition Authority for investigation.

- 2.2 The Authority reported to An Tánaiste on 29th January, 2002 and recommended that the proposal be allowed to proceed. However, given the particular regulatory regime provided for under the Health (Community Pharmacy Contractor Agreement) Regulations, 1996, the Authority also recommended that An Tánaiste consider making an Order essentially dis-applying the financial thresholds to any acquisition involving pharmacies within a certain radius of each other, and such an Order would apply for as long as the 1996 Regulations remain in force.

- 2.3 Subsequent to the submission of the Report, the 1996 Regulations were revoked and consequently, there were no longer any grounds for the making of an Order on the lines recommended by the Authority. On 15th February, 2002, an Tánaiste decided not to make an Order under Section 9 of the 1978 Act in relation to the proposed acquisition by Gehe of Unicare, and cleared the proposal without conditions.

3. Changes to Merger Law

3.1 The Competition Act, 2002 contains a number of significant changes to existing merger law, including:

- 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 be applied in deciding upon mergers to be whether the merger or take-over would lead to a “substantial lessening 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 mergers or takeovers and the proposed change will relieve firms involved in smaller size mergers of this requirement.

3.2 The Act also contains a considerable number of technical changes to the current merger control system. The new mergers control regime, as provided for in the Competition Act, will commence on 1st January, 2003. However, merger notifications received in 2002 and which are awaiting decision at year end will continue to be processed under the old regime in 2003.

3.3 The Competition Act, 2002 is available from Government Publication Sales Office (Price €6.60) and is also on the Department’s website. (www.entemp.ie)

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

- 4.1 In 2001 An Tánaiste received notice of 302 merger or take-over proposals. 84 of these cases, together with 13 cases carried over from 2000, were subject to the provisions of the Mergers Act and were examined in accordance with that Act. One case was withdrawn. 88 proposals were allowed to proceed without further investigation and one further proposal was referred to the Competition Authority. The remaining eight cases were awaiting decision at year end, including the case referred to the Authority.
- 4.2 Of the proposals notified and considered in 2001, six 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).

5. Appendices

- 5.1 The tables appended to this report provide further information on proposals processed in 2001. 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 2001 is provided in chart form.
- 5.2 Also appended is a list of enterprises involved in all proposals deemed notifiable and processed under the Mergers Act in 2001.

Appendices

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

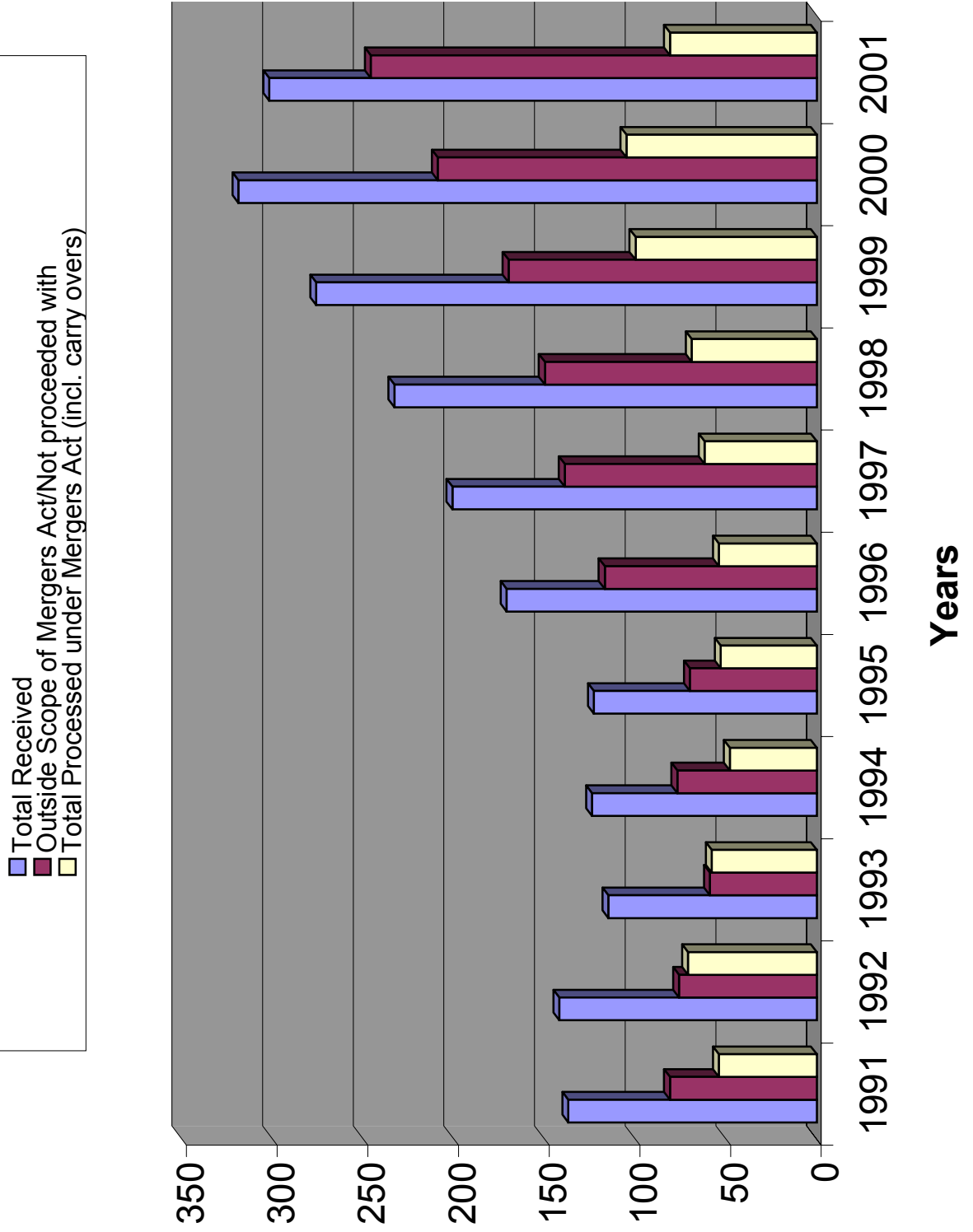
- (i) continuity of supplies or services,
- (ii) level of employment,
- (iii) regional development,
- (iv) rationalisation of operations in the interests of greater efficiency,
- (v) research and development,
- (vi) increased production,
- (vii) access to markets,
- (viii) shareholders and partners,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

Appendix 3

Mergers and Take-overs analysed according to nationality

1.	Irish companies acquiring Irish companies:	19
2.	Irish companies acquiring non-Irish companies:	18
3.	Companies trading in Ireland already under non-Irish control coming under different non-Irish control:	26
4.	Non-Irish companies directly acquiring Irish companies:	25
		—
	Total:	88

Appendix 4: Number of notifications received 1991-2001



**Appendix 5: - Merger and Takeover proposals processed under
the Mergers Act in 2001**

Purchaser(s)/ Parent of Purchaser	Target(s)/ Parent of Target
Premdor Inc.	Masonite Corporation
Vantive Holdings Limited	Dunloe Ewart plc
Trident Aviation Ireland Holdings Limited	Trident Aviation Leasing Services Jersey Limited & Trident Aviation Holdings Limited
Greencore Group plc/ Greencore UK Holdings plc	Hazelwoods Foods plc
Northern & Shell Media Holdings Limited	Express Newspapers Limited
Ulster Television plc	County Media plc
Golden Vale plc & Express Dairies plc	Libra General Trading Limited
Barlo Group plc	Athlone Extrusions plc
Green Isle Food Group Limited	Lacemont Limited
James H Woods Limited/ Jewelbury Limited/ Fallstar Developments Limited	Merchants Yard Site

Purchaser(s)/ Parent of Purchaser	Target(s)/ Parent of Target
Barid plc/ Alchemy Partners (Guernsey) Limited	William Baird plc
Law Debentures Trustees Limited	Metrow Limited
Dairy Co-operative Society Limited	Certain Assets of Roscrea Fresh Foods Limited
The Earl & Elma Payton Irrevocable Family Trust	Trend Holdings Inc.
Thieme Group BV	Modus Media International Dublin
Kingspan Group plc	Tate Global Corporation
Celestica Inc.	Certain Assets of Motorola Inc.
The Governor & Company of the Bank of Scotland	ICC Bank plc
Svenska Handelsbanken AB	SPP Livforsakring
SoftBank Finance Corporation (Parent: SoftBank Corporation)	Cognotec Limited
GATX Capital Corporation	Pembroke Group Limited
Hibernia Capital Partners	Cara Group Limited

Purchaser(s)/ Parent of Purchaser	Target(s)/ Parent of Target
Agilent Technologies Limited	MVT Limited
Weyerhaeuser Corporation	Willamette Industries, Inc.
Crucible LLC	Crucible Corporation Limited No1 Partnership/ Cross Atlantic Early Stage No1 Partnership Limited
Investment Technology Group International Limited	Investment Technology Group SG Limited
Rogers Corporation	Tonoga, Inc.
Abbey National Plc	Certain Business of Scottish Provident Institution
Real Estates Opportunities Limited	Castle Market Holdings/ Jermyn Properties plc/Cubette Limited
Thomas Crosbie Holdings Limited	Provincial Publishers Limited
The Saffron Limited Partnership	Kirby Street Development Limited
IAWS Group plc / The TDL Group Limited	CillRyans Bakery Limited
Jurys Hotel Management (UK) Limited (Parent: Jurys Doyle Hotel Group plc)	Chamberlains Hotel Limited
F & C Ventures Limited	Reckitt's (Ireland) Limited

Purchaser(s)/ Parent of Purchaser	Target(s)/ Parent of Target
Eon Energie Aktiengesellschaft/ Badische Tabakmanufaktur Roth Handle GMBH/ B Metzler Seel Sohn Metzler/ Ulster Finance Limited	Depardieu International Finance
Orb Acquisitions II Limited (Parent: Lynch Talbot Limited)	Seafield Limited
Boeing Capital Services Corporation	Airlease 101 Limited/ Airlease 102 Limited
Clondalkin Holdings BV (Parent: Clondalkin Group Holdings Limited)	Frievaart Holding BV
Anglo American Plc/ Central Holdings Limited	De Beers Consolidated Mines Limited/ De Beers Centenary AC
Allfirst Bank (Parent: AIB Group plc)	Community Counselling Services
Hibernia Foods plc	Sara Lee Bakeries UK Limited/ Finnegans Famous Cakes Limited (Parent: Sara Lee Corporation)
Bass plc	Posthouse chain of Hotels (Parent: Compass Group plc)
Deutsche Post World Net	DHL International Limited
Xpert Communications Limited	Xpert Group Limited
TDG plc	Irish Warehousing &Transport Company Limited

Purchaser(s)/ Parent of Purchaser	Target(s)/ Parent of Target
Measurement Specialities Inc.	Terraillon Holdings Limited
Grafton Group plc	Paul H Radford Limited/G A Day Limited/ Edward Bays Limited/G A Day Timber Centres Limited
Hazeldale Limited (Parent: Arlesse Limited)	Mousehold Properties Limited
Waterford Wedgewood plc	Ashling Inc.
Nypro Inc.	Nypro Limited
Irish Life plc/Firmount Limited	Stephens Green Shopping Centre/ Ilac Shopping Centre
Tosco Corporation	Irish Refining plc & Bantry Terminals Limited (Parent: Irish National Petroleum Corporation Limited)
GZ-Bank AG	Deutsche Genossenschaftsbank AG
Hibernia Capital Partners Limited	Key Tech Products Limited
Trinity Venture Capital Fund	Norkon Technologies plc
IAWS Group plc	La Brea Bakery Holdings Inc.
Berkeley Hotel Associates LLC (Parent: Jurys Doyle Hotel Group plc)	154 Berkeley Street

Purchaser(s)/ Parent of Purchaser	Target(s)/ Parent of Target
Halifax Group plc	The Governor & Company of the Bank of Scotland
Bristol & West plc (Parent: Bank of Ireland)	Willis National Holdings Limited
Shareholders of Liberty Media	Liberty Media Corporation
National Toll Roads plc	Celtic Utilities Limited
Toyota Motors Corporation	Hino Motors Limited
SIG plc	Capco Holdings Limited
Lease Holdings Limited (Parent: AMN Amro Lease Holdings NV)	Lease Plan Fleet Management Services Limited
Kerry Group plc	Golden Vale plc
CMC Magnetics Corporation	MC Infonics Ireland Limited
Associated Newspapers Limited	Title Media Limited (Parent: Score Press Limited)
Risnamento Napoli SpA	Global Switch Sarl
Michel Marchais/SASMAT SA	Air Group Finance Company

Purchaser(s)/ Parent of Purchaser	Target(s)/ Parent of Target
Riverdeep Group plc	Certain Assets of TLC Educational Properties LLC (Parent: GTG Wizard LLC)
Valentia Telecommunications Limited	Eircom plc
Westvaco Corporation	KTTL Holdings Limited
Daily Mail & General Trust plc	B & S Limited & Business of Scoot (UK) Limited
Hillingdon Investment Company/ John P. Reihill	Tedcastle Holdings Limited
Vishay Intertechnology, Inc.	General Semiconductor, Inc.
International Equipment Management BV	Four 737 Aircraft from Globalia Finance Limited
Goldshield Group plc/ Miza Pharmaceuticals Inc.	Antigen Holdings Limited Castle Holdings Investment Company Limited
Future Parking Services (Ireland) Limited	Irish Car Parks Limited
APN News & Media Limited (Parent: Independent News & Media)	Wilson & Horton Group (Parent: Independent News & Media Plc)
William Neville & Sons Limited	William Neville & Sons Construction Limited
Intouch Technologies Limited (Parent: Intouch plc)	Certain Assets of Filmline Limited

Purchaser(s)/ Parent of Purchaser	Target(s)/ Parent of Target
Calyx Limited/ Calyx Computer Limited	ITG Computers (Ireland) Limited/ ITG Telecommunications (Ireland) Limited/Addex Limited/ Workstations Training Limited
Full Circle Investments plc	Capital Bars plc
Holland Limited Securitisation Inc.	Certain Assets of Rembrandt International Company Limited
Eircell 2000 plc (Parent: Vodafone)	Cityreach International Ireland Limited
Scor SA/ Highfields Capital Limited/ BNP Paribas/ Westdeutsche Landesbank Girozentrale	IRP Holdings Limited
Swiss Re International Treasury Limited	Tamara 2001 Vermögensverwaltungs GmbH
Touax SA & Almafin SA	Touax Rail Limited/ Touax Rail Investment Company

