

# Mergers and Takeovers (Control) Acts, 1978 to 1996

## Twenty-Fourth Annual Report

Being the Report for the year ended 31st December 2002.

Department of Enterprise, Trade & Employment Website: [www.entemp.ie](http://www.entemp.ie)

Competition Authority Website: [www.tca.ie](http://www.tca.ie)

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## **1. Introduction**

Section 15 of the Mergers and Takeovers (Control) Acts, 1978 to 1996 (“the Mergers Act”) required 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 were 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, 2002, 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The Mergers Act was repealed and replaced by the merger provisions of the Competition Act, 2002 with effect from 1 January 2003.

**Mary Harney T.D.**

**Tánaiste and Minister for Enterprise, Trade and Employment**

**October, 2003**

## **2. Merger Control**

Merger control in Ireland in 2002 was governed by the Mergers and Take-overs (Control) Acts, 1978 to 1996 (“the Mergers Act”). The Act provided for the control of mergers between “enterprises” which were defined as “a person or partnership engaged for profit in the supply or distribution of goods or the provision of services”.

A merger or take-over was defined as being taken to exist when two or more enterprises, at least one of which carried on business in the State, came under common control (Section 1 (3) (a)).

Enterprises were deemed to come under common control when, inter alia, the decision as to how or by whom each would be managed could be made either by the same person or group of persons acting in concert (Section 1 (3) (b)).

The Act applied 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 was not less than €12.69m (£10m) or €25.38m (£20m) respectively or (b) regardless of the size of turnover or gross assets where one of the enterprises involved was a newspaper or magazine. Under the Competition Act, 2002 the turnover threshold has been increased to €40 million while the gross assets threshold has been abolished.

When a proposal was deemed to come within the scope of the Acts, each of the enterprises involved was required to notify the Minister for Enterprise, Trade and Employment in writing of the proposal, and to provide full details of the proposal within one month (or such other period as the Minister may have specified) of the “offer capable of acceptance” having been made (Section 5(1)). Under the Competition Act, 2002 mergers notifications are made to the Competition Authority.

Under the 1978 Act a merger or take-over could not be concluded until the Minister had stated that she did 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 had

elapsed from the date of notification or from the date of receipt of such further information as the Minister may have required.

The Minister had discretion to approve a merger or proposal without referral to the Competition Authority (a statutory body with investigative powers). Alternatively, the Minister could refer the proposal to the Competition Authority for investigation within 30 days of receipt of the notification or from the date of receipt of any additional information requested.

The Authority was obliged to investigate every proposal referred to it and to report to the Minister on its investigation. The report of the Authority had to state its opinion as to whether or not the proposed merger or take-over concerned was likely to prevent or restrict competition or restrain trade in any goods or services and was likely to operate against the common good. The report had also to 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 to this report. The Minister, having considered the report of the Authority could, had she thought that the exigencies of the common good so warranted, by order prohibit a proposed merger or take-over either absolutely or subject to conditions. The Minister was required to 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.

### **3. Referrals under Section 7 & Investigations under Section 8**

In 2002, An Tánaiste referred two notifications to the Competition Authority for investigation. In addition one proposal was referred to the Competition Authority in December 2001 and their investigation thereof carried over into 2002. These proposals were as follows:

#### **Gehe / Unicare**

On 18 February 2002 the Tánaiste cleared the acquisition by GEHE of the Unicare chain of pharmacies. Her decision was made following receipt of a report from the Competition Authority recommending that the proposal should be allowed to proceed without conditions. An Tánaiste had referred the proposal to the Competition Authority for investigation on 14th December 2001 and the Authority reported on 29th January 2002.

GEHE, a large German pharmaceutical company, already operated a number of Irish pharmacies and post transaction became the largest retail chain both nationally and in the Dublin area. GEHE also owned the 2nd largest pharmaceutical wholesaler in the State - Cahill May Roberts. A copy of the Competition Authority's report is available on the Department's website at <http://www.entemp.ie/tcmr/usit.pdf>.

#### **STA Travel / USIT**

On 1 March 2002, An Tánaiste decided to refer the proposed acquisition of USIT World plc by STA Travel to the Competition Authority for investigation.

The proposal involved the acquisition by the largest student travel group in the world (STA Travel) of the second largest (USIT World Plc).

The Authority reported to An Tánaiste on 2 April 2002. A copy of the Competition Authority's report is available on the Department's website at <http://www.entemp.ie/tcmr/usit.pdf>. An Tánaiste accepted the recommendation of the Competition Authority that the proposal should be allowed subject to conditions.

To give effect to her decision, An Tánaiste made an Order under Section 9 of the Mergers, Take-overs and Monopolies (Control) Act, 1978, (as amended) granting conditional clearance to the merger.

### **Maxol Energy / Busselle Limited**

On 6 August 2002, An Tánaiste, requested the Competition Authority to investigate the proposed acquisition by Maxol Energy Limited of Busselle Limited.

Maxol was the holding company for all the petroleum related trading activities of McMullan Bros. Limited (collectively the "Maxol Group"). The Maxol Group marketed a comprehensive range of oil and petroleum products to all sectors of the Irish market through a series of divisions comprising retail, commercial, domestic and lubricants.

Busselle Limited was the holding company for the Estuary group of companies. Estuary Fuel Limited and its subsidiaries were engaged in the importation, storage, distribution, sale and marketing of petrol, fuel oil, gas oil and other oil products, principally in the South, South-West and West of Ireland.

In referring the proposed acquisition to the Authority, An Tánaiste had particularly in mind the need for a full examination of the possible effects of the acquisition on motor fuel prices for consumers in the relevant markets, particularly in Limerick and Clare.

An Tánaiste announced on Friday 27 September 2002 that she had cleared the acquisition. An Tánaiste made her decision following receipt of a report from the Competition Authority recommending that proposal should be allowed to proceed without conditions. A copy of the Competition Authority's report is available on the Department's website at <http://www.entemp.ie/tcmr/conscarep.pdf>.

#### **4. Article 9 of EU Merger Regulation<sup>1</sup>**

A joint venture agreement whereby Allied Irish Bank and Bank of Ireland would establish a joint IT infrastructure service provider was notified to the EU Commission on 17 July 2002. The new independent entity was to be controlled jointly by AIB and BOI.

As the parties to the joint venture exceeded the financial thresholds in the EU Merger Regulation, the agreement needed to be notified to the EU Commission for regulatory clearance before it was put into legal effect.

Article 9 of the Merger Regulation provides for national jurisdiction at the request of a Member State in certain circumstances - but at the discretion of the Commission. The Commission's usual practice is to agree to such a request where the possible competitive impact of the proposal is national.

An Tánaiste made a request under Article 9 for the case to be referred back to Ireland on 7 August 2002. The reason for seeking "referral back" of the case was that the joint venture would have primarily impacted in the Irish market and, accordingly, an examination of the matter by the Irish authorities under Irish merger law would have been appropriate. It was felt that the joint venture warranted a detailed examination because of possible impacts on competition in the retail banking market where the parties enjoy high market shares.

Under Article 9 of the EU Merger Regulation the Commission had until 28 August to decide either to (a) refer the case back for the application of Irish merger law or (b) rule on the case themselves. However, on 23 August 2002 the Commission advised the Department of Enterprise, Trade and Employment that the parties had withdrawn the notification as they had decided not to proceed with the joint venture.

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<sup>1</sup> Council Regulation (EEC) No 4064/89

## 5. Changes to Merger Law

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

- transfer of responsibility for deciding upon mergers generally from the Minister to the Competition Authority;
- decisions on those mergers to be based solely on competition criteria;
- in the case of media mergers, review role for Minister with additional public interest criteria to be taken into consideration;
- the “substantive test” to be applied by the Competition Authority 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 (IR£20m) and the gross assets threshold to be removed.

The [Competition Act 2002 \(No. 14 of 2002\)](#), was signed into law by the President on 10 April 2002. Part 3 of the Act relating to mergers and acquisitions came into operation on 1 January 2003 under the terms of a commencement order made under section 2 of the Act (S.I. No. 199 of 2002). A separate order applying the provisions of Part 3 of the Act to every “media merger” irrespective of turnover also came into operation on 1 January 2003 (S.I. No. 622 of 2002).

## **6. Proposed Mergers or Takeovers notified under the Mergers Act:**

In 2002 An Tánaiste received notice of 357 mergers or take-over proposals. 103 of these cases were subject to the provisions of the Mergers Act and were examined in accordance with that Act. 3 of these cases were withdrawn. In total 103 proposals were allowed to proceed during the year without further investigations and two were referred to the Competition Authority. One case, carried over from December 2001, was subject to a referral to the Competition Authority. Two cases were carried over into 2003, one of which was subsequently withdrawn and the other was allowed to proceed without further investigation.

Of the proposals notified and examined in 2002, six were notified pursuant to the Mergers, Take-overs and Monopolies (Newspapers) Order, 1979 and all these were allowed to proceed. (This Order applied 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).

## **7. Appendices**

The tables appended to this report provide further information on merger and takeover proposals processed in 2002. 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 2002 is provided in chart form.

Also appended is a list of enterprises involved in all notified proposals considered under the Mergers Act in 2002.

## **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 2: Sectoral analysis of notifications received in 2002

The following table shows a breakdown of the sectors of “Purchasers” and “Targets” for the 99 proposals notified in 2002 and processed under the Mergers and Takeovers (Control) Acts, 1978 to 1996.

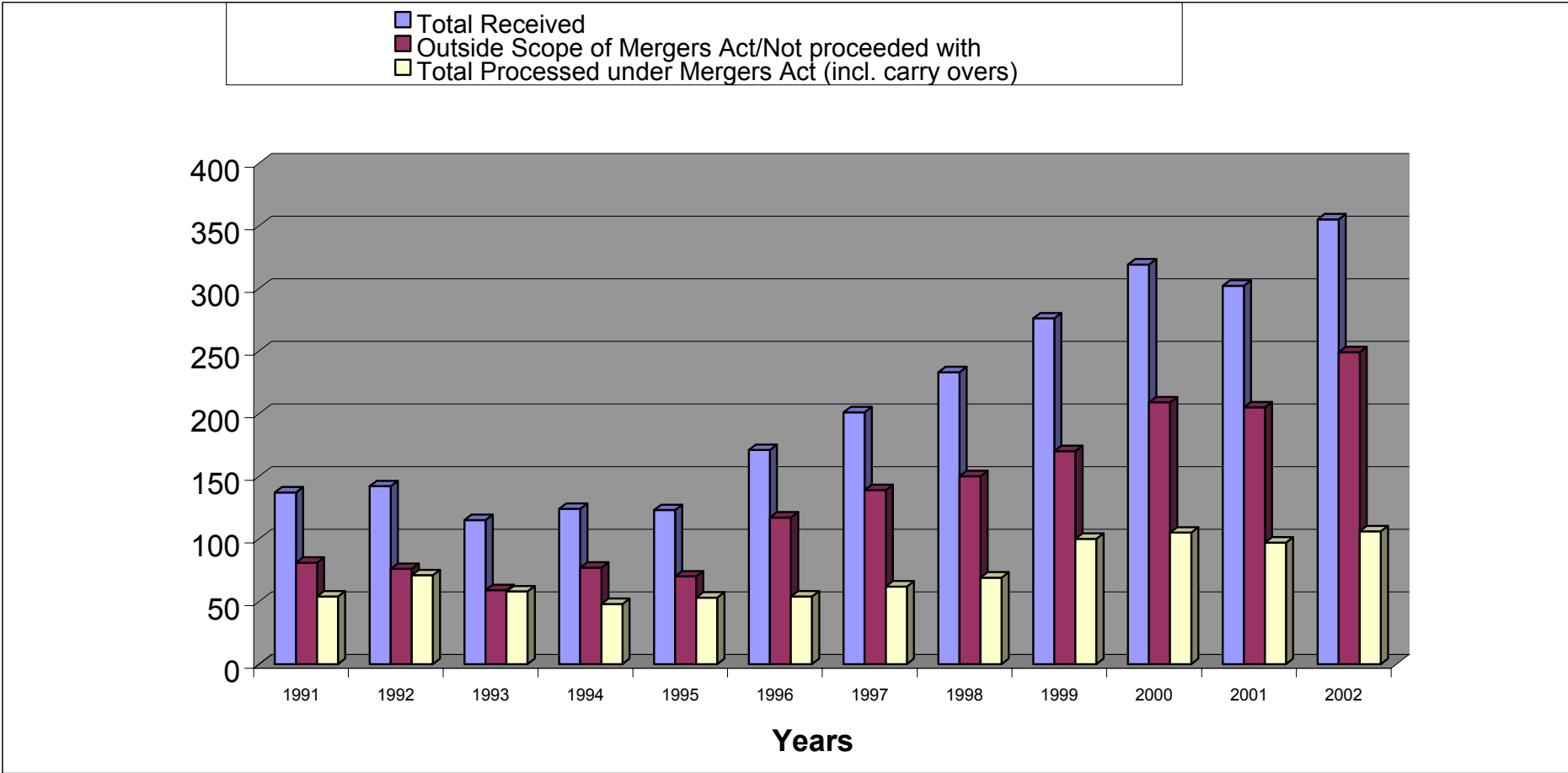
Purchaser's Sector		Sector of Acquired Enterprise														
		(i)	(ii)	(iii)	(iv)	(v)	(vi)	(vii)	(viii)	(ix)	(x)	(xi)	(xii)	(xiii)	(xiv)	Total
(i)	Distribution	1		1												2
(ii)	Financial Services	2	14	5			2	1		2		4	1		3	34
(iii)	Manufacturing			8												8
(iv)	Media				7		1									8
(v)	Pharmaceuticals/ Health					6										6
(vi)	Services						5	1								6
(vii)	Transport							4							1	5
(viii)	Textiles								2							2
(ix)	IT/ Telecommunications		1		1					10						12
(x)	Food/ Drink/ Agribusiness			1							6					7
(xi)	Property Including Construction						1					7				8
(xii)	Printing and Packaging															0
(xiii)	Natural Resources													1		1
(xiv)	Aircraft Leasing															0
	<b>Total</b>	<b>3</b>	<b>15</b>	<b>15</b>	<b>8</b>	<b>6</b>	<b>9</b>	<b>6</b>	<b>2</b>	<b>12</b>	<b>6</b>	<b>11</b>	<b>1</b>	<b>1</b>	<b>4</b>	<b>99</b>

### **Appendix 3: Analysis of notifications received in 2002 by nationality**

The following table presents a breakdown of the 99 notifications received in 2002 and processed under the Mergers Act.

Description	Total
Irish companies acquiring Irish companies	28
Irish companies acquiring non-Irish companies	9
Non-Irish controlled company acquiring Irish controlled company	28
Non-Irish controlled company acquiring non Irish controlled company	34
<b>Total</b>	<b>99</b>

**Appendix 4: Chart of Merger Data 1991-2002**



## Appendix 5: Merger and Takeover proposals processed under the Mergers Act

<i>Purchaser</i>	<i>Target</i>
Abbott Laboratories	Bicompatibles Ltd/ BiocompatiblesCardiovascular Inc/ Biodivysio
AdLink Internet Media AG (Parent Company:United Internet AG) <sup>2</sup>	European Media Business of DoubleClick Inc
Adobe Systems Incorporated	Accelio Corporation
AIB Capital Markets plc (Parent: AIB Bank plc)	Musgrave Limited
AJG Capital Inc. (Parent: Arthur J Gallaher & Co)	Aviacargo Leasing Limited
AOL Time Warner <sup>2</sup>	AOL Europe S.A.(Bertelsmann AG)
Aramark Ireland Holdings Limited	Campbell Catering/ Campbell Bewley Holdings Limited
Azlan Group plc	2T A/S Technology Team/ Horizon Technical Services Srl/ Horizon Technical Services (UK) Limited

<sup>2</sup> Notified in 2001 and carried over into 2002

<b><i>Purchaser</i></b>	<b><i>Target</i></b>
Babodana Limited/Viewforth Limited.	Jurys Skylon Hotel/ Jurys Waterford Hotel
Banca di Roma Holding S.p.A.	Bipop Finance Limited
Bank of Ireland Asset Management (US),Inc.(Parent Bank of Ireland)	Iridian Asset Management LLC
Bank of Scotland (Ireland) Ltd	ICC Heller Limited
BDP Mouldings Limited	Munekata Ireland Ltd
Bradley Investments Limited	Benchmark JER 1 Limited Partnership/Cambridge Circus Limited
Biovail Laboratories Inc	Certain Assets of Athpharma Limited
BMC Software Inc.	Peregrine Systems Inc/ Peregrine Remedy Inc
Bowne & Co. Inc.	Berlitz GlobalNET Inc
Campbell Investment Co/ Campbell Grocery Products Ltd.	Erin Foods Ltd/ Erin Foods Manufacturing Ltd/ William Rodgers (Foods) Ltd

<b>Purchaser</b>	<b>Target</b>
Canada Life Financial Corporation	Prudential Plc
CDC Finance - CDC IXIS	Nexgen Financial Holdings
Charles River Laboratories Inc.	Biological Laboratories Europe Limited
Citicorp Leasing Inc	Franchise Acceptance Corporation Limited
Cloughmore Media Limited	Baal Securities Limited
Coillte Teoranta	Louisiana Pacific Coillte Ireland Limited
Columbia Ventures Corporation	360 Atlantic (Ireland) Limited/ 360 Networks (Ireland) Limited
Cooperatieve Centrale Raiffeisen- Boerenleenbank BA <sup>2</sup>	ACC Bank plc
Corpfin Capital Asesores S.L.	Compania Hispano Irlandesa de Aviacion S.A.(Futura)
Deutsche Hyp Deutsche Hypothekebank	RHEINHYP Rheinsche Hypothekenbank Atkiengesellechaft/EUROHYPO Atkiengesellschaft Europaeische/ Frankfurt-Hamberg Aktiengellschaft/ Hypothekebank der Deutsche Bank

<b><i>Purchaser</i></b>	<b><i>Target</i></b>
DSP Group Inc.	Parthus Technologies Plc.
Deutsche Lufthansa AG	British Midlands Airways Limited
Edward Holdings Limited	Galway Shopping Centre (Max Developments Limited)
Elan Corporation plc	Ardent Pharmaceuticals Inc.
Electra Partners Europe Ltd (Parent :Electra Partners Limited)	BWG Group
Electra Partners Europe Ltd (Parent :Electra Partners Limited)	Newhill Group
EON Energie Aktiengesellschaft/ B Metzler seel.Sohn & Co.KGaA/ Metzler Ulster International Finance Limited	Depardieu International Finance
FBD Holdings plc	Travelplan Limited
First Choice Holidays plc	Porter & Haylett Limited

<b><i>Purchaser</i></b>	<b><i>Target</i></b>
Fitzpatrick, C&C Butler, McHugh	Green Property Limited
Frank Russell Institutional Funds plc <sup>2</sup>	Frank Russell Qualifying Investor Fund
Freshgrass Investments Limited	Grassland Holdings Limited
Fukuda (Luxembourg) S.a.r.L	Terraillon Holdings Limited
Gallaher Group plc	RJ Reynolds Tobacco CV
GE European Equipment Finance/General Electric Corporation	Certain Assets of Xerox Corporation
GEHE Ireland Limited <sup>2</sup>	Babbingore Ltd/ Goviltown Ltd/ Pharmacy O'Riada Holdings Ltd/ Kilmaloon Ltd
Glen Dimplex	Dimpco Ltd
Grafton Group plc	E&J W Lake Limited/ Brookhouse Johnson Limited/ JH Thornhill( Coal & Haulage) Limited/ North Midland Building Supplies Limited/ Alfreton Building Supplies Limited/ Belpar Building Supplies Limited/ Lintitle ( UK) Limited

<b><i>Purchaser</i></b>	<b><i>Target</i></b>
GUS plc	Homebase Group Limited
HBSC Holdings Plc	Household International Inc
Heitons Group plc	Cork Builders Providers Limited
Hertal Acquisition plc	Riverdeep Group Plc
IAWS group plc	Odlum Group Limited
IAWS Group plc/ Irish Agricultural Wholesale Society Limited	McGlynn Bakeries LLC
Icc Software Partners Limited /Icc Equity Partners Limited/ Independent Digital Limited	Educational Multimedia Group
Intel Corporation	Ilios Limited
Irish River Holdings/ Red Sea Hotels Ltd.	Gresham Hotel Group plc

<b><i>Purchaser</i></b>	<b><i>Target</i></b>
Johnson & Johnson	Tibotec - Virco NV
Kellwood Company	Sports Socks Co (Ireland) Limited
Kone Corporation	Partek Corporation
KPMG Ireland	Andersen Ireland
KPN Telecom B.V.	Comsource
La Touch House Co-ownership No. 1 Limited	La Touche House
Lakeland Dairies Co-operative Society Limited	Bailieboro Foods
Lloyds TSB Development Capital Limited	Digisource Limited
Lombard Aviation Capital Limited	General Electric Capital Corporation

<b><i>Purchaser</i></b>	<b><i>Target</i></b>
Longverton Limited	H&K Holdings (Ireland) Limited
Lufthansa Airmotive Ireland Holdings Limited	SR Technics Group/ Shannon Aerospace Limited
Madison Dearborn Partners LLC	Jefferson Smurfit Group plc
Maxol Energy Limited	Busselle Limited
Mellon Financial Corporation	ABN AMRO Bank N.V.
Merloni Electrodomestici SpA	General Domestic Appliances Holdings Limited
Munchener Rucksversicherungs-Gesellschaft Aktiengesellschaft in Munchen <sup>2</sup>	Bayerische Hypo-und Vereinsbank AG (Allianz AG & Dredsner AG)
Musgrave Investments plc (Parent:Musgrave Group plc)	Budgens plc
Newcourt Asset Finance International (Parent Company Tyco International Limited)	Flugzeug Limited (Parent: Airbus Financial Services)

<b><i>Purchaser</i></b>	<b><i>Target</i></b>
Oaktree Capital Management LLC	APW Ltd.
Paul Murphy	Agra Trading
Pembroke Orlando Ltd	Boeing 737 from KM Association
Promedia GCV	Golden Pages Limited
Q-Park NV	Berach Limited/ Future Parking Services Limited
Rambridge Limited	Dunloe Ewart plc
Rodinheights plc	Green Property plc
Royal Liver Assurance Limited <sup>2</sup>	Industrial Branch Business of Irish Life Assurance
San Paolo IMI SpA	Cardine Banca SpA
Scottish Radio Holdings plc <sup>2</sup>	Radio Ireland Ltd
Slaney Foods Limited	Irish Country Meats Limited

<b><i>Purchaser</i></b>	<b><i>Target</i></b>
SmartForce plc	SkillSoft Corporation
Smartforce (subsidiary of Smartforce Group)	Centra Software Inc.
STA Travel (Holdings) plc	USIT World plc
State Street Bank and Trust Company	International Fund Services (N.A),L.L.C /Investment Management Services Inc.
Sun Life Financial Services of Canada Inc	Clarica Life Insurance Company
Synopsys, Inc	Avant! Corporation
Taveta Investments Limited	Arcadia Group plc
Terra Firma Capital Partners Ltd/ Terra Firma Capital Partners Holdings Ltd	Nomura Principal Financial Group (Parent Nomura Group)
The Dunfermline Press Limited	Meath Chronicle Limited

<b><i>Purchaser</i></b>	<b><i>Target</i></b>
The Leinster Leader	The Limerick Leader Ltd/ Limerickman Limited/ Leader Print Ltd/ West Limerickman Limited
Thomas Crosbie Holdings Ltd	Sunday Business Post
Thomson Multimedia SA	Panasonic Disc Services Corporation
Trabolgan Estates Limited (Parent: West Manor Limited)	Trabolgan Homes Limited
Ulster Television plc	Treaty Radio Limited
Ulster Television plc	City Broadcasting Limited t/a Lite FM
United Drug plc	Ventiv Health Limited/ Kestrel Healthcare Limited
Vector Capital Partners 11 L.L.C/ LANDesk Holding Limited	Certain Assets of Intel
Vianel Acquisition AG	SR Technics Switzerland/ Shannon Aerospace Ltd.

<b><i>Purchaser</i></b>	<b><i>Target</i></b>
Victory Properties Limited/ Cradder Limited/ Dunloe Ewart plc/ Cherrywood Properties Limited	Firmount Limited/ British Land Company plc
Viridian Capital Ltd./ Energis Holding Ltd.	Nevada tele.com Limited
Waterford Wedgwood plc	Fairway Investments Limited
Wincanton plc	P&O Trans European
Wyatt Holdings Limited	Maharry Holdings