

UK Changes Merger Control Regime for Foreign Takeovers

IN SHORT

The Situation: New legislation came into force on 11 June 2018, allowing the UK Government to scrutinise a wider range of mergers that may raise public interest or national security issues.

The Context: This is the outcome of the first part of the UK Government's review into national security and infrastructure investment by foreign companies.

Looking Ahead: The United Kingdom is also considering longer term reforms to address its approach to foreign direct investment ("FDI"), with the aim of expanding the scope of investments and takeovers by foreign companies that fall under its FDI approval regime.

Existing Merger Thresholds

The United Kingdom has a voluntary merger notification system for review of transactions on both antitrust and public interest grounds. Merging parties carry out their own assessment as to whether to notify their deal for approval before completion. If they do not, the United Kingdom's economic regulator, the Competition & Markets Authority ("CMA"), has four months from completion of the deal being made public in which to take jurisdiction over the deal. Prior to 11 June 2018, the CMA had jurisdiction over mergers where either:

- the target had annual revenues of more than £70 million in the United Kingdom in the last financial year ("turnover test"); or
- both the buyer corporate group and the target supply the same category of goods or services in the United Kingdom or a substantial part of it and between them account for at least a 25 percent share of such supply ("share of supply test").

The UK Government may ask the CMA to assess a deal within the jurisdiction of the CMA on public interest grounds only if it may raise concerns about national security (i.e., defence), media plurality or the stability of the United Kingdom's financial system. The CMA will assess such deals and recommend clearance, changes to the deal to safeguard the public interest or that the UK Government prohibit the deal. The UK Government then makes a political decision, which may or may not follow the CMA's recommendation.



The UK Government has added computer processing unit technology, quantum computing and a range of military applications to the sectors over which it may ask the CMA to assess takeovers on public interest grounds, alongside deals raising concerns about national security, media plurality or the stability of the United Kingdom's financial system.



New Merger Threshold

Under the new law, from 11 June 2018, lower jurisdictional thresholds apply to mergers involving businesses engaged in the following:

- the development or production of items for military or dual military and civilian use;
- owning, creating or supplying intellectual property for computing processing chips; or
- the development and production of quantum technology ("Relevant Enterprises").

The lower jurisdictional thresholds for deals involving Relevant Enterprises are:

- the turnover test is lowered from £70 million to just £1 million; and
- the share of supply test will apply even if only the target has a 25 percent or more share of supply—there will no longer be any need for both parties to supply the same category of goods or services.

Longer Term Changes

The UK Government also is undertaking a review into longer term reforms aimed at further expanding the scope of deals over which it can intervene and have a say on public interest grounds. It envisages expanding the range of sectors that will trigger a public interest merger review process.

Conclusion

The UK Government is increasing its power to intervene in and, if appropriate, ultimately block acquisitions of businesses active in the United Kingdom in certain technology and military use sectors on public interest grounds. This is likely to be just the first step in changes to the law to enable greater political scrutiny of takeovers of UK businesses active in sectors deemed to be of strategic importance to the United Kingdom.

These reforms come at a time when the U.S. government is considering whether to expand the jurisdiction of the Committee on Foreign Investment in the United States, known as CFIUS, which has the authority to review and impose conditions on or block transactions pursuant to which a foreign person will acquire control over a U.S. business if such transactions raise U.S. national security concerns.

THREE KEY TAKEAWAYS

1. From 11 June 2018, the UK Government will have expanded power to review takeovers on public interest grounds involving the acquisition of businesses supplying products for military use or active in quantum technology sectors.
2. The changes to the jurisdictional thresholds form part of a wider plan by the UK Government to intervene in mergers on national security grounds where there is a change of control over an entity active in the United Kingdom.
3. The UK Government's decision to increase its ability to intervene and ultimately block foreign takeovers reflects a growing trend toward government intervention in M&A across the globe.



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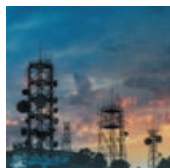
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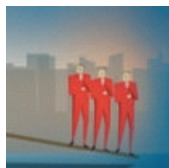
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