

Bird & Bird & UK Merger Control



How does Merger Control affect UK transactions?

Transactions covered

For the law to apply, a **relevant merger situation** (RMS) must be created. This occurs where:

- **Two or more businesses or business activities cease to be distinct** (i.e. are brought under common control or ownership including where a party acquires the ability to exercise material influence (e.g. a 15% shareholding), to control policy or outright legal control of the target company); **and**
- One or more of the following criteria is satisfied:
 - The UK turnover of the target exceeds **£70 million**; **or**
 - A share of **25% or more** in the supply or consumption of goods or services of a particular description in the UK (or in a substantial part of the UK) is **created or enhanced**

→ UK merger control applies to **completed** or **anticipated mergers**

Risks of non-notification !

In the UK, notification of an RMS to the CMA is **voluntary**, but the risks of not notifying include:

- A **'hold separate'** or **'freeze' order** preventing further integration and/or completion
- A subsequent investigation by the CMA
- The CMA could block the merger and require divestment of the entirety of the acquired business

The CMA's **merger intelligence unit** actively scans the market for mergers which may qualify for investigation and which the CMA may 'call in' for questioning/investigation

Timing



Factor into the completion timetable:

- **Pre-notification discussions** with the CMA – **2 to 8 weeks**
- **Phase I** – **40 days** from CMA confirming it has received a complete notification
- **Phase II** – **24 weeks** plus possible 8-week extension

National Security & Investment Act (NSIA)



- **Mandatory regime:** the Government can scrutinise **foreign investments in the UK** that involve the acquisition of control over certain types of entities in 17 sensitive sectors (e.g. defence, communications, space, aviation, transport, advanced robotics and quantum technologies) on the grounds of **national security**
- Acquisitions in other sectors are subject to a voluntary regime as well as acquisitions of assets, including land and IP
- The Secretary of State can unwind or block deals where national security concerns are found
- Any acquisition of shares amounting to **25%** or more in companies in certain key sectors must be notified to the Secretary of State (and acquisitions of lower shareholdings which result in "material influence") are also captured
 - The NSIA applies **retrospectively** to any deals closed from 12 November 2020 and parties can obtain informal guidance now
 - The NSIA sits alongside the UK merger control regime
 - The NSIA will come into force on **4 January 2022**

The Team

Peter Willis

Partner, Competition & EU

Tel: +44 20 7415 6696
peter.willis@twobirds.com



Saskia King

Legal Director, Competition & EU

Tel: +44 20 7850 7135
saskia.king@twobirds.com



Ariane Le Strat

Associate, Competition & EU

Tel: +44 20 7905 6345
ariane.lestrat@twobirds.com



Anthony Rosen

Legal Director, Competition & EU

Tel: + 44 20 7905 6243
anthony.rosen@twobirds.com



Bird & Bird's Competition & EU law team is here to help and has significant experience advising businesses on UK merger control at all stages. Please contact any [member of the team](#) for more information.



twobirds.com

Abu Dhabi & Amsterdam & Beijing & Bratislava & Brussels & Budapest & Copenhagen & Dubai & Dusseldorf & Frankfurt & The Hague & Hamburg & Helsinki & Hong Kong & London & Luxembourg & Lyon & Madrid & Milan & Munich & Paris & Prague & Rome & San Francisco & Shanghai & Singapore & Stockholm & Sydney & Warsaw & Satellite Office: Casablanca

The information given in this document concerning technical legal or professional subject matter is for guidance only and does not constitute legal or professional advice. Always consult a suitably qualified lawyer on any specific legal problem or matter. Bird & Bird assumes no responsibility for such information contained in this document and disclaims all liability in respect of such information.

This document is confidential. Bird & Bird is, unless otherwise stated, the owner of copyright of this document and its contents. No part of this document may be published, distributed, extracted, re-utilised, or reproduced in any material form.

Bird & Bird is an international legal practice comprising Bird & Bird LLP and its affiliated and associated businesses.

Bird & Bird LLP is a limited liability partnership, registered in England and Wales with registered number OC340318 and is authorised and regulated by the Solicitors Regulation Authority. Its registered office and principal place of business is at 12 New Fetter Lane, London EC4A 1JP. A list of members of Bird & Bird LLP and of any non-members who are designated as partners, and of their respective professional qualifications, is open to inspection at that address.

49572980.1