



Foreign investment reviews: more deals facing political intervention on national security grounds

UK Government widens its powers to intervene in deals involving the military, dual-use and advanced technology sectors

In the same week as President Trump blocked Broadcom's takeover of Qualcomm on national security grounds (see [our briefing](#)), the UK Government introduced draft legislation that will allow it to intervene in a wider range of investments in the military, dual-use, computing hardware and quantum technology sectors. These new rules are the first step in a range of proposals designed to strengthen the UK Government's powers to intervene in foreign investments on national security grounds (see our [earlier briefing](#)).

Investments in businesses active in the relevant sectors will fall within scope for review by the UK's Competition and Markets Authority (CMA) and UK Government on competition and public interest grounds if the target *either* earns UK turnover of at least £1 million (instead of £70 million), *or* it has a share of supply of relevant goods or services in the UK of 25% or more (there is no need for an increase in share of supply resulting from the deal), *or* the deal results in the *creation or increase* of a 25% or more combined share of relevant goods or services.

Key points to note:

- Short-term reforms: this is the first legislative step to tighten UK rules allowing Government intervention in foreign investments on national security grounds. More far-reaching proposals impacting a wider range of sectors and types of investment are expected later this year.
- Sectors impacted: the new thresholds apply to certain investments in, and joint ventures with, businesses active in three areas: (i) the development or production of items for military or military and civilian use ('dual use'); (ii) the design and maintenance of aspects of computing hardware; and (iii) the development and production of quantum technology. The draft legislation provides more detail on the precise scope of these areas, and advice for investors deciding whether a target business is caught.
- Minority investments are caught if the acquirer gains the ability materially to influence the policy of the target. This can occur at levels as low as 10-15%. Joint ventures may also be caught.
- Voluntary notification: there is no requirement to notify relevant investments or suspend closing until they are cleared. However, given the scope for intervention and potential remedies that may be imposed, parties may choose to notify the CMA and UK Government upfront. Investors will need to assess the risk of intervention on a case-by-case basis, depending on the nature of the business changing hands, the identity of the acquiring party and the potential national security issues arising.
- The UK Government's powers: as outlined below, the Government may issue an intervention notice any time before the CMA refers the deal to a phase 2 investigation on competition grounds, and within four months after the deal has completed or material facts are made public. Following the CMA's investigation and report, the Government may:
 - conclude that no public interest issues arise, leaving the CMA to review any impact on competition. The CMA has stated that it does not anticipate many deals which only satisfy the new thresholds raising competition concerns;
 - impose remedies to resolve national security concerns. These may be structural (e.g. control over a particular activity is not part of the wider deal) or behavioural (e.g. access to certain assets or information is limited to individuals with appropriate UK security clearances), and may be accepted at the end of a phase 1 or phase 2 CMA investigation; or
 - prohibit the deal or order it to be unwound if it has already completed.

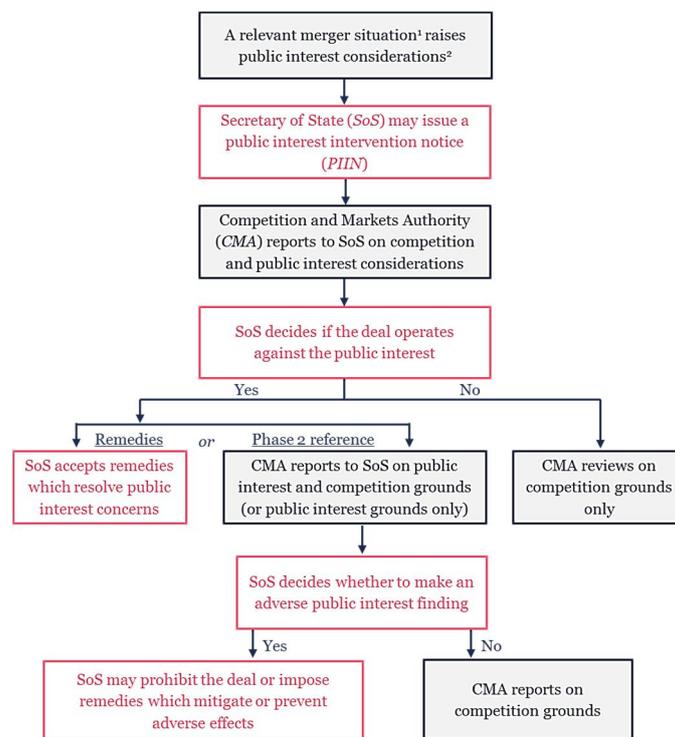
Implications for investors

The new rules bring important changes to the UK's merger regime with implications for investors and businesses active in these sectors:

- Investors buying stakes in smaller UK businesses active in the military, dual-use and advanced technology sectors will need to assess early the risk of intervention and any implications for deal timing and completion. If the target could fall within scope, early engagement with the relevant Government department to assess national security implications is recommended.
- More wide-ranging reforms impacting a larger number of sectors and types of deal are expected later this year. We will keep you up-to-date as these proposals progress.

For further information, please get in touch with your usual Freshfields' contact or any member of our antitrust, competition and trade team.

The UK Government's powers to review deals on public interest grounds: summary of procedure



- 1 Relevant merger situation: an acquisition of control or material influence (which may arise at levels as low as 10-15%) which meets the relevant turnover or share of supply tests. Lower thresholds will apply to the three sectors impacted by the new rules.
- 2 Public interest considerations: as at March 2018: (i) national security; (ii) plurality and other considerations relating to the media; and (iii) stability of the UK financial system. The Government intends to intervene in deals brought within scope by the new rules only on national security grounds.



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