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Quickguides

UK merger control

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Quickguide overview

This Quickguide summarises the UK merger control regime under the Enterprise Act 2002.

Topics covered include:

- Relevant law
- The two stage review process
- Notification and procedure
- Substantive assessment
- Merger remedies

Brexit

Whilst the UK left the EU on 31 January 2020, the EU Merger Regulation (as well as other areas of EU law) continues to apply with full force and effect in the UK during the Brexit Transition Period (at the time of writing, scheduled to end on 31 December 2020). This Quickguide does not consider the potential impact of Brexit on UK merger control law post the Transition Period, except that after that date the EU Merger Regulation "one-stop shop" principle will no longer apply so far as the UK is concerned. This means that EU clearance will no longer cover the UK, and transactions can be reviewed by both the European Commission and in the UK.

For further information on any of these areas please speak to one of the contacts listed on the final page of this Quickguide, or your usual Ashurst contact.

This publication is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions. For more information please contact us at London Fruit & Wool Exchange, 1 Duval Square, London E1 6PW T: +44 (0)20 7638 1111 F: +44 (0)20 7638 1112 www.ashurst.com.

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1. Relevant law

UK merger control legislation is primarily contained in the Enterprise Act 2002 (the EA 2002) and is enforced (since 1 April 2014) by the Competition and Markets Authority (the CMA). Following the UK's departure from the EU on 31 January 2020, the EU Merger Regulation (EUMR) (as well as other areas of EU law) continues to apply in the UK during the Brexit Transition Period.[1] The EUMR applies where the turnovers of the companies involved in a transaction exceed certain thresholds, usually to the exclusion of the UK's domestic merger control regime (and those of all other EU Member States). Further details on the turnover thresholds of the EUMR are set out in the Appendix to this Quickguide. If the EUMR thresholds are met then notification to the European Commission (the Commission) is mandatory, and the UK merger control rules will not usually apply. Conversely, if the EUMR thresholds are not met, the EU rules will not usually apply. However, whatever the initial jurisdictional analysis, it should be noted that there are provisions under the EUMR which enable cross-border mergers to be transferred between the Commission and the national authorities to ensure that they are reviewed in the most appropriate forum.

The EA 2002 applies to completed or anticipated mergers where:

- two or more "enterprises" cease to be distinct (i.e. are brought under common control or ownership); and
- one or more of the following criteria are satisfied:
  - the UK turnover associated with the enterprise which is being acquired exceeds £70m (the "standard turnover test"); or
  - as a result of the merger, a share of 25 per cent 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 (the "standard share of supply test"); or
  - if the transaction is in one or more of the military and dual-use, multi-purpose computing hardware, quantum technology, artificial intelligence, cryptographic authentication technology[2] or advanced materials[3] sectors:
    - the target has an existing share of supply of particular goods or services in the UK of 25 per cent or more (with no requirement that the merged entity's share of supply must be increased); or
    - the UK turnover associated with the enterprise being acquired exceeds £1m.[4]

It will usually be relatively straightforward to identify "UK turnover".[5] Where, however, none of the enterprises concerned remains under the same ownership and control (e.g. the merging of two

[1] At the time of writing, the Brexit Transition Period is scheduled to end on 31 December 2020.

[2] Cryptographic authentication is defined as the method of verifying a person, user, process or device, or the origin or content of a message, data or information, by means of electronic communication, where the method of verification has been encrypted.

[3] Advanced materials relate, amongst other things, to materials capable of modifying the appearance, detectability, traceability or identification of any object to humans or sensors, and alloys formed by chemical or electrochemical reduction of feedstocks in the solid state.

[4] These reduced jurisdictional thresholds in relation to military and dual-use, multi-purpose computing hardware and quantum technology were introduced in the specified sectors with effect from 11 June 2018, in the context of increasing concern regarding the ability of the UK's existing merger and regulatory regime to protect its national security effectively. The application of the reduced thresholds to artificial intelligence, cryptographic authentication technology and or advanced materials then came into force in July 2020. They are intended to be only temporary, pending the implementation of broader reforms to introduce an entirely separate national security review regime, as discussed further below.

[5] "Turnover" means revenue from sales to UK customers in the preceding business year, deducting any sales rebates, VAT and other turnover-related taxes. Turnover is aggregated for all parts of the target business, less any intra-group turnover.

partnerships), the relevant turnover will be calculated by adding together the turnovers of all the enterprises involved and taking away the turnover of the enterprise with the highest turnover.

The target company will be "brought under common control or ownership" in the following circumstances:

- when one party acquires a controlling interest in the other party ("legal control"); or
- when one party acquires the ability to control the commercial policy of the other ("de facto control"); or
- when one party acquires the ability to materially influence the commercial policy of the other ("material influence"). The CMA's guidance indicates that an acquisition of 15 per cent or more of a company's shares is liable to be examined to see whether the holder may be able to influence the policy of the company concerned; or
- where a party which already has material influence or de facto control acquires a higher level of control.

The EA 2002 also provides that control may be acquired by "associated persons" which act together to acquire joint control. This might apply, for example, where two businesses are bidding jointly to take control of a third.

Where the post-merger control structure is considered to involve enterprises ceasing to be distinct, and the jurisdictional thresholds are met, there is a "relevant merger situation".

2. A two stage review process

In common with a number of other jurisdictions, UK merger control is a two-stage process. An initial review considers whether the merger raises prima facie competition concerns (a "Phase 1" investigation), with a second stage in-depth review for more contentious mergers (a "Phase 2" investigation). Both stages of the review process are handled by the CMA. The CMA Board (which will normally delegate decision-making powers to a high-ranking CMA officer) is responsible for making Phase 1 decisions and an Inquiry Group (comprising between three and five Panel Members of the CMA, appointed for the merger in question) is responsible for Phase 2 decisions. The CMA Panel comprises people with the requisite depth of relevant experience through their work as professional or academic lawyers, economists, accountants, directors or other business role.

The CMA has a function to obtain and review information relating to merger situations, and a duty to refer for a Phase 2 investigation any relevant merger situation where it believes that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition (or "SLC") in a UK market. The CMA has powers to investigate mergers on its own initiative based on information in the public domain, following notification of the merger by the parties, or following a third party complaint.

Following a reference for a Phase 2 investigation, the CMA conducts a more detailed analysis to determine whether:

- there is a relevant merger situation falling within the UK merger control regime (i.e. confirming that the UK merger control regime is engaged);
- that relevant merger situation has resulted, or may be expected to result, in a substantial lessening of competition; and
- it should take action to remedy any substantial lessening of competition identified and, if so, what action.

This Quickguide focuses on the practice and procedure for a Phase 1 investigation, but provides a brief overview of Phase 2. For further guidance on Phase 2 procedure please see the separate *Ashurst Quickguide "UK merger control – Phase 2 references"*.

3. Public interest mergers

The EA 2002 also contains provisions allowing political involvement in certain limited categories of merger which have the potential to raise wider public interest concerns. In such cases, the Secretary of State is able to intervene and can impose additional conditions on a merger to address public interest concerns. Where the merger is felt to be in the public interest overall, notwithstanding any competition concerns, the Secretary of State can even "trump" the competition assessment and clear a merger which has been identified as potentially anti-competitive (as seen for example in the case of the *Lloyds/HBOS* merger in 2008). Currently, the specified considerations in respect of which the Secretary of State is able to make a public interest intervention are limited to national security/defence, media concerns such as media plurality, accuracy and quality, (since the financial crisis of autumn 2008) the stability of the UK financial system, and (since 23 June 2020, as a result of the COVID-19 outbreak) the need to combat public health emergencies.

To date, public interest interventions under the EA 2002 have been relatively rare. However, in October 2017 the UK Government published proposals to enhance its ability to intervene in transactions on national security grounds, against a background of increasing concern regarding the ability of the UK's existing merger and regulatory regime to protect its national security effectively. These included both "short term" proposals to reduce the threshold for intervention in mergers in certain sectors raising national security issues, and broader "long term" proposals, which would introduce an entirely separate national security review regime, with a Government Minister acting as the decision maker in all cases and no minimum asset or turnover threshold to trigger notification.

The short term proposal to amend the relevant jurisdictional thresholds was implemented in June 2018 for transactions in one or more of the military and dual-use, multi-purpose computing hardware or quantum technology sectors and in July 2020 for transactions in one or more of artificial intelligence, cryptographic authentication technology or advanced materials (see above). However, this is intended to be only temporary, pending the implementation of broader reforms introducing an entirely separate national security review regime. A White Paper setting out more detail on these proposed reforms was published for consultation in July 2018. Parties would be encouraged to voluntarily notify to the Government any transaction which may pose a potential threat to the UK's national security (which would be broadly defined to include military/dual use products, essential national infrastructure, advanced IT and biosynthesis technologies, and direct suppliers relating to the emergency services). The range of transactions that would be potentially caught is very extensive. Whilst the regime would be a voluntary one, the Government would also have the power to "call-in" for review any transaction where it has a "reasonable suspicion" that it may give rise to a risk to national security.

The Government's response to the White Paper consultation and confirmation of next steps is still awaited. However, if the proposals are implemented, the new regime would involve a fundamental change in the UK's approach to national security assessments. The Government has stated that it envisages around 200 notifications being made each year under the proposed regime (of which around 100 would be subject to a full national security assessment, and around 50 would require some form of remedies).

4. Notification and procedure

This section considers:

- the strategic considerations to take into account in deciding whether to notify a merger in the UK, including the active role of the CMA's Mergers Intelligence Committee;
- the availability of the informal advice procedure to discuss questions of jurisdiction and/or regarding the substantive assessment of the merger;
- the requirement to enter into pre-notification discussions with the CMA;
- the notification process;
- hold separate orders and related powers of the CMA; and

- merger fees.

The decision whether to notify a merger and/or wait for clearance

There is no obligation under the EA 2002 to seek prior clearance of a qualifying merger from the CMA either before or after the merger takes place, and there are no sanctions for proceeding without clearance. The commercial decision whether (a) to notify and (b) to make the transaction conditional on receipt of merger clearance, usually depends on a combination of:

- an analysis of the risk of a reference for a Phase 2 investigation and the likely ultimate outcome (clearance, conditional clearance, prohibition, etc.). Ultimately the CMA can (and, in appropriate cases, will) require an anti-competitive completed merger to be reversed. Completion without prior clearance of a merger which raises competition concerns therefore carries commercial risk for the buyer. There is no commercial risk for the seller because the CMA does not have power to require the seller to repurchase the target business, only to require the buyer to divest it (or, in some cases, part of its existing business);
- the likely impact of notification on the transaction timetable. The fact that notification is not compulsory means that in cases where speed is desirable (for example to meet a deadline or where the target is in financial difficulty), the parties can take advantage of the voluntary nature of the UK regime to press ahead, notwithstanding the associated risks. This may mean that the decision is taken to notify but to have an unconditional transaction (i.e. to complete without waiting for merger clearance);
- the relative bargaining positions of the parties. In some cases, the seller is not prepared to wait for merger clearance, or perhaps a purchaser is bidding against competing bidders whose offers do not qualify for merger clearance. The buyer may therefore have to accept the risk of an unconditional deal;
- the likelihood that the CMA will hear about the merger from another source and investigate on its own initiative. The CMA has a general duty to keep itself informed about mergers which may qualify for investigation. Its Mergers Intelligence Committee reviews the financial and business press to identify mergers which might be subject to UK merger control and uses the CMA's general information-gathering powers to ask the parties questions about the merger. Many merger investigations (particularly of completed transactions) are started in this way. Secondly, if the merger has been notified in other EU jurisdictions, the CMA may hear about it from another EU national competition authority. Finally, the CMA may learn about a merger following a complaint about it by a customer or competitor; and
- the CMA's powers to impose a "hold separate" order. It is also relevant, in deciding whether to notify, that the CMA can freeze any further integration of a completed merger which it is reviewing, freeze an anticipated merger and even reverse any integration steps which have been taken (see further below).

The CMA retains power to refer a merger for a Phase 2 investigation until the later of:

- four months after completion of the merger; or
- four months from the date on which "material facts" about the merger entered the public domain.

Because of the work of the Mergers Intelligence Committee, it is very rare for this deadline to prevent the CMA from commencing a Phase 2 investigation into a potentially anti-competitive merger.

The informal advice procedure

Informal advice from the CMA about its likely view of a particular merger may be available in relation to good faith, confidential transactions (i.e. which are not yet in the public domain) where the question of whether the CMA is likely to refer the merger for a Phase 2 investigation is a genuine issue. In other words, informal advice cannot be used in place of notification as a rubber-stamping process to gain confirmation from the CMA that the proposed merger presents no competition issues.

Informal advice need not necessarily deal with the overall question of whether a reference is likely. The request may be limited to a particular aspect of the competition assessment (for example, market definition or an issue about jurisdiction), in which case the CMA will limit its advice to the particular question raised.

Informal advice is requested by way of a short paper setting out the key issues. The CMA will endeavour to indicate within five working days whether advice will be given and the advice itself will either be given straightaway or at a meeting scheduled within ten working days of receipt of the original application. Urgent cases will be handled more swiftly if the case merits it and if the CMA staff have capacity to deal with it on an urgent basis.

Informal advice is a "one shot" procedure and cannot be used as a dialogue or process of negotiation with the CMA (although subsequent "pre-notification discussions" (see below) are encouraged).

Informal advice in no way binds the CMA when it comes to take its final decision on whether its duty to refer the merger for a Phase 2 investigation has been engaged. Moreover, the value of informal advice is directly linked to the quality and comprehensiveness of the evidence which is presented to the CMA. It has been the case that positive informal advice (i.e. that no reference for a Phase 2 investigation would be likely to be made) has been given in relation to cases which were subsequently referred for a Phase 2 investigation; for example, because additional evidence emerged which had not been known at the time when informal guidance was given. In particular, at the informal advice stage the CMA is not able to verify or test the evidence before it through third party consultation.

The CMA will only provide informal advice on a strictly confidential basis, requiring that the company seeking informal advice reveals neither the fact that advice has been requested, nor the fact that it has been given, nor the outcome. It is very important that confidentiality is maintained as the CMA reserves the right to withdraw the availability of informal advice from businesses which breach the confidentiality requirement.

Pre-notification discussions

If the decision is taken to notify a merger voluntarily to the CMA, the parties will be expected to first provide the CMA with a draft of the notification and to engage in "pre-notification discussions". Such discussions with the CMA were once simply "best practice" but are now considered by the CMA to be mandatory. The risk of not engaging in pre-notification discussions is that the CMA may reject a notification as incomplete (see below). Pre-notification discussions take four to five weeks on average but have been known to take as long as five months, so this is not a quick process. Parties seeking to hold pre-notification discussions should complete a case allocation form to allow for the selection by the CMA of an appropriate case team. The CMA will endeavour to allocate a case team within five working days.

The pre-notification procedure involves dialogue with the CMA on the completeness of the draft submission (and not on the question of whether the merger will be cleared or referred). The process involves sending the submission to the CMA in "final draft" form, which it will then review. The CMA has recently indicated that the first draft submitted by the parties is very rarely complete and that it is not uncommon that three to four further weeks of work is required to satisfy the CMA that the draft notification is considered complete. Where the CMA considers that it will need more information to investigate particular issues, the CMA case officers will highlight those parts of the draft which they consider need further evidence or development. The CMA has the ability to reject a submission which is incomplete so this process is helpful in ensuring that the submission is accepted immediately on formal submission. This in turn will ensure that the clock will start to run as regards the statutory time limits for the CMA's decision. In practice, the pre-notification process is increasingly used to commence the substantive assessment of the merger outside the statutory time frame for review which applies once the notification has been formally submitted.

Submitting a written notification (Merger Notice)

As explained, there is no obligation on the parties to a qualifying merger to notify it to the CMA for clearance. However, if notification is made, the parties must follow the prescribed statutory procedure, providing all the information requested in the pro forma Merger Notice (unless formal waivers have been granted by the CMA for specific information).

A Merger Notice may be rejected by the CMA, in particular, if it suspects that it contains false or misleading information, if it suspects that the parties do not propose to carry the arrangements into effect, if the party notifying fails to supply the required information or any subsequently requested information, or if the notified arrangements appear to be a concentration with an EU dimension within the EUMR (see Appendix).

Once the CMA has confirmed that the submitted notification is complete, it has 40 working days to either clear the transaction or refer it for a Phase 2 investigation. This period cannot be extended. However, the CMA may "stop the clock" on the 40 working day period if it considers that the addressee of a formal written notice has not complied with the request to:

- give evidence;
- produce documents; or
- supply other specified information.

Once the requested information has been provided the CMA will restart the clock and time will continue to run on the 40 working day deadline. The CMA aims to issue a decision within 35 working days in 60 per cent of merger investigations. Where the parties accept that a Phase 2 reference will be made, they can request the CMA to "fast track" the case. Where such a request is accepted, the CMA will aim to make the reference decision within 10 to 15 working days.

Hold separate orders and related powers of the CMA

As noted, the CMA has discretionary powers to impose an initial enforcement (or "hold separate") order to suspend all integration of the merging businesses from the outset of a Phase 1 investigation, as well as powers to reverse any integration steps which have already taken place (for example, recreating separate reporting lines or functions within a business). The CMA can utilise these powers in respect of both anticipated and completed mergers. For mergers completed without prior clearance the CMA's practice is to impose a hold separate order in substantially all cases, requiring the process of integration between the merging businesses to be frozen while it conducts the Phase 1 analysis (although the CMA may decide to lift the order prior to concluding its Phase 1 review if it becomes comfortable that there are no competition concerns). The power to freeze an anticipated merger is far less commonly deployed but has been used in at least one case to date. These powers can be (and frequently are) used before the CMA has established whether the jurisdictional thresholds have been met – it needs only to suspect that a merger situation has arisen or is intended. The CMA's powers to prevent integration and to reverse any steps already taken mean that buyers are potentially more resistant to attempts by the seller to pass all regulatory risk on to the buyer.

Merger fees

Merger fees are payable in respect of any merger (subject to some limited exceptions) that qualifies as a relevant merger situation and in which the CMA (or Secretary of State in public interest cases) reaches a decision on whether or not to refer the merger for a Phase 2 investigation (regardless of whether a reference is made or not). Fees are payable by the person (or group of people) submitting the Merger Notice or, if the CMA launches an own-initiative investigation, by the person(s) acquiring control. Merger fees are payable at the end of Phase 1, when the CMA announces its decision whether to refer or clear the merger.

The table below shows the current bands for merger fees.

	MERGER FEE
UK turnover of the target does not exceed £20m	£40,000
UK turnover of the target is greater than £20m but does not exceed £70m	£80,000
UK turnover of the target is greater than £70m but does not exceed £120m	£120,000
UK turnover of the target is greater than £120m	£160,000

5. Substantive assessment

The CMA's duty to refer

As indicated above, the CMA is under a duty to refer a relevant merger situation for a Phase 2 investigation where the CMA believes that it is, or may be, the case that:

- a relevant merger situation has been created, or arrangements are in progress which if carried into effect will result in the creation of a relevant merger situation; and
- the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market(s) in the UK for goods and services.

Case law has indicated that the CMA has a wide margin of discretion whether to refer cases where the risk of a merger leading to a substantial lessening of competition is believed to be more than fanciful but less than 50 per cent: in practice, the CMA will refer a merger where it considers that there is a "realistic prospect" of a substantial lessening of competition. Above a 50 per cent risk, a reference must be made.

The CMA considers that a merger may be expected to lead to a substantial lessening of competition when it is expected to weaken rivalry to such an extent that customers would be harmed. This may come about, for example, through reduced product choice, or because the merged business could profitably raise prices, reduce output and/or product quality or reduce innovation. The CMA has also indicated that it considers that the core analysis under the substantial lessening of competition test is a comparison of whether the conditions of competition in the relevant market are better with or without the merger. Further information about the substantive assessment of mergers may be found in Ashurst's Quickguide "*Substantive economic analysis in merger control*".

Exceptions to the CMA's duty to refer

The CMA may decide not to refer a merger for a Phase 2 investigation if it believes that:

- the market(s) concerned is/are not of sufficient importance to justify a reference (known as the "de minimis" exception – this exception may be available where the affected markets are worth less than £10m in aggregate, subject to various wider considerations); or
- any relevant customer benefits arising out of the merger outweigh the substantial lessening of competition; or
- in the case of an anticipated merger, the arrangements are not sufficiently advanced, or not sufficiently likely to proceed, to justify a reference.

It is not unusual for mergers involving small markets to be permitted to proceed under the de minimis exception. It is, by contrast, very unusual for a merger to be cleared at Phase 1 on grounds of customer benefits.

6. Undertakings in lieu of a reference (Phase 1 remedies)

Under the EA 2002, the CMA may accept binding undertakings from the parties to a merger as an alternative to making a reference for a Phase 2 investigation. If the CMA decides that its duty to refer applies, the parties must make their offer of undertakings in lieu no later than five working days from receipt of the CMA's reasoned decision to refer. The CMA will have no more than ten working days after the announcement of its Phase 1 decision to decide whether to pursue such undertakings. If the CMA decides to pursue undertakings, it has until 50 working days after the date of publication of its decision within which to finalise and accept the undertakings in lieu, subject to a possible further extension of up 40 working days.

Such undertakings may be structural (e.g. divesting part of the business) or behavioural (i.e. as to future conduct), although structural undertakings are generally regarded by the CMA as a more appropriate remedy for competition problems in a merger situation, particularly at Phase 1. Generally, undertakings in lieu must offer a "clear cut" remedy to the competition concerns, so more complex remedies (such as most behavioural remedies) will very rarely be acceptable and the preference is for simple divestments which remove the anti-competitive overlap outright. Where undertakings in lieu are proposed by the parties, the CMA will consult with third parties to "market test" the suitability of the proposed remedy.

Although the process of agreeing undertakings is not one of to-and-fro negotiation with the CMA, it does consider offers seriously and will engage in some discussion with the parties in light of the desirability for both the parties and the public purse of avoiding the costs of a Phase 2 investigation.

7. Phase 2 investigations

When a merger is referred for a Phase 2 investigation, the CMA's (more specifically, the Inquiry Group's) duty is to investigate and decide whether the merger has resulted in, or may be expected to result in, a substantial lessening of competition (an "anti-competitive outcome"). The CMA will decide this issue on a balance of probabilities, i.e. whether a substantial lessening of competition is more likely than not. This is a higher threshold than the "realistic prospect" test applied at Phase 1.

If the CMA concludes that the merger has resulted or can be expected to result in an anti-competitive outcome, then it must consider whether it or another body should take action – and, if so, what action – to remedy, mitigate or prevent the substantial lessening of competition or any resulting adverse effects, taking into account the need to ensure as comprehensive a solution as is reasonable and practicable. The CMA must also have regard to the impact of the remedy on any customer benefits expected to be generated by the merger.[6]

The CMA has 24 weeks, beginning with the date of the reference, to undertake its Phase 2 analysis and to prepare and publish its report and decision (including with regard to remedies). One extension of no more than eight weeks may be allowed. Historically, Phase 2 investigations have generally taken at least 20 weeks and usually the full 24 weeks. There is no "fast track" option.

8. Phase 2 remedies

Phase 2 remedies are negotiated with, accepted by, and monitored by the CMA. If suitable undertakings cannot be agreed with the parties, the CMA will make an order to remedy the adverse findings. All such undertakings and orders are published.

Broadly speaking, the types of remedies which the CMA might consider include the following:

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[6] As noted, Ashurst's Quickguide *Substantive economic analysis in merger control* considers in more detail the substantive assessment of mergers.

- remedies structured to restore or maintain all or part of the pre-merger status quo such as prohibiting all or part of an anticipated merger or reversing a completed one (in either case, this typically involves divesting one or more of the merging parties' businesses[7] to a suitable purchaser, to remove the anti-competitive overlaps between the purchaser and target and allow the remainder of the merger to proceed, or to unwind a completed anti-competitive merger);
- remedies intended to increase competition following the merger either from existing or new competitors (such as requiring the merged entity to give access to essential facilities or to license intellectual property); and/or
- remedies designed to exclude or reduce the ability of the merged firm to exploit increased market power arising out of the merger (such as imposing a price cap or other price constraint, requiring increased transparency of prices or obliging the merged business to refrain from conduct aimed at inhibiting entry) – these types of "behavioural" remedies are not favoured by the CMA and are used relatively rarely.

The CMA has a period of 12 weeks following its Phase 2 decision within which to negotiate and finalise remedies with the parties. This may be extended by up to six weeks if there are "special reasons" for doing so (this is not a particularly high threshold). The essential framework and objectives of the remedies will have been included in the CMA's final Phase 2 decision, so this later phase deals with the detailed negotiations and drafting of the undertakings which the parties will commit to in order to implement the remedies. Third party consultation will also take place within the same time frame.

[7] "Business" in this context can mean anything from a single brand or even a single intellectual property right to a fully autonomous standalone subsidiary depending on the circumstances of the merger.

Appendix

TURNOVER THRESHOLDS UNDER THE EUMR

The EUMR applies to "concentrations" (which covers mergers and other acquisitions or changes of control) that satisfy either of two sets of turnover thresholds.

1. The EUMR will apply to a concentration where:
    - the combined aggregate worldwide turnover of all of the undertakings concerned is more than €5,000m (around £4,425m at 2018 exchange rates[8]); and
    - the aggregate Community-wide (EU-wide) or EFTA-wide turnover of each of at least two of the undertakings concerned is more than €250m (around £221m at 2018 exchange rates),

    unless each of the undertakings concerned achieves more than two-thirds of its EU-wide or EFTA-wide turnover within one and the same Member State (for these purposes, the EFTA member states are Iceland, Norway and Liechtenstein).
2. The EUMR will also apply to a concentration where:
    - the combined aggregate worldwide turnover of all the undertakings concerned is more than €2,500m (around £2,213m at 2018 exchange rates); and
    - in each of at least three EU Member States or EFTA Member States the combined aggregate turnover of all the undertakings concerned is more than €100m (around £89m at 2018 exchange rates); and
    - in each of at least three of these Member States the aggregate turnover of each of at least two of the undertakings concerned is more than €25m (around £22m at 2018 exchange rates); and
    - the aggregate EU-wide or EFTA-wide turnover of each of at least two of the undertakings concerned is more than €100m (around £89m at 2018 exchange rates),

    unless each of the undertakings concerned achieves more than two-thirds of its EU-wide or EFTA-wide turnover within one and the same Member State.

Turnover is calculated by destination (i.e. based on the location of the customer, not the supplier) and comprises all revenue from sales of products or services as part of the business's ordinary activities, excluding sales rebates, VAT and any other sales-related taxes. Intra-group sales are also excluded. The thresholds apply to turnover for the preceding financial year.

[8] The official ECB exchange rate for 2019 is €1 to £0.87777.

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Euan Burrows
Partner
London

+44 20 7859 2919
euan.burrows@ashurst.com

Neil Cuninghame
Partner
London

+44 20 7859 1147
neil.cuninghame@ashurst.com

Alexi Dimitriou
Counsel
London

+44 20 7859 1191
alexi.dimitriou@ashurst.com

Duncan Liddell
Partner
London

+44 20 7859 1648
duncan.liddell@ashurst.com

Nigel Parr
Partner
London

+44 20 7859 1763
nigel.parr@ashurst.com

Steven Vaz
Partner
London

+44 20 7859 2350
steven.vaz@ashurst.com

ashurst

www.ashurst.com