

November 2020

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U.K. Government Introduces New Law to Allow Intervention in M&A Transactions on National Security Grounds

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On 11 November, the U.K. Government (the "Government") announced its plans to introduce a new law aimed at non-U.K. investors looking to acquire or take (or increase) stakes in businesses in a range of sectors, which could give rise to national security concerns. The National Security and Investment Bill aims to give the Government the ability to scrutinise, impose conditions on, or, as a last resort, block a deal in any sector where it believes there is an unacceptable risk to national security. The proposals reflect an increased appetite by the U.K. and other European governments to examine potential transactions on the grounds of national security.

Though the new regime will apply to investors from any country, it is intended to be targeted and proportionate. The Government expects that most transactions will be cleared without any intervention. However, at the very least, the new proposals will add an administrative element that parties to M&A transactions will need to be aware of, especially in contested auction transactions where the ability to execute quickly can be crucial and even administrative processes could place a party at a competitive disadvantage.

The Government's current powers are limited to mergers involving target enterprises with a turnover of £70 million or a combined share of supply of 25% or more. Unlike the Enterprise Act 2002, the National Security and Investment Bill does not include minimum turnover and share of supply thresholds. The law will expressly state that intervention must be on the grounds of national security and not any other business or economic grounds. However, some 17 sectors are identified as being in scope, ranging from more traditional sectors—such as Defence and Military—to Infrastructure, as well as a number of Technology and Data sectors.

The law will include a five-year retrospective power to call-in transactions in the wider economy which were not notified but may raise national security concerns; this power is similar to the French, German and Italian regimes. These powers will not apply to transactions which took place prior to the new law's introduction to Parliament, so historical deals will remain untouched, but those who are currently negotiating transactions will need to take the new rules into account immediately.

There have been just 12 interventions by the UK Government on national security grounds since 2002. If—or when—the National Security and Investment Bill becomes law, it can be expected that a far greater number of transactions will come under scrutiny. Parties to cross border M&A transactions will need to be aware of these new powers and the potential consequences of both timing and substance. We will be advising clients, including sellers and buyers, to assess the potential risks at an early stage so that any uncertainty can be assessed and minimised.



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