

THE UK REGULATORY ENVIRONMENT AND ITS IMPACT ON DEAL CERTAINTY

The UK's regulatory environment is becoming increasingly complex as the Competition and Markets Authority (CMA) continues to take an interventionist approach to mergers and the National Security Investment Act – which comes into force in January 2022 – introduces significant reforms.

In this summary of a recent Clifford Chance PLC Forum webinar, we explore the impact on deal certainty and provide some recommendations on how to navigate what lies ahead.

Trends in UK merger control

- Historically, parties to global transactions would have been most concerned about competition authorities in the EU, US and China, because they would have been the most likely to block deals or impose significant conditions. Now, a resurgent post-Brexit CMA has made it very clear that it is willing to be similarly (or even more) interventionist and is a force to be reckoned with.
- In the last year, for example, the CMA has reviewed 38 transactions and cleared 21 of them without conditions (55%), compared with the European Commission which has cleared 83% of cases without conditions.
- The stronger position taken by the CMA, and the advent of the NS&I Act, reflect broader trends as merger control, FDI and the regulatory framework are globally becoming more overtly politicised. For involved M&A transactions, this is likely to give rise to additional complexity.

Navigating the trend – some recommendations

- Do not underestimate how complicated and involved the CMA process can be. Often, it is not only the UK authority looking at a transaction – a large global transaction may involve filings in many other jurisdictions. Think about how to coordinate the filing process so that the UK timeline is aligned with other significant filings.
- Prepare, prepare, prepare. These transactions require a significant amount of internal management time.
- Think about your core project team – are they well positioned to represent your company if they find themselves before case teams?

- Obtaining early buy-in from senior management regarding the demand on resources, is crucial. It is important to keep the business as usual side of the business engaged.
- Beware of requests for information (RFI) fatigue – you will be dealing with a lot of them, whether from external advisors or the CMA. You may need to revisit your sign-off process to make sure you can hit the relevant timetables. Accuracy is really important and you need to have good governance.
- Ensure you have the right external advisors/forensic search entities in place to help with responses to RFIs. You do not want to negotiate terms and sign them up against the clock.
- Think about stakeholder engagement beyond just the CMA. You need collaborative, transparent and respectful engagement. And also think about your internal stakeholders – inhouse advisors, management, your shareholders, your comms team and HR to manage expectations.
- Always have a compelling economic argument to address any competition concerns. Economists may need to be engaged early on.
- When considering the NS&I Act, be mindful that the government can change its stance under external pressure so you will need a comprehensive political and policy plan.

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