LEXOLOGY®
Getting The Deal Through

Foreign Investment Review

in United Kingdom

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United Kingdom

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LAW AND POLICY

Policies and practices

What, in general terms, are your government's policies and practices regarding oversight and review of foreign investment?

The party line is that the UK is open for business, and foreign investment is therefore encouraged, subject to regulatory oversight. This is the result of the UK's long history as a trading nation, and advocate of free trade and open markets.

However, the idea that more stringent controls need to be placed on foreign investment, in particular in the technology sector, and in light of concerns over the security of critical national infrastructure, has been gaining traction in policy circles for a number of years. This has resulted in some reform to safeguard critical national infrastructure, with more on the horizon.

Thus far, the regulatory regime has not distinguished between foreign and domestic investment if there is a 'relevant merger situation', meaning that the relevant thresholds are met. However, practitioners should note that, at the time of writing, the government has introduced draft legislation, the National Security and Investment Bill, which, if implemented, will impose a specific notification regime for investment in 17 sectors.

This chapter focuses on the public interest issues. Those considering investment in an airline that operates in the UK should refer to Lexology Getting the Deal Through – Air Transport 2021 . Persons considering investment in entities active in the UK defence and security sectors should also consider whether consent is required from the Ministry of Defence to assign or novate any contracts the target has with it.

Where sectoral regulators have jurisdiction, such as in relation to water, electricity, gas, or telecommunications, they may have an important influence over the outcome of a merger review, particularly where they have concurrent powers that may be relevant to remedies. This is outside the scope of this chapter, but will need to be carefully considered by practitioners if necessary.

Main laws

What are the main laws that directly or indirectly regulate acquisitions and investments by foreign nationals and investors on the basis of the national interest?

In addition to the usual controls that apply to all public bodies under the UK's general administrative law, at the time of writing, the laws specifically addressing intervention on public interest grounds are:

- the Enterprise Act 2002 (EA02) (as amended); and
- the Takeover Code (in relation to certain public companies).

Moreover, draft legislation in the form of the National Security and Investment Bill is currently under parliamentary consideration.

Scope of application

Outline the scope of application of these laws, including what kinds of investments or transactions are caught. Are minority interests caught? Are there specific sectors over which the authorities have a power to oversee and prevent foreign investment or sectors that are the subject of special scrutiny?

At the time of writing, the UK government can intervene in three categories of transaction on public interest grounds, which are outlined below.

UK public interest mergers

These are deals within the UK merger control regime that raise public interest considerations (section 42(1) and (2) EA02).

The Secretary of State can intervene in public interest mergers, where he or she has reasonable grounds to suspect that the UK merger control regime is applicable; the jurisdictional thresholds are met; and one or more 'public interest considerations' are relevant and need to be considered with relation to the deal (section 42(1) and (2) EA02).

What constitutes a public interest consideration may be varied from time to time by the Secretary of State or by amending, removing or adding to the considerations listed by way of an order (section 58(2) EA02). Currently, the considerations include:

- defence: the interests of national security, including public security (section 58(1) and (2) EA02);
- accurate news and free expression: the need for accurate presentation of news and free expression of opinion in newspapers (section 58(2A) EA02);
- plurality of the media: in relation to every different audience in the UK, or in a particular area or locality of the UK, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience (section 58(2C)(a) EA02) (media plurality is defined in section 58(2B) EA02);
- broadcasting: for the availability throughout the UK of a wide range of broadcasting that (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests (section 58(2C)(b) EA02);
- media standards: for persons carrying on media enterprises, and for those with control of these enterprises, to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in section 319 of the Communications Act 2003 (section 58(2C)(c) EA02); and
- prudential regulation in the interest of maintaining the stability of the UK financial system (section 58(2D) EA02).

UK special public interest mergers

These are deals within the UK merger control regime (though not necessarily meeting the same jurisdictional thresholds), and raise public interest considerations (section 59 EA02).

These interventions can happen where the jurisdictional thresholds are not met, provided that:

- the structure is of a type to which the UK merger rules apply (section 59(1) EA02);
- immediately before implementation, at least one of the enterprises concerned was carried on in the UK or by or under the control of a body corporate incorporated in the UK and a person carrying on one or more of the enterprises concerned was a relevant government contractor (section 59(3B EA02), or the person or persons by whom one of the enterprises was carried on supplied at least 25 per cent of all newspapers of any description, or all broadcasting of any description in the UK, or a substantial part of the UK (section 59(3C) and (3D) EA02); and
- one or more public interest considerations is relevant to a consideration of the transaction (section 59(2) EA02).

UK critical national infrastructure mergers

These are deals that are caught by recent reforms to the Enterprise Act pursuant to the Enterprise Act 2002 (Turnover Test) (Amendment) Order 2018 and the Enterprise Act 2002 (Share of Supply Test) (Amendment) Order 2018.

Though not listed as a public interest consideration in section 58 EA02, in 2018 reforms were introduced to the turnover and share of supply threshold tests for particular industries, in essence addressing public interest concerns,

but via a different mechanism. The turnover test and share of supply test amendment orders amend the thresholds set out in section 23 EA02, resulting in many more mergers being caught by the UK regulation in particular sectors. The relevant sectors are set out in section 23A EA02, and include certain activities relating to the military, dual use and quantum computing sectors.

The effect of these reforms is to reduce the turnover threshold to £1 million, and to remove the requirement that there be an increase in share of supply, where the share is 25 per cent or more. The result is that more transactions will be subject to UK merger review in these particular sectors, which are viewed as crucial from a national security or critical national infrastructure point of view.

Definitions

How is a foreign investor or foreign investment defined in the applicable law?

Neither foreign investor nor foreign investment is defined in the EA02; the rules currently apply to all investments regardless of provenance. However, practitioners should note proposed reforms in the National Security and Investment Bill, which at the time of writing has not entered into legislation, but is being considered by Parliament.

Special rules for SOEs and SWFs

Are there special rules for investments made by foreign state-owned enterprises (SOEs) and sovereign wealth funds (SWFs)? How is an SOE or SWF defined?

To date, there are no special rules.

Relevant authorities

Which officials or bodies are the competent authorities to review mergers or acquisitions on national interest grounds?

This depends on the sector in question; for example, if the national interest ground is news plurality, Ofcom is likely to be involved in the review. In general, the Competition and Markets Authority (CMA) will work with the appropriate regulator or government department.

Notwithstanding the above-mentioned laws and policies, how much discretion do the authorities have to approve or reject transactions on national interest grounds?

The authorities must have a legal basis for any intervention, as a basic tenet of the rule of law. In principle, therefore, there is no discretion to intervene otherwise than in accordance with the relevant laws.

However, the definitions in the existing legal bases are relatively broad, which could give some flexibility to intervention. Second, the government departments or sectoral regulators may seek to exert influence over the normal merger control process, where the relevant thresholds are met.

Third, new public interests grounds can be added to the list set out in section 58 EA02 relatively swiftly or, alternatively, they can be removed or amended (section 58(3) EA02).

The Secretary of State also has the power to intervene in transactions on the basis of a consideration that is not specified, but that in his or her opinion ought to be. Steps must then be taken as soon as practicable to ensure that it is

contained in an order laid before both Houses of Parliament and approved within 28 days of the day the order was made (sections 42(7), 42(8)(b) and 124(7) EA02).

PROCEDURE

Jurisdictional thresholds

What jurisdictional thresholds trigger a review or application of the law? Is filing mandatory?

The Competition and Markets Authority (CMA) thresholds for merger notification are as follows:

- The share of supply test: where, as a result of the merger, either (1) the combined enterprise will supply or acquire 25 per cent or more of any goods or services in the UK or a substantial part of the UK, or an existing share of supply of 25 per cent or more will be enlarged (section 23 of the Enterprise Act 2002 (EA02)); or (2) in relation to the critical national infrastructure sectors, a 25 per cent or more share in the supply of goods or services in the UK or a substantial part of the UK, with no increase necessary (section 23 EA02 as amended by the Enterprise Act 2002 (Share of Supply Test) (Amendment) Order 2018, SI 2018/578).
- The turnover test: where the value of the target entity's turnover exceeds £70 million (section 23 EA02), or in relation to the critical national infrastructure sectors, the value of the target entity's turnover exceeds £1 million (section 23 EA02 as amended by the Enterprise Act 2002 (Turnover Test) (Amendment) Order 2018, SI 2018/593).

Notification to the CMA is not compulsory, but practitioners should be aware that the CMA has wide powers to intervene after a transaction has closed. Practitioners should also check whether the National Security and Investment Bill has been implemented, as this will provide for mandatory filings in certain sectors. Moreover, reforms are proposed in relation to mandatory notification for digital mergers, which will be reviewed by a Digital Markets Unit, a new regulator for digital expected to launch in spring 2021.

Following the publishing of the Panel Statement 2016/9 on 14 December 2016, those public companies to which the Takeover Code is relevant must submit a series of documents and forms, including a firm offer announcement, to the Takeover Panel.

National interest clearance

What is the procedure for obtaining national interest clearance of transactions and other investments? Are there any filing fees? Is filing mandatory?

For a transaction that meets the UK thresholds, filing with the CMA is not, at the time of writing, mandatory.

CMA investigations are conducted in phases. Phase 1 is a shorter, less in-depth investigation. Only where concerns are identified does the matter proceed to Phase 2. Fees are payable on filing.

In both public interest and special public interest cases, the CMA will undertake investigations at Phase 1. The Secretary of State is able to issue a public interest intervention notice or special intervention notice at the stage at which he or she has reasonable grounds to suspect that the respective public interest tests are fulfilled. The CMA will then report to the Secretary of State on jurisdiction and market definition issues and then take the decision on clearance, clearance with undertakings or referral to Phase 2. The Phase 2 review is, similarly, undertaken first by the CMA and then considered by the Secretary of State. The standard CMA fees will apply to public interest mergers. There is no fee for special public interest mergers.

Which party is responsible for securing approval?

There is no rule on who should secure approval in the UK but, in practice, the acquiring party tends to take the lead; this may be provided for in contractual agreement between the merging parties. In public bids, this is the bidder; in acquisitions, the acquirer; and in mergers, parties must file jointly on behalf of all parties.

Parties should also be aware that merger control in other jurisdictions where the acquirer or target have assets or do business might also apply.

Review process

How long does the review process take? What factors determine the timelines for clearance? Are there any exemptions, or any expedited or 'fast-track' options?

The usual CMA timescales will or may apply to parts of the review. Both Phase 1 and Phase 2 reviews are subject to timetables (though extensions or suspensions are allowed in certain circumstances). However, the Secretary of State's involvement in a UK or Commission review can significantly extend the review process. The effect of the intervention on the timetable will depend on at which stage the Secretary of State chooses to intervene (when he or she has reasonable grounds for doing so).

The Secretary of State has the power (as does the CMA in standard merger reviews) to expedite a Phase 1 review and proceed straight to a Phase 2 referral, provided the transacting parties agree and provided that it is likely that the criteria for Phase 2 referral will be met. This fast-track procedure requires parties to waive some of their procedural rights under the Phase 1 process.

Various other factors affect the timeline of a review, including the complexity, the flow of information between the authorities and the parties in question, the number of 'interested' parties, and whether and at what stage undertakings or remedies are proposed.

In practice, it would be prudent for transacting parties to engage with the CMA, and relevant UK government departments at the earliest stage possible (and in many cases, prior to notification). Early discussions, informal advice and well-considered and drafted undertakings or remedies may help expedite clearance.

Must the review be completed before the parties can close the transaction? What are the penalties or other consequences if the parties implement the transaction before clearance is obtained?

Subject to any contractual arrangements between the parties to the contrary, transactions under review at a national level do not need to receive clearance before the transaction can close. However, parties should proceed with caution if the thresholds will (or are likely to) be met as the regulatory authorities have the power to intervene following closure of the transaction, and can order the unwinding of a completed transaction, which may be costly for the parties.

Moreover, the CMA can issue an order that the parties 'hold separate' the entities pending competition review. In this scenario the transaction cannot close until after the CMA inquiry.

If the Secretary of State were to intervene in a merger on public interest grounds, this would not be a bar to the transaction completing. However, the Secretary of State and the CMA can impose separate obligations on the transacting parties to prevent integration of the parties or impose obligations to undo integration that has already occurred. There is relatively wide scope for them to do this and there is detailed guidance on what considerations the

CMA or Secretary of State must take into account when following such a course of action.

Involvement of authorities

Can formal or informal guidance from the authorities be obtained prior to a filing being made? Do the authorities expect pre-filing dialogue or meetings?

The CMA generally welcomes pre-notification discussions, but these are not mandatory. The CMA is able to offer informal advice and encourages pre-notification discussions, provided there is a realistic prospect that the transaction can or will go ahead. There are strict confidentiality requirements on any pre-notification discussions and any positions taken in such pre-notifications are not binding on the ultimate position of the CMA. Early discussions can assist in identifying any potential competition concerns and could assist transacting parties in the notification process as they may be able to provide information at the notification stage that deals with competition concerns raised in initial discussions. Furthermore, if competition concerns are identified, and early and detailed proposals for remedies made (which have already been discussed with the regulator), this can help speed up clearance.

When are government relations, public affairs, lobbying or other specialists made use of to support the review of a transaction by the authorities? Are there any other lawful informal procedures to facilitate or expedite clearance?

The employment of lobbying specialists is not common. However, transacting parties may use external specialists to undertake reviews, reports or case studies that can be submitted to the reviewing authorities.

Early informal advice or discussions may expedite clearance and, in those cases where a Phase 2 referral is likely, early consideration of and discussions on undertakings are likely to be of value. Where undertakings may involve third parties (such as divestment undertakings), it can be valuable to include those in the discussions from an early stage. The CMA (and the Secretary of State) can delay a decision if the transacting parties (or in some cases relevant third parties) do not provide full and correct information during the course of their investigations.

What post-closing or retroactive powers do the authorities have to review, challenge or unwind a transaction that was not otherwise subject to pre-merger review?

The Secretary of State may refer a UK public interest merger to the Phase 2 investigation up to four months after the transaction completes or the material facts are made public, whichever is later. The Secretary of State may also accept undertakings in lieu of a reference in the same period.

At a national level, the CMA and the Secretary of State are able to review, challenge or even unwind integration if, on a case-by-case basis, they consider it necessary to do so.

Furthermore, non-compliance with the Takeover Code may result in sanction by the Panel, the Financial Conduct Authority and any regulatory body to which the non-compliant organisation belongs.

SUBSTANTIVE ASSESSMENT

Substantive test

What is the substantive test for clearance and on whom is the onus for showing the transaction does or does not satisfy the test?

The substantive test for clearance depends on the basis for which there is intervention. For UK public interest mergers, the test for referral to Phase 2 is whether the Secretary of State believes the transaction falls within the UK merger regime and that it operates or may be expected to operate against the public interest (section 45(2–5) EAO2). Following the Phase 2 investigation, the test for a negative decision is whether the Secretary of State believes the same test to have been met.

The Secretary of State must, in his or her consideration, accept the Competition and Markets Authority's (CMA) findings on anticompetitive outcomes (whether negative or positive) but then must also consider whether the relevant public interest considerations outweigh any anticompetitive effect. There is limited guidance on how that decision must be taken.

For UK special public interest mergers, the test for referral to Phase 2 investigation is whether the Secretary of State believes that the relevant criteria are (or may be) met and, taking into account only the relevant public interest considerations, the transaction operates or may be expected to operate against the public interest (section 62(2) and (3) of the Enterprise Act 2002 (EA02)). Similarly, the substantive test for a negative decision following a Phase 2 reference is whether the Secretary of State decides that this test is met (section 66(2) EA02).

To what extent will the authorities consult or cooperate with officials in other countries during the substantive assessment?

Formal and official guidance here is unavailable. From practical experience it is known that the competition authorities have many opportunities to discuss cases with each other in the course of their regular meetings (see, for example, the International Competition Network meetings between competition authorities). Cross-agency discussions can and do occur in relation to defence issues pursuant to intergovernmental cooperation treaties. It is advisable to ensure that the respective government departments are briefed in relation to the issues within their concern.

Other relevant parties

What other parties may become involved in the review process? What rights and standing do complainants have?

Competitors, interested parties, industry working groups, economists and other experts may be consulted by the decision-making body.

The rules on standing are set out in the respective regulatory legislation or guidelines.

Prohibition and objections to transaction

What powers do the authorities have to prohibit or otherwise interfere with a transaction?

The Secretary of State can prohibit a UK public interest, or special public interest if, following a Phase 2 CMA report, he or she has made an adverse public interest finding and considers that such action is reasonable and practicable to remedy, mitigate or prevent any of the adverse public interest effects that have resulted from, or may be expected to result from, the transaction (sections 55(2) and 66(6) and Schedule 8 EA02, and section 12(7) PLIO).

In a limited number of public interest cases, the Secretary of State has the power to make a reference to the CMA for a Phase 2 investigation, where the CMA has not done so. The Secretary of State is bound by the CMA's Phase 1 findings on competition issues, but not on any views expressed about the public interest consideration.

Is it possible to remedy or avoid the authorities' objections to a transaction, for example, by giving undertakings or agreeing to other mitigation arrangements?

The Secretary of State can accept undertakings to remedy public interest concerns or competition concerns identified by the CMA in public interest cases. Undertakings can be offered after an intervention notice has been issued and, if they are agreed by the Secretary of State and fulfil the relevant criteria, clearance can be gained despite the public interest grounds for intervention. Undertakings or remedies can also be offered at Phase 2 and can involve third parties.

In public interest cases, undertakings will be reviewed by both the Secretary of State and the CMA for applicability to public interest concerns and to competition concerns respectively. They may also be reviewed by a relevant sector-specific regulator. The Secretary of State can also clear transactions that may otherwise cause competition concerns where it has been decided that the public interest outweighs these concerns.

Challenge and appeal

Can a negative decision be challenged or appealed?

UK decisions taken by the CMA and the Secretary of State's decisions can be challenged in the Competition Appeal Tribunal (CAT). Subject to judicial permission, CAT decisions can be appealed before the Court of Appeal of England and Wales, the Court of Session in Scotland or the Court of Appeal in Northern Ireland, as applicable, or, in certain circumstances, the UK Supreme Court.

The Secretary of State's decision may also be subject to judicial review by the High Court. The grounds for judicial review are generally limited to errors of law and procedure, and judicial review is not an appeal on the merits.

Confidential information

What safeguards are in place to protect confidential information from being disseminated and what are the consequences if confidentiality is breached?

Generally, the CMA insists on confidentiality in any pre-notification requests for advice or meetings, subject to material being shared between the transacting parties. The CMA publishes decisions, communications and submissions, subject to the removal of confidential information or business secrets, and may share documents with other interested parties. Claims to confidentiality must be substantiated, and non-confidential versions of documents can be required for publications. The Commission publishes guidelines on these claims for confidentiality.

RECENT CASES

Relevant recent case law

Discuss in detail up to three recent cases that reflect how the foregoing laws and policies were applied and the outcome, including, where possible, examples of rejections.

21st Century Fox/Sky

In December 2016, 21st Century Fox announced that it would pursue a takeover of the UK satellite broadcaster Sky. The deal resurrected an earlier attempt by another part of the same media empire, News Corporation, to purchase Sky. The earlier News Corporation deal was approved by the European Commission, but ultimately fell apart under considerable political pressure in relation to the question of whether News Corporation fulfilled the requirement for media proprietors to be 'fit and proper' persons under the public interest test as applied to media mergers. A range of remedies were proposed to strengthen editorial independence, notably in relation to board membership, but were not ultimately agreed.

It is important to emphasise how unusual the context was giving rise to these concerns. The concerns stemmed from allegations of ethical issues in the running of News Corporation newspapers, especially in relation to the use of telephone hacking. The case thus represented a very rare example of politics intruding into normal competition-based analysis under very specific and unusual circumstances.

As the Sky/Fox deal was again proposed, a 2017 letter signed by many of the main protagonists in the case against the 2010 deal, with signatories including Sir Vince Cable, former leader of the Liberal Democrats, and the former Labour Party leader Ed Miliband, was published raising similar concerns about the deal.

The letter pushed for Ofcom to open a new inquiry into the question of whether the improprieties at News International undermine the case that Sky is a fit and proper broadcast licence holder, revisiting the question of James Murdoch's role in the company, and raising the issue that James Murdoch has a management position in Fox and issues concerning the extent and nature of control of Sky through the Murdoch family trust.

The Secretary of State Karen Bradley requested that Ofcom consider the merger in light of three public interest considerations: media plurality, broadcasting standards, and fit and proper person to hold a broadcasting licence. Ofcom delivered its report to the Secretary of State, highlighting in particular concerns about media plurality. The parties had offered undertakings in lieu of a Phase 2 reference, which the Secretary of State indicated on 29 June 2017 she was not minded to accept, instead indicating that she was minded to refer the merger to the Competition and Markets Authority (CMA) for the Phase 2 investigation on the media plurality ground, and minded not to refer on the broadcasting standards ground, indicating a period in which interested parties could make further submissions.

In a letter to Ofcom dated 7 August 2017, the Secretary of State indicated that a number of submissions received were considered to be substantive, and requested further advice in relation to Ofcom's broadcasting standards analysis. Following correspondence throughout August, the Secretary of State announced on 20 September 2017 the referral of the merger to the CMA for a Phase 2 investigation on both media plurality and commitment to broadcasting standards grounds. At the time of writing, the CMA has issued an issues statement, requesting input from interested parties for their investigation, and both Sky and Fox have made initial submissions to the CMA on both grounds.

On 23 January 2018, the CMA provisionally found that the transaction would not be in the public interest owing to media plurality concerns, but not because of a lack of genuine commitment to meeting broadcasting standards in the UK.

The CMA sent its final report to the Department for Digital, Culture, Media and Sport, on 1 May 2018, and on 5 June 2018 the Secretary of State accepted the CMA's recommendation that the transaction was not in the public interest owing to media plurality concerns, and accepted the CMA's recommendation that the most effective and proportionate remedy would be for Sky News to be divested to a suitable third party.

In the end, the transaction did not complete, as Fox was drawn into a bidding war by Comcast, resulting in a rare supervised bidding process in which the Takeover Panel oversaw the submission of blind bids, from which Comcast emerged the victor, offering £30 billion for full control of Sky.

Connect Bidco Limited/Inmarsat

On 25 March 2019, Inmarsat plc announced that it had agreed to the acquisition of its entire issued share capital by Connect Bidco Ltd, a private equity-led consortium. Inmarsat is a satellite telecommunications company, offering

global mobile services. On 15 July 2019, the CMA launched an inquiry into the merger.

The Secretary of State for Digital, Culture, Media and Sport issued a public interest intervention notice on 22 July 2019, citing national security grounds. The transacting parties offered undertakings to address any concerns. The CMA completed a report for the Secretary of State. This report was published by the Secretary of State on 9 October 2019, along with the launch of a public consultation on the draft undertakings before the Secretary of State and the CMA.

On 29 October 2019, the undertakings were accepted by the Secretary of State. A redacted version of the undertakings can be found on the CMA website.

Tobii AB (publ)/Smartbox

This is an interesting transaction as it is an example of the CMA employing the share of supply test to intervene in a transaction once it had closed. The CMA launched a merger inquiry on 27 November 2018.

During the CMA's inquiry an unwinding order was issued, requiring the parties to unwind any aspects of the merger that had been completed before intervention.

The inquiry went through both Phase 1 and Phase 2 review, with the CMA ultimately finding that the transaction would result in a substantial lessening of competition and recommending full divestiture of the Smartbox entity.

The CMA's final report was subject to a review by the Competition Appeal Tribunal, heard in early November 2019. The Competition Appeal Tribunal handed down judgment on Friday 10 January 2020, in which it ruled that four of the five grounds for review had not been made out, but in respect of the fifth ground for review, finding that the CMA had failed to gather sufficient evidence upon which to base its vertical theory of harm that the merger would result in partial input foreclosure in relation to a particular software.

The CMA's final order remained in force, and Tobii was required to divest the Smartbox business.

UPDATES AND TRENDS

Key developments of the past year

Are there any developments, emerging trends or hot topics in foreign investment review regulation in your jurisdiction? Are there any current proposed changes in the law or policy that will have an impact on foreign investment and national interest review?

Following the Competition and Markets Authority's (CMA) market study into online platforms and digital advertising, a recommendation has been put forward for the creation of a Digital Markets Unit, with new regulations to be applied to certain players with market power in the online space. The exact shape of this legislation is not yet clear, but recommendations from the CMA to the government include extra scrutiny for mergers in the digital space.

Moreover, on 11 November 2020, the UK government published a draft National Security and Investment Bill. The Bill will need to go through parliamentary approval. If passed into law, it will introduce a regime specifically to review foreign direct investment in the UK.

The Bill proposed new powers to review both takeovers and investments, including the acquisition of minority shares, in a number of industries. The proposed Bill includes a range of penalties for failure to notify, so practitioners should ensure that they check whether the Bill has been implemented as law, and whether their transaction is caught.

The draft Bill provides a call-in power for any transaction taking place between 12 November 2020 and the commencement date of the Bill once implemented as legislation. At the time of writing, it is not clear when the Bill is expected to pass through Parliament and be implemented as legislation.

Coronavirus

What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

As the covid-19 pandemic began to unfold, the UK government implemented a number of exclusion orders. Exclusion orders are made under paragraph 7 of Schedule 3 to the Competition Act 1998, which allows for competition rules in relation to certain agreements to be relaxed where necessary for public policy reasons.

At the time of writing, such orders had been made in relation to groceries, dairy produce, Solent maritime crossings, health services for patients in England, and health services for patients in Wales. Details can be found on the government's website . In relation to mergers specifically, the CMA has released guidance on merger review during the pandemic. In particular, this indicates a more flexible approach to deadlines for providing information to the CMA than would be the norm.