

European Commission amends referral policy to allow review of previously non-reportable ‘killer acquisitions’

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On 26 March 2021, the European Commission published new guidance on when it will accept referrals from EU National Competition Authorities to review deals involving potential “killer acquisitions” that would previously have avoided merger review. The new guidance follows on from a Vestager speech in September 2020 that noted the European Commission’s intention of “accepting referrals from national competition authorities of mergers that are worth reviewing at the EU level – whether or not those authorities had the power to review the case themselves”. This represents a significant policy shift that will complicate future merger filing risk assessments and forms part of a broader re-evaluation of procedural and jurisdictional aspects of EU merger control. Companies, particularly those involved in fast-moving, digital markets, should be wary of the risk of deal referral to the European Commission, even where revenue-based jurisdictional thresholds are not satisfied.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

D. Jarrett Arp

+1 202 962 7150
jarrett.arp@davispolk.com

Arthur J. Burke

+1 212 450 4352
+1 650 752 2005
arthur.burke@davispolk.com

Ronan P. Harty

+1 212 450 4870
ronan.harty@davispolk.com

Howard Shelanski

+1 202 962 7060
howard.shelanski@davispolk.com

Matthew Yeowart

+44 20 7418 1049
matthew.yeowart@davispolk.com

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