

Recent UK and US merger control developments

February 16, 2017

CMA announces proposed changes to *de minimis* guidance

The UK's Competition and Markets Authority (CMA) has announced proposed changes to its *de minimis* guidance, under which mergers affecting small markets may be cleared despite the presence of competition concerns. The CMA has proposed that:

- the threshold above which the *de minimis* exception cannot be used should be increased to markets with an annual value of **£15 million** (up from £10 million); and
- the threshold under which the CMA considers that a reference to a phase 2 review will not be justified other than in exceptional circumstances should be increased to markets with an annual value of **£5 million** (up from £3 million).

As always, the application of the *de minimis* exception in the UK will remain at the CMA's discretion. And this measure is unlikely to free up significant capacity for the CMA's post-Brexit scrutiny of deals currently handled in Brussels. The UK regulator may need to take a more rigorous look at the efficient allocation of its resources.

FTC announces increases to the Hart-Scott-Rodino (HSR) Act notification thresholds

The FTC has announced annual increases to the "size of transaction" and "size of parties" jurisdictional thresholds. These thresholds are used in the initial determination of whether a transaction requires advance notification in the US.

- The "size of transaction" threshold for 2017 will be increased to **\$80.8 million** (up from \$78.2 million). Transactions that result in the acquirer holding voting securities or assets valued above \$80.8 million may be reportable if the "size-of-parties" threshold is also satisfied and no exemptions are available.
- The "size of parties" thresholds for 2017 will be satisfied where one party to the transaction has worldwide sales or assets of or exceeding **\$16.2 million** (up from \$15.6 million) and the other has worldwide sales or assets of or exceeding **\$161.5 million** (up from \$156.3 million). Transactions valued at more than **\$323.0 million** (up from \$312.6 million) will be subject to pre-closing notification without regard to the sales or assets of the parties.

The new thresholds take effect on 27 February 2017.

In a related announcement, the FTC has confirmed that failure to comply with the HSR Act will carry a maximum penalty of **\$40,654 per day**.

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

Nicholas Spearing	+44 (0)20 7418 1096	nicholas.spearing@davispolk.com
Devin Anderson	+44 (0)20 7418 1087	devin.anderson@davispolk.com
Matthew Yeowart	+44 (0)20 7418 1049	matthew.yeowart@davispolk.com

© 2017 Davis Polk & Wardwell London LLP | 5 Aldermanbury Square | London EC2V 7HR

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's [privacy policy](#) for further details.

Davis Polk & Wardwell London LLP is a limited liability partnership formed under the laws of the State of New York, USA and is authorised and regulated by the Solicitors Regulation Authority with registration number 566321.