

The UK Extends its Discretionary Powers to Intervene in Foreign Takeovers

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On 22 June 2020, the UK government announced amendments to the merger control regime which extend its discretionary powers to intervene on national security or public interest grounds. These reforms aim to address concerns raised by the COVID-19 pandemic and related financial uncertainty which has heightened the “risk of hostile actors exploiting the situation” to acquire vulnerable UK businesses.

In brief, the amendments:

1. **Enable public interest interventions in takeovers of businesses that “combat and mitigate the effects of a public health emergency”.** The government will be able to intervene in takeovers of healthcare companies (e.g., pharmaceuticals, equipment suppliers), critical service providers (e.g., internet service providers, food supply chain companies) as well as “usually stable businesses” suffering a short-term impact to share price or profitability.
2. **Lower jurisdictional thresholds for transactions relating to artificial intelligence, cryptographic authentication technology and advanced materials.** Transactions in these sectors will be reviewable if the target has UK turnover of more than £1 million (in contrast with £70 million for other sectors) or the transaction will result in a UK share of supply of 25% or more. These lower thresholds already apply to military, quantum technology and computing hardware.

The first reform comes into effect today. The lower turnover thresholds are to be debated and approved by Parliament before coming into effect later this year.

These changes to the Enterprise Act 2002 set the scene for further, extensive reforms to be set out in the National Security and Investment Bill (the “**NSI Bill**”), expected before Parliament this summer. The NSI Bill, in development since the publication of a June 2018 White Paper, is expected to establish a standalone foreign direct investment (“**FDI**”) screening regime, which will enable the government to closely scrutinize a far wider range of transactions than has historically been the case. This system is expected to be in addition to and distinct from the pre-existing antitrust merger control regime.

These UK proposals form part of the rapid global spread of FDI screening regimes. Increasingly, FDI screening is viewed by national governments as a necessary tool to enable the protection of domestic businesses from takeovers by hostile foreign investors (see our previous [briefing](#)). The recent wave of reforms in major jurisdictions, including the EU-level screening regime due to come into full effect in October, underlines how rapidly the regulatory landscape is changing. Deal teams should assess FDI filing risk early in the deal planning process, to mitigate adverse timing and other execution risks.

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