

**Baker  
McKenzie.**

# **UK Merger and Foreign Investment Controls**

# Transactional Scrutiny in the UK on the Rise

The UK Competition and Markets Authority (CMA) is now emerging as the most aggressive antitrust enforcer worldwide – frustrating more deals than any other global antitrust authority over recent years. The CMA will further accelerate progress towards its stated ambition to be a leading global antitrust authority, as it ceases to come under the EU “one-stop-shop” principle at the end of 2020, and establishes a fully independent merger control regime post-Brexit.

## CMA prohibitions are increasing in frequency

*“In the UK, we are increasingly of the view that when you find significant problems prohibition is the right answer.”*

– Andrea Coscelli, CMA Chief Executive, October 2020

## CMA Intervention in numbers since 2019

Phase 1 clearance without conditions in cases within the last 18 months is the new gold medal result



Despite the voluntary nature of the UK merger control regime, it is essential that businesses now develop a thorough understanding of the process and challenges of CMA filings, and embed the UK as a key tenet of a global merger control filing strategy to avoid deals being blocked.

## The Risk of Initial Enforcement Orders (IEOs)

For completed deals called in to be considered or contemplated deals scheduled to close prior to the end of a CMA Phase 1 review, initial enforcement orders (IEOs) – requiring the acquirer to hold the target’s business separate until conclusion of the CMA’s work will be imposed almost automatically, with considerable fines imposed for IEO breaches.

## Increasing Scrutiny of Foreign Investment

On 11 November 2020, the UK Government introduced the National Security & Investment Bil. The new law significantly expands the Government’s powers to review UK national security implications of transactions. Although the Bill is expected to be enacted in early 2021, certain aspects are relevant for transactions as of 12 November 2020.

Once the Act enters into force, a mandatory notification system will potentially apply to transactions involving as little as a 15% shareholding in one of [17 strategically important industry sectors](#). Transactions subject to this regime that are not notified will be void. Failure to make a mandatory notification will risk significant financial penalties (up to 5% of total worldwide turnover or £10 million, whichever is higher) and criminal liability for directors.

Outside the 17 focus industries, notification will be voluntary, however the Government will have the ability to “call in” transactions not notified to it that it considers pose national security risks.

With the Government envisaging up to 1800 notifications a year, all companies need to be ahead of the curve regarding the potential impact of these reforms on their deal strategy.

## Delivering Deal Certainty and Execution in the UK and Beyond

- Our experienced UK merger control experts ensure deal certainty and execution by handling the entire merger control process, from conducting an initial filing assessment to handling informal advice procedures, pre-notification discussions, written notifications and all aspects of Phase 1 and Phase 2 investigations.
- As the CMA has increased its interventionist nature so the number of challenges are on the rise – giving the Competition Appeal Tribunal (CAT) the opportunity to review the CMA's approach. We have a long track-record of dealing with regulatory appeals and can assist clients considering this route.
- With strength and depth both in London and Brussels, we can ensure a 'one stop shop' for both the UK and EU. Clients also benefit from our ability to draw upon the largest global competition practice and experience of handling large multi-jurisdictional merger control and foreign investment assessments and filing/notification strategies.

## Our Experience

- **Platinum/Wesco.** Assisted PEG with obtaining global merger control clearances in connection with the USD 2 billion acquisition of Wesco Aircraft Holdings. Involved an in-depth review by the CMA during phase 1.
- **Bain Capital (Diversey)/Zenith.** Advised on the acquisition of Zenith Hygiene by Diversey, one of Bain Capital's portfolio companies (cleared unconditionally by the CMA despite the parties appreciable horizontal overlap).
- **Baxter/Hospira** – Advised Baxter on the acquisition of Hospira's compounding business in the UK. The transaction was granted a Phase I unconditional clearance by the CMA, successfully defending an Issues Letter at the Case Review Meeting.
- **Brakes/Kent Frozen Foods** – Advised on Brakes' acquisition of Kent Frozen Foods before the CMA, cleared in Phase 1.
- **Cardtronics/DirectCash** – Represented Cardtronics on its acquisition of DirectCash Payments Inc; eventually cleared by the CMA without remedies following Phase 2 inquiry.
- **Technology merger** – Advising a software and analytics provider in connection with its acquisition of a controlling stake in a provider of capital markets solutions to financial institutions. The CMA called in the completed transaction for merger control review.

## Resources & Insights



- [Global Merger Analysis Platform \(GMAP\)](#)
- [Foreign Investment Review Evaluation \(FIRE\)](#)
- [Foreign Investment & National Security Blog](#)
- [Introduction to UK Merger Control: Webinar](#)
- [Information Requests in UK Merger Cases: How to Avoid a Procedural Investigation](#)

## KEY CONTACTS

---



**Keith Jones**

Partner  
+44 207 919 1573  
keith.jones@bakermckenzie.com

*"reassuringly smart and unerringly commercial ... we always come away from meetings with Keith in a far better position than before."*

– Chambers UK, Competition Law, 2021



**Luis Gomez**

Partner  
+44 207 919 1766  
Luis.Gomez@bakermckenzie.com

*"a shining star in the competition law sky, who provides safe and razor-sharp guidance in the treacherous waters around the CMA."*

– Chambers UK, Competition Law, 2021



**Samantha Mobley**

Partner  
+44 207 919 1956  
samantha.mobley@bakermckenzie.com

*"extremely committed, comes up with creative solutions and is very responsive."*

– Chambers UK, Competition Law, 2021

## WHAT OTHERS SAY

---

### Client Testimonials on our UK Competition Practice

'A team of excellent professionals with a highly business-focused and pragmatic attitude.'

'The integrated practice can draw on the skills of specialists across the world. Very practical and great to work with.'

'Extremely dedicated to client relationships, very proactive, with unique global coverage and outstanding global knowledge management.'

Baker McKenzie is renowned for its expertise in merger control

**Legal 500, EU & Competition (2020)**

#3 for Merger Control and Top 5 Global Elite Firm

**Global Competition Review 2019**

---

## Baker McKenzie helps clients overcome the challenges of competing in the global economy.

We solve complex legal problems across borders and practice areas. Our unique culture, developed over 70 years, enables our 13,000 people to understand local markets and navigate multiple jurisdictions, working together as trusted colleagues and friends to instill confidence in our clients.

**[bakermckenzie.com](http://bakermckenzie.com)**

© 2020 Baker McKenzie. All rights reserved. Baker & McKenzie International is a global law firm with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner or equivalent in such a law firm. Similarly, reference to an "office" means an office of any such law firm. This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.