

UK Government increases its scope to review takeovers on national security grounds

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The UK Government has [announced](#) that it is expanding the scope of its existing jurisdiction to review, block or impose conditions to transactions involving a change in material influence or control over certain enterprises on national security grounds. This covers enterprises engaged in certain defined sectors involving the development of military and dual-use (i.e. civilian and military) equipment and systems, as well as enterprises engaged in certain forms of computer technologies processing units (development or ownership of IP or design, maintenance or management of “roots of trust”) and quantum-based technology.

The reduced jurisdictional thresholds will apply where the target enterprise has turnover in the UK exceeding £1 million, or has a share of supply in the UK or a substantial part of the UK of more than 25 per cent (irrespective of whether that share is increased). Detailed definitions of the in-scope activities are set out in the Government’s [guidance](#).

The new thresholds will operate within the existing voluntary UK merger control framework. Where a public intervention notice is issued by the Government, the Secretary of State will instruct the Competition and Markets Authority to prepare a report on the competition issues and to summarise any views received on the public interest aspects of the transaction. The Government may prohibit the transaction altogether, or may require structural or behavioural remedies, often in the form of undertakings.

There is no provision for parties to a transaction to obtain formal confidential clearance in advance for their transaction. However, in the Government’s guidance, it does invite parties to informally notify it about transactions with potential national security concerns as early as possible. This will allow the Government to begin the assessment process and, where relevant, issue a non-binding indication that it has no national security concerns with a deal so that parties can choose whether or not to proceed.

Some features of these changes are particularly notable:

- The changes to the thresholds have no impact on those transactions involving a target with turnover over £70 million or those transactions with an increment to the merging parties’ share of supply to over 25 per cent, as these are already capable of being reviewed by the Government on national security grounds under the existing regime.
- The Government’s powers are applicable even where the relevant activities form only a minor part of the target’s total activities. Similarly, turnover from all activities is counted, and not just from the relevant activities.

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- The Government decided not to reflect in its approach those consultation responses which voiced a concern that a £1 million threshold would miss micro-businesses which may nonetheless hold significant IP that could be a threat to national security, yet fall outside the regime.

In increasing its scope to review more transactions on national security grounds, the Government has been mindful of the need to balance its scrutiny of national security implications of overseas investment with ongoing efforts to encourage the flow of inward foreign direct investment to the UK. The Government will hope that it has found that balance and that the new thresholds will be seen as part of a clear and predictable national security regime with transparent and objective criteria, without presenting any significant barriers to investment. However, at this critical time for foreign investment into the UK against the backdrop of Brexit, only time will tell. These changes also represent only the short-term element of the Government's industrial policy, with longer-term reforms expected to be outlined by the Government in due course.

The move by the UK Government is consistent with an increased focus globally on foreign investment controls. In September 2017 the European Commission unveiled a set of proposals for the screening of foreign direct investments into the EU on the back of calls from Member States such as France, Germany and Italy. The CFIUS regime is also increasingly active in policing foreign investment into the US, with President Trump blocking Broadcom's hostile takeover of Qualcomm in March 2018. Companies considering the acquisition of targets with national security dimensions in the relevant sectors in the UK should take note and will watch with interest how the Government uses its newly-expanded jurisdiction.



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