



**COME HELL OR HIGH WATER? –  
NEGOTIATING MERGER CONTROL  
PROVISIONS IN INTERESTING TIMES**

2 FEBRUARY 2023

PARIS

- **DOVILE BURGIENE**; *WALLESS, VILNIUS, LITHUANIA*
- **FRÉDÉRIC DE BURE**; *CLEARY GOTTlieb STEEN & HAMILTON, PARIS, FRANCE*
- **CLARE GASKELL**; *SIMPSON THACHER & BARTLETT, LONDON, UK*
- **DIETER GERICKE**; *HOMBURGER; ZURICH, SWITZERLAND*
- **RENATA MENDAÑA NAVARRO**; *GARRIGUES, MADRID, SPAIN*

# DISCUSSION

- **PREPARING FOR A DEAL:** ARE COMPETITORS EXCLUDED FROM THE POTENTIAL BUYERS LIST, WHAT IS THE PROCESS FOR THAT, WHEN AND WHO CARRIES OUT INITIAL ANALYSIS THAT IDENTIFIES THE COMPETITION CONCERNS
- **DD AND NEGOTIATIONS:** CLEAN TEAM ARRANGEMENTS AND OTHER PROCESS CONSIDERATIONS
- **FILING:** TIMING OF FILING, COOPERATION PROVISIONS, DROP-DEAD DATES – WHEN THIS IS DISCUSSED IN THE PROCESS (LOI, SPA)

# CASE

- **TARGET:** UK-HQ CONTRACT MANUFACTURER OF BIOTECH PHARMACEUTICALS WITH SWISS, SPANISH AND US PRODUCTION SUBSIDIARIES AND GLOBAL SALES, BUT MOSTLY IN THE US, UK AND FRANCE
- **BUYER:** FRENCH STRATEGIC THAT HAS 2 BUSINESSES:
  - CONTRACT MANUFACTURING OF BIOTECH PHARMACEUTICALS WITH PRODUCTION IN FRANCE AND GLOBAL SALES, BUT MOSTLY IN THE US, UK AND FRANCE
  - DEVELOPMENT OF OWN PRODUCT IN PHASE IV CLINICAL TRIALS IN EMA AGENCY, WHILE THE TARGET PRODUCES CLINICAL TRIAL BATCHES FOR COMPETITORS OF THE BUYER
- **FINANCIAL SPONSORS:** 2 UK-HQ FUNDS PLUS BANK FINANCING
- **SELLER:** UK-HQ PE FUND
- DEAL IS SUBJECT TO MERGER CONTROL IN MULTIPLE JURISDICTIONS

# NEGOTIATIONS

- PRE-NEGOTIATED REMEDIES, HELL OR HIGH-WATER CLAUSES, BREAK (OR REVERSE BREAK) CLAUSE
- NON-COMPETE / NON-SOLICIT CLAUSE



**QUESTIONS?**