

# Navigating Regulatory Challenges in Transactions

## TOP TIPS FOR PRIVATE EQUITY LAWYERS

1

### Identify the relevant jurisdictions and regimes

- Will merger control and/or foreign direct investment (FDI) notifications be triggered?
- Is there a risk of the merger being called in for review by the European Commission under Article 22 of the EU Merger Regulation, by the UK Competition and Markets Authority or by any other jurisdictions with a call-in power?
- Is notification required under the new EC Foreign Subsidies Regulation?

2

### Establish if the transaction will raise substantive concerns

- **Merger control:** Are there horizontal overlaps? Are the parties close competitors? Do the parties have any vertical relationships? Is this a roll-up acquisition? Is this a sector of interest to the competition agencies (*e.g.*, consumer-facing, digital or pharmaceutical sectors)?
- **FDI:** Are the parties involved in sensitive sectors (*e.g.*, defence, health or critical infrastructure)? Does the transaction involve any State-owned investors?
- **EC Foreign Subsidies Regulation:** Do the parties receive significant financial contributions from any non-EU states (*e.g.*, subsidy, loans, guarantees, or public contracts)?

3

### Develop a project plan with timelines for the various notifications

- Allow time for preparation of notifications and for pre-notification discussions with the relevant agencies, which may be lengthy.
- Which clearances will need to be obtained before closing can take place?
- Is it likely that agencies will require remedies to clear the transaction? If so, consider whether it will be possible to coordinate the timetables in different jurisdictions to enable parallel remedy discussions.
- Consider the implications of the timetable for the transaction timing and longstop date.

4

### Consider how to mitigate regulatory risks in the project documentation

- What conditions precedent should be included to cover the necessary regulatory clearances?
- What covenants should be included to encourage the buyer to obtain the regulatory clearances as soon as possible and to ensure cooperation between the parties in the regulatory processes?
- Is it appropriate to negotiate a Hell or High Water clause, break fee or reverse break fee?

## Key Contacts



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