



Unbundling Competition

Episode 7: Screening of Asian Investment in Europe – UK competition law after Brexit

In this episode, Adelaide Luke, partner and Head of Competition Asia in the HSF Hong Kong office, and Mark Jephcott, partner in the HSF London office, discuss the UK competition law system, and how it will apply to Asian companies after the expiry of the UK EU Withdrawal Agreement on 31 December 2020.

Key points to consider after 31 December 2020

1. From 1 January 2021, the UK Withdrawal Agreement will expire, and EU law (including EU competition law) will no longer apply to the UK.
2. Companies may need to consider the possibility of parallel merger control filings in the EU and UK, and should build this into deal planning.
3. UK turnover will not be counted towards EU turnover for EU merger control purposes, which may make it harder for some companies to meet EU merger filing thresholds.
4. Companies may also need to consider the possibility of parallel investigations for infringements of EU and UK competition law, and make leniency applications accordingly.
5. EU and UK competition law rules are likely to diverge over time.
6. The UK is likely to remain a popular venue for private damages claims against cartel participants, even for EU cartel investigations.

Key points to know about UK competition law

1. The UK Competition & Markets Authority (**CMA**) is a pro-active competition regulator with a wide and extra-territorial view of its own jurisdiction. It can exercise jurisdiction even where parties have no sales in the UK.
2. Although the UK merger filing regime is 'voluntary', there are risks in not filing, including the imposition of Interim Enforcement Orders and unwinding of completed transactions.
3. The triggers for filing in the UK are lower than in the EU, including the acquisition of material influence over a target – includes shareholdings as low as 15%.
4. There are significant differences in the merger review process between the EU and UK. In general, the UK review period is longer, but more flexible.
5. The CMA has wide enforcement powers, including to impose criminal sanctions and to disqualify company directors for up to 15 years.

