

Private Equity Deals in the Antitrust Spotlight

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To date, private equity (PE) deals have seldom attracted serious scrutiny by the United Kingdom's Competition and Markets Authority (CMA) and other antitrust regulators. However, this looks set to change; in particular with the CMA indicating that PE "roll-up" deals (where a PE house acquires multiple smaller companies in the same industry) have become an enforcement priority.

- There are a number of recent high profile examples of the competition authorities in the United States, United Kingdom, and Europe looking much more closely at these deals for competition concerns, and our recent practical experience with clients mirrors this development.
- The CEO of the CMA, Sarah Cardell, explained at an antitrust enforcement summit in Washington, D.C. on 27 March that the CMA has received several complaints concerning roll-up acquisitions, which were accused of leading to high cost increases in the relevant markets. As a result, the CMA has "taken a conscious strategy of really looking out for these transactions."
- Cardell highlighted that a particular focus for the CMA will be deals involving industries that matter to consumers, i.e., consumer-facing markets. Cardell also noted that the CMA is particularly concerned about "quiet deal-making" in the veterinary space. She is reported as having pointed out that the proportion of independent veterinary practices in the United Kingdom dropped from 89% in 2013 to 45% in 2021 – "an absolutely huge drop" that she attributes to the growing presence of PE in the sector.
- Cardell issued this key takeaway: "You want to make sure that boardrooms are aware of the kinds of deals that should or shouldn't go ahead." The CMA is sending a clear message to PE firms that they're on its radar, and that deals that may otherwise have slipped under that radar are "going to come in for very close scrutiny."
- Principal Deputy Assistant Attorney General of the U.S. Department of Justice, Doha Mekki, confirmed that the spotlight is also shifting to PE in the United States, highlighting roll-ups in

the health care sector (including dental practices and dialysis clinics) as an area that will receive particular attention.

- It's worth noting that this trend runs in parallel with developments on the foreign direct investment front, with many countries, including the United Kingdom – now requiring mandatory approvals for deals in more sensitive sectors. Whilst we have found the UK government to be quite pragmatic about the level of PE investor detail needed where limited partners (LPs) are entirely passive, the filings still require a lot more information regarding investment structure and influence than PE houses may be used to disclosing – and questions about LPs are not unheard of where these include foreign investors.
- The upshot? PE firms can expect to have to spend more time carefully assessing regulatory risk – and in particular merger control – before pursuing a growth strategy in an industry, to realistically gauge whether a deal could be blocked or subject to expensive remedies which undermine deal value, and to ensure appropriate deal prioritization.

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