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Regulatory Update

Rising Antitrust Risks in Europe From Below-Threshold Merger Call-Ins

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Transactions falling below traditional jurisdictional filing thresholds (i.e., where the parties don't meet the relevant turnover thresholds) have historically been regarded as low risk from a merger control perspective, but that assumption is no longer safe. Recent international developments illustrate a broader global trend, with regulators increasingly willing to scrutinise smaller transactions that may shape or impact competition. The direction of travel is clear: more competition authorities will adopt or expand call-in powers, reflecting political and regulatory pressure to ensure that fast-moving, innovation-driven transactions do not escape scrutiny simply because the parties' turnover may be limited.

At the same time, regulators are exploring alternative tools beyond merger control to review transactions, such as applying general antitrust rules under Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU), which prohibit anticompetitive agreements and the abuse of a dominant position. Following the *Towercast* judgment,[1] authorities in Belgium and France have applied these principles to intervene in — and, in one case, prompt the abandonment of — below-threshold transactions, while the European Commission (EC) is applying the same in the ongoing *Zoetis* investigation (Case AT.40734, *Zoetis - Librela*). These cases illustrate that regulators will apply general antitrust and broader competition rules to address alleged competitive concerns, even when formal merger control thresholds are not met.

This evolving landscape creates significant uncertainty for investors and businesses. Deals that may appear "non-notifiable" on turnover thresholds alone may still face review — sometimes after signing or even post-closing — with potentially material consequences for timing, execution and remedies. This alert explains the latest developments, outlines the key risks and sets out practical steps to help parties manage exposure and help preserve transaction certainty.

Recent Developments

Across the world, competition authorities are moving towards more flexible call-in and below-threshold scrutiny. Most recently, in Denmark, the Danish Competition and Consumer Authority (DCCA) exercised its new call-in power for the first time, requiring notification of two transactions that did not meet Denmark's usual jurisdictional merger filing thresholds. In separate decisions issued on 25 and 26 August 2025, the DCCA intervened in the completed Uber-Dantaxi transaction, citing concerns about Uber's app integration via its DRIVR Danmark agreement, and also called in the proposed merger between OneMed and Kirstine Hardam over fears it would combine the two largest suppliers of stoma care products to Danish municipalities.

Denmark's move is emblematic of a wider trend: many jurisdictions, including Australia, Canada, China, Cyprus, Hungary, Ireland, Italy, Latvia, Lithuania, Slovenia and Sweden, have granted their competition authorities below-threshold call-in powers, and several EU Member States, such as France and the Netherlands, are consulting on similar measures. The U.K.'s Competition and Markets Authority (CMA) has also revamped its merger regime with a new hybrid threshold test designed to capture so-called "killer acquisitions" that may have fallen outside its jurisdiction under the previous rules (Enterprise Act 2002, s.23 (4C)–(4G) (as amended by the Digital Markets, Competition and Consumers Act 2024, Schedule 4)). These developments signal a shift toward more flexible and vigilant oversight of smaller, potentially impactful transactions and raise new questions about how below-threshold deals will be assessed in practice.

The changes also reflect a broader concern among competition authorities that traditional merger filing thresholds — such as turnover or asset-based tests — can miss transactions involving fast-growing or innovative businesses, whose currently modest revenues may not be reflective of their future competitive significance. Call-in powers are increasingly being seen as a necessary tool to ensure such transactions do not escape scrutiny simply by falling below conventional thresholds, but at the same time are in tension with the desire for legal certainty, as parties face intervention even where formal thresholds are not met.

This tension is exemplified by the *Illumina/Grail* saga, which illustrates both the limits of regulatory reach and the ongoing risk to below-threshold deals. In that case, the EC sought to review Illumina's acquisition of Grail under its Article 22 referral mechanism, despite the transaction not meeting EU or national thresholds. The Court of Justice of the European Union (CJEU) rejected that approach, delivering a victory for legal certainty by confirming that Member States without jurisdiction cannot refer transactions for EC review. However, the ruling did not remove the ability of Member States to exercise their own below-threshold call-in powers — reinforcing that a "below-threshold" transaction does not always mean "low risk" from a review perspective.

In parallel, regulators are increasingly turning to enforcement tools beyond traditional merger control to address perceived problematic transactions. Notably, some competition authorities are invoking broader antitrust provisions — specifically Articles 101 and 102 TFEU or national equivalents — to investigate below-threshold transactions ex-post. These developments build on the CJEU's *Towercast* judgment,[2] which confirmed that acquisitions involving dominant players can be scrutinised ex-post under abuse-of-dominance rules, even if they fall outside merger control thresholds. Recent examples that illustrate how these tools are applied in practice include:

- **France (2024)**: The Autorité de la concurrence (ADLC) invoked Article 101 TFEU to review a below-threshold, non-notified merger ex-post. The case involved a 2015 series of 21 cross-divestitures between Akiolis, Saria and Verdannet, which were alleged to allocate the French meat-cutting market by geography. After examination, the ADLC ultimately dismissed the allegations.

- **Belgium (2023-2025)**: The Belgian Competition Authority (BCA) has invoked both Articles 101 and 102 TFEU to scrutinize below-threshold acquisitions. In 2023, the BCA opened proceedings regarding Proximus' takeover of EDPnet's assets, which ultimately required the divestiture of EDPnet to a third party. In early 2025, the BCA initiated Article 101 proceedings into Dossche's planned acquisition of Ceres' artisan bakery segment due to potential anti-competitive effects. Faced with the BCA's position and the uncertainty it created, the parties ultimately abandoned the transaction — underscoring how below-threshold scrutiny can derail deals entirely.

The EC's ongoing *Zoetis* investigation further underscores the significance of ex-post antitrust enforcement. In 2017, Zoetis acquired a smaller rival developing a pipeline veterinary therapy that could have competed with its own blockbuster product, Librela. The transaction fell below EU and national merger control thresholds and therefore closed without review. In March 2024, the EC opened an investigation into whether Zoetis may have abused a dominant position by discontinuing the acquired pipeline therapy and refusing to transfer it, thereby eliminating a nascent competitor. The case highlights how Article 102 TFEU can be applied post-closing to address innovation-related concerns even where merger control mechanisms did not apply. It also demonstrates regulators' determination to prevent the foreclosure of future competition through both merger review and antitrust enforcement tools.

Implications and Practical Steps for Transacting Parties

The growing use of call-in powers and ex-post antitrust tools introduces potential uncertainty into deal planning. Transactions that fall below traditional thresholds may nevertheless face review — sometimes after signing or closing — creating risks for timing, cost and execution. This is especially relevant in sectors such as the digital, biotech and other innovation-driven industries, where smaller players may hold outsized competitive importance. Recent cases, such as the Belgian bakery deal abandoned in response to BCA intervention, show that the risk is not only delay or remedies, but that entire transactions can be derailed by below-threshold scrutiny.

Against this backdrop, parties can no longer assume that “non-notifiable” means “low risk”. Instead, competition risk assessment should be integrated from the outset, including:

- **Going beyond traditional threshold analysis**: Parties should assess overlaps, innovation pipelines and data assets.
- **Building in flexibility**: Timetables and deal documents should anticipate potential intervention, with clear antitrust conditionality, covenants and, where relevant, remedies planning.
- **Engaging early with authorities and local counsel**: Informal discussions and tailored local law advice can reduce the risk of late-stage intervention and help anticipate how different regimes apply call-in or ex-post tools to avoid last minute surprises.
- **Continuing to monitor the evolving regulatory landscape**: Regulators are expanding call-in regimes, turning more frequently to antitrust rules and focusing scrutiny on innovation-driven sectors under increasing political pressure. Ongoing monitoring is essential to anticipate and manage future risks.

As the regulatory net widens, deal certainty will depend less on whether a transaction meets formal thresholds and more on how well parties anticipate scrutiny. Parties that combine robust diligence, contractual safeguards and proactive engagement will be best placed to navigate this shifting environment with confidence.

Conclusion

The DCCA’s first use of its call-in power, alongside parallel developments across Europe and beyond, confirms that below-threshold deals can no longer be assumed to be risk-free. Competition authorities are equipped with both proactive call-in powers and retrospective antitrust tools, and political momentum suggests these interventions will only increase. As seen in Belgium, where concerns led to the abandonment of a bakery-sector deal, such scrutiny can affect execution as well as timing. For transacting parties, the message is clear — embed competition risk analysis at the outset, stress test contractual protections and stay alert to evolving global enforcement trends to safeguard deal certainty in a shifting environment.

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[1] In its judgment in Case C-449/21 (*Towercast*), the Court of Justice of the European Union (CJEU) addressed the application of Article 102 TFEU to acquisitions that fall below EU and national merger control thresholds and have not been referred to the European Commission under Article 22 of the EU Merger Regulation. The CJEU held that such transactions can be subject to ex-post scrutiny by national competition authorities under Article 102 TFEU, provided that the acquiring firm holds a dominant position and the acquisition has the potential to significantly impede effective competition in the internal market. The court emphasised that merely strengthening a dominant position is insufficient; there must be a substantial impediment to competition resulting from the acquisition.

[2] The *Towercast* case (Case C-449/21) concerned TDF's acquisition of rival French television transmission operator Itas. The transaction that did not meet EU or French merger control thresholds and therefore closed without review. A competitor, Towercast, challenged the deal under Article 102 TFEU, arguing that the acquisition strengthened TDF's dominant position and harmed competition. The CJEU held that Article 21(1) EUMR does not prevent national competition authorities from applying Article 102 TFEU ex-post to below-threshold, non-referred concentrations, confirming that acquisitions by dominant firms may be scrutinised ex-post as a potential abuse of dominance.