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Regulatory Alignment: EU and U.K. Conclude Technical Negotiations for Future Competition Cooperation

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Summary

On 29 October 2024, the U.K. Government and the European Union [formally concluded a technical negotiation](#) in relation to cooperation between the U.K. and the EU with respect to competition investigations (the Cooperation Agreement). The Cooperation Agreement will be relevant to businesses that are notifying transactions to competition authorities in the EU or the U.K. With respect to a transaction feasibility assessment, where merger filings are anticipated in EU countries or the U.K., businesses should be alive to potential theories of harm that could be relevant in each of the applicable jurisdictions as the respective competition authorities may coordinate in relation to merger assessments and, as a result, the enforcement of possible remedies.

About the Cooperation Agreement

Whilst the Cooperation Agreement has not yet been made public, based on press reports published by the [European Commission](#) and the [U.K. Government](#), it is understood that the Cooperation Agreement will set out a framework under which antitrust and merger investigations can be brought to the attention of the EU and U.K. competition authorities (the European Commission and the U.K.'s Competition and Markets Authority (the CMA), respectively) as well as the National Competition Authorities of the EU Member States. The Cooperation Agreement will also enable the coordination of investigations and set out clear principles of cooperation designed to avoid conflicts between jurisdictions.

Prior to Brexit, transactions that met the EU jurisdictional thresholds were reviewed under the EU's 'one-stop-shop' review mechanism and, as such, there was alignment between the two jurisdictions with respect to the outcome of merger investigations as the deal would fall under the purview of one (rather than both) regulators. Following Brexit, if both the U.K. and EU jurisdictional thresholds are met and parties decide to notify in the U.K. (noting it is a voluntary filing jurisdiction unlike the EU), the CMA and the European Commission will run their own, separate merger investigations. Since Brexit, there have been high profile cases where the CMA and the European Commission have reached different conclusions with respect to the same conduct or transaction. While it is not anticipated that the Cooperation Agreement will necessarily align the respective conclusions of investigations undertaken in the U.K. and EU (given that the CMA and European Commission (or relevant EU member states) will focus on the impact on competition in their own jurisdiction), it is likely that it will facilitate more cooperation between the authorities beyond the current waiver program that essentially permits discussions between the authorities where the parties subject to the relevant review(s) have provided their consent.

What the Cooperation Agreement means for businesses

Businesses should be alive to possible cooperation between the CMA, the European Commission, and the National Competition Authorities of the EU Member States in relation to how conduct or potential transactions may be assessed in the different jurisdictions. Notifying parties will need to ensure their respective advocacy in both the U.K. and EU is consistent, where appropriate. From a practical perspective, under the Cooperation Agreement the reviewing authorities will still need the consent of the parties subject to any investigations in relation to the exchange of confidential information under the existing so-called 'waiver' process.

Unlike the EU's merger control regime, the U.K.'s merger control regime is voluntary (i.e., if the U.K.'s jurisdictional thresholds are met, the transaction does not need to be notified and cleared before the transaction can close, which means that a number of transactions over which the CMA may have jurisdiction are not ultimately notified). At present, to pick up transactions of potential interest, the CMA employs a merger intelligence unit, which screens the market for transactions that could potentially be deemed as problematic under U.K. competition rules. The Cooperation Agreement may bolster the CMA's information gathering arsenal should its EU counterpart offer information on potential transactions of interest.

Next steps

The Cooperation Agreement will enter into force after both the EU and the U.K. have finalised their ratification procedures.



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

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