# Agenda

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1. Introduction
Facebook fined £94m for 'misleading' EU over WhatsApp takeover

European commission says fine is a 'clear signal' to companies that they must comply with EU merger rules.

Altice to pay EUR 80 mln. competition fine for SFR takeover

US FTC info leads to merger reversal and fine in Hungary

CMA issues first merger review fine

EU court upholds decision to fine Marine Harvest €20m over Morpol merger

ACM imposed fines of EUR 12.5 million on cold-storage firms

GE is in discussions with EU antitrust regulators after the latter alleged that the company provided incomplete information in its deal to takeover LM Wind.
Procedural Pitfalls in Merger Control: Why should you care?

- Enforcement action on the rise both at EU and national level
- Fines for procedural infringements can be significant, e.g.
  - Facebook/Whatsapp: fined EUR 110 million by the EC for providing incorrect or misleading information
  - Altice: fined EUR 80 million by the French competition authority for gun-jumping
  - Marine Harvest/Morpol: fined EUR 20 million by the EC for gun-jumping
- Merger control = fertile ground for procedural infringements:
  - Number of jurisdictions with active merger control regimes continues to increase
  - Trend towards broader jurisdictional tests (e.g. minority shareholding acquisitions, transaction value thresholds etc.)
  - Ever-increasing burden on companies to provide documents, data and information to regulators
The Life of the Deal…

MANAGING ALL ISSUES

DD Assistance

Post closing integration

Sensitive info exchange control

Auction assistance

Negotiating SPA

Divestments

Multi-J

Gun jumping control

Feasibility

Merger control filings

Approach Target

SPA

Closing
2. Identifying notifiable transactions
Is the deal reportable?

<table>
<thead>
<tr>
<th>The General Rule</th>
<th>Potential pitfalls</th>
<th></th>
</tr>
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<tbody>
<tr>
<td>Acquisition of control over target business, e.g.:</td>
<td>Minority shareholdings</td>
<td>Australia, Austria, Brazil, Canada, Germany, India, Israel, UK, US</td>
</tr>
<tr>
<td>• Share acquisition, merger, business assets</td>
<td>Acquisition of significant assets (IP, warehouse, website)</td>
<td>Must revenues be associated with asset?</td>
</tr>
<tr>
<td>• Establishing joint venture or business</td>
<td>Joint control</td>
<td>Covisint EU vs Germany</td>
</tr>
<tr>
<td></td>
<td>Outsourcing</td>
<td>Standalone business or formalistic assessment?</td>
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Transactions involved: Mergers, Acquisitions, Full Function Joint Ventures
Where do we have to file?

<table>
<thead>
<tr>
<th>The General Rule: Thresholds Based On</th>
<th>But Consider Carefully</th>
</tr>
</thead>
<tbody>
<tr>
<td>▪ Revenues (local/global)</td>
<td>Need for parties' presence in same market</td>
</tr>
<tr>
<td>▪ Assets (local/global)</td>
<td>Local &quot;nexus&quot; (effect)</td>
</tr>
<tr>
<td>▪ Market shares</td>
<td>Local corporate entity</td>
</tr>
<tr>
<td>▪ Deal value (globally and attributable to country)</td>
<td><em>Ex-Officio</em> Powers</td>
</tr>
<tr>
<td></td>
<td>Deal value</td>
</tr>
<tr>
<td></td>
<td>Voluntary filing</td>
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Complete, Everywhere, On Time
Key deliverables

- GMAP provides a robust and clear view as quickly as possible containing:
  - a list of mandatory filings
  - a holistic and measured view of enforcement risk
  - a list of notification deadlines (e.g., Bosnia, Greece, Hungary, Iceland, Indonesia, Montenegro, Slovenia, Serbia, Tunisia, etc.)
  - a preliminary antitrust regulatory timetable flagging the potential gating items (e.g., China? India? Brazil?)
  - a list of recommended counsel outside of the Baker McKenzie global network
  - drafting suggestions and advice for transaction structure / corporate documents
3. Integration planning: how to avoid gun-jumping
Sensitive Info Exchange and Gun Jumping (Two Different Issues…)

- Tension is inevitable; what do the transaction documents provide?
- Clear realistic guidance and communications; are the safeguards robust and sufficient? Central depository/management?
- Risk is particularly high:
  - at the very beginning (fishing for data; lawyers not involved) and;
  - at the very end (everyone is fatigued and eager to complete).
- Managing expectations is as important as doing a good job on substance. Beware of consultants or "special" agendas!
- Plan as much and as early as possible; but built-in flexibility needed
- Consider employing two different teams (one for the filings/substance and one for managing pre-integration issues), esp. in complex cases
Ace your integration planning before closing without breaches of competition law rules

Pre-Acquisition Integration Expertise

### How we can help

- Create a safespace for information exchange
- Maximise the use of pre-closing period
- Provide swift and succinct advice on what can be exchanged pre-closing
- Develop realistic integration planning timeline

#### Timeline of transactional steps

<table>
<thead>
<tr>
<th>Feasibility</th>
<th>MOU / Start of DD Phase I</th>
<th>DD Phase II</th>
<th>SPA signing</th>
<th>Closing</th>
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<td>First approach of Target</td>
<td>MOU / Start of DD Phase I</td>
<td>DD Phase II</td>
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### Permitted Activity / Information

<table>
<thead>
<tr>
<th>Public information</th>
<th>Confidential data</th>
<th>Commercial data</th>
<th>Start pre-integration</th>
<th>Higher Volume of Clean Team data</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>General NDA to be signed</td>
<td>Clean Team can review commercially sensitive data</td>
<td>Integration NDA to be signed</td>
<td>Review of information to be exchanged outside Clean Team (as before)</td>
</tr>
<tr>
<td>Contents of Data Room to be reviewed for competition law compliance</td>
<td>Q&amp;A process</td>
<td>Aggregated Clean Team output to be reviewed by competition law expert before disclosure to management</td>
<td>Legal training of integration team members</td>
<td>Review of Clean Team output</td>
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### Safeguards

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<td>No gun jumping safeguards</td>
<td>Q&amp;A process</td>
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Top tips for a successful and legally sound pre-merger integration

Pre-Acquisition Integration Expertise

01 Early planning of pre-merger integration steps, considering legal restrictions and safeguards
02 Agree Integration NDA and terms, members and terms of Clean Team
03 Agree Exit process in case transaction fails (e.g. how to handle newly created integration material)
04 Determine clear and consistent rules regarding communication, exchange of information and meetings
05 Monitor enforcement of rules

Our Services

1 Prepare plan - Advice on pre-acquisition planning steps and timeline
2 Compliance check of Due Diligence Process - Review general NDA and content of Data Room, Review aggregated output of Clean Teams
3 Setting up pre-acquisition structure - Draft Integration NDA and guidelines for communication, information exchange, meeting protocols, legal briefings, exit process and Gun jumping safeguards
4 Monitor flow of data - Review data to be exchanged in integration team; provide ad hoc advice regarding planning steps and gun jumping risk
5 Monitor meetings - Attend and supervise particularly sensitive meetings
4. Preparing merger control filings and dealing with regulators
Some thoughts on minimising risk…

Merger Control Filings

- Accuracy and consistency (across filings in different jurisdictions but also across different transactions that are notified to the same regulator)

- Access to (all) the right people?
  - who is knowledgeable/reliable?
  - who signs off?
  - what are the limitations of statements/data etc. (less is more/at least consider fns;)

- Early meetings with all the stakeholders; good working relationships
Potential pitfalls

- Lack of (reliable) data:
  - How do you construct reliable market size and market share estimates when you don't have access to reliable data and there are no 3rd party/industry reports?

- Responding to RFIs
  - How do you set up and conduct effective e-searches and respond to requests for internal documents?
  - How do you protect yourself when scope of questions is unclear or you are unable to respond in full?
  - Should you incorporate RFI responses into your filing?