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Client Alert: Call-in powers for competition authorities – a growing risk below the thresholds



Call-in powers for competition authorities are becoming an increasingly important factor in M&A transactions across Europe – with implications for timing and SPA negotiations.

Greater regulatory access – even without a traditional notification requirement

Competition authorities in an increasing number of countries can “call-in” transactions for review even if the “traditional” turnover thresholds for merger control are not triggered.

For the parties to a transaction, this means: A purely formal threshold analysis is therefore increasingly insufficient; even deals not subject to a merger control filing requirement can come under the scrutiny of competition authorities. This is particularly relevant for transactions involving innovative, data-intensive or strategically significant target companies – but increasingly so in traditional sectors as well. In addition, beyond traditional turnover thresholds, competition authorities have further tools at their disposal to scrutinise transactions that could potentially harm competition – for example, through an ex post abuse control following the completion of the transaction.

Regarding the use of “call-in” powers, Italy is currently of particular relevance. Since mid-2022, the Italian competition authority has the competence to “call-in” certain below-threshold transactions and has already exercised this power on several occasions. The Netherlands is currently on the verge of introducing call-in powers.

Impact on timing and SPA negotiations

This trend significantly increases uncertainty regarding timing and closing. Acquirers and sellers should assess at an early stage whether market position, innovative strength, data access, local market impact or complaints from competitors could give rise to an increased call-in risk.

The SPA should at least address this risk through appropriate closing conditions, realistic long-stop dates, cooperation obligations and a clear allocation of procedural, cost and remedy risks.

Call-in powers are also playing an increasingly significant role in **Foreign Direct Investment (FDI)**. Often, authorities can potentially review transactions in sensitive sectors even without a mandatory filing requirement.

An integrated merger control and FDI risk analysis, with particular consideration of call-in uncertainty, should therefore be an integral part of any transaction planning.

Our team can assist you in assessing call-in risks and in securing appropriate contractual safeguards in the SPA. Please feel free to contact us!

Your contact persons







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Call-in Power in EU Member States – Overview

-  Countries with unlimited call-in power
-  Countries where call-in power is linked to minimum turnover thresholds
-  Countries where call-in power is linked to specific conditions
-  Countries where the introduction of call-in power is under discussion

