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More technology deals to be subject to UK merger review

At a Glance…

The UK government is introducing changes to merger control rules to extend jurisdiction to review competition and national interest aspects of transactions affecting businesses which have activities in the technology and defence sectors.

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The UK government is introducing changes to merger control rules,[1] extending existing jurisdiction to the review of competition and national interest aspects of transactions affecting businesses which have activities in specified technology sectors.

Deals where the acquired business has a minimum UK turnover of £1 million or 25 per cent share of sales (regardless of whether the transaction increases that share) are caught by the new rules.

For further information on the reduced jurisdictional thresholds see the related client alert here.

The new legislation reflects government concerns that advances in computing hardware and quantum technology make it easier for hostile actors to break into currently secure computer or telecommunications systems.

Computing hardware technology firms affected include businesses that own, create or supply intellectual property related to the way that computer processing units ('CPUs') function. Businesses that manage roots of trusts in relation to CPUs are also in scope. 'Roots of trust' is defined as hardware, firmware or software components that are inherently trusted to perform critical security functions, including, cryptographic-key material. This could therefore include businesses that design firmware containing the cryptographic material for a CPU.

Quantum technology activities (including quantum computing or simulation; quantum imaging, sensing, timing or navigation; quantum communications; and quantum-resistant cryptography) are also subject to the new rules. Businesses which research, develop or produce goods designed for use in these activities, or which supply services in relation to these activities, are covered. It is intended that the revised thresholds extend to businesses involved in all stages of the development process, including the design, assembling and testing of products or the creation of intellectual property.

Notification of deals is not, however, compulsory. Parties' transactions which do not appear to raise competition or security issues may sensibly take the view that their deals will not concern the authorities and elect not to notify, but they do so at the risk of subsequent action by the authorities.

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1. The Enterprise Act 2002 (Turnover Test) (Amendment) Order 2018 and the Enterprise Act 2002 (Share of Supply Test) (Amendment) Order 2018.

If you have questions or would like additional information on the material covered in this Alert, please contact one of the authors – listed below – or the Reed Smith lawyer with whom you regularly work.

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