Mergers & Acquisitions: United Kingdom

21 November 2024

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Slaughter and May
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Introduction

As in many other countries, UK M&A struggled in the second half of 2023. Geopolitical crises, tightening monetary policy and a brief foray into negative GDP growth made it a challenging environment. The number and aggregate value of UK M&A deals dipped, and there was a transition to smaller and mid-cap transactions. However, 2024 heralded macroeconomic improvements and large M&A transactions again. The legal framework for M&A remains similar, but with some noteworthy changes to the UK Listing Rules and proposed reforms to the UK prospectus regime.

Year in review

Overview of M&A activity

UK M&A struggled in 2023. The value of UK deals fell to £83 billion, down from £149 billion in 2022 and £269 billion in 2021.[2] The number of deals also dropped by 18 per cent and was almost a third less than the record-breaking year of 2021. High interest rates persisted, energy prices remained inflated, and geopolitical crises in Ukraine and the Middle East caused economic uncertainty. These issues were situated within broader complex themes such as the widening ideological gulf between Western democracies and China, and the proliferation of environmental, social and governance (ESG) pressures.

However, 2024 brought with it positive macroeconomic news. The UK economy grew by 0.6 per cent in the first quarter, its fastest rate for two years and is expected to grow by a further 0.2 per cent in the second quarter.[3] Inflation has been tempered with the consumer price index (CPI) falling to 2.8 per cent in the 12 months to June.[4] The Bank of England cautiously maintained its base rate at 5.25 per cent for much of the year, but with inflation falling it made its first cut to 5 per cent on 1 August 2024. The loosening monetary policy follows similar moves by central bankers in Canada, the European Union, Sweden and Switzerland.

With the macroeconomic setting improving, M&A activity is returning. The value of deals in the first quarter was £68 billion, up from £26 billion in the same period in 2023.[5] The number of deals fell slightly, year on year, from 1,671 to 1,307 (a 22 per cent decline), signalling the return of fewer but larger deals.[6]

The UK followed the European trend of public companies being targeted due to their low valuations. In the first half of 2024, there were 18 firm offers for Main Market companies and 12 for AIM listed ones.[7] This compares to 10 and 15 respectively in the first half of 2023. Importantly, the value of these deals has increased too, with 10 of them being worth over £1 billion (up from just four in all of 2023).[8] The total value of public-related deals in the first quarter was up by £9 billion to £20.5 billion. Private equity continues to target public companies too, constituting 43 per cent (13) of the firm offers made so far this year (down slightly from 56 per cent in the first half of 2023). Private equity bids have also been larger this year, with five of them exceeding £1 billion.[9]

Despite this, as a general trend, corporate strategic activity has been eclipsing private equity, with the value of corporate acquisitions accounting for 57 per cent of deal value in the first quarter, and just two of the UK's 20 largest transactions involving private equity sponsors.[10] In fact, just 16 per cent of the value of UK deals came from private equity, which is down from 24 per cent for the equivalent period in 2023 and is the lowest quarterly figure since the end of 2020.[11]

UK M&A activity is tentatively returning, with public companies being the most sought after. Private equity sponsors remain somewhat subdued, but with interest rates coming down they will be under pressure to deploy dry powder soon as well as looking for sale opportunities for long-held portfolio companies.

Developments in corporate and takeover law and their impact

Listing regime

On 29 July 2024, significant changes were made to the UK listing regime that are designed to encourage more companies to list, and remain listed, on the UK Main Market. In the context of M&A transactions, the most relevant change is the removal of the requirement to obtain shareholder approval for significant transactions – defined broadly as a transaction where the value of the target represents 25 per cent or more of the value of the listed group as a whole (previously known as a Class 1 transaction). The change is designed to bring the UK more closely into line with other comparable markets and to enable UK listed companies to compete for assets more effectively against global competitors.

However, to ensure that shareholders are provided with sufficient information, where a listed company enters into a significant transaction it will be required to announce certain information about the transaction and how it will affect the company. For most transactions, this will involve a 'staggered' disclosure process:

a. initial disclosure: as soon as possible after the terms of the transaction are agreed, the company must announce certain key details about the transaction and its impact;
b. additional disclosure: as soon as possible after the relevant information has been prepared or the company becomes aware of it, and in any event by the time the transaction completes, the company must announce certain non-financial information relating to the target and the listed group, such as details of any material contracts and significant litigation. For a disposal, the company must also announce certain historical financial information relating to the target; and
c. post-completion disclosure: as soon as possible after the transaction has completed, the company must announce the fact that completion has occurred and give details of any material change to the information included in the previous announcements.

Prospectus regime

In an M&A context, the UK prospectus regime – which currently is very similar to the EU prospectus regime – is relevant primarily where:

a. the purchaser offers its own shares to the sellers as consideration;
b. the purchaser offers loan notes as an alternative to cash; or
c. the purchaser offers cash consideration and seeks to finance all or part of this by raising new equity funding.

As a starting point, a prospectus must be published if there is an offer of transferable securities to the public in the UK or a request is made for transferable securities to be admitted to trading on a regulated market in the UK. However, there are various exemptions from the requirement to produce a prospectus. If the securities will both be offered to the public and admitted to trading on a regulated market, an exemption from the prospectus requirement is required in respect of both the offer and the admission. In an M&A context, the main exemptions in relation to offers to the public are:

a. offers made to or directed at qualified investors only;
b. offers made to or directed at fewer than 150 persons, other than qualified investors, in the UK; and
c. offers made in connection with a takeover by means of an exchange offer, provided a document is published that includes certain prescribed information about the offer, the purchaser and the combined group.

The main exemptions in relation to admission to trading apply when:

a. the shares to be admitted to trading do not, when taken with other shares admitted within the past 12 months, amount to 20 per cent or more of the number of shares of the same class already admitted to trading on the same regulated market (the secondary issue exemption); and
b. an offer is made in connection with a takeover by means of an exchange offer, provided a document is published that includes certain prescribed information about the offer, the purchaser and the combined group.

These exemptions mean that a prospectus is not required on most UK M&A transactions.

The UK government has announced it intends to overhaul the prospectus regime. As a first step, in January 2024 it made the Public Offers and Admissions to Trading Regulations 2024 (the Regulations), which set the framework for the new regime and gave the Financial Conduct Authority (FCA) power to make rules in a number of key areas. Under the Regulations and proposed new FCA rules:

a. it will be unlawful to offer securities to the public in the UK unless an exemption applies. Exemptions include where the securities are already admitted, or will as part of the transaction be admitted, to trading on a regulated market or primary MTF in the UK. (A primary MTF is a trading venue where the operator specifies eligibility criteria and continuing obligations that apply to issuers. AIM is the main example). However, no prospectus will be required in connection with a public offer; and
b. as a general rule, a prospectus or similar document will have to be published where a company seeks to get its securities admitted to a regulated market or primary MTF in the UK, including where a company issues new listed shares to investors and uses the cash proceeds to fund an acquisition, or where it issues listed consideration shares to sellers of a target. However, as at present, there will be a number of exemptions. In particular, the exemption referred to above for shares issued in connection with a takeover is expected to be retained broadly as it is; and the secondary issue exemption will also be retained but with the threshold raised to 75 per cent of the listed company's existing share capital – in other words, a prospectus would be required only where the new shares represent 75 per cent or more of the existing share capital. As a result, a prospectus would be required on even fewer UK M&A transactions than at present.

Most of the Regulations are not yet in force. They will come into force when the existing rules on public offers and admissions to trading, set out primarily in the UK Prospectus Regulation, are repealed (i.e., the whole regime for public offers and admissions to trading will be replaced in one go). The FCA will be consulting on certain aspects of the new regime over the next year or so, and the new regime is expected to come into force in the first half of 2025.

Takeover code

While there have been a number of revisions to the Takeover Code over the past year, most of the changes have been fairly minor and technical, with the most significant development being the amendments to the frustrating action regime under Rule 21 of the Code (see below). It is also worth considering how wider trends affect takeovers in practice. In particular, the increasing influence of the UK Competition and

Markets Authority (CMA), which has taken an increasingly interventionist stance in transactions, and the Pensions Regulator, which now has greater powers to intervene in transactions that involve defined benefit pension schemes, are both likely to affect how takeovers are conducted.

Revised Takeover Code: December 2023 (frustrating actions)

The Takeover Panel Code Committee published in May 2023 a consultation concerning amendments to Rule 21 of the Code, which restricts the ability of the offeree board to take certain actions (including issuing shares and acquiring or disposing material assets) at a time when the offeree company is subject to an offer or possible offer, which might result in that offer or possible offer being frustrated without shareholder approval and/or consent of the Takeover Panel (Rule 21.1(a)).[12] These amendments came into force in December 2023[13] and, in broad terms, have resulted in a more relaxed regime so that, in general, target boards are not restricted from taking an action that either is not material or is in the ordinary course of the target company's business. Further guidance has also been provided on what would be considered ordinary course and the assessment of materiality for these purposes.

Consultation: April 2024 (scope to which the Code applies)

The Takeover Panel has proposed limiting the application of the Code so that it applies only to companies that are 'UK registered' (having a registered office in the UK, Channel Islands or Isle of Man) and that are either 'UK listed' (that is, have their securities admitted to a UK regulated market, UK multilateral trading facility or a stock exchange in the Channel Islands or Isle of Man) or that were UK-listed in the previous three years. It is proposed that the Code will no longer apply to companies that have never been UK-listed or have not in the past three years, a change from the current regime under which (sometimes to the surprise of parties) the Code potentially applies to all UK-registered public companies and certain private companies even if they are unlisted.[14] The Takeover Panel is expected to publish its final amendments later in 2024.

Amended Practice Statements 5 and 31

The Takeover Panel has also revised certain of its Practice Statements of relevance to the conduct of takeovers. Practice Statement 5 was updated to clarify the Panel's approach to the ability of offerors to invoke conditions and pre-conditions in order to lapse or withdraw a takeover offer. In particular, the Practice Statement explains the Panel's approach to determining whether bidders can invoke conditions relating to a 'Phase II reference' or other in-depth reviews by regulators.[15]

Practice Statement 31 has also been revised to provide that certain dispensations from the Code that are normally only available to publicly announced 'formal sale processes' are also available to 'private sale processes', where a company initiates discussions with potential offerors on a private basis. The Panel has clarified that where a company initiates a genuine private sale process, it would normally grant dispensations from Rules 2.4(a) and (b), meaning that the identities of potential offerors in discussions with the company are not required to be disclosed if those discussions are announced (due to leaks or otherwise). This change provides improved flexibility to those considering private sale processes. There is also updated guidance in relation to strategic reviews and public searches for potential offers.[16]

Regulatory

UK merger control reform

In May 2024, the Digital Markets, Competition and Consumers Act 2024 (DMCC Act) received Royal Assent. The DMCC Act introduces sweeping reforms to UK competition law and consumer protection. It creates a new *ex ante* regime aimed at increasing competition in digital markets and modernises investigative and enforcement powers related to competition and consumer law. The key changes in relation to the merger control regime include:

a. raising the UK turnover threshold from £70 million to £100 million;
b. a new safe harbour regime for small transactions, created by inserting a new condition to the existing share of supply test that requires at least one of the merging enterprises to have UK turnover of more than £10 million;
c. a new threshold to capture vertical and conglomerate mergers, which will be met where one of the parties has UK turnover exceeding £350 million and an existing share of supply of goods or services of 33 per cent in the United Kingdom or a substantial part of the United Kingdom, and the other party has activities in the United Kingdom;
d. a new pre-completion reporting obligation for undertakings designated as having strategic market status in respect of a digital activity, for mergers which involve a minimum consideration of £25 million, the acquisition of certain percentage thresholds of shares or voting rights, and a specific link to the United Kingdom; and
e. changes to enable the CMA to deliver more effective and efficient merger investigations, such as enhancing and streamlining the merger fast track procedure and allowing the CMA and the parties to mutually agree to extend the statutory timetable for Phase II investigations.

Commencement of the main provisions of the DMCC Act requires secondary legislation. At the time of writing, the bulk of the reforms are expected to come into force in the autumn of 2024.

Additionally, in April 2024 the CMA adopted a revised process for Phase II merger investigations. The updated process aims to streamline the start of Phase II investigations, improve the opportunities for businesses to engage with the CMA decision-makers overseeing the investigation and facilitate earlier remedies discussions.

National security and foreign investment

On 4 January 2022, the United Kingdom's National Security and Investment Act 2021 (NSI Act) came into force. The NSI Act introduced mandatory filings for transactions in 17 key sectors and voluntary filings in respect of other transactions that may have an impact on national security. The UK government has extensive call-in powers for up to five years for completed transactions. The NSI regime replaced the public interest merger regime provisions of the Enterprise Act 2002 insofar as a transaction involves national security considerations.

The UK government published its second report on the implementation of the NSI Act on 11 July 2023, looking at the period from 1 April 2022 until 31 March 2023. The Investment Security Unit received 886 notifications during that period. Breaking down this figure by type, 671 were mandatory and 180 were voluntary. There were 65 acquisitions called in for further assessment, including 10 for acquisitions that had not been notified. Final orders were imposed in 15 cases (with one revoked), including five prohibitions (all involving Chinese or Russian-linked purchasers).

Prior to the July 2024 general election and following a call for evidence on the regime, the previous UK government had said that it would launch a consultation on changes to the mandatory notification areas by summer 2024. It was also in the process of considering certain technical exemptions to the mandatory notification requirements. It remains to be seen whether and what changes the new Labour government under Prime Minister Keir Starmer (new government) might make to the regime. Nevertheless, the growing focus on investment controls in the United Kingdom and elsewhere is becoming an increasingly important part of deal planning, with implications for deal strategies and timetables, and one that looks likely to be here to stay. However, it may also create opportunities for competitive advantage for bidders that do not trigger reviews or present prima facie national security concerns.

Artificial intelligence

On 29 March 2023 the UK government published its 'Pro-Innovation approach to AI regulation' White Paper. It set out a sector-specific approach to artificial intelligence (AI) regulation, underpinned by five cross-sectoral principles and a set of centralised functions such as a sandbox and centralised risk function. In a subsequent consultation response in February 2024 the previous Conservative government (previous government) suggested that new binding rules may also be on the horizon for the most advanced general purpose AI systems.

The new government looks set to introduce some form of new law. In the King's Speech on 17 July it confirmed that it 'will seek to establish the appropriate legislation to place requirements on those working to develop the most powerful artificial intelligence models', but stopped short of explicitly announcing the introduction of an AI bill.

Financial regulation

Transactional activity that results in a change in control of a firm that has permission to carry on regulated activities under Part 4A of the Financial Services and Markets Act 2000 (as amended) (FSMA) will require the prior approval of the Prudential Regulation Authority (PRA) and/or the FCA (see more on FSMA under 'Legal framework').

The Financial Services and Markets Act 2023 broadened the set of circumstances under which the regulators may impose conditions on a change in control approval, pointing to a more robust approach to the review of acquisitions in this sector. The full practical impact of this modified condition power, which has applied to applications received on or after 29 August 2023, is yet to emerge.

Environmental, social and governance

ESG regulations, legislation and voluntary frameworks continue to grow, with recent developments being most notable in respect of supply chain due diligence and social factors, such as human rights. Companies with complex supply chains and those in heavily regulated sectors such as finance are particularly open to ESG-related challenges and regulatory scrutiny. From an M&A perspective, this means thinking about how best to incorporate a target into the purchaser's due diligence plan, and testing governance arrangements and preparedness for current and future developments relating to, for example, sustainability reporting, supply chain due diligence, and transition plans.

In particular, the UK plans to introduce new Sustainability Reporting Standards (SRS) for large and listed companies, based on the International Sustainability Standards Board's sustainability and climate reporting standards. The text of the SRS is expected to be made public in the first quarter of 2025, and the regime would apply no sooner than 1 January 2026 (unless timings are changed by the current government). The FCA has also said it will consult on guidance setting out expectations for listed companies' transition plan disclosures, probably building on the Transition Plan Taskforce's voluntary transition plan disclosure framework. Some EU sustainability reporting and due diligence regimes will, in due course, also apply to non-EU companies that have sufficient turnover and/or presence in the EU, such as the Corporate Sustainability Reporting Directive and Corporate Sustainability Due Diligence Directive.

Legal framework

The Companies Act 2006 provides the fundamental statutory framework, and with the law of contract forms the legal basis for the purchase and sale of corporate entities. In addition, the Takeover Code regulates takeovers and mergers of certain companies in the UK, the Isle of Man and the Channel Islands. The Takeover Code has statutory force and the Takeover Panel has statutory powers in respect of transactions to which the Takeover Code applies. Breach of any of the Takeover Code rules that relate to the consideration offered for a target company could lead to the offending party being ordered to compensate any shareholders who have suffered loss as a consequence of a breach. In addition, breach of the content requirements of offer documents and response documents may constitute a criminal offence. The Panel also has the authority to issue rulings compelling parties who are in breach of the requirements of the Takeover Code to comply with its provisions, or to remedy the breach. These rulings are enforceable by the court under Section 955(1) of the Companies Act. The Takeover Code has a wider scope than the EU Takeovers Directive and applies if the offeree (or potential offeree) is a UK public company and, in some instances, if the company is private or dual-listed.

FSMA regulates the financial services industry and makes provision for the official listing of securities, public offers of securities and the communication of invitations or inducements to engage in securities transactions. Following substantial amendments to FSMA, brought about on 1 April 2013 when the Financial Services Act 2012 (FS Act) came into force, financial regulation is split between two bodies: the FCA, which regulates conduct in the retail and wholesale markets, and the PRA, which is responsible for the prudential regulation of banks and other systemically important institutions. As a consequence of the FS Act, around 1,500 institutions (including banks, building societies, credit unions and insurers) are now dual-regulated, and the FCA regulates the conduct of nearly 45,000 businesses in the UK.[17] The FCA Handbook (containing the Listing Rules), the Prospectus Regulation Rules sourcebook (containing the Prospectus Regulation Rules), and the Disclosure Guidance and Transparency Rules Sourcebook (containing the Disclosure Guidance and Transparency Rules) are promulgated by the FCA (the competent authority for the purposes of Part VI of FSMA). These sets of rules include various obligations applicable to business combinations involving listed companies, and govern the prospectuses needed for public offers by both listed and unlisted companies. The Listing Rules, in particular, set out minimum requirements for the admission of securities to listing, the content requirements of listing particulars and ongoing obligations of issuers after admission. The Criminal Justice Act 1993 contains the criminal offence of insider dealing, and the UK Market Abuse Regulation (UK MAR) (the retained EU law version of the Market Abuse Regulation) (with the Listing Rules, the DTRs and the Takeover Code) regulates the civil regime for insider dealing.

Merger control rules are contained in the Enterprise Act 2002. M&A activity is likely to involve the processing of personal data and so the UK GDPR and the Data Protection Act 2018 (see also the 'EU Overview' chapter) will need to be considered. In addition, specific statutory regimes apply to certain areas, including water supply, energy networks, newspapers, broadcasting, financial stability, telecommunications and utilities, and these separate regimes may have practical implications in merger situations.

The first major post-Brexit divergences from EU law occurred at the end of 2023. These will affect corporate law to an uncertain degree. The UK and EU entered a transitional period from 31 January 2020 until 31 December 2020, during which the UK remained bound by EU law. On 1 January 2021, at the end of this period, most EU law to which the UK was subject, as an EU Member State, was 'on-shored' by the European Union (Withdrawal Agreement) Act 2020, resulting in an alignment between UK and EU law. In May 2023 the government significantly amended the 'Section 1 sunset clause' in the Retained EU Law (Revocation and Reform) Act (the REUL Act), which was to revoke almost all EU law at the end of 2023 to the extent that statutory instruments were not passed to retain it.[18] The REUL Act came into force on 1 January 2024 with two less drastic sunset clauses – one of which revoked around 600 specified EU-derived laws on 31 December 2023, rather than the 4,000 originally planned – but it is not obvious that these will materially affect UK M&A. The REUL Act also abolished the supremacy of EU law and revoked the general principles of EU law, which could introduce M&A-related uncertainty, for example concerning the interpretation of employment legislation (see 'Employment law' below).

Foreign involvement in M&A transactions

As noted in the previous edition of *In-Depth: Mergers & Acquisitions*, inward and outward M&A figures fell in the first two quarters of 2023 as compared with 2022. In the first quarter of 2023, the total value of inward M&A was £12.7 billion, £4.1 billion lower than the first quarter of 2022.[19] In the second quarter of 2023, the total value of inward M&A was £7.4 billion, £4.7 billion lower than the second quarter of 2022.[20] In the first quarter of 2023, the total value of outward M&A was £2.9 billion, £0.2 billion lower than the first quarter of 2022.[21] These figures include BP plc's £1 billion acquisition of TravelCenters of America. In the second quarter of 2023, the total value of outward M&A was £2.3 billion, £2.4 billion lower than the second quarter of 2022.[22]

These figures improved by the final quarter of 2023. The value of inward M&A was £8.6 billion, £3.3 billion higher than the previous quarter (£5.3 billion).[23] The value of outward M&A was £3.2 billion, £1.1 billion higher than the previous quarter (£2.1 billion).[24]

Into 2024, the value of outward M&A continues to increase, despite inward M&A struggling. The value of outward M&A was up £0.9 billion compared to the last quarter to £4.4 billion.[25] This also exceeds the £2.9 billion of outward M&A in the first quarter of 2023.[26] The value of inward M&A at the start of this year was £6.1 billion, down from £10.1 billion in the previous quarter and £12.7 billion in the first quarter of 2023. The total number of deals also fell slightly in the first quarter of 2024, down from 444 in the previous quarter to 426.[27]

Outward M&A is steadily increasing, with UK acquirers spotting more opportunities overseas. Despite inward M&A falling, UK companies remain popular targets for US acquirers. Half of all inward M&A this year has involved US-based acquirers, with the largest being International Paper's US$9.6 billion acquisition of DS Smith plc.[28]

Significant transactions, key trends and hot industries

Private equity and fund-backed bids

Private equity activity began to recover in 2023. In the public markets, 63 per cent of the firm offers announced were either private equity-backed or backed by other funds, investment companies or private equity bolt-on acquisitions (up from roughly one-third in 2022).[29] There were 12 offers for Main Market targets and 24 for AIM-listed companies. Private equity was also responsible for 2023's second largest deal, which was GTCR's acquisition of Worldpay for £10.2 billion.[30] In total, private equity was involved in 26 per cent of all M&A in 2023 (1,645 deals, a slight drop from 2022).

Activity slowed somewhat in the first half of 2024. Private equity accounted for 43 per cent of firm offers in the public markets in the first half of the year, down from 56 per cent for the equivalent period in 2023. Of the 13 firm offers, seven were for Main Market targets and six for AIM listed companies.[31] In the first quarter, private equity accounted for 28 per cent (360) of all M&A transactions and its total disclosed value was £11 billion (16 per cent of total value, a small decrease from 24 per cent recorded in the first quarter of 2023).[32]

Sponsors remain under pressure to deploy capital as well as to realise value from their existing portfolio companies and generate return to investors, both key drivers of M&A activity. With UK-listed targets still retaining relatively attractive valuations (particularly for US bidders), we can expect private equity activity in UK public M&A to increase in the second half of the year. Against a backdrop of stabilising interest rates, making it easier to price deals, we anticipate renewed activity by private equity players more generally on M&A deals, particularly in larger, more significant transactions, which may be supported by co-investors, including sovereign wealth.

Shareholder activism

As noted in previous editions of *In Depth: Mergers & Acquisitions*, the past few years have seen a considerable increase in shareholder activism. One particular trend that has grown in popularity in the UK is 'bumpitrage', whereby shareholders of a target company threaten to vote down or reject a bid so that the bidder 'bumps' up the offer price.[33] Low valuations of UK companies in recent years have contributed to the growth of bumpitrage. An example from 2023 is SARIA Nederland BV's acquisition of Devro.[34] After an offer was recommended in November 2022, shareholder activity resulted in a higher final bid. However, bumpitrage carries risk for shareholders: a bidder can frustrate shareholders' intentions by withdrawing a bid that shareholders threatened to vote against, as happened with four transactions in 2021 and 2022.[35]

The success of UK shareholder activism in general has been mixed. One example of success concerned the offer made by Providence Equity Partners LLC and Searchlight Capital Partners UK LLP for Hyve Group plc.[36] The Redwheel European Focus Fund, an 11.6 per cent shareholder in Hyve, announced that it considered that the bid undervalued Hyve's share capital. Other shareholders were also reportedly opposed to the bid. The offerors subsequently increased the bid from 108 to 121 pence per share. Redwheel gave a letter of intent supporting this bid and the scheme was approved in May 2023. A contrasting case is Etablissements Maurel & Prom SA's offer for Wentworth Resources plc.[37] The bid, announced in December 2022, was recommended by the board and supported by investor organisations ISS and PIRC. Fidelity International, an 11.87 per cent shareholder in Wentworth, announced an intention to vote against the bid. However, the bidder declared its offer to be final, and the scheme was approved by 75.26 per cent in February 2023.[38] It is notable that shareholder activism has not been confined to shareholders with majority or even greater than 25 per cent holdings, which indicates that minority shareholders are becoming bolder. Both Redwheel and Fidelity, for example, had holdings of around 11 per cent.

Shareholder activism has taken a variety of forms this year, with shareholders attempting to encourage sales, receive higher offers, influence the outcome of bids and blocking transactions. When CVC advisers, Nordic Capital and Platinum Ivy put forward an offer to purchase the share capital of Hargreaves Lansdown plc, the board suggested that it would be willing to recommend the offer to its shareholders. Minority shareholder Lancaster Investment Management LLP responded with a public letter stating that the offer undervalued the business and that the structure, which included an unlisted stub equity alternative, was unfair because only a minority of existing shareholders/stakeholders would in their view be able to roll into the stub vehicle.[39] However, while Lancaster Investment's criticism did prompt at least two other investors to voice concerns about the deal,[40] the board ultimately decided to recommend the offer without the changes to the structure or the consideration that Lancaster Investment had advocated for.[41]

As markets stabilise, shareholder activism is expected to continue to play an important role in M&A transactions.

Sector trends

UK M&A enjoyed a broad sectoral spread across 2023. The manufacturing sector had the highest aggregate value, which rose from £59 billion to £69 billion (18 per cent), despite the number of deals falling from 1,547 to 1,404. The only other sector to increase the value of its transactions was wholesale and retail (W&R),, which saw an increase from £26 billion to £44 billion (73 per cent), even though the number of deals fell slightly from 1,237 to 1,172 (5 per cent). Financial services lost its position as having the highest aggregate value in 2022 (£81 billion) after this figure fell by 17 per cent to £67 billion in 2023. The most significant loss of aggregate value occurred in the construction sector, which saw a decline by 55 per cent from £22 billion to £10 billion. Infocomms retained its position as the most active sector with 1,630 deals (worth £50 billion) which was down from 1,989 in 2022. The least active sector remains transport, with just 212 deals (down from 245) worth £13 billion (down from £15 billion).[42]

The first quarter of 2024 brought with it the return of big-ticket transactions. Although the number of transactions across all sectors was down between 20 and 30 per cent, there were significant increases in aggregate value year on year. Construction was the biggest winner, with aggregate value rising by 587 per cent from £600 million to £5.8 billion. Manufacturing also fared well, with aggregate value rising by 201 per cent year on year from £8 billion to £24 billion. W&R also saw a healthy 172 per cent increase from £6.9 billion to £18.5 billion. The only two sectors to experience year on year declines in aggregate value were support services (£1.5 billion compared with £3.1 billion) and health (£300 million compared with £500 million).[43]

Financing of m&a: main sources and developments

The first half of 2024 showed a healthy uptick in acquisition finance transactions from the historic low base set in 2022 and 2023. Key driving factors of the increase in acquisition finance activity include the stabilisation of interest rates and declining inflation in the UK. Despite this positive market movement, the percentage of public bids financed either in full or in part with debt in the first half of 2024 remained constant with the previous year at 55 per cent.[44] In 2023, there was reduced appetite among arranging banks for larger deals, with banks unwilling to lend using their own balance sheets or provide bridging finance without a clear route to syndication or take-out financing. Private credit, to some extent, stepped in, and 2023 saw a proliferation in the amount of alternative debt providers offering bid finance. Private credit continued its upward trajectory in the first half of 2024, playing an increasingly significant part in the funding of M&A. However, as the market has stabilised and credit market conditions have improved, lending banks have resumed their willingness to fund. On a number of deals, banks are now competing directly with private credit lenders, who are in some instances clubbing together to be able to finance larger deals.

M&A activity is commonly funded by short-term bridge facilities and these have remained prevalent during 2024. Bridge facilities offer the advantage of allowing a relatively quick negotiation for certain funds purposes. They are typically refinanced within a very short time frame (often before the acquisition closes) and may be offered on a 'covenant-lite' basis, adopting high-yield bond-style incurrence or very limited covenants. These may include key covenants such as the negative pledge, financial indebtedness, sanctions and significant change undertakings, and a financial covenant (for example, a leverage ratio), together with acquisition-related covenants. Bridge facilities typically include margins that step up over time to encourage early refinancing. The levels and frequency of these step-ups vary, depending on the transaction, refinancing timetable and planned take-out.

Short-form interim facilities are also commonly seen in the M&A sphere and this was yet again a funding mechanic utilised in 2024, albeit less than short-term bridge facilities. Typically, where interim facilities are provided, they will be accompanied by commitment papers that hold details of the take-out debt. These types of facility are often provided for PE-backed bids and in periods of high activity.

The use of longer-term debt to back M&A transactions has declined over recent years, though it is still seen on a few transactions and has the advantage of certainty in agreeing long-term funding upfront, avoiding the pressure of a quick refinancing. Longer-term acquisition debt can be structured either as an amendment to the acquirer's existing facilities or as a new term facility. Where a new facility is used, the covenant package tends to be based on the offeror's existing debt facilities and covenant package. Margins are variable, depending on factors such as the structure of the facilities, the rating of the offeror and complexity and size of the transaction.

As mentioned above, direct lending remains an increasingly important source of M&A bid finance, particularly in the mid-market. Many credit funds have significant amounts of capital to deploy, giving more scope for these funds to compete directly with banks. Unitranche facilities (term loans that are split 'behind the scenes' between senior and junior lenders, avoiding the need for senior and junior debt instruments), in particular, are increasingly being used outside the sponsor-led market. Unitranche debt may carry the additional advantage of 'covenant-lite' terms, similar to the institutional Term Loan B market.

Employment law

New government: implications for employment

The Labour government elected at the July 2024 general election has plans to enact the biggest reform of employment law in a generation. Labour's Plan to Make Work Pay sets out a wide ranging series of changes, many of which may have an impact on M&A, They include making unfair dismissal a day-one right, banning exploitative zero-hours contracts, ending the scourges of 'fire and rehire' and introducing rights to work flexibly and to disconnect from work outside normal working hours. They also include extensive changes to trade union legislation, including simplifying the process for applying for statutory recognition, giving trade unions a right of access to workplaces for recruitment and organisation, and repealing the restrictions on strike action introduced by the Trade Union Act 2016.

An Employment Rights Bill to enact these changes was announced in the King's Speech on 17 July 2024, although at the time of writing the Bill had not yet been published. Businesses will need to prepare for a period of change and increased regulation on employment matters.

TUPE changes

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) apply to certain asset transfers and service provision changes, and form one of the key considerations from an employment perspective on an M&A transaction. On a TUPE transfer, the contracts of employment of in-scope employees will be automatically transferred to the purchaser. There are also obligations to inform and consult affected employees, usually via a collective process with employee representatives. There is, however, an exception allowing consultation to take place with employees directly. This was originally limited to 'micro-businesses', those employing fewer than 10 employees. However, this exception has now been extended. For TUPE transfers that take place on or after 1 July 2024, employers can now inform and consult employees directly, where:

a. there are no employee representatives already in place; and
b. either:
    - the employer has fewer than 50 employees; or
    - there are fewer than 10 employees transferring.

In May 2024, the government launched a consultation on further proposed changes to TUPE, including:

a. amending the definition of 'employee' within TUPE to make it clear that it does not include 'workers'. This is intended to resolve the ambiguity created by a number of employment tribunal cases, including *Dewhurst v. Revisecatch Ltd t/a Ecourier*,[45] which have suggested that workers may be protected under TUPE. Although these cases do not have precedent value and have not prompted a significant change in practice, they may affect negotiations in TUPE transfers where large number of workers are engaged in the relevant business or services; and
b. clarifying that an employment contract can only be transferred to one employer and should not be split between multiple employers. This is intended to reverse the effect of *ISS FacilityServices NV v. Govaerts*[46] and *McTear Contracts Limited v. Bennett*,[47] which held that contracts of employment can potentially be split as the result of a TUPE transfer, in proportion to the tasks performed by the employee.

The *Govaerts* and *McTear* decisions have been viewed as somewhat controversial in the United Kingdom, where the courts have in the past rejected the possibility of employment contracts being split on the transfer of part of the business. The proposal to reverse those decisions has, therefore, largely been welcomed, and should simplify the process of determining the impact of a TUPE transfer on the contracts of affected employees.

The consultation was launched by the previous government and has now been picked up by the new government. The consultation closed in July 2024 and at the time of writing the response had not yet been published.

Brexit: employment implications for M&A

Since the United Kingdom left the European Union, the most immediate impact from an employment law perspective has been on European Works Councils (EWCs). Because the United Kingdom is now a third country, UK employees are unable to ask their employer to set up an EWC, and there are differences in the rules governing existing EWCs. The government consultation referred to above also considered abolishing the legal framework for EWCs in the UK. Businesses with EWCs will need to bear this in mind, particularly when undertaking M&A activity that falls within the scope of EWC consultation.

There has also been the end of free movement and the introduction of a new points-based immigration system on 1 January 2021 for EU and non-EU workers coming to the United Kingdom. Businesses are getting to grips with the new rules on business travel between the United Kingdom and the European Union, which may affect M&A activity.

The REUL Act, discussed above, received Royal Assent on 29 June 2023. It made fundamental changes to the status of retained EU law (renamed 'assimilated law' under the REUL Act) in the United Kingdom. With effect from 1 January 2024, the supremacy of EU law was abolished, the general principles of EU law were revoked, and UK courts were given power to resolve conflicts between UK law and UK legislation implementing EU directives and EU-derived case law. This could introduce significant uncertainty in how areas of employment law affecting M&A transactions are interpreted – most relevantly, TUPE.

New pensions legislation to increase scrutiny of pensions impacts of corporate activity

The Pensions Regulator has yet to use its new powers introduced on 1 October 2021[48] to greater scrutinise corporate activity, impose increased financial penalties and prosecute certain criminal offences. Nevertheless, the existence and potential threat of the new powers have had an impact on corporate activity, with sponsors of defined benefit schemes seeking advice and engaging with scheme trustees at a far earlier stage in a proposed transaction.

In a previous edition we noted aspects of this legislation to increase the scope of the current notifiable events regime by adding to the number of events that have to be notified to the Pensions Regulator, requiring notification and more detailed disclosures at an earlier stage of a transaction that will necessitate interaction with trustees and potentially the Pensions Regulator on the impact of the transaction on the pension scheme. There remains no clear timeline for the extension of the notifiable events framework, and the new government has yet to confirm whether it remains committed to introducing the accompanying regulations.

New funding and investment regime for UK defined benefit pension schemes

New regulations came into force on 6 April 2024[49] setting out the detail of the changes to the existing scheme funding regime, which will require schemes to focus more on journey planning and their endgame target (i.e., a buyout of benefits with a third-party insurer or funding self-sufficiency) and cooperate with the employer in drafting a funding and investment strategy to reach that target. Parties to commercial transactions involving defined benefit pension schemes completing valuations on and after 22 September 2024 (when the new regime will apply) will need to bear in mind that pension trustees will be increasingly focused on being able to reach their long-term funding target.

The Pensions Regulator's new code of practice setting out how it expects schemes to comply with these new requirements and how it envisages that schemes will de-risk as they reach maturity was laid before Parliament on 29 July 2024.

Refunding surplus from an ongoing scheme

With recent improvements in the funding levels of UK defined benefit pension schemes, in February 2024 the government launched a consultation looking at how it could facilitate the refund of surplus in an ongoing scheme, including introducing new powers to allow refunds and protecting members through requiring minimum funding levels before a refund can be made. The government's response to that consultation is awaited.

The rate of tax on refunds of surplus was reduced from 35 to 25 per cent with effect from 6 April 2024.

Tax law

Jeremy Hunt, then Chancellor in the previous government, delivered an Autumn Statement on 22 November 2023 (Autumn Statement)[50] and Spring Budget on 6 March 2024 (Spring Budget).[51] The former included certain corporate tax measures while the latter seemed focused on personal taxation – which was perhaps unsurprising given the then already looming general election.

On 22 May 2024, then Prime Minister Rishi Sunak announced that the general election would take place on 4 July 2024. It was won by the Labour Party, which now forms the new government under Prime Minister Keir Starmer. While the Labour Party Manifesto which was published on 14 June 2024[52] (Manifesto) centred on the word 'change', it also promised a level of certainty and continuity from a tax perspective. It stated that Labour 'are committed to one major fiscal event a year' and that they would publish a 'roadmap for business taxation for the next parliament' (which, assuming a five-year election cycle, should cover a period up to mid-2029). Further details on certain tax proposals in the Manifesto are referenced, where relevant, in the remainder of this section.

Chancellor Rachel Reeves noted significant pressures on public finances in a speech on 29 July 2024 (July Statement). The July Statement also set 30 October 2024 as the date for the new government's first budget (which is generally expected to increase the tax burden) and announced certain measures that would be included in it. The remainder of this section will reference these where relevant.

Corporate taxation

Corporation tax rates have remained the same since April 2023, when the headline rate increased to 25 per cent. This increase was accompanied by the reintroduction of a small profits rate, a change in the rate of the bank surcharge (meaning that banks now pay corporation tax at a rate of 28 per cent) and a concomitant increase in the diverted profits tax (DPT) rate from 25 to 31 per cent (to maintain a 6-percentage point rate differential). The previous government had planned to roll DPT into corporation tax, while maintaining the rate differential.[53] It remains to be confirmed whether the new government will implement this.

The Manifesto promised to 'cap corporation tax at the current level of 25 per cent', leaving open the possibility that the rate could be lowered if the UK's competitiveness came under threat. That does not seem particularly likely given the Manifesto also noted that the UK's corporation tax rate is 'the lowest of the G7'.

But going back to April 2023, at the same time as the headline corporation tax rate increased to 25 per cent, the 'super deduction' (allowing tax relief at up to 130 per cent of certain capital expenditure) expired, and full expensing (allowing tax relief at up to 100 per cent of relevant capital expenditure) was introduced to mitigate the impact of this. Full expensing was initially set to expire at the end of March 2026, but the Autumn Statement announced that it would be made permanent, and this was legislated for in the Finance Act 2024. The Manifesto promised that full expensing would be maintained. Whether the new government would also consider a potential extension of the relief to leased assets (as had been contemplated by the previous government in the Autumn Statement and Spring Budget) remains to be confirmed, but this seems unlikely given budgetary constraints highlighted in the July Statement.

The past year saw further changes to the UK's two energy sector-specific taxes, the Energy (Oil and Gas) Profits Levy (EPL) and the Electricity Generator Levy (EGL), despite industry calls for certainty and predictability.[54]

The EPL was first announced in May 2022[55] as an additional 25 per cent levy on profits from the production of oil and gas applicable until 31 December 2025, and was legislated for in the Energy (Oil and Gas) Profits Levy Act 2022. The Finance Act 2023 increased the EPL rate to 35 per cent and extended its application to the end of March 2028, and the Finance (No. 2) Act 2023 introduced an additional relief in respect of upstream decarbonisation expenditure. On 9 June 2023, the government announced the 'Energy Security Investment Mechanism' (ESIM) pursuant to which the EPL would terminate earlier than its end date, provided oil and gas prices fell below certain thresholds.[56] The ESIM was legislated in the Finance (No. 2) Act 2024. The Spring Budget announced an extension of the EPL by one year to 31 March 2029, but this was not legislated by the previous government. The July Statement confirmed that, while retaining the ESIM, the new government would postpone the EPL's end date to 31 March 2030. It also confirmed that investment allowances would be rolled back and the EPL rate increased by three percentage points (taking the overall rate at which upstream oil and gas profits are taxed to 78 per cent).

The EGL, introduced in the Finance (No. 2) Act 2023, is a temporary 45 per cent charge on receipts from low-carbon electricity generation above a certain benchmark price to be adjusted by reference to the CPI for subsequent years. The end date for the EGL is 31 March 2028 (and there does not seem to be any suggestion that this would be extended in line with the EPL). The Autumn Statement announced a new investment exemption for the EGL which was legislated in the Finance Act 2024 and covers receipts from a new electricity generating station or additional receipts from the expansion of an existing generating station where the substantive decision to create the new station or expand the existing station is made on or after 21 November 2023.

The Manifesto further included a promise that Labour would 'begin to close the tax gap', meaning the difference between tax collected and the amount HMRC considers ought to have been paid, which was estimated at £39.8 billion (or 4.8 per cent of total theoretical liabilities) for 2022/23.[57] A pre-election document entitled 'Labour's Plan to Close the Tax Gap'[58] included proposals to strengthen powers to require early payment of disputed tax. Once further details are available, it should be assessed what impact such changes could have on the drafting of tax protections in M&A deals. The document also envisaged additional downstream compliance resources targeted at large businesses. It appears that the new government has already started to take action in this respect. Alongside the July Statement, reference was made to 'hiring around 5,000 additional staff to recover more tax revenues. HMRC has already started the process of recruiting additional staff into compliance roles.'[59] It would seem prudent for tax risk assessments to take into account the possibility of an increase in tax investigations as a result of this.

International tax reform

Discussions on international corporate tax reform within the Organisation for Economic Co-operation and Development (OECD)/G20 Inclusive Framework, which, as of May 2024, counted 147 members, centre around a set of measures that include the establishment of a 15 per cent minimum level of corporate taxation around the world (often referred to as the 'GloBE Rules (Pillar Two)') and the reallocation of certain taxing rights under what is known as 'Amount A of Pillar One'.

The GloBE Rules (Pillar Two) comprise an interlocking set of rules. The income inclusion rule (IIR) requires additional tax to be paid in the parent jurisdiction in respect of any foreign subsidiaries' income taxed at less than 15 per cent, whereas the undertaxed profits rule (UTPR) allows subsidiaries' jurisdictions to collect additional tax in respect of other group companies' undertaxed profits that are not already covered by an IIR charge.

The UK implemented the IIR in Finance (No. 2) Act 2023 in the form of a 'multinational top-up tax' (MTT) with effect from 31 December 2021. It also introduced an additional charge, the 'domestic top-up tax' (DTT), in respect of undertaxed UK profits calculated in accordance with the principles of the MTT, subject to certain modifications. The MTT and DTT rules have already been amended to correct errors and reflect further developments at the OECD level, and the July Statement announced a further change to implement an anti-avoidance provision agreed at the OECD level. It is likely that further amendments will be made in due course.

The previous government had published draft legislation in July 2023 (updated in September 2023)[60] to implement the UTPR through amendments to the MTT. Alongside the July Statement, the new government confirmed its intention to go ahead with the introduction of the UTPR with effect from 31 December 2024, but it remains to be seen whether the new government would abolish the Offshore Receipts in respect of Intangible Property (ORIP) rules when the UTPR takes effect (as had been envisaged by the previous government in the Autumn Statement). Broadly speaking, the ORIP rules impose an income tax charge in respect of 'UK-derived amounts' on persons not resident in the UK or a territory with which the UK has a double tax treaty with a non-discrimination clause. Their removal would be a welcome simplification.

For groups within the scope of the GloBE Rules, it will be prudent in an M&A context to assess a target group's structure and preparedness for the application of the GloBE Rules, the availability of relevant data and its compatibility with the purchaser's systems and any historic issues that could impact the purchaser's group.

Amount A of Pillar One is intricately linked to digital services taxes (which tend to be, broadly, taxes on gross revenues derived from certain online business activities to the extent attributable to users in the relevant jurisdiction). The imposition of such taxes by the UK and certain other countries triggered US trade sanctions. Amount A is intended to supplant these taxes, and the US agreed with the UK and certain other countries to terminate trade sanctions pending the negotiation of Amount A. However, the OECD missed a 30 June 2024 deadline for reaching agreement on it. At the time of writing, the full implications of this are unclear, but it is expected that the UK's digital services tax will remain in place for the time being and that the US has no immediate plans to reimpose trade sanctions. In this context, the new government will need to carefully assess any relevant policy proposals. The Manifesto did not include a proposal to increase the UK's digital services tax rate (as the Labour Party had previously appeared to consider), but it did envisage that business rates (broadly, a recurring charge on non-domestic properties) would be replaced with a system that would 'level the playing field between the high street and online giants'. This will be difficult for several reasons, including the risk that measures that seem targeted at digital businesses could cause trade tensions with the US (much like the introduction of the UK's digital services tax did and an increase in its rate would likely do). In an M&A context, a prudent approach might, where relevant, consider the potential impact on the target's valuation if terminated trade sanctions were introduced.

Personal taxation

The previous government announced reductions in national insurance contributions (NICs) at the Autumn Statement and the Spring Budget. Overall, the main rate of primary Class 1 employee NICs and the main rate of Class 4 self-employed NICs were reduced, respectively, from 12 to 8 and from 9 to 6 per cent. Class 2 self-employed NICs were abolished. No changes were made to income tax rates and thresholds. The dividend allowance and annual exempt amount for capital gains tax (CGT) were reduced as previously planned. So, for the tax year 2024/25, they are respectively £500 (down from £2,000 in 2022/23) and £3,000 (down from £12,300 in 2022/23).

The Manifesto promised that NICs, income tax rates and value added tax would not be increased, which was reiterated during the July Statement. This leaves open the possibility of changes, for instance, to CGT which could include raising the CGT rate (although this is, as yet, unconfirmed). The Manifesto did, however, envisage that there would be changes to the tax treatment of carried interest, which would be likely to affect the private equity industry in the UK. A call for evidence on the taxation of carried interest was published alongside the July Statement and it is expected that further details will be announced at the next budget.

The July Statement confirmed that the new government would abolish the 'non-dom regime' under which (subject to certain conditions) individuals who are tax-resident, but not domiciled in the UK, are taxed on their foreign income and gains only to the extent that these are remitted to the UK. It would be replaced by an 'internationally competitive' residence-based regime that exempts foreign income and gains from UK tax during the first four years after an individual becomes UK tax-resident. Certain transitional rules and changes to inheritance tax are also proposed. It remains to be seen how this will affect the UK's attractiveness.

Stamp taxes on shares

On 27 April 2023, HMRC published a consultation on the modernisation of the UK's stamp taxes on shares[61] through merging the existing taxes (stamp duty reserve tax which is, in practice, mainly paid on electronic share transfers, and stamp duty, which would be paid in other cases) to create a single tax on the transfer of non-government equity in UK-incorporated companies. At the time of writing, it is unclear whether this proposal would be pursued by the new government. It could bring welcome simplification, but it is unlikely to be a priority.

A final point worth noting is that the stamp taxes position on capital raisings remains broadly unchanged. There had been the possibility that a 1.5 per cent charge which had been disapplied under EU law could have been reintroduced pursuant to the Retained EU Law (Revocation and Reform) Act 2023. But the Finance Act 2024 included provisions to prevent this.

Competition law

The UK merger regime

At the time of writing, mergers qualify for review under the UK rules if they meet a test relating to the turnover of the target or, alternatively, a 'share of supply' test. Where the UK turnover of the target exceeds £70 million, the turnover test will be satisfied. The share of supply test will be satisfied where the merger creates an enlarged business supplying 25 per cent or more of goods or services of any reasonable description or enhances a pre-existing share of supply of 25 per cent or more. As mentioned above, the DMCC Act (which requires secondary legislation before it can commence) includes certain changes to these thresholds, including increasing the target turnover threshold from £70 million to £100 million and introducing a new threshold in respect of certain vertical and conglomerate mergers.

The CMA has the power to carry out an initial Phase I review and has a duty to refer any qualifying transaction for a detailed Phase II investigation if it believes that the merger will or may give rise to a substantial lessening of competition. Phase I decision-making is undertaken by the Senior Director of Mergers (or another senior CMA official). Phase II decision-making is undertaken by an independent panel of experts drawn from a pool of senior experts in a variety of fields.

Notification is voluntary in the sense that there is no obligation to apply for CMA clearance before completing a transaction. The CMA may, however, become aware of a transaction through its market intelligence functions (including through the receipt of complaints) and impose interim orders preventing or unwinding integration of two enterprises pending its review. There is a risk that it may then refer the transaction for a Phase II investigation, which could result in an order for divestment.

The CMA strongly encourages parties to enter into discussions in advance of formal notifications to seek advice on their submission to ensure that a notification is complete and to lessen the risk of burdensome information requests post-notification.

Once a transaction is formally notified, Phase I begins, and the CMA has a statutory time limit of 40 working days to reach a decision. The CMA may extend the 40-working-day period in certain exceptional circumstances, such as if it is waiting for information from the merging parties.

If the CMA's duty to refer a transaction to a Phase II investigation is engaged, the parties have five working days from the substantial lessening of a competition decision (SLC decision) to offer undertakings in lieu of a reference to the CMA (although they may offer them in advance should they wish to do so). If the parties offer undertakings, the CMA has until the 10th working day after the parties receive the SLC decision to decide whether the offer might be acceptable, in principle, as a remedy to the substantial lessening of competition. If the CMA decides the offer might be acceptable in principle, a period of negotiation and third-party consultation follows. The CMA is required to decide formally whether to accept the offered undertakings, or a modified form of them, within 50 working days of providing the parties with the SLC decision, subject to an extension of up to 40 working days if there are special reasons for granting this.

At Phase II, the CMA must issue its decision within a statutory maximum of 24 weeks. This period may be extended, in special cases, by up to eight weeks. If remedies are required, the CMA has a statutory period of 12 weeks (which may be extended by up to six weeks) following the Phase II review within which to make a decision on any remedies offered by the parties.

The CMA has significant powers to impose interim measures to suspend or reverse all integration steps and prevent pre-emptive action in relation to both completed and anticipated mergers. This ensures that, although notification is voluntary in the United Kingdom, the CMA is able to prevent action being taken that would result in irreversible damage to competition. Severe financial penalties may be imposed for breaches of any interim orders or undertakings (capped at 5 per cent of the aggregate group worldwide turnover).

The CMA levies substantial filing fees in respect of the mergers it reviews (between £40,000 and £160,000, depending on the turnover of the target business).

Treatment of mergers by the CMA

The CMA issued 54 Phase I merger decisions in the 2023 to 2024 financial year, 18 of which were unconditional clearances. Three cases were referred for a Phase II review and undertakings in lieu of a reference were accepted in 26 cases.

The CMA issued nine Phase II decisions during the same period. Five were unconditional clearances and two were cleared subject to divestiture remedies. The CMA prohibited one merger (Microsoft's proposed acquisition of Activision Blizzard – see below), and one transaction (*Adobe/Figma*) was cancelled or abandoned at Phase II. These interventions reflect the fact that many competition authorities worldwide are increasingly sceptical about the benefits of mergers, especially in concentrated industries.

Recently published statements and consultations relevant to mergers

In recent years, the CMA has conducted a thorough review of its guidance, including issuing new versions of its merger assessment guidelines, its guidance on jurisdiction and procedure and its guidance on the *de minimis* exception. The updated guidelines reflect changes to the CMA's practice that has occurred in recent years, particularly in relation to an expanded approach to jurisdiction, usage of dynamic theories of competition and a greater focus on mergers in innovative sectors. They also reflect the revised process for Phase II investigations which the CMA adopted in April 2024.

Brexit and merger control

The United Kingdom left the European Union on 31 January 2020 following the result of the 2016 referendum. Pursuant to the UK–EU Withdrawal Agreement, the United Kingdom was treated for most purposes as if it were still an EU Member State until 31 December 2020. Since that date, the 'one stop shop' principle no longer applies with respect to the United Kingdom, meaning that businesses may need to submit parallel notifications in the United Kingdom and the European Union to obtain clearance for a deal. Of the cases subject to parallel review since the end of the transition period, around a third have seen some sort of divergence in outcome. For example, Booking Holdings' proposed acquisition of eTraveli was cleared unconditionally by the CMA at Phase I but prohibited by the Commission. In contrast, the Commission conditionally approved Microsoft's proposed acquisition of Activision Blizzard just a few weeks after the CMA had rejected Microsoft's proposed remedies and blocked the transaction. In response to the prohibition, the parties decided to restructure their transaction and in October 2023 the CMA cleared it on this basis.

Outlook and conclusions

There is an air of cautious optimism in UK M&A. Inflation and interest rates are falling, the UK economy has showed healthy GDP growth rates and there is anticipation surrounding the new government. Public companies, with their low valuations, have been particular targets over the past 12 months and will continue to be. Private equity has been more subdued than expected, but sponsors are under pressure to deploy capital and, with the cost of borrowing falling, likely to initiate ambitious deals. However, this is not to dispel the numerous hazards that persist. Energy prices continue to fluctuate, geopolitical crises endure in Ukraine and the Middle East, and there are economic distress signals emanating from trading partners in continental Europe. Finally, UK companies find themselves situated within broader complex phenomena such as the energy transition, the generative artificial intelligence revolution and the broadening ideological gap between the West and China. UK M&A has been resilient, but further challenges lie ahead.

Footnotes

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[11] ibid.
[12] PCP 2023/1: Review of Rule 21 (Restrictions on frustrating action) and other matters.
[13] RS 2023/1: Response Statement to review of Rule 21 (Restrictions on frustrating action) and other matters.
[14] PCP 2024/1: Companies to which the Takeover Code applies.
[15] Practice Statement 5 (revised 27 October 2023), paragraphs 3.9–3.12.
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[20] ONS, 'Mergers and acquisitions involving UK companies: April to June 2023'; ONS, 'Mergers and acquisitions involving UK companies: April to June 2022'.

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[22] ONS, 'Mergers and acquisitions involving UK companies: April to June 2023'.

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[33] LexisNexis, 'Market Tracker Trend Report Trends in UK Public M&A deals in H1 2023'.

[34] ibid.

[35] ibid.

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[45] ET 2201909/2018.

[46] [2020] EUECJ C-344/18.

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[51] HM Treasury, 'Spring Budget 2024'.

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