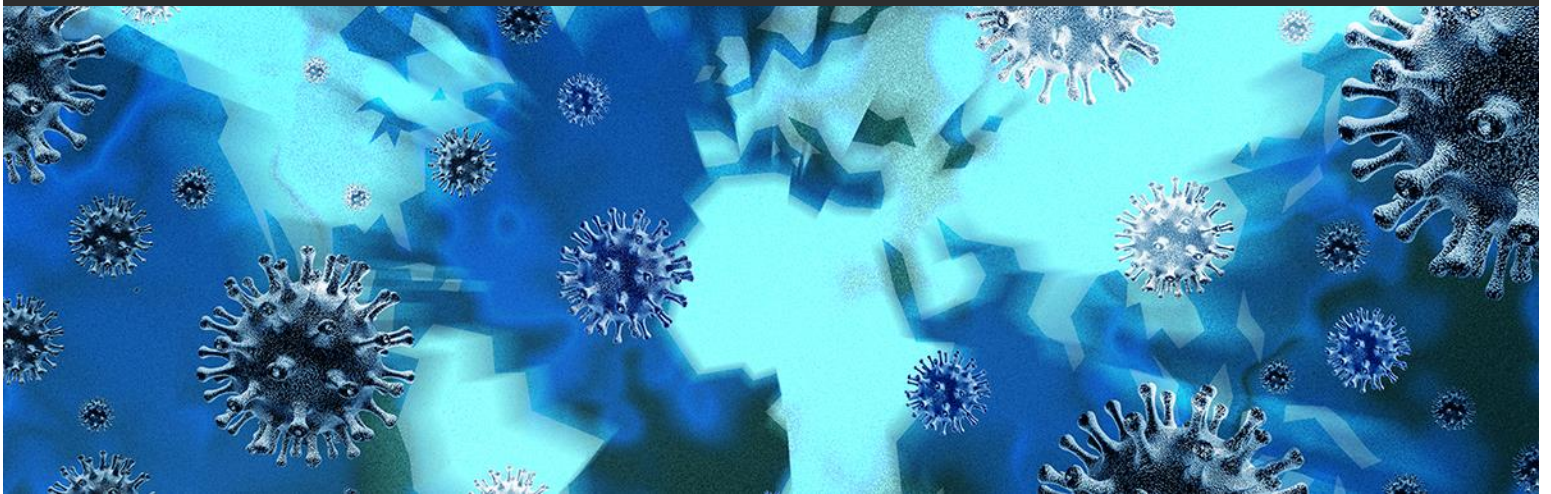


**Alert | Health Emergency Preparedness Task Force:
Coronavirus Disease 2019**



June 2020

Emergency Controls Over Acquisitions of UK Businesses Critical to Health Emergencies

On 23 June 2020 the UK government brought into force emergency legislation imposing controls on any acquisitions of UK businesses that are critical to combating Coronavirus Disease 2019 (COVID-19) and future public health emergencies.

The basis for the emergency legislation is a concern that the economic disruption caused by the COVID-19 pandemic may have made some UK businesses with critical capabilities more susceptible to takeovers. The controls are general in nature and not expressly directed against foreign investment. However, the [government's press release of 21 June 2020](#), announcing the new legislation, confirms that the aim is to control acquisitions arising from “outwardly hostile approaches” and the sale of financially distressed firms to “malicious parties”. The press release quotes UK Secretary of State for Business, Energy and Industrial Strategy Alok Sharma as saying that while the UK is open for investment, it is not open for exploitation.

The new powers conferred by the legislation enable the government to intervene in any case where a UK business that is directly involved in a pandemic response, or that contributes to the maintenance of a UK health emergency response where there is no immediate crisis, becomes a takeover target. Examples given in the press release are acquisitions of a vaccine research company or personal protective equipment manufacturer.

The legislation takes the form of a short government order entitled [The Enterprise Act 2002 \(Specification of Additional Section 58 Consideration\) Order 2020](#). The Enterprise Act 2002 (the Act) contains the principal merger control provisions in the UK. These enable the UK competition regulator, the Competition and Markets Authority (CMA), to investigate any merger above a certain size that affects the UK and to impose conditions on it, or block it outright, on competition grounds.

The Act provides only limited scope for government intervention in UK mergers on non-competition, public interest grounds, and these are set out in section 58 of the Act. Until recently they have comprised national security, plurality of media and (introduced as a result of the 2008 financial crisis) the stability of the UK financial system. The 23 June 2020 Order adds to the list of grounds (or “considerations”) the need to *maintain in the UK the capability to combat, and to mitigate the effects of, public health emergencies*. The UK government now has the power to impose conditions on, or block, any acquisition of a UK business with capability that is key to responding to a UK health emergency.

This emergency legislation is one of a number of steps being taken by the government towards strengthening controls on acquisitions of UK businesses that are of strategic importance to the UK. The principal focus of reform is national security. In May 2018, the government reduced to £1 million the threshold for control of mergers involving businesses active in the UK supply of military or dual-use goods subject to export control, computer processing units and quantum technology. At the same time as introducing the new health protection powers on 23 June, the government also put before Parliament a proposal to reduce the threshold for controlling mergers involving businesses active in the UK supply of artificial intelligence, cryptographic authentication technology and advanced materials. Finally, a new National and Security and Investment Bill proposing more comprehensive powers of intervention on national security grounds is due to be introduced for debate in Parliament shortly.

In each case, the controls have not been proposed as specific to non-UK investment, and the government’s stance remains that the UK is open to foreign investment, but that it is prepared to act where necessary in the UK public interest.

For more information and updates on the developing situation, visit [GT’s Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#).

** This GT Alert is limited to non-U.S. matters and law.*

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