# Alex Chisholm speaks about public interest and competition-based merger control

Speech given by CMA Chief Executive, Alex Chisholm, at the Fordham Competition Law Institute Annual Conference.

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Numbers in brackets refer to footnotes, which can be found at the end of the speech.

## Introduction

It's an honour and a pleasure to be here to speak to you today on this interesting and current topic. I'm grateful to the Fordham Competition Law Institute for the opportunity.

The discussion we're having today is most timely, given recent developments in the sphere of proposed state intervention in cross-border takeovers. You will all be familiar with General Electric's bid for Alstom, and Pfizer's attempt to acquire AstraZeneca. These and other large international merger cases have revived a lively debate on the perennial question of the balance between industrial policy and the application of antitrust laws. Should we stick with a competition-based assessment by independent authorities? Or should the State reserve for itself the right to intervene in global deal-making, for instance in order to protect domestic jobs or particular aspects of a country's infrastructure? The question of whether such state intervention is beneficial, and if so whether best achieved through a widening of public interest tests in merger control, or by virtue of other legislative tools, including foreign investment control, continues to arise.

Observers have commented on renewed signs of 'economic patriotism' in some post financial crisis EU member states. (1) While the European Commission continues to display resolve to uphold competition principles and the single market in both merger assessment and state aid cases, EU Competition Commissioner Joaquin Almunia recently voiced concerns about a rising tide of protectionism in Europe, citing public debate over the handling of General Electric's bid for Alstom's energy business as only one example of 'protectionist signals' in Europe. (2) In Europe, as in some other parts of the globe, we are still seeing relatively slow economic growth in the aftermath of the financial crisis, and this has fed calls to create or protect so-called 'national champions' by relying on public interest considerations.

There is also a perception that in the post-crisis climate, European companies could be attractive targets for foreign buyers, including US companies, and that these might be driven artificially by tax considerations

Even in my own country, the UK, which has traditionally been a strong advocate of a competition-based merger control regime, there has been much recent debate in politics and the media about the extent to which national interests need to be protected against foreign takeovers in certain circumstances. (3)

At a global level, the recent breakdown of WTO talks has been interpreted as a further sign of protectionist tendencies prevailing over the liberal vision of a multilateral trading system that has guided the post-war era in the global economy since Bretton Woods. (4)

So it is a good time to take stock and consider the health of our competition-based merger regime. And explore the implications of any possible shift in policy towards a greater role for public interest considerations.

Today I will describe the evolution of the merger regime in the UK and use this to show what considerations and experiences have driven the move away from a broad public interest assessment towards the independent competition-based regime we have today. (I am not going to address the legal implications of public interest interventions within the context of EU merger and internal market law and practice, important as these are, because these issues are well addressed by other speakers today (notably John Davies). Nor am I going to describe the variety of foreign investment controls that apply in many overseas jurisdictions, which are well covered in the papers presented by Calvin Goodman and Ilene Gotts.)

I make this contribution as the Chief Executive of the UK's new unified competition agency, the Competition and Markets Authority (CMA), established last year by the Enterprise and Regulatory Reform Act. We are a statutory body, the operator rather than the designer of the competition regime, and it is from this agency perspective that we share our experience and views. Before we contemplate further changes to merger control, we need to look carefully at its history and its current state. Given the possible consequences of the wrong diagnosis or the wrong treatment, it is vital to consider carefully the potential adverse implications if the UK or other jurisdictions were to reverse policy developments over the past decades by prescribing a reintroduction of broad public interest tests, and to measure these against any benefits from doing so.

**Evolution of the independent competition-based regime in the UK**

For decades UK mergers were assessed on a broad public interest test under the Fair Trading Act 1973 and before it the Monopolies and Restrictive Practices Act 1948. The Fair Trading Act (5) required the authorities to take into account 'all matters which appear to them in the particular circumstances to be relevant'. This included factors such as the alleged desirability of 'maintaining and promoting the balanced distribution of industry and employment in the United Kingdom'. (6)

The impact on competition as a key factor in the assessment of mergers was given more prominence in 1984 when the then Secretary of State for Trade & Industry, Mr Norman Tebbit, announced that references to the Monopolies and Mergers Commission (MMC) would be made primarily, but not exclusively, on competition grounds, taking into account the increasingly international dimension of competition. (7)

The UK Government took this approach further in a paper in 1988, which set out a strong case for a largely depoliticised merger control regime. (8) Although from another era, the arguments reviewed in the paper are ones we still hear today, pressing for a wide range of issues other than competition to justify intervention (including effects on employment, regional economic development, research on development spending by companies, the consequences of highly leveraged bids and foreign takeovers). In response to these submissions, the government posited that none of these matters was one where the public interest typically diverged from the interests of private sector decision makers, although it recognised that it may do so in exceptional cases. It therefore concluded that there was no case for intervening on a regular basis to prevent private firms from carrying through their business decisions, on the grounds that those plans may have adverse immediate implications for such matters as employment or R&D.

In shifting towards a competition-based assessment, successive British governments had also taken on board years of concerns about the lack of transparency and predictability in the public interest test. These weaknesses were felt to risk deterring mergers that were beneficial to the economy and consumers, and undermining the confidence of investors and firms. (9)

But despite the incremental move towards free market policies and the promotion of competition as the main feature of merger control, a degree of political involvement remained part of the assessment process. This manifested itself most notably in the 'Lilley doctrine'. In 1990 the then Secretary of State for Trade and Industry, Peter Lilley, announced a new approach to assessing mergers, designed to resist the spectre of 'nationalisation by the back door' (10) through the takeover of British companies by state-owned foreign companies. The policy turned out to be short-lived and proved unsustainable, not least as no adverse effects were found in cases that were examined in more detail on these grounds. (11)

Even though only a small proportion of mergers were examined in more detail on non-competition grounds, it remained difficult at the time for firms to predict when a merger would be blocked, (12) not least as the role of the independent competition agencies in merger control remained advisory with the Secretary of State retaining decision powers to block or remedy a merger. This increased uncertainty for businesses considering investments.

Hence, a decade or so later, the Enterprise Act 2002 established a fully independent and competition-based regime. This has been described as having put an end to 'substantial room for the exercise of political preferences'. (13)

It is interesting to recall that there was broad political consensus across all parties represented in Parliament to move towards the independent and competition-based regime when the Enterprise Act was adopted; as can be seen from the record of the parliamentary debates of the time. Politicians seemed mostly able to agree at the level of policy, even if they sometimes disagreed on the merits of specific transactions.

The use of an economics-based competition assessment of mergers brought the UK in line with international evolution of merger control policy; (14) a process aided and abetted by the OECD, the International Competition Network, the European Competition Network and events such as this at Fordham. The trend towards narrower competition criteria, a more technical and nuanced assessment, (15) and fuller reported analysis has been observed across many jurisdictions. This development coincided with competition authorities responsible for merger control becoming more independent and more subject to judicial scrutiny. Overall the process has become more transparent, rules-based and predictable, and this has been positive for businesses making investments and has promoted public confidence in the regime. The accumulated learnings from the experience of different national regimes in handling merger cases, coupled with the desire of individual countries to make their markets attractive locations for business activity, can be seen as key drivers for these important trends.

Today, merger control in the UK is performed primarily by the CMA, (16) under the Enterprise Act 2002, (17) using an economics-based competition assessment. (18) Intervention by government may take place on certain specified public interest grounds, currently: national security, media plurality and the stability of the UK financial system. (19)

In the small number of cases where public interest considerations have been invoked, notably defence mergers but also mergers raising issues of media plurality (such as BSkyB/ITV), it has been possible for a clearly distinguishable public interest element to be considered alongside competition analysis; within a clearly designed legal framework.

The architectural framework of the regime allows for the list of grounds to be supplemented. However, any new public interest considerations allowing for intervention by the Secretary of State require approval of Parliament. This has happened only once. In 2008, in the midst of the recent financial crisis, Parliament approved a new public interest ground, the stability of the UK financial system, which the Secretary of State relied on to approve the Lloyds/HBOS banking mergers against the competition-based advice of the OFT. (20) Although there is room for debate as to whether the Lloyds/HBOS merger should have been allowed (with some expert commentators criticising the decision and others seeing it as a ‘cautionary tale’ about the risks of setting aside competition concerns) (21) – this case can be seen as a response to exceptional events. It did not lead to further public interest interventions nor did it require a disapplication of the UK merger control regime altogether.

On the whole, therefore, the UK’s regime currently governing public interest considerations has been tried and tested for more than a decade and has proven capable of dealing even with extraordinary circumstances in a global financial crisis. (22)

## Foreign investment and takeovers

Looking beyond merger control for a moment, public or national interest considerations are also taken into account under foreign investment controls in many jurisdictions. Over 130 countries now have competition regimes, and in most of these, foreign investment controls and competition law operate side by side.

Foreign investment controls and competition law make for uneasy bedfellows, as the prime motivations are different and potentially conflicting. Competition law is motivated by the desire to promote consumer welfare by subjecting producers to effective rivalry, while foreign investment controls are typically motivated by the desire to protect domestic producers from competitors based outside the territory. The two can thus be contradictory. In so far as the future scope and weight of public interest considerations are concerned, it would appear desirable for both merger and foreign investment controls to move in parallel, rather than working against each other.

The debate about the merits of shielding domestic producers from foreign acquirers is often complicated by a notable lack of clarity about the notion of the prototype ‘foreign acquirer’. What does it actually mean for investments or acquirers to be ‘foreign’ in an increasingly globalised economy, with companies operating across multiple jurisdictions, with multi-regional headquarters and multinational shareholders and employees? For example, Apple, widely considered as a quintessential American or even Californian company, manufactures the majority of its products in China, where it employs 700,000 people, compared with a total 307,250 US jobs supported by Apple. Volvo, headquartered in Sweden and long identified as a Swedish company, was bought by Ford and later sold to a Chinese car company. (23) If the location of headquarters is the key determination of nationality, WPP (the world’s largest advertising business) was a British business until 2008, an Irish one for the next five years, and is now British again. A recent study by the Economist (24) uses a ‘domestic density index’ which combines the origin of revenue, employees, shareholders and the nationality of the CEO and finds that AstraZeneca is only 12% British and Alstom only just over a third French. GE is just less than half American according to this index.

More generally, the public debate is often shaped in a way that tends to focus on the immediate, headline-grabbing consequences of a particular deal and to overlook or underplay the longer-lasting effects on economic growth and consumer welfare. This point was recognised by the UK Parliament’s Business, Innovation and Skills Committee when it considered possible legislative changes to the UK merger control regime in the aftermath of the takeover of Cadbury by Kraft, noting that ‘any reform of takeovers in the United Kingdom has to recognise that foreign direct investment is of great benefit to the UK economy’. (25)

This is by no means a UK-only point. Policymakers around the world prioritise economic growth for their countries, and the IMF has found a positive correlation between the level of foreign direct investment and economic growth. (26)

But the UK is a particularly open economy, and one that has both received and made very high amounts of foreign direct investment. So it is, I hope, of wider interest to consider how it has benefited from its ‘openness’ and foreign investment. What does the evidence show? Well, UK Trade and Industry, a

Government body, reports that an estimated 66,000 jobs were created by international companies investing in the UK in the year 2013/14, and 45,000 jobs safeguarded. (27)

A recent survey of British businesses reported overall positive effects from foreign ownership, (28) although it also noted that these effects may vary by company and situation, with some individual communities experiencing both positive and negative consequences of foreign ownership. (As an aside, we should note that the potential for some groups to be negatively affected by foreign investment will most likely increase their incentives to lobby against any individual transaction, irrespective of the overall potential gains of such a transaction to UK businesses and UK consumers overall.)

In terms of outbound investment, UK businesses are equally global in their investment outlook and are substantial investors in the outside world. (29) A report by UKTI in 2014 (30) reviewed the evidence on the effects of this and concluded that, on the whole, being one of the largest outward investors provides significant economic benefits (mostly through increased access to opportunities that would otherwise not be available) increasing productivity, profitability and competitiveness. Other evidence suggests that, on the whole, outward FDI also benefits the economy through effects on innovation, productivity and employment. (31)

The British car industry offers a specific sectoral example of the potential benefits of foreign direct investment. Its glory days seemed all but over by the 1980s, when its lack of competitiveness was evident from falling shares in both domestic and international markets, and heavy losses and write-downs. From this point, while other countries were still seeking to shield their national car manufacturers from foreign acquirers, Britain adopted a different approach and openly welcomed investment by Japanese and other foreign investors. Some of these established new plants in green field sites, which began to introduce new practices and standards. Later, some foreign companies acquired British car marques and some of these, with the new investment, experienced a remarkable turnaround. These companies are now building new generations of successful models in Britain and recent reports suggest that this development is driving innovation: in hybrid and electric car technologies Britain is starting to gain some critical mass, even a lead. (32) UK car production has risen to 1.6 million vehicles a year, with over 80% exported. (33)

**Public interest in mergers**

I shall now move on to evaluating the merits of a potential reintroduction of wider or new public interest exceptions in the assessment of cross-border transactions. In doing so, I will touch upon the potential costs and risks, as I see them, to UK consumers, businesses and the overall economy.

On the plus side, it is fair to recognise that some mergers do not present an obviously impressive rationale, and may seem to owe more to executive hubris or fiscal ingenuity than value-creating industrial logic. Some ex post evaluation suggests at least as many mergers destroy value as create it. Although, in aggregate, the gains from the successful ones exceed the losses from the unsuccessful ones. (34) If one could readily identify in advance those mergers that would not work out, the economic world would be a better place. But given the strong incentives ,on the part of the merging parties and their investors and advisers to get this right and the resources available to these groups, one must fairly conclude that overall it is extremely difficult to pick in advance the winners from the losers. This argues for a policy stance of studied neutrality. Individual mergers may turn out well or poorly for the company, the shareholders and the wider economy, so let's focus on removing clearly anti-competitive features, not second-guessing the whole rationale.

Is it any easier to identify in advance welfare-enhancing mergers that are in the public interest? Well we know this is very challenging, even more so than the commercial assessment, because we had decades of operating such a regime in the UK before the reforms of the last 30 years.

As well as the difficulties experienced by the financial and corporate communities in predicting which mergers would be acceptable to the public authorities, those authorities themselves found it difficult to identify wherein precisely lay the public interest. We have already noted how the Fair Trading Act 1973 required the authorities to take into account 'all matters which appear to them in the particular circumstances to be relevant'. Would we be more precise today? I am sure that would be the intention. But once the principle is established of adding exceptions to standard merger control and addressing particular concerns, the pressure to add more such exceptions tends to build over time.

We have seen how the government in France has sometimes reacted strongly to the prospect of foreign takeovers of French companies, and not just in infrastructure sectors such as GE/Alstom – witness, for example, the stance adopted in relation to the mooted takeover of Danone by PepsiCo. The French government has recently taken a broad approach to what represents a strategic interest, including energy, transport, communications, water and public health, all of which are thought to justify state intervention. (35)

In the UK, one advocate for a 'new balance' in merger regulation suggested the following economic test: 'It would make bidders show that a takeover would be good for the target company. It would take into account the interests of the wider economy, employees, suppliers and local communities.' (36) How could these interests be weighed in the balance with the interests of national consumers? And with criteria as broad as this, could one operate a predictable and consistent regime?

These risks should be seen against the backdrop of ever more mobile capital and technology allowing investors and companies to pick and choose where to direct their activities globally, resulting in a greater need for countries to present themselves as attractive places for business to set up and expand within – part of what the British Prime Minister has called the 'Global Race'. (37)

If the credibility of a regime is weakened, this may, in turn, damage business confidence. Reintroducing political involvement in the assessment of mergers may encourage a belief that decisions on mergers are open to influence by interested parties. Again, we have been here before. In 2010, the then Secretary of State for Trade and Industry, Peter Mandelson, was unconvinced of the merits of a public interest test because in those circumstances he thought a government's judgement and intervention could be too exposed to political lobbying and short-term populist pressures. He added that such a move could lead to a loss of the transparency and predictability which made the current UK regime open to investors, from which the UK benefited a great deal. (38)

In addition, if policymakers in a particular country were to introduce measures aimed at preventing what they may regard as undesirable and/or otherwise unpopular takeovers, this may weaken considerably the ability of that country to object to other jurisdictions contemplating similar measures – thereby hindering their own firms' ability to expand and invest abroad. Indeed, other states may be encouraged to use any legislative change re-politicising merger control as a blueprint for their own legislative agenda. It is difficult for any country to be credible in advocating more open markets overseas while simultaneously reducing the openness of its own markets.

In the recent public debate, concern has been expressed about the implications of any merger between AstraZeneca and Pfizer for R&D and scientific research activity being carried out in the UK. It should not be assumed that such implications would not be taken into account in any event by an economics-based competition assessment. Merger control assessment can examine the effects on incentives of a merged entity to innovate and engage in R&D. Note, for example, that in Google/Waze (39) the OFT assessed whether the merger would dampen Google's incentives to innovate. In GSK/Pfizer, (40) the OFT assessed the merger, in part, on its effect on research and pipeline innovation. And in AkzoNobel/Metlac, (41) the CC took account of evidence on the impact of the merger on R&D. Even in public market sectors such as rail transport and healthcare, competition-based merger control is being applied effectively in the UK.

The risk of concluding too soon that intervention to protect domestic firms is required, is increased by the way in which discussion around foreign takeovers is typically shaped. Public debates about the merits of intervening against foreign takeovers on non-competition grounds tend to suffer from information and communication asymmetries, compounding the problems already identified regarding the notion of a 'foreign company' and the disparate interpretation of public interest discussed above.

First, there is a notable asymmetry between the ability of the potential beneficiaries of the acquisition, and those standing potentially to lose, to make their voices heard and influence the process. There is normally a clearly identifiable group of people within the target company that may face adverse consequences, but those potentially benefiting from the takeover, for instance taxpayers and consumers, cannot so readily be identified and organised for campaigning. Those doing the acquiring will make their voices heard, of course, but are obviously open to the criticism of self-interest: 'they would say that, wouldn't they?'.

Second, the lack of balance in the ensuing debate is often exacerbated by a further asymmetry: whilst the domestic target of a foreign acquirer will be able to rely on a broad network of political support, there is no natural (domestic) constituency to speak up for the foreign acquirer. This can be contrasted with domestic acquirers which have several channels of communication and influencing at their disposal. (42) This is especially the case in hostile takeovers which may be noisily resisted by domestic targets but are not axiomatically either better or worse than friendly mergers.

There are also the different time frames that can apply. Many mergers take years to deliver their full potential. Sometimes an initial rationalisation of costs between the merging parties is later followed by a period of investment and expansion. Contrast this with the very short term – weeks, days, sometimes just hours – which characterises the modern media-political axis.

And we should also keep in mind that there may be more suitable instruments to bring to bear to address concerns arising in takeover situations – for example, reforms to tax law, or changes to the applicable takeover code. Such steps may be preferable to using merger control powers for ancillary purposes.

I started my speech today by saying that I would explore whether merger control is in good health or requires the prescription of a further dose of 'public interest medicine'. I hope I have made it clear that, in my view, the regime is in good health. We have in place the key components of a sound merger control regime. Namely: an independently administered rule-based system that provides legal certainty; limits itself to minimal, economically justified interventions; and inspires business and consumer confidence.

Aside from attracting foreign investment for the benefit of the economy, a merger control regime that is based on sound competition economics can make companies, whether or not they are regarded as ‘national champions’, more efficient and innovative; fostering the creation of jobs and economic growth. A ‘re-politicisation’ by adding more exceptions to competitive-based merger controls, or introducing criteria in foreign investment control that have previously been abandoned in merger control by successive governments, could undermine business confidence and the credibility of any merger regime.

The question for policymakers, then, is whether any such increase in the use of public interest exemptions can bring benefits that would justify the potential adverse side effects we have identified. In weighing up the attractions of a new political approach to mergers, let us keep firmly in mind the lessons of the past, the considerable progress made to date, and just how much there is to lose.

**Footnotes:**

(1) Protectionist tendencies in EU Member States were also observed in the mid-noughties, see for instance Nourry/Jung, ‘EU State Measures against Foreign Takeovers: “Economic Patriotism” in All But Name’, Competition Policy International, 2006, Volume 2, Number 2; See further Financial Times, ‘GE deal “victory” for role of French state in economy’, 23 June 2014.

(2) MLex, Almunia voices concerns over rising protectionism, 24 June 2014.

(3) See, for instance, the article by Mark Field MP, ‘After Astra-Zeneca/Pfizer – Is Protectionism Part of the “New Economics”?’, 4 August 2014.

(4) See, for instance, ‘WTO plunged into crisis as doubts grow over its future’, Financial Times, 1 August 2014.

(5) Under section 84 of the Fair Trading Act 1973, the Competition Commission (CC), and its predecessor, the MMC, were required to take into account ‘all matters which appear to them in the particular circumstances to be relevant’, with regard to the desirability: (a) of maintaining and promoting effective competition between persons supplying goods and services in the United Kingdom; (b) of promoting the interests of consumers, purchasers and other users of goods and services in the United Kingdom in respect of the prices charged for them and in respect of their quality and the variety of goods and services supplied; (c) of promoting, through competition, the reduction of costs and the development and use of new techniques and new products, and of facilitating the entry of new competitors into existing markets; (d) of maintaining and promoting the balanced distribution of industry and

employment in the United Kingdom; and (e) of maintaining and promoting competitive activity in markets outside the United Kingdom on the part of producers of goods, and of suppliers of goods and services, in the United Kingdom.

(6) For further discussion, see A Scott, M Hvvid and B Lyons, 'Merger Control in the United Kingdom', OUP 2006, page 5.

(7) First report: 'Takeovers and mergers', 27 November 1991, HC 1991 to 1992, paragraph 223.

(8) DTI, 'Mergers policy: a Department of Trade and Industry paper on the policy and procedures of merger control', HMSO, 1988.

(9) See Andreas Stephan, Did Lloyds/HBOS mark the failure of an enduring economics based system of merger regulation?, Northern Ireland Legal Quarterly, 2011, page 4.

(10) HC Deb 26 July 1990 cc 415-6W. The statement was reproduced in Department for Trade and Industry press notice 90/457, Merger reference policy, 26 July 1990. See also Antony Seely, 'Takeovers: the public interest', House of Commons Library, 3 June 2014, page 7.

(11) 'Politics and the UK merger control process: the public interest exceptions and other collision points', 2010, Competition Law, page 80, Antony Seely, 'Takeovers: the public interest', House of Commons Library, 3 June 2014, pages 7 and 8.

(12) See Andreas Stephan, Did Lloyds/HBOS mark the failure of an enduring economics based system of merger regulation?, Northern Ireland Legal Quarterly, 2011, page 3.

(13) S Wilks, 'In the Public Interest: Competition Policy and the Monopolies and Mergers Commission', MUP, 1999, page 228.

(14) For example, the USA with its Clayton Act 1914 (and subsequent amending legislation), and the EU that adopted its Merger Regulation in September 1990.

(15) Moving away from the structuralist analysis.

(16) The CMA is responsible for merger control across all industries and has decision-making power, although certain sectoral regulators such as Ofcom or Monitor also have statutory roles in examining mergers. The CMA was established on 1 October 2013. By virtue of the Enterprise and Regulatory Reform Act 2013 and the Enterprise and Regulatory Reform Act 2013 (Commencement No 6, Transitional Provisions and Savings) Order, No 416 of 2014, the Office of Fair Trading's (OFT) and CC's merger control functions were transferred to the CMA on 1 April 2014.

(17) As amended by the Enterprise and Regulatory Reform Act 2013.

(18) There is no separate body or process in the UK for the control of foreign investment. The CMA's primary duty is to seek to promote competition, both within and outside the UK, for the benefit of consumers, see CMA Mergers: Guidance on the CMA's jurisdiction and procedure, January 2014, paragraph 2.5.

(19) See section 42 of the Enterprise Act. In terms of process for such public interest cases, the CMA must make a report to the Secretary of State advising whether a relevant merger situation has been or will be created and whether that has resulted or may be expected to result in a substantial lessening of competition. The CMA does not, however, advise on whether or the extent to which public interests considerations are relevant. It is then for the Secretary of State to take a decision on whether to refer the merger for a second phase review. He may refer such cases where he believes that the merger operates or may be expected to operate against the public interest, taking account of a substantial lessening of competition identified by the CMA and the existence of one or more specified public interest considerations. Under the Act, an anti-competitive outcome is to be treated as being adverse to the public interest unless it is justified by one or more public interest considerations. After receiving the Phase 2 report from the CMA, the Secretary of State makes a final decision as to whether the merger operates against the public interest. If he decides that this is the case he may take such enforcement action that he considers reasonable and practicable to remedy, mitigate or prevent any of the adverse effects identified. This may extend to prohibiting the merger. See section 58 of the Enterprise Act.

(20) Enterprise Act 2002 (Specification of Additional Section 58 Consideration) Order 2007 (SI 2008/2645).

(21) Sir John Vickers, former Chief Executive of the OFT and later Chairman of the Independent Commission on Banking, said that it was a mistake to force the merger through on public interest grounds. See The Guardian, 'Sir John Vickers calls Lloyds takeover of HBOS a mistake', 26 November 2010.

(22) Peter Freeman, 'Merging is Such Sweet Sorrow', speech to the British Institute of International and Comparative Law Mergers Conference, 13 November 2008.

(23) For more details, view the market watch news story.
(24) See Companies and nationality: flags of inconvenience, The Economist, 17 May 2014.

(25) HC 234 2009 to 2010 paragraphs 74 and 75.

(26) IMF Working Paper WP/01/175.

(27) UKTI (2014) Inward Investment Report 2013/14.

(28) Economic and Social Research Council, 'Evidence Briefing: Foreign ownership and consequences for British business', January 2011.

(29) HM Government, ‘Outward Investment – some economic proposals’, Trade and Investment Analytical Papers: Topic 15 of 18, January 2014.

(30) UKTI Inward Investment Report 2013/2014.

(31) See, for example, Copenhagen Economics (2010) ‘Impacts of EU Outward FDI’.

(32) The Independent, ‘A resurgent British car industry offers lessons in how to improve other areas of our economic output’, 13 January 2014.

(33) Department of Business, Innovation and Skills 2014 Growth Dashboard.

(34) ‘M&A in the UK: a study of post-transaction shareholder wealth creation, company financial performance and employment’, Andrew Clare and Anna Faelten, 26 April 2013.

(35) Decree No. 2014-479, dated 14 May 2014 and published on 15 May 2015.

(36) ‘Cadbury shows takeovers need reform’, The Guardian, 22 February 2010.

(37) ‘World Islamic Economic Forum: Prime Minister’s speech’, David Cameron’s speech on 29 October 2013.

(38) ‘The work of the Department for Business, Innovation and Skills: Evidence given by Rt Hon Lord Mandelson’, 19 January 2010, 10 March 2010 HC 299-i 2009-10 Q13; see also Antony Seely, ‘Takeovers: the public interest’, House of Commons Library, 3 June 2014, page 14.

(39) For more detail, see the OFT’s decision on Google/Waze.
(40) For more detail, see the GSK/Pfizer case page.
(41) For more detail, see the AzkoNobel/Metlac case page.
(42) A recent example of a domestic acquirer getting traction in the public debate is the Barr/Britvic merger.