

# Acquisition of UK Investment Management Businesses

## Merger control and restrictive covenants

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# Merger control

Must be assessed on any acquisition

EC Merger Control is a one stop shop turnover based tests

Where ECMR doesn't apply, then need to consider any one of more Member States regimes

Most jurisdictions, but not the UK, generally prohibit closing prior to clearance having been obtained

Unlikely to be substantive issues but still potentially a significant administrative burden

# Restrictive Covenants

UK acquisitions normally include covenants on seller not to compete with the target business

In principle this is market sharing – clear infringement of EC and UK competition laws – fines imprisonment

Acceptable where – directly related and necessary to the acquisition and where – subordinate to the main object of the transaction (ancillary restraints)

# Restrictive Covenants

## Duration

2 years where goodwill only; 3 years where goodwill and know-how

## Ambit

Must relate to the business activities conducted by the target at the time of the sale

## Geographic extent

Must relate to the geographic location(s) where the business was being carried out at the time of the acquisition

Fall outside these rules    need for objective justification

# Covenants on the Buyer

Seller may have concerns that buyer will unfairly compete against its retained business

Generally not permitted

Exceptional case (BHF/CCF/Charterhouse-1993) where split of Charterhouse's business justified mutual covenants not to solicit each other's clients

# Covenants on Individuals

Need to ensure key staff don't take off and compete with the acquired business

Competition rules not relevant – individuals aren't undertakings

UK common law restraint of trade doctrine

Rules on ambit and geographical extent as above, but duration only up to 12 months. Garden leave less than this (nearer six months)