

**Baker
McKenzie.**

Annual Corporate Compliance Conference 2020

7 September - 9 October 2020



Need for Speed: Identifying and Cleansing Compliance Risks in M&A

Thursday 10 September, 2.00 - 3.00 pm BST



Speakers



Tristan Grimmer
Partner (Chair), London



Jannan Crozier
Partner, London



Peter Tomczak
Partner, Chicago



Julian Godfray
Associate, London

M&A Trends: Implications of COVID-19



Increase in strategic M&A

- Carve-outs of non-core businesses
- Acquisitions of strategic / tech-focused bolt-ons
- Increase in acquisition financing – with banks demanding enhanced due diligence
- Buyers contemplating more complicated deals in order to extract value



Growing desire to localise / build resilience in supply chains

- Companies seeking to be less reliant on supplies from Asia
- Increase in 'vertical' acquisitions of key local suppliers and/or distributors
- Compliance challenges presented by new markets

Assessing Compliance Risks: The Buyer's Perspective

➤ Regulatory
scrutiny



➤ Successor liability

- Share acquisitions and asset acquisitions
- The US perspective

➤ Ongoing liability

➤ Handling proceeds of crime

➤ Clean-up costs

➤ Stakeholder
accountability

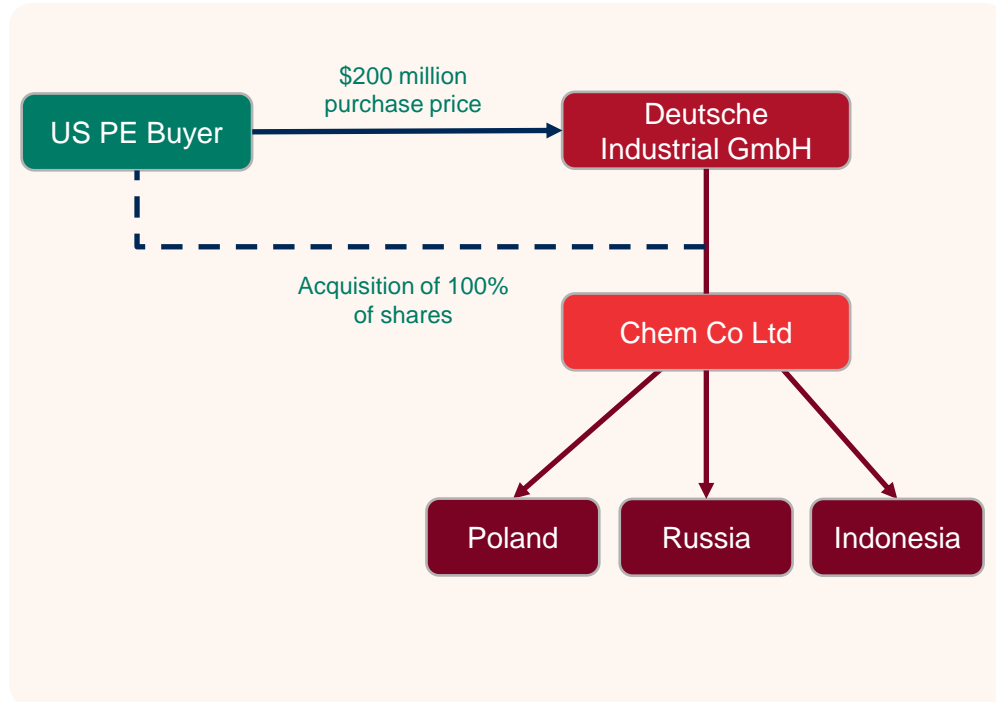


Compliance Overview of the M&A Process



Case Study: Share Acquisition

- US SEC-regulated PE Buyer
- Carve-out of chemicals business from German industrial conglomerate
- Acquisition of 100% share capital in Parent Co of the carved-out business (Chem Co Ltd)
- Local subsidiaries / chemicals manufacturing sites in three jurisdictions



Due Diligence: Preliminary Issues Identified in Data Room



Apparent absence of any compliance policies or procedures



High number of third party intermediaries, and sales to higher-risk jurisdictions



Degree of reliance on interactions with government officials in jurisdictions with production sites (Poland, Russia, Indonesia)

Due Diligence: Targeted Questions and Engagement with Management

➤ Buyer perspective:

- Framing and prioritisation of questions

➤ Seller perspective:

- Responding to widely-drafted questions; disclosure letter considerations

➤ Importance of timing

Due Diligence: Seller's Responses to Questions



Apparent absence of any compliance policies or procedures

- Policies and procedures drafted at a group-level by German parent
- No retained compliance function within acquired business



High number of third party intermediaries, and sales to higher-risk jurisdictions


- Responses suggest risk-based due diligence approach, but limited ongoing oversight of third party relationships



Degree of reliance on interactions with government officials in jurisdictions with production sites (Poland, Russia, Indonesia)

- Seller provides details of key government interactions in these jurisdictions, and list of permits obtained by the three production sites

Due Diligence: Identification of Past Investigation

 Seller's response to due diligence question around previous internal compliance investigations provides details of potentially significant issue

- Previous internal investigation over 5 years ago, into allegations raised by whistleblower
- Allegation that production site in Indonesia obtained a key environmental permit through bribery to a public official (through a third party consultant)
- Investigation at the time was inconclusive, but no clear identification of wrongdoing
- Whistleblower has since left the business
- Indonesian subsidiary has since renewed permit last year, using same consultant

Focus on Warranty and Indemnity Insurance

➤ Can be buyer-side or seller-side; policy can sit 'back-to-back' with SPA

➤ Exclusion of matters that insured is aware of at time of inception of policy

➤ Premium can be affected by coverage for specific indemnities, and language of warranties

➤ Bribery and corruption coverage in W&I context can commonly be "subject to underwriting"

Disclosure Letter

➤ Buyer perspective:

- Avoid seller using vague or ambiguous wording; ensure that disclosed matters are tightly-drafted

➤ Seller perspective:

- Benefit through wide drafting of letter

➤ Importance of timing

Remedies

➤ Structural remedies:

- Consider switching to asset purchase?

➤ Contractual remedies:

- Apportioning risk in SPA

➤ Other remedies / additional steps?

Post-Closing: Cleansing and Integrating the Target

➤ Post-acquisition risk review / compliance audit / targeted due diligence?

➤ Integration of acquired business within Buyer's compliance framework?

➤ Disclosure of issues identified post-acquisition?

➤ Regulatory expectations?

The image features a white speech bubble on the left side, containing the word "Questions" in a bold, dark blue font. The background is a dark blue gradient with a glowing teal particle trail that curves across the bottom right. The overall aesthetic is clean and modern, suggesting a focus on inquiry or technology.

Questions

Agenda

Tuesday 15 September
2.00 - 3.30 pm BST

The Future of Global Antitrust Compliance

Chair: Luis Gomez, Partner, London | Teisha Johnson, Partner, Washington D.C. |
Lerisha Naidu, Partner, Johannesburg | Carolina Pardo, Partner, Bogota | Lena Sersiron, Partner,
Paris | Laura Liu, Special Counsel, Beijing

Wednesday 16 September
2.00 - 3.00 pm BST

Distribution Agreements: Key Compliance Learnings from Recent Cases

Sarwenaz Kiani, Senior Associate, London | Karoline Phillips, Senior Associate, London

Thursday 17 September
2.00 - 3.00 pm BST

Competitor Collaborations: Keeping the Right Side of the Line

Chair: James Robinson, Partner, London | Irena Apostopoulos, Senior Associate, London |
Grant Murray, Lead Knowledge Lawyer, Global Antitrust & Competition Group, London

Thursday 17 September
3.45 - 4.45 pm BST

Dealing with the UK CMA in a post Brexit World

Chair: Samantha Mobley, Partner, London | Mara Ghiorghies, Senior Associate, London |
Miriam Fine, Associate, London