

# Digital Secretary instructs CMA to look into NVIDIA's takeover of ARM

- Digital Secretary Oliver Dowden issues a Public Interest Intervention Notice
- Competition body to report on jurisdictional, competition and national security issues
- 'Phase one' investigation is the start of a process to examine the transaction

Digital Secretary Oliver Dowden has today issued a [Public Interest Intervention Notice](#) (PIIN) in relation to the proposed sale of ARM to NVIDIA.

He has written to the Competition and Markets Authority (CMA) to inform them of his decision and has instructed them to begin a 'phase one' investigation to assess the transaction.

The CMA will now prepare a report with advice on jurisdictional and competition issues. The report will also include a summary of any representations it receives on potential national security issues arising from a consultation it will launch to gather third-party views. Alongside the CMA's process, the government will examine the national security public interests.

The Digital Secretary, who has 'quasi-judicial' powers under the Enterprise Act 2002 to intervene in certain mergers on public interest grounds, has issued the notice to ensure that any national security implications for the United Kingdom are explored.

ARM, which is headquartered in Cambridge, is a major global player in the semiconductor industry. Semiconductors are fundamental to current and future technologies – from artificial intelligence and quantum computing to 5G. Semiconductors also underpin the UK's critical national infrastructure and are found in defence and national security related technologies.

Digital Secretary Oliver Dowden said:

"Following careful consideration of the proposed takeover of ARM, I have today issued an intervention notice on national security grounds.

"As a next step and to help me gather the relevant information, the UK's independent competition authority will now prepare a report on the implications of the transaction, which will help inform any further decisions.

"We want to support our thriving UK tech industry and welcome foreign investment, but it is appropriate that we properly consider the national security implications of a transaction like this."

The 'phase one' investigation will ensure specific considerations around

competition, jurisdiction and national security are assessed.

It will advise whether the acquisition results in a substantial lessening of competition in any market in the UK, and whether it would be appropriate to deal with any concerns through undertakings by the parties involved in place of a referral to a 'phase two' investigation.

The CMA has until midnight at the end of 30 July 2021 to complete and submit this report to the Digital Secretary.

## **The test**

The test to be met for the Digital Secretary to issue a PIIN under the Enterprise Act 2002 is:

- He has reasonable grounds for suspecting the proposed transaction could result in the creation of a 'relevant merger situation': when two enterprises would 'cease to be distinct' (for example, one enterprise is buying another) and the turnover in the UK of the enterprise being taken over exceeds £1 million;
- The Competition and Markets Authority has not completed a 'phase one' assessment under the Enterprise Act on competition grounds (ie: that the CMA has confirmed that their 'phase one' process has not yet been formally started);
- The Digital Secretary believes that it is, or may be the case, that one or more public interest considerations such as national security is relevant to the merger situation concerned.

## **Next steps**

Once the 'phase one' process is complete, the Digital Secretary has a number of options:

- He can decide whether to clear the transaction if, for example, no concerns arise on either public interest or competition grounds;
- Clear the transaction subject to any agreed undertakings (to remedy the competition or public interest concerns or both);
- Refer the transaction to a 'phase two' investigation for further scrutiny (whether on public interest and competition grounds or on public interest grounds alone).

There is no set period in which this decision must be made, but it must take into account the need to make a decision as soon as reasonably practicable to reduce uncertainty.

If the Digital Secretary determines there are no public interest concerns, but there are competition concerns based on the CMA's report which cannot be remedied by undertakings, he will instruct the CMA to deal with the merger as an 'ordinary' merger case.

If the transaction is referred to a 'phase two' investigation, the CMA will lead a further investigation of any identified competition and/or public

interest concerns.

If a 'phase two' referral has been made based on public interest concerns, the CMA will assess further whether the merger raises public interest concerns and make recommendations as to what the Digital Secretary should do to remedy any adverse effects.

At the end of a phase two investigation the Digital Secretary has the power to take action to remedy, mitigate or prevent any effects adverse to the public interest.

The government has issued several PIINs of this nature in the past and they are an important element of the UK's investment screening regime.

## **Notes to editors**

- In September last year Nvidia announced its intention to buy ARM in a deal valued at approximately \$40 billion.
- The decision to issue a PIIN is in line with our approach to investment screening and falls within the Digital Secretary's statutory powers under the Enterprise Act 2002.
- The Act's main purpose is to enable the Competition and Markets Authority to scrutinise and intervene in potentially anti-competitive M&A activity.
- The Act also allows the relevant UK Secretary of State to make a quasi-judicial decision to intervene in mergers under the following public interest considerations: national security; media plurality; the stability of the UK financial system; to combat a public health emergency.
- If the relevant Secretary of State deems that a merger or transaction meets these conditions they can issue a PIIN to assess the transaction in greater detail.
- If the relevant Secretary of State has referred a merger on public interest grounds, he or she also takes the final decision on whether the merger operates, or may be expected to operate against the public interest, and on any remedies for identified public interest concerns.
- Subject to the ability to reach a decision ultimately on public interest grounds, the Digital Secretary must accept the CMA's decision on jurisdiction and competition issues.
- Following the receipt of the Competition and Markets Authority's report and the updated national security assessment, the Digital Secretary has the power to make reference under section 45 for a phase two investigation.

DCMS press office is on 020 7211 2210