

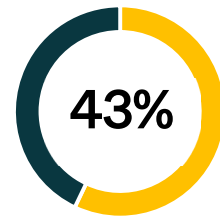
## Difficult Deals:

### Merger Control Outlook for 2022 and Lessons Learned from 2021

2021 was a busy year for the EU Commission's and the German Bundeskartellamt's merger control departments, with approx. 400 and approx. 1,000 filings, respectively. We have analysed the most difficult deals reviewed in Phase 2 and/or only cleared subject to remedies in 2021, and summarise **four key points** to keep in mind for 2022:

- 1 Merger control proceedings will not become easier.** Even though the EU Commission did not stop a deal in 2021 and the Bundeskartellamt only issued one prohibition, almost half of Phase 2 deals ultimately failed. Despite the regulatory focus on big tech, none of these cases were pure tech deals.
- 2 Focus beyond overlapping activities.** The focus of merger control reviews goes beyond competitive overlaps. Concerns regarding vertical or conglomerate effects, potential foreclosure, interoperability, or purchasing power also have and will make deal reviews very difficult. The Bundeskartellamt even prohibited a change from joint to sole control (in a case with overlaps).
- 3 Break fees increasing?** In the aborted EU Phase 2 deals where information on reverse break fees is publicly available, those fees were (much) higher than what used to be the usual 3-5% range of deal volume.
- 4 Financial trouble is no free ticket to clearance.** While financial difficulties of the target can pave the way to clearance in some cases, they are no guarantee for a swift or easy review. Neither are Covid-effects. All deals aborted during EU Phase 2 review related to travel/tourism with targets in difficult financial conditions.

**Share of aborted and prohibited Phase 2 cases (EU and Germany)**



**Number of EU Phase 2 cases cleared without remedies:**

**0**

**Break fee range in aborted EU Phase 2 cases (compared to deal volume):**

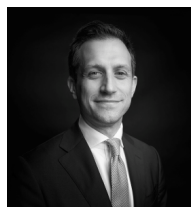
**6-15%**

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