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Getting the deal through in an era of policy-driven enforcement

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In 2026, merger control sits squarely inside a broader policy frame. Beyond traditional questions of market concentration, pricing power and merging parties' commercial incentives, competition agencies are taking account of a wider range of considerations, such as national security, resilience, growth and technological competitiveness. The mix of considerations will significantly vary from agency to agency. To inform their decisions, agencies ask more information from merging parties, use more analytical tools and explore points that may fall outside the purview of traditional merger control analyses. For dealmakers, that reality rewrites the sequence of a transaction: the policy case will often need to be designed alongside the competition case. And procedural mastery will be a key factor shaping the outcome of a transaction review. The recognition that merger control is just one of several regulatory reviews, and that competition agencies are taking a broader set of trade-related considerations into account, is also critical: foreign investment (FDI), and foreign subsidies in the European Union, as well as broader trade dynamics, can be determinative of deal feasibility. In complex remedies cases, effective remedy packages need to take account of all of these considerations, and early engagement with agencies is often essential. All of this makes for an increasingly unpredictable regulatory dynamic.

Merger control now firmly in the geopolitical arena

Dealmakers must now contend with several imperatives, and must build the policy case for their transaction, not just based on competition considerations. This is driven by the normalisation of policy-driven enforcement. Across major jurisdictions, there is a perception that merger control is becoming increasingly politicised, and no longer a technocratic review of consumer prices resulting from a transaction. That does not license weak theories of harm. Rather, it expands the factual record authorities expect: for example, evidence on innovation incentives, supply-chain resilience, investment and jobs may, at least in some jurisdictions, be taken into account as part of agencies' market definition and/or effects analyses.

The practical implication is that dealmakers now need to craft a jurisdiction-specific narrative that shows how the deal supports stated policy goals: resilience where supply chains are fragile; innovation where dynamic rivalry matters; and growth where investment and productivity are priorities. When facing cross-border reviews, fitting jurisdiction-specific narratives into a coherent transaction rationale becomes a key challenge.

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In the United States, the agencies pair a renewed openness to clearing straightforward deals with a focus on national interest, protecting workers and small businesses, promoting AI innovation and guarding against foreign influence. For its part, the EU is experimenting with how to embed industrial policy goals – strategic autonomy, innovation and resilience – into guidance while continuing to enforce intensively against both classic and evolving theories of harm. Across APAC, enforcement tracks national priorities with heightened attention to strategic sectors. Japan in particular has flagged an openness to allowing consolidation of domestic players with a view to protecting against ferocious foreign competition. And in China, the State Administration for Market Regulation (SAMR) continues to fiercely guard the national interest in reviews of both domestic and foreign transactions – even where these may fall below reportability thresholds. The exception may be the UK, where the Competition and Markets Authority's (CMA) "wait and see" approach to mergers being reviewed by other agencies and involving broader than national markets can be expected to lead to greater convergence in overall outcomes. In this patchwork, geopolitical awareness becomes a core execution risk: the same transaction can meet different receptions, so the policy narrative must be tailored, evidenced and synchronised across filings.

Mastering new merger control procedures

Procedures are no longer background – they are the playing field. While the judicial saga continues, the revised US Hart-Scott-Rodino form (temporarily) shifted filings toward EU/UK-level depth, with broader document collections, narratives on overlaps and supply relationships, and disclosures on interlocks and prior acquisitions. In Europe, call-ins and referrals (post-*Illumina/GRAIL*) and abuse-of-dominance pathways (post-*Towercast*) keep sub-threshold deals squarely in scope. In Asia, SAMR is also actively calling in below-threshold transactions (including after closing), and the Japan Fair Trade Commission recommends voluntary engagement for non-reportable but locally connected deals. Australia's new mandatory regime still preserves wide review powers, with the possibility for transacting parties to seek a formal waiver from having to notify straightforward transactions.

The wide array of procedural tools at agencies' disposal need to be kept under constant review and tailored according to the context of the relevant transaction. First, expansive jurisdictional triggers should be taken into account for deal documents and how they allocate or contend with regulatory and timing risk. This includes factoring in pre-notifications and springing conditions where applicable. There should also be a clear roadmap on who drives regulatory strategy. Second, awareness of different authorities' procedural objectives can be an advantage in obtaining a more predictable review timeline. For instance, in the UK, as part of its policy commitment to "the 4Ps" – predictability, proportionality, process and, particularly, pace – the CMA is now subject to a pre-notification KPI that sees it aiming to get deals "on the clock" within 40 working days of notification. While this is a welcome development, parties to complex transactions should always consider whether it might be preferable to opt-out from the KPI to allow scope for greater early engagement. Another example is Korea's pre-filing consultations and willingness to consider early remedy proposals that can also compress timetables. In China, SAMR is refining process requirements to reduce documentation in appropriate cases. Finally, in the United States, early terminations have returned for straightforward matters. Well-sequenced and coordinated multi-jurisdictional filings can turn procedural complexity into speed, provided the evidence is harmonised across regimes and made consistent with the overall competition and policy story.

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For more complex transactions, review timetables can materially extend. Pre-notifications not subject to any statutory timetables, call-ins with automatic suspensory effect and frequent information requests stopping the review clock all continue to contribute to reviews spanning the better half of one year, possibly even longer. Contract drafting must keep pace: efforts standards calibrated to the underlying risk assessment; information-sharing covenants robust enough for heavier disclosure; explicit cooperation and timing obligations aligned to authorities' KPIs; and reverse fees that reflect not only prohibition risk but also cover procedural delays, below-threshold call-ins, or referrals for in-depth investigations or litigation.

New merger control theories of harm to be prepared for

Competition agencies continue to explore novel (or historically unenforced) theories of harm. Labour and digital markets are two areas that have come into focus in a number of jurisdictions in recent months.

Around the globe, competition agencies are increasingly considering the impact of transactions on competition for labour, both as a theory of harm when reviewing transactions (see, for example, the FTC's cases against *Kroger Albertsons* and *Tapestry–Capri,* which both included concerns that increased consolidation could reduce competition for labour), and as a separate antitrust consideration (see, for example, the European Commission's fines of Delivery Hero and Glovo for their use of, inter alia, no-poach agreements originally provided for in a shareholders agreement). Parties to a transaction should expect questions on the impact of their deal on the workforce and competition for talent, and factor labour-related considerations into their substantive risk assessment. Equally, no-poach agreements that go beyond the scope of traditionally accepted ancillary restraints will also need to be very carefully thought through given the increased scrutiny they are likely to receive.

In the digital space, theories of harm based on access to important inputs, be it data (as in *UMG/Downtown*), infrastructure (as in *Vodafone/Three*) or even "talent" (as in *Microsoft/OpenAI, Google/Anthropic* and *Amazon/Anthropic*) are becoming increasingly common. Dealmakers active in digital sectors can be expected to be tested on these points, even where a traditional market share analysis might not reveal any obvious competition concerns to address (or even a qualifying transaction to review).

Dealmakers should be alive to these new trends in competition enforcement, which as the above cases demonstrate, are already determining the outcomes of complex transactions.

Merger control is but one piece of the regulatory puzzle

The past decade saw a proliferation of parallel regulatory review regimes. It is now not unheard of for a transaction to face more foreign direct investment (FDI) screening than merger control reviews. In the EU, the mandatory and suspensory Foreign Subsidies Regulation (FSR) regime for transactions adds a third layer of scrutiny. All these regimes have different policy objectives, which can be in tension with each other and complicate regulator-facing narratives – especially where the different regulators are in the same jurisdiction.

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FDI reviews in particular have matured into a parallel feasibility test. Where sensitive technologies, data, infrastructure, critical minerals or government supply chains are in play, asset sensitivity, not just acquirer profile, drives scrutiny, mitigation scope and timelines. This may mean that even investors from “friendly” jurisdictions can face increasing scrutiny, and increasing overall unpredictability. Expect elongated reviews (as with merger control, these can sometimes take over 12 months) and mitigations (access controls, data localisation, governance undertakings and trusted-supplier commitments). Sellers in sensitive sectors should rank bidders on clearance probability and mitigation credibility to preserve auction tension. Across regimes, trends rhyme but do not match. The Committee on Foreign Investment in the United States emphasises critical technologies, supply-chain integrity and resilience. EU member states are expanding coverage across critical technology, infrastructure and suppliers to government, and outbound screening is on the horizon. The UK National Security and Investment Act regime is issuing more final orders, and the government plans to widen the sectoral scope of its mandatory regime. In APAC, Japan continues to tighten its screening regime, including for minority stakes with potential hidden foreign influence. Imminent reforms would, if passed, capture both direct and indirect investments in Japanese corporations or businesses. Real estate in certain locations and health-data-rich medical devices are rising themes. For global deals, parties increasingly design one mitigation architecture that aligns with merger remedies to avoid contradictions at closing and during monitoring.

While investment commitments in R&D, technology or in additional manufacturing capacity might be a welcome message to governments looking to attract foreign investment, the EU foreign subsidies regulation places breaks on such actions where they are financed by alleged distortive foreign subsidies. With transactions facing FSR review, the “how” of financing is equally important as the “what” of the underlying conduct or markets.

Finally, the European Union is weighing plans to introduce restrictions on investments in emerging strategic sectors (for now: battery technologies, electric vehicles, solar PV technologies and extraction, and the processing and recycling of critical raw materials). If introduced, these changes would add yet another layer of regulatory review for certain transactions.

Facing a multitude of regulatory reviews from several different angles, merging parties need to conduct red-flagging in early stages of diligence. Transaction structure, financing, technology or product pipeline access, board rights, the management of sensitive information and post-close operating models must be stress-tested against plausible mitigation so that agreed commitments are implementable across jurisdictions and do not undermine the deal’s industrial and commercial logic.

Considering the wider picture

In addition to transactions triggering more, and more types of, regulatory filings than might have been the case just a few years ago, dealmakers also increasingly need to contend with agencies taking a broader set of considerations into account.

Particularly where a transaction crosses borders, parties are faced not only with considering the domestic policy objectives of the relevant regulators but also the impact of tariffs and trade policy on commercial decision-making. Trade policy is now a front-line policy lever with rapidly shifting tariffs, retaliatory measures and rules-of-origin enforcement altering input costs, supply routes and competitive positions. These levers are being pulled with respect to friend and foe alike, leaving little for granted. Companies responding with friend-shoring, near-shoring and dual-sourcing strategies should capture those moves inside the transaction narrative: explain how the combination hardens supply resilience, diversifies risks and supports national strategies on critical inputs (from semiconductors to energy).

Practically, this means integrating trade counsel early, aligning claims made in merger and FDI filings with customs and export-control disclosures, and ensuring any remedy that touches inputs (eg, supply commitments) is compatible with tariff-exposed cost curves and feasible under export-control constraints.

The new roadmap for merger control remedies

As with the actual merger control reviews, remedy expectations now reflect broader policy aims alongside competition theory. The toolkit diverges: recent CMA decisions point to an agency that is more open to behavioural or hybrid solutions than in years gone by. The EU still prefers structural divestitures but is revisiting guidance with an eye to preserving innovation incentives and resilience. The United States remains structurally oriented and sceptical of conduct-only fixes. Conversely, China often relies on behavioural commitments in strategic sectors to offset perceived supply chain vulnerabilities. For complex multi-jurisdictional deals, these differences require remedy-first engineering: mapping viable divestiture units; testing access and interoperability, supply and firewall commitments; geopolitical coherence; ensuring monitorability; and aligning with any FDI or FSR-induced mitigations.

Transaction documents must take account of these developments (as well as developments in FDI and FSR enforcement), one way or another. Sellers increasingly seek specificity (pre-agreed packages or staged remedy offers), while buyers push for flexible efforts obligations tied to evidence and feasibility. Break fees are being linked to earlier regulatory inflection points, such as the opening of Phase II investigations or Second Requests, rather than only outright prohibition. The parties that arrive with a credible policy story and a realistic, data-backed menu of structural and behavioural options are best placed to shorten reviews and protect value.

Getting the deal through in 2026

While there have been a number of important developments in the international merger control, and broader regulatory, landscape over the past 12 months, points of good practice remain largely unchanged (albeit more critical than ever).

The importance of developing a relevant, coherent and consistent narrative

Dealmakers should be cognisant of the broader policy objectives that competition agencies are (increasingly) being expected to play a role in advancing, such as the promotion of economic growth, and how their transactions fits in with these considerations.

At the outset of a complex transaction, careful thought should be given to developing an evidence-based narrative that is effective in emphasising the pro-competitive and/or broader policy benefits likely to result from the transaction. This is not an exercise that should be done in the abstract – to avoid becoming a hostage to fortune, parties should stress test

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the transaction narrative against the available evidence, including in particular, the parties' internal documents. Reminders on the importance of document hygiene as the transaction progresses should also be given to the business.

For transactions involving filings across multiple jurisdictions, the narrative should, of course, be tailored to take account of local nuances. A global perspective is needed, however. In describing the benefits of the transaction, whether from a competition and/or policy perspective, it is critical that there is overall consistency in messaging across jurisdictions, both with agencies and in discussions with customers and other relevant stakeholders.

Fail to prepare, prepare to fail

As ever, when planning complex transactions that require filings in multiple jurisdictions, detailed planning – both on substance and process – will be key.

On substance, it is important to work out as early as possible in the process where filings are going to be triggered or present a call-in risk, the key regulatory concerns (if any) that agencies are likely to have and the evidence needed to address those concerns, and remedies strategy (if needed), including commercial redlines and when to engage with relevant agencies.

Equally, on process, dealmakers need to give serious consideration to the likely impact regulatory reviews will have on the transaction timetable and the sequencing of filings early on in a transaction process. Failure to do so can lead to regulatory hold-ups not anticipated in the transaction documentation and/or staggered, rather than simultaneous remedies negotiations with different agencies (which can result in sub-optimal outcomes).

It is also important that expectations are set as between the parties to the transaction about their respective roles in shaping the merger control, and broader regulatory strategy, as well as their obligations, and this should be clearly documented in the transaction documents to avoid disputes further down the line.

Early clarity on remedies (where likely to be needed) can make the difference

In transactions where complex remedies are likely to be required in multiple jurisdictions, early and serious engagement with agencies on potential remedy packages will often ensure acquirers have the best possible chance of designing a commercially acceptable, global remedies package that goes no further than is required. In a time of sudden, policy-driven shifts in merger control enforcement, regular discussions with case teams can also give parties an early steer on new headwinds that need to be adjusted for.

Even where early engagement with agencies is not the best course of action, dealmakers should settle on their remedies strategy early on in the life of a transaction and test where their commercial red lines would be in a worst-case scenario.

Conclusion

The 2026 landscape is exacting but navigable. Authorities want coherent stories backed by credible remedies, and they are signalling where flexibility exists. Deals that meet the moment, by integrating geopolitical awareness, procedural rigour, FDI and FSR feasibility and remedy realism, can still proceed on competitive timetables. Often, the aim will be not to avoid scrutiny but to channel it: to demonstrate, with evidence, how the transaction preserves rivalry while advancing resilience and innovation in the markets that matter most. That is how, in a policy-driven world, ambitious combinations can still get done.