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Merger control amid geopolitical shifts and antitrust scrutiny

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Following a 'year of elections' in 2024, with (national) elections taking place in over 50 countries globally, significant changes are seen in governmental priorities and regulatory approaches. The landscape of merger control is equally undergoing transformation, influenced by geopolitical shifts, tariffs and trade wars, evolving antitrust trends, and heightened regulatory scrutiny.

In the wake of this changing of the guard, one of the changes anticipated in this evolving landscape is that mergers may be increasingly scrutinised through a political and often protectionist lens. This would imply that mergers perceived to align with national interests may be more likely to receive approval, while those that do not may face tougher scrutiny. Regulators are employing a variety of new tools, such as call-in powers and ex post abuse of dominance investigations, to review mergers that are deemed to require close scrutiny. They are also deploying more creative theories of harm.

As a result, merger control is becoming increasingly complex and difficult for dealmakers to navigate.

Impact of the changing of the guard

In the European Union, a new European Commission was established at the end of 2024. Long-time Executive Vice President and Competition Commissioner Margrethe Vestager was succeeded by Teresa Ribera, whose role has been redefined as Executive Vice President for 'a Clean, Just and Competitive Transition'.

Commission President Ursula von der Leyen's mission letter to Commissioner Ribera emphasises the need for a 'new approach to competition policy'. Echoing recommendations from the impactful Draghi Report, this approach aims to support European companies scaling up in global markets, ensuring that European businesses and consumers benefit from effective competition. It also aligns with common goals such as decarbonisation and a just energy transition. The letter highlights the importance of resilience against geopolitical threats and unfair competition through subsidies. To achieve these objectives, Ribera is tasked concretely with reviewing the Horizontal Merger Control Guidelines and addressing below-threshold mergers and 'killer acquisitions'.

Across the Channel, following the election of a Labour government focused on fostering economic growth, the UK Competition Markets Authority (CMA) published its 2025–2026 annual plan. The UK government's removal of CMA Chair Marcus Bokkerink at the same time signalled a change of approach. The annual plan aims to 'drive growth by promoting competition, protecting consumers, and enhancing business and investor confidence'. Chief Executive Sarah Cardell explained that while the CMA's core principles remain unchanged, the external landscape has evolved. Highlighting geopolitical turbulence and shifting government priorities, she announced several changes for the coming years.

To stimulate economic growth, the CMA will focus on reforms to its processes and engagement with businesses, ensuring a level playing field and inspiring confidence. Simultaneously, the CMA has launched a review of its merger remedies approach, with Cardell stating that 'every deal capable of being cleared either unconditionally or with effective remedies should be, and only truly problematic mergers, where harm to businesses and consumers cannot be effectively addressed, should not proceed'. Reflecting a broader trend of regulators viewing merger control through a political lens, the CMA's chief economist suggested considering a deal's positive externalities on the broader economy. For example, large-scale infrastructure markets that benefit the entire economy should be evaluated for their wider impact beyond specific overlap markets.

In the United States, new antitrust leadership has been appointed for both the Department of Justice (DOJ) and Federal Trade Commission (FTC), while the new administration has also sought to test the boundaries of the FTC's independence by removing the two Democratic commissioners from their seats. With this realignment, newly appointed FTC Chairman Andrew Ferguson plans to reverse former Chair Lina Khan's 'war on mergers' by not unnecessarily delaying mergers that benefit consumers and halting the use of his predecessor's novel theories. Meanwhile, the DOJ's Antitrust Division is now led by Gail Slater, who has experience in merger enforcement at the FTC but more recently was a close adviser to Vice President Vance. Although the agencies will no longer be waging their war on mergers, it does not mean that either will shy away from challenging potentially harmful deals. Similar to other jurisdictions, there may be a renewed acceptance of behavioural remedies, with agencies under pressure to approve mergers in certain sectors.

Mergers in the United States will face an increased burden as a result of the new Hart-Scott-Rodino (HSR) filing form. This update marks one of the most significant changes to HSR review process in nearly 50 years, requiring parties to provide substantially more detailed information. This will increase preparation time and the risk of extended information requests or further investigation. Key changes include obligations to provide ordinary course of business documents as well as a broader set of deal-related documents with the filing, and requirements for information on interlocking directorates (section 8 of the Clayton Act Assessment), subsidies from foreign entities or governments of concern, global overlaps (not limited to the United States) and detailed ownership structures.

In South Africa, the competition authority is considering raising merger control notification thresholds to reduce the number of notifications. While emphasising the need for effective merger control regulations, the authority also highlights the importance of fostering economic growth and the role competition regulation can play.

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All of these changes show the increased volatility and unpredictability of the environment in which merger control authorities operate and evaluate deals.

Shifting priorities and multifaceted investigations

Amid shifting geopolitical dynamics and guided by Ribera's mission letter, the Commission is planning a comprehensive update of the Horizontal Merger Control Guidelines to reflect changing market dynamics, new theories of harm and a calibration of priorities. Director General Olivier Guersent (who will retire in 2025) highlighted by way of example the relative ease of assessing a merger's potential to spur innovation compared to its ability to boost investment. Unlike innovation, there is no established theoretical framework to predict how mergers might enhance investment, which makes it difficult to codify in updated guidance. Guersent's comments reflect a broader focus on economic growth and investment stimulation in Europe, including in the context of merger control.

For years, key protagonists have urged the Commission to ease its scrutiny of emerging European champions, particularly in pressured industries like transport, logistics and defence. For example, in line with geopolitical priorities and EU defence spending, the CEOs of Airbus, Leonardo and Thales met Commissioner Ribera in April 2025 to discuss their three-way joint venture satellite business with a view to creating a European counterforce to the US's Starlink.

Innovative and creative theories of harm, and the renaissance of behavioural remedies

In recent years, global antitrust authorities have been developing alternative theories of harm in merger reviews. This shift has led to increased scrutiny of several high-profile deals, sometimes resulting in their abandonment. Notable examples include the Amazon/iRobot, Adobe/Figma and Booking/eTraveli cases, each examined through novel lenses.

At the same time, the role of AI in everyday life and merger control is becoming increasingly significant. As AI proliferates and investment surges, regulators are faced with the question how to deal with AI markets and developments. Some regulators have expressed the need for close scrutiny of these highly complex markets, and are actively monitoring deals in this space. For instance, Brazil's Administrative Council for Economic Defense (CADE) opened investigations into three AI-related acquisitions: Anthropic by Amazon, MistralAI by Microsoft and Character AI by Google (another remains confidential). A Brazilian official noted that traditional theories of harm might be more suitable for AI transactions than new, innovative theories. Meanwhile, OpenAI's associate general counsel commented that current merger control regimes may not be equipped to handle AI deals. It will be interesting to see how global regulators address merger and acquisition activity in the AI space in the coming years, and what creative theories they will deploy in the process.

Simultaneously, Andreas Mundt, head of the German competition authority, noted a shift in focus towards innovation-related theories of harm, cases where 'the theory of harm is not so much price or quality related, but is innovation related in both directions'. Recent cases, such as Thermo Fisher and Edwards Lifesciences, exemplify this trend, where impact on innovation is scrutinized alongside traditional concerns like price and quality. Ultimately, the Thermo Fisher case was cleared unconditionally by the German and UK authorities, while

Edwards Lifesciences fell below the traditional notification thresholds. Following a review under alternative thresholds that apply when the target is active in the respective jurisdiction 'to a significant extent', the German authority dropped its review and the Austrian Supreme Court ruled that the Austrian authority could not review the deal as the target was not active in Austria to a significant extent.

As merger control (and arguably theories of harm as well) becomes increasingly innovative and creative, the question is whether remedies to fix potential competition issues are on par. Will we be seeing the renaissance of behavioural remedies?

The recent CMA investigations into the Vodafone/Three and the Schlumberger/ChampionX mergers may be the prelude to a broader revival of behavioural remedies. The CMA, under pressure to foster economic growth while maintaining effective competition, ultimately cleared the Vodafone/Three merger subject to behavioural remedies at the end of 2024. Following an in-depth Phase 2 investigation, the CMA ultimately found that the merger could go ahead if the parties committed to:

- deliver a joint network plan for their combined network across the United Kingdom over the next eight years;
- cap selected mobile tariffs and data plans for three years, directly protecting affected customers from short-term price rises in the early years of the network plan; and
- offer pre-set prices and contract terms for wholesale services for three years to ensure that virtual network providers have competitive terms and conditions.

In Schlumberger/ChampionX, the CMA accepted a novel licence remedy to approve the deal. The CMA's approach to these cases illustrates its new approach to consider other objectives such as economic growth and investments in the British economy.

Meanwhile, in March 2025, the CMA launched the review of its remedies approach focusing, among other things, on the questions of when behavioural remedies may be appropriate, how remedies can be used to preserve any pro-competitive effects of a merger and how the process of assessing remedies can be made as quick and efficient as possible.

At the same time, the expectation is that US agencies may be more receptive to pre-complaint settlements, including those involving behavioural remedies. At the Capital Forum event during the ABA Spring Meeting, FTC Chairman Ferguson and DOJ Assistant Attorney General Slater commented that the agencies will more actively support (potentially) successful remedies, while also indicating that parties should consider more actively proposing remedies alongside their HSR filings (essentially proposing a fix-it-first).

The potential increased willingness to consider behavioural remedies may also be fostered by recent judgments in this space. As an example, under the previous administration, the FTC sued the 'mattress deal' (Tempur Sealy/Mattress Firm) despite the parties offering a range of behavioural remedies during the administrative process. Ultimately, the FTC lost in court, with the judge considering (among other factors) that the behavioural remedies offered by the parties were sufficient to prevent the merger from substantially lessening competition, confirming that the legal test relates not to requiring the remedies to eliminate all competitive harm, but to prevent the merger from substantially lessening competition.

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Below-the-threshold reviews

At the ABA Spring Meeting 2025, Commissioner Ribera identified tackling killer acquisitions as the most pressing merger control issue currently facing the Commission, confirming that the Commission remains laser-focused on those deals despite a setback in applying article 22 of the European Union Merger Regulation (EUMR). And indeed, in 2024 and 2025, there have been several article 22 EUMR referrals and national reviews of transactions that fell below the thresholds. They include investigations into mergers under antitrust laws, such as abuse of dominance.

In response to the Court of Justice's ruling in the Illumina/Grail case, which closed the article 22 EUMR backdoor to EU merger review, several EU and European Free Trade Association member states have begun modifying their merger control regimes to include call-in powers, allowing them to call-in certain transactions for review under the national merger control regime. This would effectively also allow those same member states to subsequently use article 22 EUMR to refer the case to the European Commission. A number of jurisdictions have already granted their merger control authorities call-in powers (including Cyprus, Denmark, Hungary, Italy, Ireland, Latvia, Lithuania and Sweden), while others are in the process of adopting legislative changes (such as the Netherlands, Belgium, France and others) or have broad, multi-interpretable rules that could result in de facto call-ins (such as Austria and Germany).

A call-in with a subsequent article 22 EUMR referral was first deployed by the Italian authority in the Nvidia/Run:ai case. Although the monetary notification thresholds were not met, the Italian authority used its powers to call-in the transaction for review. It subsequently referred the case to the Commission under article 22 EUMR. The Commission accepted the request, stating that the transaction threatened to significantly affect competition in the markets where Nvidia and Run:ai are active, which are likely to be at least EEA-wide in geographic scope and therefore including the referring jurisdiction of Italy. Given its intrinsic knowledge and expertise in assessing cross-border markets, the Commission concluded that it was indeed best placed to review the transaction. Following a three-month review of the transaction, the Commission ultimately cleared the transaction unconditionally in December 2024.

The Commission may also be more inclined to encourage parties and national competition authorities to more frequently use the more 'traditional' referral mechanisms of article 4(5) EUMR (referral to the Commission in case at least three member states have jurisdiction) and article 9 EUMR (referral of a Commission case to a member state), to ensure that potentially harmful mergers are closely scrutinised by the most appropriate authority.

Besides the call-in or referral cases, merger control authorities have also become more active in using traditional antitrust (article 101 and/or 102 of the Treaty on the Functioning of the European Union (TFEU), or national equivalents) to investigate below the threshold mergers. This follows from the Towercast ruling in which the EU Court of Justice essentially ruled that the rules on abuse of dominance (article 102 TFEU) can be used to challenge post-closing acquisitions that fell below the notification thresholds. In its judgment, the Court of Justice held that it is in particular 'for the authority in question to verify that a purchaser who is in a dominant position on a given market and who has acquired control of another undertaking on that market has, by that conduct, substantially impeded competition on that market'. In other words, the act of acquiring another company can in and of itself be an abuse of dominance, prohibited by article 102 TFEU (and national equivalents).

Shortly after that judgment, the Belgian competition authority opened an investigation into Proximus's acquisition of EDPnet. At the beginning of 2025, the Belgian authority also opened an investigation – this time under article 101 TFEU – into the acquisition of the artisan bakery segment of Ceres by Dossche Mills Group, which was abandoned only a few months after the opening of the investigation. And there are other examples: the Dutch competition authority opened an investigation into the acquisition of the Dutch branch of the German company Ziemann by competitor Brink's, both active in the cash transportation business.

Europe is not alone in its interest to examine below-the-threshold mergers. The Chinese merger control thresholds were changed recently, emphasising the authority's ability to review transactions that fall below the thresholds if they might have anticompetitive effects. Although the State Administration for Market Regulation (SAMR), China's antitrust authority, has had these powers for a few years, they have recently been re-emphasised and formal guidance has now been provided in separate regulations. In 2023, SAMR cleared a deal that did not meet the notification thresholds but that was voluntarily notified to it (a possibility under the regulations).

The focus on mergers that fall below the threshold is also illustrated by the changes to the Australian merger control regime. The current Australian regime is a non-suspensory regime where parties can voluntarily notify deals or the authority can call in deals for review if the combined shares exceed 20 per cent or the deal could otherwise harm competition. By 1 January 2026, that regime is set to change to a mandatory suspensory regime based on clear (monetary) notification thresholds. However, the Australian legislature has decided that the authority must retain its ability to call in transactions that would 'fall below the monetary thresholds' (ie, retaining the possibility to intervene in smaller but harmful deals).

Review of concentrations within a changing global context

The intersection of geopolitical shifts, tariffs and trade wars, evolving antitrust trends, and heightened regulatory scrutiny has created a complex environment for mergers and acquisitions. As geopolitical dynamics continue to shape the global merger control and trade landscape, merging parties must navigate an increasingly complex regulatory environment. The divergence in regulatory approaches across jurisdictions necessitates a strategic and informed approach to merger planning and execution. By understanding the evolving priorities and innovative regulatory tools employed by antitrust authorities, businesses can better position themselves to achieve successful outcomes in this unpredictable landscape. This applies not only to merger control, but also to the Foreign Subsidies Regulation (FSR) and foreign direct investment review, both of which have also seen a surge in complex reviews and in-depth investigations over the past years.

At the same time, regulators are struggling to devote undivided attention to all developments and are forced to prioritise. For instance, in April Director General Guersent commented that the European Commission is 'so grossly understaffed' that it has to make priority choices that are difficult to reconcile with the policy objectives the Commission is pursuing. The Commission has received additional powers and oversight in recent years, including on the Digital Markets Act and FSR, leading to a significant understaffing problem. In this light, the Commission acknowledged that it is limited in its ability to launch ex officio reviews under the FSR, given the large number of notifications it receives for ex ante review.

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In sum, 2025 will likely go down in history as a turbulent year, not just from a general geopolitical perspective, but from a merger control perspective as well. Companies and their advisers planning mergers and acquisitions should be aware of these dynamics and consider merger control and other regulatory issues early, strategically and with a holistic approach.