FRESHFIELDS

JANUARY 2025

Navigating antitrust

10 key themes from the forefront of global antitrust

Introduction

As we predicted in our last edition, 2024 saw some remarkable developments in antitrust.

Perceptions of underenforcement in merger control saw regulators in the US, EU, and UK testing the limits of their jurisdiction and developing novel theories of harm, making the path to merger clearance for some deals even more challenging – whilst in Asia Pacific some regulators sought new powers to bring in more deals for review.

Businesses faced increasingly stringent scrutiny under foreign investment, national security, and subsidy control rules across a broader range of sectors. Proactive preparation for regulatory regime changes also defined many of 2024's key themes, particularly in relation to digital and consumer-facing markets. We saw artificial intelligence emerge as the next frontier for antitrust intervention, with early mover agencies sharpening their focus on specific parts of the AI value chain. Competition and monopolization investigations, backed by enhanced and reinvigorated investigatory powers, saw robust antitrust enforcement as well as a rise in creative cross-border claimant strategies and novel approaches to litigation.

This year, a transition in agency leadership is taking place, notably in the US and the EU. Competing political priorities for new governments and new antitrust agency heads around safeguarding economic growth and investment, while at the same time promoting resilience and national security, will be reflected in antitrust policy, maintaining antitrust at the forefront of global attention in 2025:

- **Global M&A.** Jurisdictional uncertainty will continue, particularly in relation to "killer acquisitions". In Europe, we anticipate the European Commission exploring alternative ways to preserve its ability to intervene in below-threshold transactions, following its defeat in Illumina/Grail. With several EU Member States using their national call-in powers and agencies in other jurisdictions such as the UK and Australia introducing new or revised merger notification thresholds, dealmakers must remain vigilant in mapping potential review points. Where reviews are triggered, the growing overlap – and potential tension – between competition policy and non-competition priorities further complicates merger control review, bringing with it new considerations and challenges for multi-jurisdictional coordination. That said, in the US, we expect greater reliance on traditional theories of harm and economic analysis. And a more positive outlook for remedies may be on the agenda in certain jurisdictions, including in the US, particularly for those willing to engage early with regulators.
- **Foreign investment.** Rigorous review of foreign direct investment in Europe and the UK and increasingly elastic interpretations of what is prohibited and permitted under relevant US laws will continue in 2025. Mitigation measures in key jurisdictions will become more frequent and more complex. We will see the tightening of existing rules as well as the introduction of new mechanisms for protecting national security interests, including outbound investment programs.

- **New and updated regulatory regimes.** Merger review will continue to be at the forefront of the US regulatory agenda. New filing requirements for reportable transactions are slated to take effect in February, although potential executive and congressional actions may result in a delay or further evaluation. Regimes governing digital and consumer-facing markets will remain in the antitrust spotlight throughout 2025, with ongoing implementation and monitoring of the main obligations and prohibitions in the EU's Digital Markets Act and entry into force of the UK's much anticipated Digital Markets, Competition and Consumers Act. This growing scope of regulation lends itself to heightened complexity, requiring businesses to navigate these challenges proactively.
- **Artificial intelligence.** The AI/antitrust interface will remain a key area of focus in 2025. However, new administrations in the EU and US will see a shift in enforcement priorities and a balancing of regulation with the need to foster technological innovation and economic growth.
- **Antitrust enforcement.** Agencies are expected to keep pushing antitrust boundaries, whether by pursuing new forms of collusion, like the focus on algorithms in the US, or evolving monopolization theories and scrutinizing unfair practices in Europe and Asia. As the scope of cartel investigations broadens, vigilance and proactive measures will be essential to mitigate antitrust risk, while remaining competitive.
- **Antitrust litigation.** Through a growing number of funders and claimants, the volume of global disputes is expected to rise further in 2025, with allegations of anticompetitive behavior encompassing consumer, data protection, and environmental issues in Europe. In the US, public enforcement is expected to take a more traditional – yet still active – approach under the incoming Trump administration.

As authorities take action to promote competitive markets, protect consumers, and support productivity and innovation, we invite you to explore what 2025 holds for your business in this 15th edition of 10 Key Themes, our annual forecast of the most critical antitrust trends to watch in the year ahead. Strap yourself in, because it's going to be another dramatic year for global antitrust.

Alastair Chapman
Global Head,
Antitrust, Competition and Trade Group

With thanks to Karen Slaney for her contribution.

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Power in transition:

What newly elected political leaders and agency heads mean for antitrust in 2025

Power in transition: What newly elected political leaders and agency heads mean for antitrust in 2025

In brief

Over two billion voters went to the polls in 2024, a pivotal year that will have important ramifications for global antitrust enforcement. Competition law and policy are expected to realign in many jurisdictions. Antitrust agencies will become increasingly mindful of growing political pressure to consider domestic growth, security and resilience concerns, and industrial policy goals. As political influences and domestic imperatives vary by jurisdiction, so too will the analytical frameworks employed by each antitrust authority. These trends will make managing multi-jurisdictional cases increasingly complex.

Shaping 2025

Adopt a comprehensive strategy. Newly elected political leaders and agency heads are focusing on the expanding importance of antitrust law as a tool for industrial policy. In 2025, businesses must move beyond looking at antitrust issues in a silo and embrace a more comprehensive approach to navigating the current regulatory landscape. Reading the room and staying attuned to developments in this new environment will be essential.

Recognize differences in approach. With the growing decoupling of world economies and the rise of policies favoring national interests, businesses must navigate an increasingly differentiated enforcement landscape. Firms need to account for these variances when planning deals, shaping antitrust compliance strategies, and conducting business activities. A sophisticated analysis will help identify the key risks and provide strategies for mitigating them.

Don't forget the opportunities. While global antitrust enforcement is expected to remain aggressive, the emergence of new approaches can also unlock significant opportunities. Many new governments' emphasis on growth may also open doors for new investment.


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Antitrust enforcement as a tool for industrial policy goals

In an increasing number of jurisdictions, politicians are pressuring competition authorities to use antitrust laws to achieve industrial policy objectives. These objectives include supporting local economies, fostering national or regional champions, and advancing priorities like resilience, inward investment, the green agenda, and national security. These imperatives vary by country and threaten to reverse decades-long attempts to achieve harmonization and convergence in multi-jurisdictional merger reviews. Nevertheless, these trends may provide a route to clearance for more challenging transactions in some instances.

Under President Biden, the goals of US antitrust enforcement expanded, with progressive enforcers broadening their analysis to consider the impact of business activities and proposed mergers on labor, small businesses, and other constituencies beyond consumers. The populist wing of the Republican Party often shares goals similar to those of the progressives in the Democratic Party, and both President-Elect Trump and Vice President-Elect Vance have embraced populist themes.

Power in transition: What newly elected political leaders and agency heads mean for antitrust in 2025

Early in 2024, then-Senator Vance praised Federal Trade Commission (FTC) Chair Lina Khan's enforcement stance, although he has subsequently walked back his seeming embrace of her policies. This populist influence has played a role in shaping the second Trump administration's personnel choices, and we anticipate that antitrust enforcers will maintain a focus on workers and small businesses. That said, President-Elect Trump is a lifelong entrepreneur and business man who prizes limited government, as demonstrated by the strong deregulatory bent of his first term. Consequently, we expect a scaling back of the more radical enforcement policies of the Biden era, while maintaining a robust antitrust agenda.

In the UK, the Labour Party's landslide victory in the July 2024 general election has brought renewed focus on economic growth. Since taking office, Prime Minister Keir Starmer has urged the Competition and Markets Authority (CMA) to prioritize growth, investment, and innovation in the country. Despite bold statements from the government, the CMA has publicly defended its approach to antitrust enforcement, and merger control in particular. We think it is unlikely that the Labour Party's win will result in a general weakening of antitrust enforcement in pursuit of the government's growth objectives. Speculation that the CMA's recent clearance of a four-to-three telecoms deal with only behavioral remedies signals a more relaxed approach to merger control enforcement is, in our view, somewhat misplaced. Investment and growth considerations are, however, likely to continue playing a significant role in some cases.

> The question of whether antitrust enforcement drives or hinders growth is now critical. While the CMA has responded to the Labour government's focus on growth with initiatives like the new Microeconomics Unit Growth Programme, it has been clear that its role is to apply statutory tests and analyze the effects of a specific transaction independently.
>
> **Martin McElwee**
> Antitrust Partner, London/Brussels

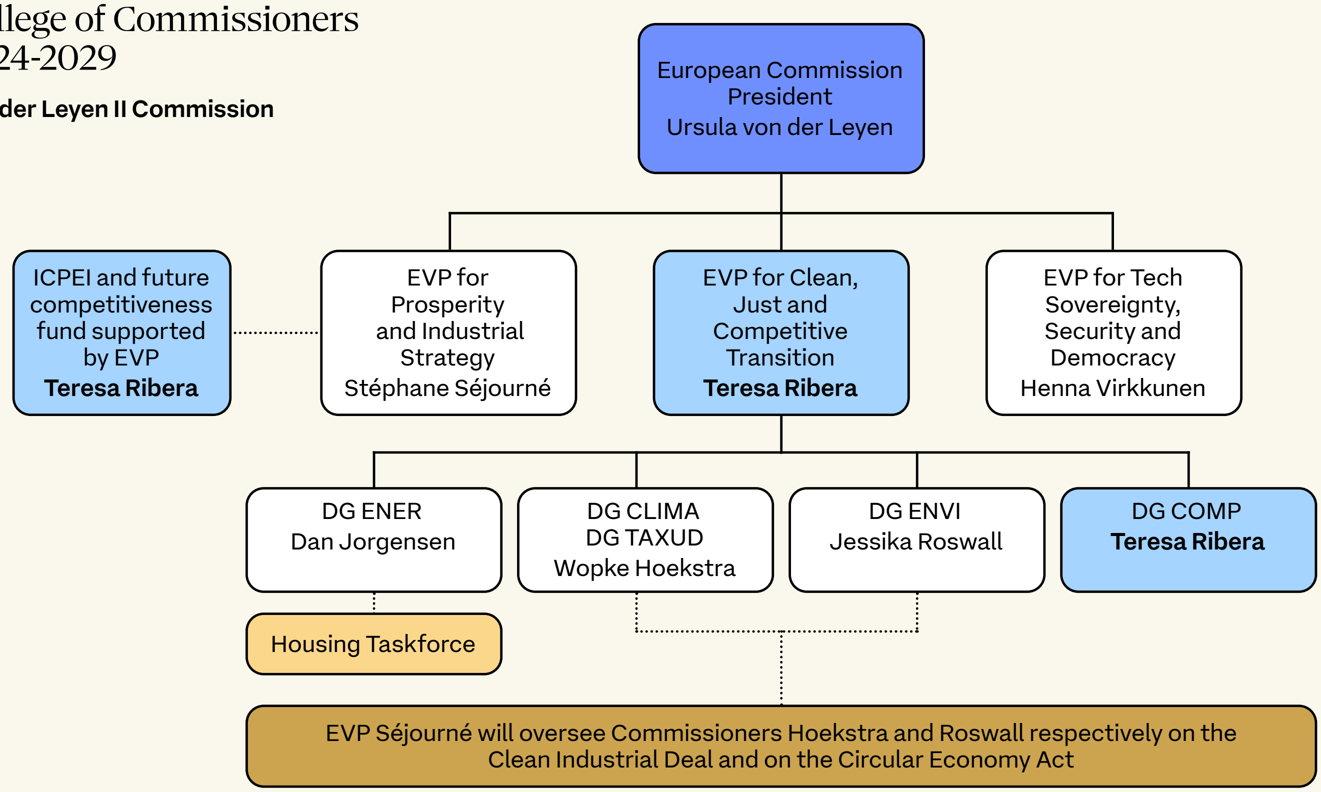
In Europe, European Commission (EC) President Ursula von der Leyen has called for a new approach to competition policy that gives greater weight to innovation and resilience. In her mission letter to the new Commissioner responsible for competition, Teresa Ribera, President von der Leyen highlighted the importance of Mario Draghi's report on the future of European competitiveness to all Members of the College, which proposes that the EC take account of geopolitical and other threats to supply chains. The report recommends using regulatory tools like antitrust to support growth and innovation, enabling European companies to remain competitive globally.

> Championing European businesses is likely to be a priority for the European Commission. While a revamp of the EU Merger Regulation requires unanimity among EU Member States and might be politically challenging, some policy adjustments should be expected. This is likely to include a more open approach towards scale and innovation defenses in strategic sectors.
>
> **Thomas Janssens**
> Antitrust Partner, Brussels

Commissioner Ribera has also publicly supported the goals of improving the competitiveness of European national champions and lowering barriers to innovation. Her brief, tellingly framed as competition "policy" rather than "law", together with her background, indicates a shift towards using competition law to achieve broader policy goals, such as decarbonization. This marks a departure from Margrethe Vestager's emphasis that rigorous competition enforcement ensures the best outcomes for EU citizens.

Teresa Ribera's role in College of Commissioners 2024-2029

von der Leyen II Commission



In Asia, the use of antitrust laws in furthering industrial policy goals is frequent, and this trend is steadily increasing. Japan's Fair Trade Commission (JFTC) declared that it is "actively addressing socially significant issues in recent times, when price pass-through across the entire supply chain has been a crucial policy objective." Industrial policy considerations can also influence the JFTC's case selection. In China, the government remains focused on stimulating the economy and attracting foreign investment into priority sectors. Consequently, the State Administration for Market Regulation (SAMR) is taking a restrained approach to merger control and conduct enforcement.

As antitrust agencies pursue distinct, often localized policy objectives, the risk of diverging outcomes in merger and antitrust investigations will increase. At the same time, day-to-day enforcement activity will continue to involve extensive coordination among agencies globally, making robust cross-border strategies essential for businesses.

Continued aggressive enforcement

The consideration of industrial policy goals or politically driven agendas in some cases does not signal more lenient treatment of deals or conduct overall. Key competition agencies are expected to maintain aggressive enforcement with other factors only influencing the direction of travel in limited circumstances. Businesses must remain prepared for sustained, active enforcement worldwide.

In the EU, President von der Leyen called for continuing robust enforcement of the EU Foreign Subsidies Regulation, aligning with Europe's geopolitical priorities, and the Digital Markets Act. Her mission letter to Ribera also calls for addressing the risks of "killer acquisitions" targeting nascent competitors. Additionally, the EC is expected to consider (again) a New Competition Tool to address structural competition issues in both digital and non-digital markets, with Germany leading efforts to include this in the EC's agenda.

In the UK, a strong enforcement agenda is expected to continue, especially in digital markets. The implementation of the Digital Markets, Competition and Consumers Act will give the CMA "game-changing" powers in relation to digital markets and consumer enforcement, and the CMA is already preparing a significant pipeline of work to begin as soon as these powers take effect. This new legislation also gives the CMA stronger enforcement powers across the board, with the promise of quicker, but potentially tougher, investigations in the future.

In China, the National Development and Reform Commission that is responsible for national security reviews is increasingly interested in sectors involving advanced technologies and areas involving collection of personal data. Remedies may now be required to resolve these concerns and obtain clearance. A number of authorities across APAC are intensifying deal scrutiny – a trend unlikely to slow down.

> SAMR continues to focus on transactions affecting supply chain security, with an increase in its use of call-in powers. Clients should prepare for lengthy review periods, as these often require input from a broad group of stakeholders to assess their impact on competition and Chinese industrial policy.
>
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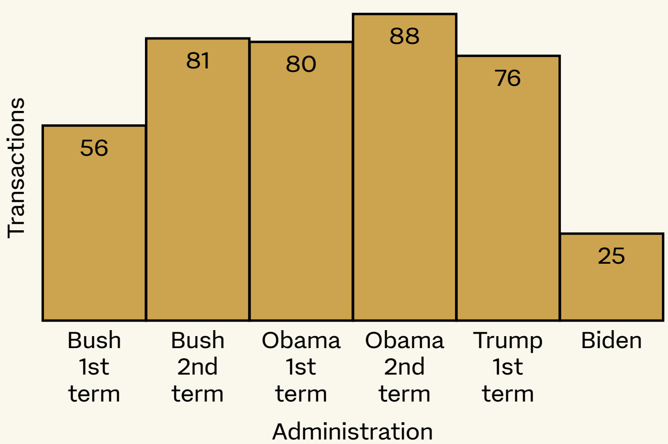
Finally, we expect sustained scrutiny of mergers by the US agencies. The two Republican commissioners who joined the FTC in 2024 – including Andrew Ferguson, the incoming FTC Chair – have played an active role in challenging mergers, voting with the three Democrat commissioners to issue complaints. If the past is prologue, Trump 1 signals a robust enforcement agenda during Trump 2. In the first Trump administration, both the FTC and the Department of Justice Antitrust Division (DOJ) maintained a healthy roster of second requests, consents, and litigated challenges. And during the last calendar year of President Trump's first term in office, the U.S. FTC set a 20-year record for merger enforcement. While the DOJ pursued fewer litigations, it forced the abandonment of several high-profile mergers and initiated a comparable number of full-phase investigations to the FTC. Notably, while we do anticipate an aggressive enforcement stance during the second Trump administration, we also expect that merger review will depend more heavily on traditional theories of harm and economic analysis, and exhibit a greater receptivity to merger remedies and settlements rather than litigated challenges.

It remains uncertain whether the new heads of the FTC and the DOJ will preserve the new pre-merger filing form announced under President Biden in October 2024. The five sitting FTC commissioners voted unanimously to issue the revised and more burdensome form, substantially increasing notification requirements for proposed deals under the Hart-Scott-Rodino Act (HSR). The two Republican votes for the new HSR form could diminish Congressional appetite to set it aside using the Congressional Review Act. An executive order freezing all finalized but not yet implemented rules could offer a 60-day reprieve; using the rulemaking process required by the Administrative Procedure Act to pare back the more burdensome aspects of the new form will take time.

US merger review settlements by administration



> Although the Trump administration will not approach mergers with the inherent skepticism of M&A activity we saw in the Biden administration, mergers will not be waved through. Agencies will apply generally accepted theories of harm and rigorous economic analysis to evaluate proposed deals, with remedies pressure-tested for competitive viability.
>
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With thanks to Cara Carr, William Cooke, Natalie Pettinger Kearney and Chi Chung Chan for their contributions to this theme.

2.

A new age for industrial policies:

Could strategies to promote key sectors mean more (or less) intervention for certain deals and collaborations?

A new age for industrial policies: Could strategies to promote key sectors mean more (or less) intervention for certain deals and collaborations?

In brief

Ambitious industrial policies designed to harness opportunities and mitigate risks from technological, environmental, and geopolitical change are driving increased government intervention in markets. Antitrust laws can be an important tool to achieve economic goals, and recent consensus has been that vigorous enforcement is essential to drive innovation, productivity, and investment. However, there is growing pressure on authorities to adopt a more targeted and flexible approach to support broader goals for boosting economic competitiveness, building strength and resilience of strategic sectors, and bolstering economic growth more broadly. We explore what this means for deals and collaborations in key industries.

Shaping 2025

Have the evidence ready. Businesses should be prepared to demonstrate with evidence how/why a deal or collaboration supports, or does not undermine, a wider industrial policy goal.

Consider alternatives. In some cases, businesses should contemplate alternatives to M&A, such as collaborations, which may offer a more flexible framework to develop efficiencies arguments.

Prepare a remedy strategy. Businesses should be prepared to offer more complex remedies that address wider concerns, including behavioral remedies where appropriate.

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The rise of industrial policies to address new priorities: interplay with antitrust/competition policy

Recently announced industrial policies seek to address a wide range of economic and political priorities facing countries today. The challenges and opportunities vary widely, but three key issues dominate the debate:

1. **The innovation gap:** transformative technologies and the digital revolution are driving policies to promote innovation, skills, and capabilities; and reduce reliance on fragile global supply chains.
2. **Climate change:** despite ongoing political differences, countries are racing to develop the green technologies and solutions critical for the energy transition and future sustainable industries.
3. **Economic resilience and self-sufficiency:** declining confidence in globalization and free trade has shifted the focus to supply chain resilience and self-sufficiency in strategic sectors.

In 2025, we're likely to see these issues play out in three main areas.

A new age for industrial policies: Could strategies to promote key sectors mean more (or less) intervention for certain deals and collaborations?

First, M&A and collaborations in high growth, innovative sectors

The innovation gap – 2013-2023

Percent (%) share of global tech revenues

United States

2013
30%

2023
38%

European Union

2013
22%

2023
18%

Agencies will be aiming to balance the extent to which a deal stimulates R&D in growth sectors versus the likelihood that it undermines innovation and investment. In 2025, we expect the agencies to adopt the following rules and approaches:

- New rules to catch acquisitions of innovative start-ups: US agencies already review below-threshold deals, while national authorities in the EU are actively expanding their call-in powers to ensure they can still refer acquisitions of low-turnover targets to the European Commission (EC) following Illumina/Grail. Unbound by EU referral rules, the UK Competition and Markets Authority (CMA) has gained new powers that provide a clearer legislative basis to review acquisitions of businesses with minimal UK nexus and no overlapping activities with the acquirer. Likewise, in Asia Pacific (APAC), some agencies are reviewing below-threshold deals (e.g. China), while others have new powers to do so (e.g. Australia and India). In 2025, vertical and conglomerate deals and those involving small, innovative businesses remain firmly on the agencies' radar.
- **Greater weight placed upon innovation, growth, and global competitiveness:** in dynamic markets, agencies will assess how deals impact future innovation and global competitiveness. However, providing the evidence needed to corroborate these forward-looking assessments is inherently challenging. One of the incoming EC's priorities is revising its merger guidelines to better reflect the EU's need for resilience, efficiency, and innovation in strategic sectors. Mario Draghi has recommended that deals proven to drive innovation should benefit from an innovation defense, although it is unclear whether the EC will go that far. In the UK, the CMA responded to the government's industrial strategy by reaffirming its approach to efficiencies that offset competition concerns, including increased innovation and investment, while noting that the evidential bar for merging parties to show these remains high. Businesses will welcome a more open and flexible approach to efficiency defenses, although clearer guidance from the agencies on how and when these effects will be taken in account could help unlock more pro-growth M&A in 2025.
- **Streamlined processes for pro-competitive deals and collaborations:** to provide legal certainty for businesses active in fast-moving sectors, agencies are exploring ways to accelerate reviews of pro-competition and pro-growth deals and collaborations. Agencies face growing pressure to collaborate more with businesses on innovation projects. In the EU, Teresa Ribera has been asked to speed up enforcement, while Mario Draghi recommends streamlining EU merger control which he described as being "increasingly complex and uncertain". Similarly, in the UK, the CMA recognizes the importance of pace and minimizing protracted uncertainty for business. It has committed to pursue the fastest possible outcomes, including moving quickly to remedies in appropriate cases.
- **Remedies:** there are indications that some authorities are now becoming more open, following the tightening in policy of recent years, to more complex remedies, including, in some circumstances, behavioral remedies. The CMA, for example, has announced a 2025 review of its approach to remedies, set against the UK government's economic growth agenda, which could bring additional flexibility, although suggestions of radical near-term changes need to be treated with caution. This is particularly likely to be the case where the deal generates attractive pro-competitive benefits that would be

lost by requiring structural remedies or prohibiting a deal entirely. Early engagement will be critical given the high evidential bar to convince an authority on both the pro-competitive benefits of the deal and the effectiveness of a complex remedy.

> From the outset of deal planning, make sure you understand the impact of the current environment on reviews and whether the evidence supports a pro-innovation, pro-growth rationale. The CMA says it may be open to more behavioral remedies, but the facts and evidence will still make or break a case. Pay particular attention to internal documents that corroborate or undermine those arguments.
>
> **Tom McGrath**
> Antitrust Partner, London/Brussels

Second, M&A and collaborations that facilitate the green transition

ESG-driven market interventions highlight a major transatlantic divide in political priorities. In the US, the agencies adhere strictly to their primary mandate of upholding competition, with very little room, if any, for ESG-related arguments. On the other hand, the EC has adopted an approach designed to help businesses enter into legitimate collaborations by explicitly recognizing in guidance the potential pro-competitive benefits of sustainability initiatives, while the CMA has taken a more flexible approach by considering the benefits to the UK population as a whole if collaborations deliver on net zero goals.

The interplay of competition rules and green initiatives remains high on the agenda, but there is not global consistency. Teresa Ribera, the EU's first Commissioner with a dual green and competition mandate, has committed to making sure competition policy helps the EU reach its "overarching objectives, such as the clean transition, including climate and biodiversity targets."

In APAC, several agencies including notably Australia, Japan, New Zealand and Singapore have shown that they will consider ESG-related arguments when assessing collaborations or M&A. In contrast, US agencies are committed to scrutinizing ESG-driven collaborations and/or M&A along traditional lines without any special treatment or guidance.

> ...I will ensure a further effective alignment of competition policy with the EU's priorities.
>
> This of course includes contributing to the Clean Industrial Deal for a sustainable and competitive European economy...
>
> **Teresa Ribera**
> Executive Vice-President for the Clean, Just and Competitive Transition, European Commission

In 2025, we expect sustainability to feature more heavily in competition assessments, particularly in the EU, UK, and APAC:

- Shifting customer preferences mean that "sustainability" is an increasingly important factor in how businesses compete. Remaining aware of how customer preferences for sustainable products are changing will help businesses anticipate how the agencies will assess competitive dynamics in a market and their likely impact on the outcome of a review.
- More agencies recognize environmental benefits as efficiencies that may offset potential negative effects on competition. However, if competition or consumers may be harmed, businesses must provide robust quantitative evidence to demonstrate likely positive environmental outcomes.
- Clean technology, as a strategic sector, is driving pressure on the agencies to accelerate reviews and clarify how they assess environmental efficiencies. There is, in addition, increasing recognition, including within the agencies, that significant investment will be needed to facilitate the transition to a low-carbon economy. Nevertheless, with ongoing concerns about high energy prices, businesses should also expect close scrutiny of the price impact of deals and other collaborations.

- Guidelines from European and Asian authorities aim to help businesses collaborate confidently within the rules. However, we await the first harder edged case where parties have to prove that environmental benefits outweigh negative effects on competition and consumers. Could 2025 be the year?

In the US, sustainability is not expected to be given enhanced weight. The enforcers under President-Elect Trump almost certainly will reject invitations to employ a more lenient antitrust standard to facilitate an industry's focus on climate-related goals. Moreover, the incoming US Congress is expected to focus on the extent to which cooperation on ESG issues has blunted competition.

> Companies should not expect ESG-related arguments to hold water in merger reviews or conduct investigations under the Trump administration. We anticipate a return to more traditional antitrust enforcement principles, including a focus on legal precedent and more rigorous economic analysis.
>
> **Justin Stewart-Teitelbaum**
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Third, M&A and collaborations in critical sectors and supply chains

Geopolitical tensions are driving policies to strengthen national resilience in critical sectors and supply chains, increasing pressure on agencies to take account of security and resilience in their competition reviews.

Telecoms provide a strong example, with recent European cases showing greater acceptance of deals and collaborations where businesses need to pool resources to upgrade critical infrastructure. In Belgium, the authority facilitated cooperation between telecoms operators to roll out fiber networks, while in the UK, the CMA approved the Vodafone/Three merger with binding investment commitments. Similar arguments could be advanced to promote investment in other critical infrastructure sectors, such as transport, where extreme weather disruptions pose growing challenges which the new Commissioner responsible for competition, Teresa Ribera, has committed to address.

US enforcement is expected to remain robust, with greater respect for legal precedent than we saw under President Biden. That said, we anticipate a sustained focus on the impact of mergers and business activities on workers and small businesses in light of President-Elect Trump's priorities. However, transactions in innovative and national security industries may advance additional arguments in defense of the deal. The second Trump administration is likely to implement policies aimed at re-shoring manufacturing and supply chains of critical inputs and further de-risking US reliance on China.

> Geopolitical tensions will linger in 2025, as US/China trade relations deteriorate, and trade realignment continues across the world impacting deal-making. Businesses will need to prepare for longer reviews, below-threshold deals being called in, or deals collapsing if an agency cannot complete its review within the long-stop date and/or demands commercially unacceptable remedies.
>
> **Ninette Dodoo**
> Antitrust Partner, Beijing/Hong Kong

Businesses active in these critical sectors must also navigate the web of antitrust, foreign investment (FDI), and foreign subsidy (FSR) reviews. Key points to keep in mind include:

- the likely expansion of FDI regimes in Europe, following an EU proposal for all Member States to introduce mandatory screening regimes. This includes calls to broaden FDI reviews to cover all modes of participation in critical infrastructure projects, including collaborative ventures, partnerships, and technology transfers; and

- FSR public procurement notification obligations, which may deter bidders from strategic projects. This is illustrated by the withdrawal of several Chinese manufacturers from public tenders following the EC's launch of an in-depth investigation. Similarly, in the US, the new HSR rules, if implemented, require disclosure of subsidies from select countries.

> Investments in critical infrastructure are under heightened scrutiny due to perceived security risks arising from the acquirer's identity or the source of the acquirer's funds – ensure a thorough assessment of the impact of newly introduced regimes, and consider springing clauses to address the ever-increasing call-in risks.
>
> **Vanessa van Weelden**
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With thanks to Aytac Celebi, Emily Abbott and Sarah Jensen for their contributions to this theme.

3.

M&A: How certain is certain?

Implications of new jurisdictional rules and approaches to merger review for deal planning in 2025

M&A: How certain is certain? Implications of new jurisdictional rules and approaches to merger review for deal planning in 2025

In brief

Any sigh of relief from dealmakers following the European Court of Justice's (ECJ) high-profile rejection of the European Commission's (EC) expansive approach to jurisdiction in the Illumina/Grail case may prove to be short-lived. The apparent certainty offered by the ECJ's ruling could give way to long-term uncertainty in 2025, as the EC and other global antitrust agencies implement new ways to preserve their ability to call in and review below-threshold transactions.

Determining whether a deal could be subject to agency scrutiny – and by whom and how – is now more crucial than ever for successful deal implementation.

Shaping 2025

Proactively assess call-in risks. Identify factors that might make a transaction more likely to be called-in for merger review, even if the transaction falls below notification thresholds.

Ensure deal documentation accurately reflects the transaction rationale, particularly where increased innovation, investment, or resilience are core drivers. Internal documents will be pivotal to securing a successful outcome.

Consider early engagement on efficiencies arguments and customer benefits. Plan for arduous and fact-intensive processes to establish competition-enhancing efficiencies and customer benefits where these could be meaningful in order to maximize persuasiveness, and account for these in timelines.

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> "Getting global deals done in 2025 will require early engagement. A winning strategy starts long before the auction or first overture, and includes thinking about what the agencies' view of the deal is actually going to turn on, vigorous testing of remedy assumptions across all relevant jurisdictions and thoughtful deal documentation that allocates antitrust risk and addresses operations of the target business between signing and a closing that may occur many months later (or not at all).
>
> **Paul Humphreys**
> GT Partner, New York

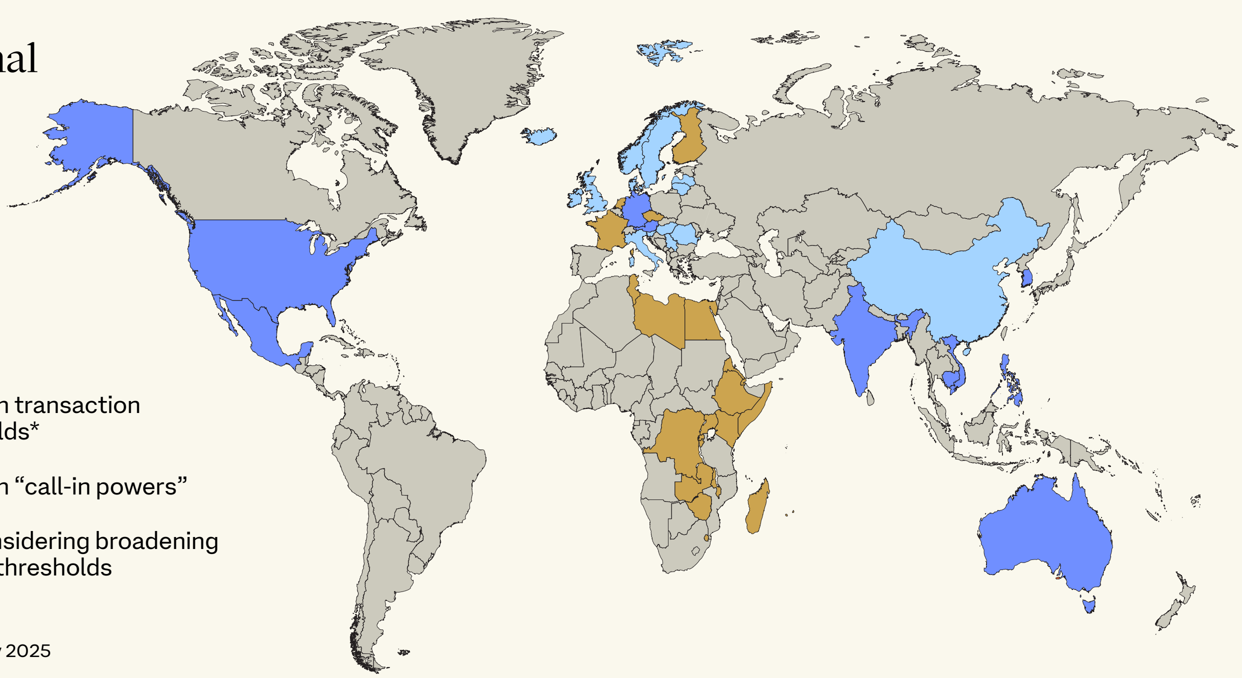
Non-reportable, not non-reviewable

In the ECJ's own words, determining whether a transaction requires notification is of "cardinal importance." The ECJ's curtailment in Illumina/Grail of the EC's expansive interpretation of its own jurisdictional competence in September 2024 was a welcome development for transacting parties. Dealmakers in Europe no longer need to be concerned about EU Member States referring deals to the EC when neither their own jurisdictional nor the EC's thresholds are met. The EC responded swiftly, however, exploring new ways to review these transactions. The new Commissioner responsible for competition, Teresa Ribera, has been instructed to "address the risks of killer acquisitions" and has promised to "look into all options" to ensure that the EC is able to review below-threshold deals with high competitive and innovative potential.

Where will this leave M&A in Europe in 2025? Lower notification thresholds or the introduction of deal-value thresholds, similar to the US size-of-transaction test, could emerge over time. However, in the short term, the continued use of Article 22 EU Merger Regulation by Member States – with the encouragement of the EC – is more likely. Additionally, more Member States now have broad "call-in" powers to assert national jurisdiction, including Denmark, Hungary, Ireland, Italy, Latvia, Lithuania, Slovenia, and Sweden. This significantly increases the risk of referrals to the EC under Article 22. Other Member States, such as Czechia, Finland, France, and the Netherlands, are considering following suit by introducing transaction-value-based thresholds. Will this permit the EC to continue to review deals of interest via the back door? Likely yes. Just eight weeks after the ECJ judgment, the Italian Competition Authority called-in Nvidia's acquisition of Run:ai, despite falling below Italian thresholds and referred it to the EC – a request the EC was only too happy to accept.

Jurisdictional expansion isn't limited to EU Member States. The UK has introduced a new merger threshold under the Digital Markets, Competition and Consumers Act (DMCC). The so-called "hybrid" test, which will apply alongside the CMA's existing turnover test and famously flexible share of supply test,

Evolving jurisdictional rules



Countries with transaction value thresholds*

Countries with "call-in powers"

Countries considering broadening jurisdictional thresholds

*Australia from 1st July 2025

could capture essentially any acquisition by larger businesses with UK turnover exceeding £350m. The "hybrid" test includes few guardrails, suggesting minimal limits on its application. While a target must have a "UK nexus," this broad concept is satisfied if "at least part of its activities" are carried out in the UK. The CMA's guidance confirms its intention to use the mechanism as widely as possible. It notes a "purposive" approach to assessing the UK nexus condition, which could be met where the target has taken "preparatory" steps in the UK towards supplying goods or services in the UK – a test that could conceivably be met in almost any situation. If experience is anything to go by, merging parties may need to brace themselves for broad interpretations of this new test if the CMA is interested in reviewing a transaction.

> The UK's already flexible jurisdictional rules are now extended further by the new acquirer-focused threshold. Combined with the CMA's ongoing consideration of a wide range of theories of harm, it can be a challenging environment for businesses to navigate. But it also offers opportunities, with the CMA increasingly receptive to early and open engagement on remedies packages, even if they are more complex than those seen recently.
>
> **Colin Raftery**
> Antitrust Partner, London

The US agencies are permitted to review, and if appropriate challenge, non-reportable deals. Challenges to consummated deals are neither new nor rare in the US. Agencies also have the ability to revisit reportable transactions even if they were not initially challenged. In keeping with the sustained interest in non-reportable deals and the growing interest in AI, the Federal Trade Commission (FTC) in January 2024 used Section 6(b) of the FTC Act to order several tech companies to provide information regarding recent AI-related investments and partnerships. A few months later, the FTC and the Department of Justice Antitrust Division (DOJ) issued a joint request for public comments on "roll-ups" and serial acquisitions. With a new Republican administration set to take over in 2025, the US agencies are expected to scale back radical enforcement but maintain an aggressive enforcement stance. Parties should not assume, therefore, that non-HSR-reportable transactions will escape review. Moreover, since the yet-to-be adopted new HSR Form requests information on all transactions in the same sector from the past five years, agencies are more likely to become aware of transactions irrespective of initial reportability.

Asia Pacific regulators are also concerned about deals slipping under the radar. Like the US, the State Administration for Market Regulation (SAMR) in China can review non-reportable transactions. In 2024, SAMR exercised this discretionary power, calling in the Synopsys/Ansys foreign-to-foreign merger. SAMR continues to actively monitor markets of interest – pharma, technology, semiconductors, digital, and automotive – following information from various sources, such as complainants or Chinese trade associations. Japan's Fair Trade Commission (JFTC) also has the authority to examine below-threshold transactions, reviewing fifteen such investigations in 2022. Recently, the JFTC's reviews have increasingly factored in industrial policy, where strong advocacy efforts can prove beneficial.

> The JFTC aims to be at the forefront of antitrust developments, particularly in AI and digital platforms, reflecting the Japanese government's push to strengthen the domestic IT industry. Deals in these sectors will therefore attract detailed questions that explore the impact on Japanese competitors as well as on customers. Reviews may also take longer, as the JFTC is less concerned about being the final authority to approve a global transaction.
>
> **Kaori Yamada**
> Antitrust Partner, Tokyo

A major development in the region is Australia's introduction of a mandatory notification regime for mergers, announced in November 2024. While final details are still being determined, parties will be able to notify the Australian Competition & Consumer Commission (ACCC) under the new rules from July 2025, with the regime becoming fully operational on 1 January 2026. With an additional A$37.6 million in funding being provided to the ACCC, dealmakers should anticipate more muscular enforcement in Australia. The ACCC has committed to a "risk-based approach," focusing on the "long-term harm to consumers" in its reviews.

As call-in risks rise in the region, unpredictable review timelines with some new authorities heighten the importance of developing strategic filing policies.

When is a merger not a merger?

The other side of the jurisdictional coin concerns which transactions – particularly those falling short of full acquisitions of existing businesses – fall within merger control thresholds. 2024 saw an increasing number of antitrust agencies seeking to assert jurisdiction – particularly in the AI space – over arrangements not traditionally viewed as falling within merger control rules. In the UK, the CMA once again interpreted its jurisdiction broadly, investigating Microsoft's hiring of former Inflection AI employees alongside a non-exclusive license agreement to use the business's IP. The CMA treated these arrangements as the acquisition of "at least part of the activities" of the pre-merger Inflection AI business, concluding that they triggered the UK's merger control test. In particular, the CMA noted that the transfer of employees alone could trigger UK merger control rules where this "enables a particular business activity to be continued." Although the EC ultimately did not review the same transaction – following withdrawal of the referral by seven Member States after the ECJ's judgment in Illumina/Grail – it confirmed its vigilance over unique deal structures. The EC suggested that these 'acqui-hire' arrangements would have given rise to a notifiable concentration under the EU Merger Regulation. The deal remains under scrutiny by the FTC in the US, which is investigating whether the transaction was structured to avoid regulatory review.

It's not over until it's over – ex post merger review

As if the jurisdictional jigsaw wasn't complicated enough, some agencies have suggested that certain merger challenges could be framed as monopolization or abuse of dominance. The US DOJ and FTC's 2023 US Merger Guidelines specifically assert that mergers can violate Section 2 of the Sherman Act if they entrench or extend a dominant position. At least one of President-Elect Trump's designated antitrust officials has signaled agreement with at least some aspects of the 2023 Guidelines, but regardless of whether the Guidelines are ultimately rescinded or revised, this theory of harm is likely to remain a relevant tool in the regulators' toolkit.

In the EU, the ECJ's 2023 Towercast judgment empowers national competition authorities to conduct ex post reviews of acquisitions by dominant entities under Article 102 of the Treaty on the Functioning of the European Union. This applies where the acquisition could strengthen the acquirer's dominant position and significantly impede effective competition. The judgment was welcomed by national enforcers, with the Belgian Competition Authority initiating proceedings against Proximus for its alleged abuse of dominance stemming from a recent acquisition, only six days after the publication of the Towercast judgment. Ultimately those proceedings were closed after Proximus decided to divest the newly-acquired business. While abuse of dominance represents a novel application of ex post antitrust rules, it nevertheless presents another risk factor for businesses with strong market positions. 2025 may see more national competition authorities using such powers to capture predatory or serial acquisitions where they would remain otherwise unreviewable under traditional merger control rules.

Evolving theories of harm – more uncertainty ahead?

Changes in the global political landscape and new leadership at key agencies are set to influence enforcement practice. The growing overlap between competition policy and non-competition priorities further complicates the path to merger control clearance. In the US, we expect greater reliance on traditional theories of harm and economic analysis in merger control review. It remains to be seen whether the agencies will resuscitate the 2010 Horizontal Merger Guidelines and the 2020 Vertical Merger Guidelines – withdrawn during the Biden administration – or instead revise the 2023 Guidelines.

In the EU, one of Ribera's first tasks in 2025 will be reviewing the EC's Horizontal Merger Guidelines. She has pledged continued evolution to "capture contemporary needs and dynamics like globalization, digitalization, sustainability, innovation and resilience." Time will tell whether, and if so how, the EC's new approach to competition policy will play out in practice. At the same time, question marks hang over how the CMA will react to the UK government's growth agenda, and the enforcement implications of the UK's new digital markets regime. These unknowns will undoubtedly have a knock-on effect for global coordination in cross-border deals, making it critical for businesses to anticipate agency actions and reactions in 2025.

> A new Competition Commissioner with a clear mandate could drive a change in the direction of European merger control in 2025. Policy considerations, including the needs of the EU economy, are likely to play a greater part in merger control assessments.
>
> **Paul van den Berg**
> Antitrust Partner, Amsterdam/Brussels

A brighter outlook for remedies?

With more deals likely to fall within the jurisdictional reach of antitrust agencies in 2025 – and as agencies continue to adopt evolving theories of harm – what are the implications for merger remedies? Recent years have seen an increasingly stringent approach to remedies: higher standards for acceptability, fewer transactions being cleared subject to remedies, and more abandoned deals.

Nonetheless, there are reasons for optimism. Under the Biden administration, US agencies largely avoided negotiated consent orders. However, the incoming administration is likely to be more open to negotiating remedies as a condition to clearance, with a preference for divestitures.

> Businesses should expect continued vigorous merger enforcement in the US, with fewer expansive academic theories. Negotiated consent orders are also likely to return. These reversions to form should bring a greater level of predictability than we saw in the previous four years.
>
> **Mary Lehner**
> Antitrust Partner, Washington, DC

Recent reforms to the CMA's phase 2 process aim to enhance engagement on merger remedies, providing greater opportunity to discuss complex remedies with the CMA. Upcoming legislative changes in the UK will offer more flexibility for "settling" cases with remedies earlier in phase 2 investigations and better alignment of cross-border remedies in multi-jurisdictional deals.

There are growing indications that a broader range of remedies may now be considered, at least in some jurisdictions. The recent clearance of Vodafone's merger with Three, subject to behavioral remedies, demonstrates that the CMA is willing to accept behavioral remedies in certain cases. A newly announced 2025 review of the CMA's approach to remedies, set against the UK government's economic growth agenda, could bring additional flexibility, although suggestions of radical near-term changes need to be treated with caution. While the EC has historically been more receptive than the CMA to behavioral remedies, it has expressed initial skepticism about the investment-facilitating remedies that the CMA appears to be considering.

With thanks to Karen Slaney, Ally Ampudia and Edward Dean for their contributions to this theme.

4.

Foreign investment and subsidy control:

Trends in mitigation and enforcement in 2025

Foreign investment and subsidy control: Trends in mitigation and enforcement in 2025

In brief

Foreign investment, national security, and subsidy control reviews are now critical regulatory pillars for cross-border deals and should be integrated into deal planning from the outset. In 2025, agencies are expected to use a wider range of tools to review and, if necessary, mitigate risks to a country's strategic capabilities or economic resilience. They will also focus on "levelling the playing field" with foreign state subsidized companies. We explore the trends in mitigation and enforcement that are likely to impact deals in 2025 and provide strategies for effective management. We also highlight the key procedural challenges and new rules that should now be factored into deal planning.

Shaping 2025

Identify early which agencies have jurisdiction. Determine which authorities will have jurisdiction to review a deal under foreign investment and/or foreign subsidies regimes, and assess potential concerns and integrate them into contractual agreements and deal timelines to avoid delays.

Anticipate in-depth information requests. Providing complete, timely responses is key to a smooth and expedited review.

Proactively identify solutions. Collaborate with agencies to develop mitigations that address their concerns while ensuring commercial acceptability for all parties. Adopt a constructive and proactive engagement strategy from the outset to streamline the process.

Rafique Bachour
Brussels

Sarah Jensen
London

Alastair Mordaunt
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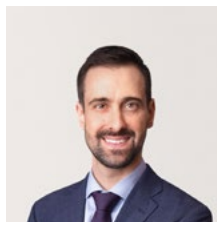

Brian Reissaus
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Frank Röhling
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A wider net: more complex mitigations across diverse parties

Where a deal raises national security – rather than competition – concerns, remedies or mitigations are more likely to control the parties' behavior than alter structure. These mitigations range from light touch obligations, such as notifying an agency before rights accrue, to more intrusive measures, including ring-fencing sensitive information, data, and technology; preserving critical capabilities; and restricting the investor's access and level of influence over the target business.

The first remedies imposed under the EU Foreign Subsidy Regulation (FSR) reflect this trend. In September 2024, the European Commission (EC) allowed Emirates Telecommunication Group Company (e&) to buy PPF Telecom Group B.V., subject to a package of commitments that address concerns about foreign subsidies received from the UAE, notably in the form of an unlimited state guarantee.

> Increased enforcement across all three regulatory pillars – merger control, FDI, and FSR – makes it critical for investors to plan early. This means careful design and implementation of an integrated regulatory roadmap that anticipates (potentially divergent) issues in each regime and jurisdiction and allocates responsibilities and risks between parties in a way that will maximize the chance of a commercially successful outcome.
>
> **Rafique Bachour**
> Antitrust and Foreign Investment Partner, Brussels

However, deals are still blocked or unwound on national security grounds if behavioral remedies are deemed insufficient, though such cases remain the minority. In the EU, only one percent of decided cases in 2023 were blocked, whereas ten percent were authorized with conditions and four percent withdrawn. Similarly in the UK, only a quarter of mitigations so far have involved a prohibition or order to unwind. In the US, however, these numbers are higher with approximately three-to-four percent of unique transactions filed with CFIUS in 2023 resulting in parties abandoning their deals due to national security concerns. The recent high-profile case of Nippon Steel's proposed acquisition of US Steel saw President Biden block the deal on questionable national security grounds. While unique, this case shows that CFIUS has become increasingly politicized and is at risk of being used for protectionist (i.e. where foreign ownership in and of itself is grounds for objection) or other non-national security related objectives.

The steady rise in the proportion of reviewed deals being subject to mitigation

US: CFIUS (2023)
↗15%

EU (2023)
↗10%

Statistics showing low prohibition rates may also mask important underlying trends, with some regions now experiencing a shift. In the US, transactions that previously would likely clear without mitigation now frequently require it. Transactions involving Chinese investors increasingly involve carve-outs of sensitive assets or technology, or withdrawals to avoid unpalatable remedies or prohibitions. UK government data illustrate this trend: in 2023-2024, eight of the ten deals withdrawn following a call-in involved Chinese investors.

At the same time, behavioral mitigations are becoming more expansive, with agencies increasingly examining whether any linked third parties pose risks. This trend is typified in the US, where CFIUS frequently requires mitigation for transactions tangentially connected to China that CFIUS assesses could potentially result in the indirect transfer of technology or data to China.

> The Trump administration is expected to heighten uncertainty for companies with global supply chains and operations that extend into China. Understanding the interplay of new regimes with Trump administration policy priorities will be critical for transaction parties to manage these potential risks.
>
> **Brian Reissaus**
> Senior National Security Advisor, Washington, DC
> (former career head of CFIUS and
> Deputy Assistant Secretary of the Treasury)

In the EU, with France taking the lead, behavioral remedies are increasingly being used to impose strict obligations on the acquirer regarding the management of the target business. The UK government also imposes intrusive controls and monitoring where necessary, examining not just the transaction parties but also any "linked party" that could undermine national security. Risks include undue influence on the target or the transfer of sensitive technology, intellectual property, or expertise. Factors considered include the source of funds and whether any actors are seeking to obfuscate their identity through complex corporate structures.

Increased enforcement for breaches

Alongside broader mitigations, enforcement action against parties breaching their obligations is on the rise with the prospect of heavy financial sanctions – and, in some jurisdictions, criminal sanctions – for non-compliance.

In the US, CFIUS has expanded the scope and intensity of its review and blocking authorities, while increasing its enforcement of penalties. In 2023 alone, CFIUS imposed four penalties – double the total since it gained penalty authority in 2007. The focus on enforcement continued in 2024 and is expected to remain a priority for CFIUS in 2025.

In Europe, many regimes are still new and have yet to establish consistent enforcement practices. However, most governments actively monitor compliance and are increasingly investigating suspected breaches. Governments are expected to expand the use of trustees to monitor adherence to remedies, mirroring a well-established practice in merger control cases.

> FDI remedies are becoming increasingly complex, and governments are intent on ensuring that conditions are being complied with. This may extend to future business decisions over which the authority may not otherwise have had control. It is therefore important for parties to ensure that conditions are manageable and respected.
>
> **Frank Röhling**
> Antitrust and Foreign Investment Partner, Berlin

Three years in, the UK government has also not yet reported penalties for non-compliance with the National Security and Investment Act. However, parties are subject to regular compliance obligations, and it is only a matter of time before penalties are imposed. The government's broad discretion in deciding matters of national security and imposing remedies has also recently been confirmed by the court.

> The first court ruling on the UK regime (in LetterOne's appeal of an order to divest fibre broadband start-up Upp) underscores the Secretary of State's responsibility for deciding which remedies are necessary and proportionate to address national security risks, and the limited role the courts can play in such decisions. This level of discretion presents a high bar for parties seeking to challenge mitigations.
>
> **Sarah Jensen**
> Antitrust and Foreign Investment Counsel, London

Longer review periods and more burdensome information requests

Investments that raise concerns often face extended reviews and wide-ranging, in-depth information requests. The practical implications vary significantly between jurisdictions.

In the US, parties negotiating mitigation with CFIUS should be prepared to withdraw and refile. Transactions involving Chinese investors or sensitive technology may require multiple refilings, significantly impacting deal timelines.

In the UK, in-depth reviews can last for 7-8 months with frequent and lengthy clock stops while parties address often extensive information requests. In a welcome move, the UK government's Investment Security Unit has stepped up engagement with parties during reviews. However, compared to the level of engagement typical in merger reviews, the process remains less transparent, which can be a source of frustration for parties.

In the EU, the coordination mechanism – allowing other Member States and the EC to comment on investments under screening – adds complexity and unpredictability, often delaying national proceedings. Parallel notifications under the FSR regime require parties to navigate a burdensome process, reflecting the EC's ongoing learning curve in the early stages of this regime. In 2025, we expect the EC to develop new guidance, building on its rapidly growing practical experience. A critical question for investors will be whether this guidance alleviates the current procedural burden.

Similarly in China, although pre-notification consultations with the National Development and Reform Commission have been helpful in most instances, timelines remain unpredictable, with some consultations taking several months.

New tools in the toolbox: what to watch out for in 2025

Several recently introduced or forthcoming tools and regulations in 2025 should be factored into deal planning:

- The **US government** is expected to expand the use of existing legal tools and create new mechanisms aimed at protecting US national security interests, technology, and strategic position relative to China. These include:
  - the new outbound investment rule (effective from January 2025). The rule prohibits certain investments involving US persons and Chinese companies engaged in specific technology activities and requires notification for others. Although currently limited to three sectors, semiconductors, quantum computing, and AI, it catches a wide range of investors and subsidiaries of Chinese entities, within and outside the US. Violations can result in significant civil and criminal penalties, making thorough diligence essential to compliance;
  - stringent new regulations relating to connected vehicles;
  - new or expanded rules surrounding data security;
  - tariffs on Chinese imports; and
  - the potential expansion of CFIUS' (i) mandatory filing requirements and (ii) jurisdiction to include greenfield investments.
- The proposed new **EU FDI Regulation**, still under discussion, is expected to evolve further before the text is finalized. However, the current draft indicates expanded filing obligations, including:
  - all EU Member States to introduce a screening mechanism, including those without a regime (e.g. Croatia, Greece, Cyprus);
  - all Member States to mandate notifications of investments in certain critical sectors. The proposed list of critical sectors is extensive and lacks precision, creating legal uncertainty. Many companies may prefer to submit filings even where requirements are unclear. Investments in a company active in a potentially critical sector across multiple EU Member States will trigger multiple parallel notifications without any harmonization yet on the information required; and
  - investors to submit all FDI filings in the EU on the same day, which will require strict project management and coordination.

> The implementation of the proposed EU FDI Regulation could double the number of filings required in EU Member States from one day to the next. The EU should ensure that filings are only mandated in transactions that have the potential to affect public order and security and that the list of critical sectors is narrowly tailored to achieve this goal.
>
> **Uwe Salaschek**
> Antitrust and Foreign Investment Counsel, Berlin

- The **UK government** is expected to consult on a few activities that are not currently covered by the mandatory notification regime but may present risks, together with some improvements designed to help companies determine with confidence whether an acquisition must be notified. With an increased focus on strategic growth sectors (such as advanced technologies and life sciences) we could see some new areas introduced, although any changes will be targeted and proportionate given the Labour government's number one mission to drive economic growth and its commitment to letting investment flow as fast as possible while only intervening to protect national security.

> With a Labour government introducing a new industrial policy, investors face a landscape where protecting critical sectors and promoting inward investment are increasingly intertwined. We could see some sectors come under closer scrutiny in 2025 as the government implements its strategy for growth sectors, many of which are core areas of focus for the national security regime.
>
> **Alastair Mordaunt**
> Antitrust and Foreign Investment Partner,
> London/Hong Kong/Dublin

- Key developments in **Asia's** foreign investment landscape include:
  - **Singapore** has introduced its first foreign investment screening regime, requiring notification of investments in certain "designated entities" reaching specified ownership or control thresholds;
  - **South Korea** has expanded its regime to cover investments in "national high-tech strategic technologies" alongside "national core technology." National high-tech strategic technologies include semiconductors, secondary batteries, displays, biotech, future mobility, as well as robotics and quantum technology;
  - **Japan** has added new sectors to its pre-closing screening requirements, including semiconductor manufacturing equipment, advanced electronic components, machine tool parts, marine engines, optical fiber cables, and complex machines; and
  - **India's** regime remains unpredictable and burdensome, although its stance has slightly softened since early 2023 – especially for entities providing essential components in electronic supply chains and the electric vehicles sectors, both of which are targeted for growth.

With thanks to Victoria Baert, Andrew Gabel, Matthias Wahls and Ziqi Zhou for their contributions to this theme.

5.

Monopolization and dominance:

Guilty until proven innocent?

Monopolization and dominance: Guilty until proven innocent?

In brief

Dominance and monopolization will remain at the forefront of regulators' minds in 2025. The European Commission (EC) is expected to publish the final version of controversial new guidelines on exclusionary abuses by Q4. In the US, outcomes of cases based on broader theories of monopolization and unfair practices are anticipated, while the UK Competition and Markets Authority (CMA) is expected to continue to monitor traditional industries, as well as digital markets. Regulators in the Asia Pacific region (APAC) are also active in taking action against alleged abuses, including abuse of a superior bargaining position. In 2025, regulators are expected to reinterpret the scope of existing powers, attempt to lower the threshold for intervention, and reduce their burden of proof.

Shaping 2025

In Europe, closely monitor progress on the EC's proposed guidelines addressing exclusionary abuses of dominance, the potential revision of the procedural antitrust framework, and policy changes under the new Commissioner responsible for competition.

Non-tech companies should keep their market shares under review and ensure compliance programs are alert to potential monopolization or abuse of dominance issues where shares are close to the line.

Don't let litigation be an afterthought – integrate litigation strategies early in investigatory stages, given competition authorities' increasing readiness to pursue court action.

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Ninette Dodoo
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Heather Lamberg
Washington, DC

Europe's push to ease intervention and reduce evidentiary burden

In July 2024, the EC published its draft guidelines on exclusionary abuses (Draft Guidelines). In several areas the Draft Guidelines present a highly novel interpretation of the EU's existing legal framework for abuse of dominance, generally lowering the bar for intervention. Notable aspects of this bold approach include introducing presumptions to establish the likely anticompetitive nature of certain types of conduct such as tying and exclusive dealing, and moving away from the as-efficient-competitor and consumer welfare principles, which are firmly rooted in European case law.

The Draft Guidelines will significantly influence the enforcement of dominance rules at both EU and Member State level, even before they are finalized. Their assertive approach will likely intensify the trend of companies needing to litigate to overturn any EC findings. Litigation before the EU courts will clarify the extent to which the Draft Guidelines can ultimately be applied in practice. However, since court proceedings often take years to deliver a judgement, national courts may start to rely on the

Draft Guidelines as an authoritative document, despite their controversial nature. Some national competition authorities have already indicated that the Draft Guidelines could enable them to win their cases in court.

Final adoption of the Draft Guidelines is planned for 2025. Before then, revisions are expected to incorporate many points from the significant volume of feedback received during the public consultation. They should also reflect recent losses for the EC before the European courts, which affirm the key role of the as-efficient-competitor test in assessing rebate schemes, and the necessity for the EC to take into account all relevant circumstances. Given the Draft Guidelines' departure from existing case law, the ultimate scope and significance of these changes is hard to predict.

Looking ahead to 2025, additional developments may include potential amendments to the EU's procedural antitrust framework under Regulation 1/2003, following a 2024 public consultation, and the continued pursuit of novel or rare theories of harm by the EC, such as the imposition of "unfair trading conditions" on contractual counterparties, possession of a "substantial distribution advantage" or "disparagement" of competitor products.

> The European Commission is seeking to give itself greater flexibility to investigate alleged anticompetitive practices by dominant companies, aimed at lowering its burden of proof. Whether pursuing these changes through its upcoming guidelines is appropriate and ultimately beneficial for competition in Europe will remain a significant and contested question throughout 2025, and one that will ultimately be decided in the European Courts.
>
> **Charlotte Colin-Dubuisson**
> Antitrust Partner, Paris

Beyond digital: casting a wider net for enforcement

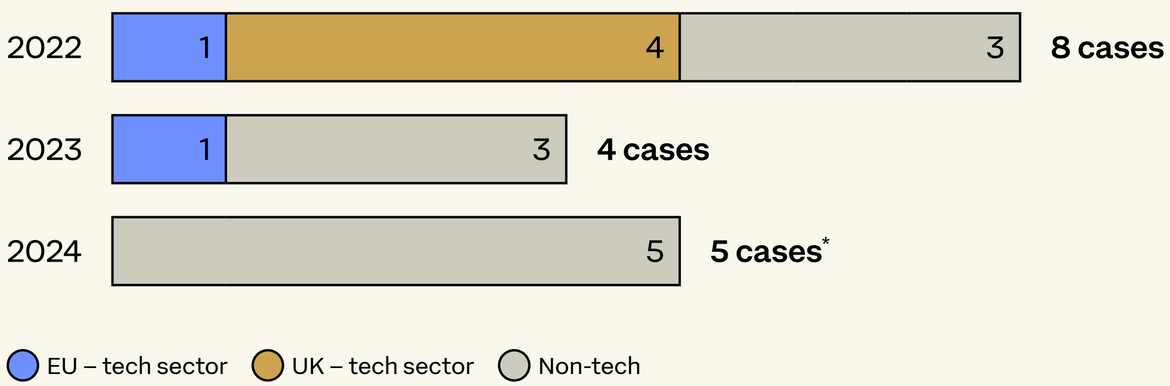
The introduction of ex ante digital toolkits – including the EU's Digital Markets Act (DMA) and the UK's Digital Markets, Competition and Consumers Act – are intended to empower competition authorities to pursue the conduct of so-called "Big Tech" more efficiently, without needing to prove key concepts such as "dominance" or anticompetitive effects. There are already indications that enforcement activity is moving towards these new bespoke tools. The CMA, for instance, has indicated that potential concerns identified in three long-standing "traditional" investigations would be better addressed under its new "digital" powers. Complainants are also increasingly focusing on criticizing compliance efforts rather than making traditional "dominance" complaints.

In 2024, neither the EC nor the CMA opened new dominance investigations into tech companies. Instead, the newest abuse of dominance cases targeted pharma-related and other sectors, and this shift toward deploying dominance resources to sectors beyond tech is expected to continue in 2025.

Outgoing Competition Commissioner Vestager signaled her hope that dominance tools will still be used to "break new grounds in digital markets," particularly where conduct falls outside the scope of DMA obligations, and jurisdictions without specific ex ante obligations will also continue to target the tech sector, supported by legislative changes to simplify enforcement. Director General Olivier Guersent has said that parallel EC proceedings are possible where there is uncertainty as to whether the DMA catches the conduct, followed if necessary by rapid DMA amendment.

Abuse of dominance cases opened in the last few years have moved away from tech and widening to include other sectors.

Cases opened by the **EU** and the **UK**



*opened in 2024

> The application of new and untested ex ante rules, coupled with authorities' focus on lowering evidentiary thresholds, makes it increasingly important for digital companies to consider litigation strategy throughout their regulatory engagement.
>
> **James Aitken**
> Antitrust Partner, London/Dublin

Beyond digital markets, some APAC regulators continue to focus on abuse cases in sectors critical to public welfare. For example, China has imposed several relatively high fines for excessive pricing and other abuses in the pharmaceutical sector in recent years – a trend that is set to continue in 2025. Meanwhile, Hong Kong's nascent regime saw its first abuse of dominance case in 2024, heard by its Competition Tribunal, involving medical gas equipment.

Expanding theories of market dominance

US market-leveraging cases: US regulators have shifted to theories of competitive harm that emphasize fairness to competitors over efficiency. In one example, the Federal Trade Commission (FTC) alleged that Amazon leveraged its monopoly power to prevent third-party sellers from offering lower prices on other platforms. The FTC's case survived a motion to dismiss, indicating courts could be receptive to market-leveraging theories.

Abuse of a superior bargaining position: Regulators in Japan and South Korea are increasingly targeting alleged abuses of a superior bargaining position. Similarly, several EU Member States have laws prohibiting abuse of economic dependence, allowing them to sanction conduct such as the imposing of unfair commercial terms, even in the absence of a dominant position.

Unfair practices: Aside from invitations to collude, stand-alone theories of harm under Section 5 of the FTC Act have been relatively rare. But under President Biden, the FTC introduced a

Section 5 Policy Statement that advanced an expansive view of Section 5. The FTC invoked Section 5 in the Amazon case and recently launched a challenge against several pharmacy benefit managers, alleging their rebate practices inflate drug prices. Additionally, the FTC has revived enforcement of the Robinson-Patman Act, which prohibits anticompetitive price discrimination in commodities and has gone largely unenforced for decades. The FTC first signaled its renewed focus on the Robinson-Patman Act with public statements in 2022. It then reportedly launched investigations into several companies, including Coca-Cola, and recently filed a Robinson-Patman Act case against Southern Glazer's Wine and Spirits.

New administration, new direction? We anticipate continued aggressive enforcement under President-Elect Trump's second term, including a continued focus on the technology sector. In announcing his antitrust enforcers, President-Elect Trump emphasized the need for continued scrutiny of large tech companies. We expect monopolization and dominance investigations in the AI space and adjacent sectors.

> Extending the reach of antitrust laws through Section 5 cases has been a consistent objective of the Biden administration. We will have to wait and see if the new administration will take a more measured approach.
>
> **Heather Lamberg**
> Antitrust Partner, Washington, DC

With thanks to Bjorn Sijtsma, Martin Dickson, Ziqi Zhou, Brendan Clemente and Joanna Goyder for their contributions to this theme.

6.

Protecting individuals:

Practices and sectors coming under increased surveillance and enforcement

Protecting individuals: Practices and sectors coming under increased surveillance and enforcement

In brief

Last year's elections saw voters in over 50 countries go to the polls, bringing issues affecting individuals – whether as workers, consumers, or small businesses – firmly to the forefront of regulatory developments and enforcement action worldwide. This trend is particularly evident amid the ongoing cost-of-living crisis affecting many global markets. As economic headwinds and geopolitical instability persist, governments and regulators are expected to intensify their efforts to protect individuals.

Shaping 2025

Assess all relevant parts of a business. Given the expansive application of laws governing consumer protection and workers' rights – from interface designs to contract terms – it is essential to regularly evaluate business procedures from a risk perspective.

Anticipate close scrutiny for consumer-facing businesses and transactions where individuals' rights are engaged. Strengthened regimes and enforcement across jurisdictions mean business activities could face scrutiny, whether in antitrust investigations, merger control proceedings, or consumer protection reviews.

Navigate the complexities of adopting a standard approach. The range of laws governing workers' rights across different jurisdictions requires businesses operating in multiple countries to carefully consider any globally applicable policies or contracts impacting their employees.

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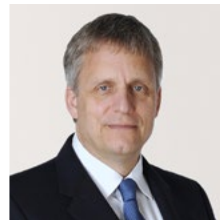
Nina Frant
Washington, DC



Martin Klusmann
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Ilka Oberlander
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Jan Rybnicek
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Strengthened consumer protection regimes and approaches

> At the heart of our work this year has been steadfast and decisive action which protects consumers in the face of ongoing cost of living pressures... Whether it's in areas of essential spend like road fuel, groceries and veterinary care, or in vital infrastructure markets like housebuilding...
>
> We're determined to keep building on this progress in the coming year. That means doubling down on our commitment to great choices and fair deals for consumers...
>
> **Sarah Cardell**
> Chief Executive of the CMA

Protecting individuals: Practices and sectors coming under increased surveillance and enforcement

The global shift towards stronger consumer protection standards and enforcement continues. The UK's new Digital Markets, Competition and Consumers Act strengthens consumer protection laws – with new rules on price transparency, subscription contracts, and fake reviews – and, perhaps more importantly, significantly enhances the Competition and Markets Authority's (CMA) enforcement powers in consumer cases. For the first time, the CMA can impose fines and other remedies directly on companies found to have breached consumer law, with penalties of up to ten percent of their annual global turnover – matching the levels seen under the existing competition regime.

> The UK CMA says that businesses should treat compliance with consumer protection laws as seriously as they do competition law. With new fines of up to ten percent of global turnover introduced under the new legislation, alongside anticipated stricter enforcement of consumer law, they're not wrong.
>
> **Andrew Austin**
> Dispute Resolution Partner, London

In Europe, the European Commission's (EC) recent "Fitness Check of EU consumer law on digital fairness" highlights several issues that individual consumers are said to encounter in the digital environment, including what the report describes as:

- deceptive interface designs;
- personalized practices which target vulnerabilities;
- difficulties with the cancellation and renewal of digital subscriptions;
- forced acceptance of unfair contract terms; and
- challenges associated with social media commerce, such as influencer marketing.

We anticipate further legislative action, potentially in the form of a Digital Fairness Act, may emerge in 2025.

These concerns are also prominent in the US: in 2024, the Federal Trade Commission (FTC) announced a final rule prohibiting the sale or purchase of fake reviews and testimonials, and ran a voice cloning challenge to promote the development of ideas to protect consumers from the misuse of AI-enabled voice cloning for fraud and other harms.

In the US, the degree of regulatory intervention under the new Trump administration will be a central focus for corporate America in 2025. In late 2024, the FTC took enforcement action against prescription drug benefit managers for unfair pricing practices, challenged transactions related to handbags and mattresses, and imposed a "click-to-cancel" rule requiring companies to simplify the cancelling of recurring subscriptions. We anticipate that the FTC will revise or rescind several rules issued under President Biden that are viewed as overly broad, while pursuing investigations for unlawful conduct prohibited by those rules.

> While we do anticipate some changes in the authorities' approach under the second Trump administration, the focus on individuals – particularly in terms of consumer goods and labor markets – appears here to stay.
>
> **Jan Rybnicek**
> Antitrust Partner, Washington, DC

Sectors under the antitrust and merger control spotlight

Antitrust authorities worldwide are increasingly focusing on sectors and theories of harm that affect particularly vulnerable consumers. Industries such as healthcare and food and groceries have historically been and remain among the most scrutinized sectors. Both mergers and market behavior in these sectors are expected to be closely watched by antitrust authorities, especially in view of macro-economic trends and headwinds.

Protecting individuals: Practices and sectors coming under increased surveillance and enforcement

With healthcare and hospital care under global demand and cost pressures, authorities have intensified their scrutiny of mergers and market developments in this sector. In Europe, the German Federal Cartel Office prohibited the merger of two university hospitals, citing the impact on patients amongst other factors. In the US, the agencies have long prioritized enforcement in this sector, and that trend shows no signs of waning.

> In light of the global cost-of-living crisis, authorities are paying very close attention to merger investigations in markets that affect the most vulnerable individuals in society.
>
> **Dr. Ilka Oberlander**
> Antitrust Partner, Munich

The pharma sector also remains under close government scrutiny. The FTC recently filed a lawsuit against several drug producers for anticompetitive behavior and litigated its first challenge to a pharmaceutical merger in more than a decade in the Amgen/Horizon case. In Germany and Austria, in-depth investigations are underway concerning the acquisition of a transcatheter aortic valve replacement manufacturer. Meanwhile, the Dutch Authority for Consumers and Markets has urged both consumers and companies to report anticompetitive behavior, including excessive drug pricing. Likewise, in the Asia Pacific region (APAC), regulators are scrutinizing business practices in the sector. A notable recent example includes Hong Kong's first abuse of dominance case in 2024 involving medical gas equipment. And, as consolidation continues apace in response to growth and supply chain imperatives, the sector is expected to continue to attract close attention in APAC.

Another sector directly impacting consumers – food and groceries – is also being closely examined. In Europe, Germany is conducting an in-depth investigation into a merger in the meat processing industry. In the US, the FTC has secured a preliminary injunction preventing the largest proposed supermarket merger in the US between Kroger and Albertsons, citing concerns over price increases.

The CMA is also closely examining the food and grocery sector, placing enhanced scrutiny on mergers involving consumer staples such as milk and poultry. More generally, the CMA is actively addressing consumer sectors through its wide-ranging market investigation work in the infant formula, grocery and veterinary industries.

In APAC, the food and grocery sector has historically been the focus of scrutiny for nascent regimes – a trend that is set to continue as newer agencies seek to flex their powers in 2025.

Advancing workers' rights

Antitrust regulators are pursuing agendas aimed at the protection of workers' rights. One key focus has been enforcement against no-poach or non-solicitation agreements. In the Delivery Hero/Glovo case, the EC expressed concern over an alleged agreement between the companies not to poach each other's employees. Significantly, the EC stated that the investigation is part of its effort to ensure "a fair labor market where employers do not collude to limit the number and quality of opportunities for workers."

> With the European Commission having formally initiated its first investigation into no-poach agreements in the Delivery Hero/Glovo case, mobility in labor markets is becoming an important area of competition law enforcement and, consequently, compliance.
>
> **Dr. Martin Klusmann**
> Antitrust Partner, Düsseldorf

We see this same focus in the US. Since 2016, the Department of Justice Antitrust Division (DOJ) has warned of heightened scrutiny of, and enforcement against, wage-fixing and no-poach agreements, pursuing multiple actions against companies alleged to be imposing these agreements. Although the DOJ has secured only one plea agreement for no-poach agreements and wage-fixing in eight years, US agencies remain focused on broader labor-related enforcement efforts. Recently, the FTC finalized a rule banning nearly all post-termination non-compete clauses between employers and workers. While private parties successfully challenged the rule in federal court, preventing its implementation, the FTC has filed a notice of appeal. Under the second Trump administration, the populist nature of the incoming administration will ensure a continued interest in wage-fixing, no-poach agreements, and non-compete agreements.

> While the FTC's recent non-compete rule is facing numerous legal challenges and its ultimate impact remains uncertain, businesses should closely monitor the rule's appeal status and any follow-on state legislation, should the rule be struck down or deprioritized under the Trump administration.
>
> **Nina Frant**
> Special Counsel, Washington, DC

Finally, in the UK, fair competition in labor markets has been a key priority for the CMA, as highlighted in its 2024/25 annual plan, which identifies labor markets as "an important area of focus." This follows the launch of two investigations into potential competition law infringements relating to the employment of staff in TV production and broadcasting. The CMA has also published a detailed report analyzing competition and market power in UK labor markets as a whole.

With thanks to Cara Carr, Kate Collister, Sam Fulliton, Haris Ismail and Felix Roscam Abbing for their contributions to this theme.

7.

Digital business:

Too many referees?

Digital business: Too many referees?

In brief

2025 will be a pivotal year for digital markets as they remain firmly in the regulatory spotlight. We are witnessing broad ranging enforcement priorities across the globe and businesses must be prepared to navigate new, increasingly complex, and often conflicting avenues of regulation. Heightened complexity is anticipated. Conduct requirements for firms designated as having "strategic market status" under the UK Digital Markets, Competition and Consumers Act as well as those considered gatekeepers under the EU's Digital Markets Act, together with relevant privacy and broader consumer protection rules, need to be weighed against policy goals such as economic growth and stimulating innovation, both of which will be at the forefront of regulators' minds as they seek to strike a fine balance between help and hinderance.

Shaping 2025

Think comprehensively about compliance with digital regimes. Strategic and thorough thinking is essential to navigate the interplay between traditional antitrust tools and newer regulatory tools governing digital businesses at both national and supranational levels.

Monitor collaboration and cohesion initiatives in regulating digital sectors. Businesses must be increasingly prepared to grapple with competing enforcement priorities globally. Staying alert to collaboration and cohesion initiatives between agencies and tools that aim to address these challenges will be important when considering potential points of tension.

Be prepared for a potential uptick in private litigation. Alongside regulatory engagement, private litigation before national courts is set to become a key battleground for digital businesses in 2025, as new digital regulatory regimes, including the EU DMA and UK DMCC, present opportunities for follow-on and standalone claims against designated firms.

Alessandro Di Gio
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Sharon Malhi
London/Dublin

Alvaro Pliego Selie
Amsterdam

Elisabeth Weber
Munich

Kevin Yingling
Washington, DC

Regulatory fragmentation: a clash of the regulators

Amid the political turbulence of 2024, digital markets continued to be in regulators' crosshairs globally. While enforcement of the first ex ante regimes sprang into action, regulators continued to engage traditional competition law tools, including merger control, abuse of dominance, and market investigations. In 2025, attention will remain on the increasingly complex interplay between traditional antitrust tools and the newer tools in the digital markets regulatory toolbox at both national and supranational levels. Regulators are also likely to extend their reach to nascent and developing digital markets such as AI. Whether this leads to further fragmentation or greater convergence, 2025 will be a defining year for digital markets.

The EU's DMA will continue to shape digital markets in 2025, as gatekeepers and the European Commission (EC) continue to lock horns over DMA compliance. We expect the first non-compliance investigations into gatekeepers to conclude in early 2025. As the DMA matures and a new Commissioner responsible for competition assumes office, the EC is likely to dedicate significant resources to investigate further instances of gatekeeper non-compliance. The EC may also seek to designate digital businesses that fall outside the quantitative designation thresholds. National competition authorities and private plaintiffs will seek to have a seat at the enforcement table, and Member States may seek to introduce additional national regimes.

Similar developments are anticipated in the UK, where the launch of the DMCC and subsequent SMS designations will shake up the regulatory landscape in the digital sector.

There is, in many jurisdictions, a growing appetite for new competition tools, similar to the UK's market investigation tool, which have been adopted at the national level in Germany and Denmark, and are under consideration in Italy and Norway. The EC also considered introducing a new competition tool but decided to abandon the initiative – it remains to be seen, whether and to what extent, these tools will come to fruition in other jurisdictions.

These tools aim to provide regulators with greater flexibility when tackling perceived market failures, going as far as allowing structural remedies without competition law infringements.

Digital markets will also continue to be heavily influenced by regulators' approach to merger control. In the EU, following the EC's loss of its Article 22 policy for reviewing below-threshold mergers, we anticipate a renewed push to introduce flexible call-in powers at national level (as seen recently in Nvidia's below-threshold takeover of Run:ai where the EC relied on Italy's national call-in powers to review the deal). In the UK, the new "hybrid" threshold is well suited to capturing deals involving larger digital businesses.

> The DMCC Act adds another string to the CMA's bow: an expansive new regulatory toolkit for digital markets. Getting it right will require thoughtful engagement from both sides – particularly to ensure practical coherence with the EU's Digital Markets Act and the continued delivery of high-quality technology services for UK consumers and SMEs.
>
> **Sharon Malhi**
> Antitrust Partner, London/Dublin

In the US, digital markets remain a focus for federal and state antitrust enforcers and now, more than ever, these companies must navigate an increasingly complex web of oversight. While federal agencies have pursued cases against several major tech companies, State Attorneys General (AGs) have emerged as equally significant players in enforcement. States have often joined forces with federal agencies, serving a supporting role in federal antitrust cases against large tech companies. However, State AGs often prioritize distinct enforcement objectives. The recent State Antitrust Enforcement Act means a defendant can face concurrent antitrust claims from private plaintiffs, States AGs, and the federal government in *different* federal courts. State AGs may increasingly use this statute for a homefield advantage, bringing claims in their own backyard rather than in larger consolidated cases. The second Trump administration may continue to bring actions against digital companies. However, if State AGs diverge from the administration's approach, the State Antitrust Enforcement Act empowers them to pursue independent cases on their home turf.

> During the Biden administration, we saw a 'whole of government' approach to federal antitrust enforcement, with robust State AG engagement as well. Looking forward, we can expect State AGs to remain active so digital companies must keep all of these regulators on their radar.
>
> **Kevin Yingling**
> Antitrust Partner, Washington, DC

Regulation across digital markets: a one-way ticket to conflict?

Asia Pacific (APAC) jurisdictions are exploring different approaches toward digital markets following the developments in Europe. Japan has recently adopted a DMA-like ex ante regulation targeting large tech companies, while proposals in Australia, India, and Thailand remain under review or consultation. Other jurisdictions have chosen to sharpen their existing tools to address digital market challenges.

For example, China published its Anti-monopoly Guidelines on Platform Economies in 2021 and its Interim Provisions on Anti-Unfair Competition on the Internet in 2024, which introduced new obligations for digital platforms with "competitive advantages". Recognizing data as a critical factor in assessing conduct in the digital economy, the State Administration for Market Regulation (SAMR) recently published its first abuse of dominance case related to the data market. Similarly, in South Korea, the focus has for now shifted from DMA-like legislation to a proposal to amend existing antitrust laws. This plan introduces new thresholds for presuming market dominance of online platform operators and imposes additional obligations. In parallel, South Korea is vigorously using its dominance legislation to tackle the digital sector.

With an expanding array of digital-specific or relevant regimes – including in Europe the DMCC, DMA, Digital Services Act (DSA), General Data Protection Regulation (GDPR), AI Act, Data Act – enforcement priorities will be put to the test in 2025 as the wave of new regulatory initiatives increases the potential for conflicting approaches and obligations across jurisdictions. We anticipate increased complexity between (i) conduct requirements for SMS firms and gatekeepers, privacy rules and broader consumer protection measures; and (ii) policy goals such as economic growth and fostering innovation.

Furthermore, as new ex ante regulations are expected to apply, digital firms may face an uneven landscape in terms of the scope and nature of their obligations. For example, in the EU, a key question is how the ex ante unlawfulness of certain conduct by regulated gatekeepers will be factored into merger control or antitrust enforcement when gatekeepers are involved. This issue arose in the Amazon/iRobot transactions, but the Commission did not ultimately address it since the parties abandoned the deal.

This friction underscores the growing need for better collaboration and cohesion between agencies and tools in regulating digital sectors, alongside the rising importance of initiatives aimed at addressing these challenges. For instance, the UK Digital Regulation Cooperation Forum – which brings together the CMA, the Information Commissioner's Office and the Office of Communications – has recently called for input to shape its 2025/2026 plan of work. Similarly, the European Data Protection Board has committed to collaborating with the EC to clarify and provide guidance on the interplay between DMA and GDPR.

> Europe is on the frontline of digital regulation, and the landscape is in flux. The year ahead will be critical, with the first DMA compliance investigations coming to an end, and competition law enforcement adjusting under the new European Commission. With ever more rulebooks and referees, digital companies need to be prepared for an unpredictable and fast-changing regulatory environment and adopt a holistic approach to compliance.
>
> **Alvaro Pliego Selie**
> Antitrust Counsel, Amsterdam

Too much uncertainty: fine line between help and hindrance

CMA resources allocated to the DMU doubled

2022
3.6%

2023
↗7.9%

As global regulators ramp up resources to regulate digital players, the potential for overreach grows. The impact of diverging global enforcement efforts on consumers remains uncertain. Digital businesses may think twice before entering into deals or launching new innovations. In some cases, large digital companies may limit certain products or product changes to particular jurisdictions due to regulatory risks.

In others, these companies, which typically think globally, may align with the lowest common denominator. As a result, consumers globally may miss out on innovations or product enhancements driven by regulatory uncertainties in far-away jurisdictions.

For example, companies are no stranger to the “Brussels effect”, where EU laws often set global standards. In digital regulation, the DMA has shown similar influence, with jurisdictions worldwide adopting comparable legislation and companies choosing to align globally with the DMA’s substantive obligations. However, EU digital regulation has also led to a “reverse” Brussels effect, with companies having refrained from rolling out certain features in the EU because of regulatory uncertainty. This serves as a stark reminder that regulation can stifle innovation. While regulators hope to foster innovation and improve product quality, conflicting enforcement priorities may achieve the opposite. As a result, regulators and political leaders could be left questioning whether these new regimes are inadvertently causing the harms they were intended to prevent.

Private litigation: the next battleground

Alongside regulatory engagement, private litigation before national courts is set to become a key battleground for digital businesses in 2025. Competition regulators have long regarded private litigation as a valuable complement to public enforcement, helping to address resource constraints and providing faster, more direct redress for plaintiffs. In recent years, large tech firms have increasingly been in the firing line for private claims. This trend is likely to accelerate as new digital regulatory regimes (including the EU DMA and UK DMCC) present opportunities for follow-on and standalone claims against designated firms. Nascent representative/class action regimes further broaden the options for plaintiff law firms to capitalize on these opportunities. As early investigations by authorities under the new regimes conclude, plaintiffs may look to enforce findings or seek damages. Injunctions could also become a critical tool, particularly in jurisdictions where cost risks are lower and speed is essential in fast-moving markets.

> “Regulations like the EU DMA and UK DMCC provide new routes for plaintiff firms to seek redress in the courts, which may be brought on a standalone basis or combined with more traditional competition or consumer harm claims. For digital businesses facing new regulation, the key risk is that national court interpretations will compound the uncertainty and fragmentation of regulatory requirements. It is crucial to adopt a coordinated litigation and regulatory strategy at an early stage, identifying key risk areas and ensuring a consistent approach across jurisdictions.
>
> **Elisabeth Weber**
> Dispute Resolution Partner, Munich

With thanks to Hannah Dorling, Ole Schley, Leonardo Stiz and Lauren Vaca for their contributions to this theme.

8.

Establishing boundaries:

Antitrust and the AI value chain

Establishing boundaries: Antitrust and the AI value chain

In brief

Throughout 2024, regulators globally were eager to investigate the emerging "AI value chain", launching sector inquiries, merger reviews and antitrust investigations, and considering how new ex ante powers in digital markets could apply to AI. While 2024 was characterized by heavy-handed scrutiny from competition agencies, enforcement priorities may shift in 2025, with new administrations in the EU and US. Political pressures may push agencies and lawmakers to balance regulation with the need to foster technological innovation and economic growth.

Shaping 2025

Monitor political appetite for regulating AI. While agencies have taken an assertive approach to AI enforcement over the past year, signals from governments, particularly in the UK and US, that regulation must balance innovation and investment indicate a potential reshaping of the AI regulatory landscape.

Prepare for cross-border cooperation and further changes in AI enforcement priorities. In 2024, authorities in the UK, EU, and US publicly heralded a more aligned approach in scrutinizing competition in AI. However, the new US administration may shift the US agencies' approach, potentially altering the dynamics of global cooperation and domestic enforcement focus.

Proactively assess whether partnerships, acqui-hires, and other types of arrangements may trigger regulatory scrutiny. Identify factors that might make a transactions more likely to trigger merger reviews or antitrust enforcement (and in which countries).

Rikki Haria
London/Dublin

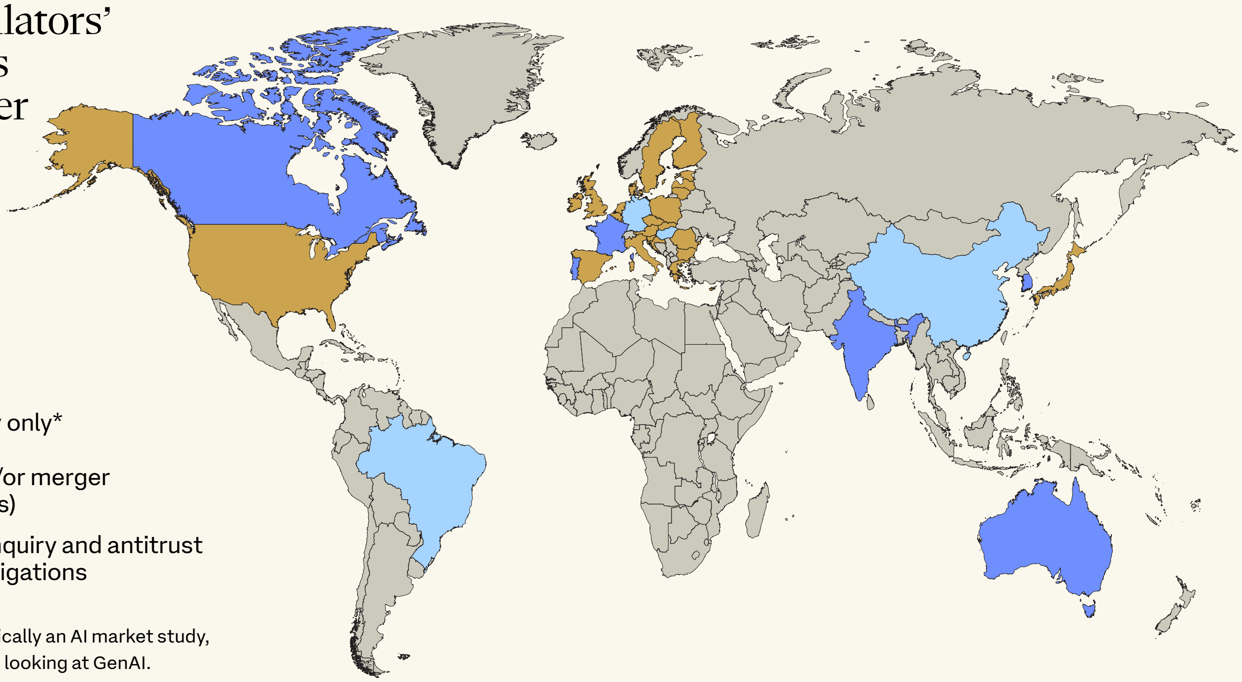
Tone Oeyen
Brussels

Elizabeth Suarez
Washington, DC

If 2023 marked AI's mainstream breakthrough, 2024 became the year regulators raced to catch up. Leading the charge, the UK Competition and Markets Authority (CMA) published its AI Foundation Models (FM) initial report in late 2023, sparking a wave of global regulatory activity. Agencies worldwide have since launched wide-ranging market inquiries, scrutinized AI-focused deals, and introduced proactive ex ante regulatory measures.

> "Despite, or perhaps due to, the lack of legislative progress on AI regulation in the US, federal agencies have used their existing powers to scrutinize conduct and arrangements involving AI. The FTC and DOJ each have launched major investigations, reflecting their proactive stance. However, with President-Elect Trump signaling his intent to repeal Biden's AI Executive Order – which empowered the FTC to oversee competition in AI – these priorities may shift under the new administration.
>
> **Elizabeth Suarez**
> Antitrust Counsel, Washington, DC

Global regulators' activities as of November 2024



- Sector inquiry only*
- Antitrust and/or merger investigation(s)
- Both sector inquiry and antitrust merger investigations

*Australia is not specifically an AI market study, but the Search DPSI is looking at GenAI.

A crystallizing framework for antitrust analysis

> "In the past year, we've seen European agencies moving away from a more neutral fact-finding approach to AI, and towards conceptualizing a framework for analyzing potential harms to competition. The European Commission is starting to develop its picture of what it thinks is the overall AI market, including novel upstream markets for critical inputs, as well as markets for supplying access to generative AI models themselves – factors likely to shape future enforcement targets.
>
> **Tone Oeyen**
> Antitrust Partner, Brussels

Regulators worldwide are coalescing around the "AI value chain" framework, which identifies compute and underlying accelerator chips, data, talent, and capital as key inputs into FMs. These FMs are distributed both B2B to developers and enterprises (via open source or proprietary APIs/tools) and B2C through a wide range of downstream apps and services.

Regulators are increasingly using the AI value chain as a lens to crystallize a framework for antitrust analysis. Upstream, they are exploring how access to certain inputs – such as compute and data – could constitute barriers to entry and expansion, especially for smaller, standalone AI developers. To that end, agencies including the European Commission (EC), CMA, Autorité de la concurrence (FCA), the Department of Justice Antitrust Division (DOJ), and the Federal Trade Commission (FTC) have been investigating issues such as access to accelerator chips, the functioning of the cloud market, and how digital platforms are using both first- and third-party proprietary data in their models.

Establishing boundaries: Antitrust and the AI value chain

In parallel, agencies are recognizing shifting market dynamics, as inputs evolve to enable rapid technical innovations in FMs, such as new modalities (e.g. video or reasoning) and increasingly efficient FMs.

Downstream, regulators have been scrutinizing how large tech players could be leveraging their existing digital products and services and the data they have access to, to distribute their novel AI technologies. This focus is reflected in the increased and expanded use of traditional tools, such as merger control and antitrust enforcement, alongside the use of new ex ante regulatory powers.

A new frontier for merger control: partnerships & acqui-hires

Agencies around the world are on the lookout for acquisitions of AI companies. Notably, the EC's first use of its Article 22 referral mechanism following the European Court of Justice's judgment on Illumina/Grail has been to review Nvidia's acquisition of Run: ai.

Large tech firms are increasingly entering into partnerships or agreements with AI start-ups, structured as minority investments, cloud partnerships, IP licensing arrangements, talent hires (or 'acqui-hires'), or any combination thereof.

The EC, CMA, and FTC have each opened individual inquiries into high-profile partnerships and investments, such as Microsoft's partnership with OpenAI. The CMA's broad and more flexible merger control regime has lent itself to conducting reviews in the AI space. Its recent decision in Microsoft/Inflection demonstrates its willingness to assert jurisdiction over acqui-hires where the talent is key to the company's know-how and essential to the continuation of its business activities by the acquirer post-transaction. The CMA's ongoing review of the Microsoft/OpenAI arrangements – which stands at a year and counting, even before a formal investigation has begun – indicates a thorough examination of whether those arrangements give rise to substantive competition concerns.

The German Bundeskartellamt also signaled that it is watching this space: in the context of a review of Microsoft's acquisition of the co-founders and other staff members of Inflection AI, it held that 'acqui-hires' can constitute a notifiable merger, despite concluding that this specific acquisition would not be formally reviewed given Inflection AI's lack of substantial operations in Germany.

> The CMA has led the way in reviewing investments and partnerships in the AI sector. Emerging practice suggests that, while pure financial minority investments are unlikely to trigger review thresholds, the CMA will be interested where there are wider facts of influence, such as cloud commitments, distribution arrangements, R&D collaboration, IP licensing, and/or sway over other shareholders or the board.
>
> **Rikki Haria**
> Antitrust Partner, London/Dublin

Beyond individual inquiries, the EC and the US agencies have scrutinized such partnerships through the wider lens of sector reviews and/or antitrust enforcement powers. The EC is examining specific partnerships as part of a broader consultation on generative AI. Meanwhile, the FTC has issued compulsory orders to large tech firms to gather information on their investments into and partnerships with AI startups that would not otherwise be reportable under the US merger control regime. The future of the FTC's investigations remains uncertain with the incoming Trump administration, as policy directions may shift under new leadership. For example, Andrew Ferguson, the incoming FTC chair wants to "make sure that America is the world's technological leader and the best place for innovators to bring new ideas to life.", which may signal that greater weight will be placed on pro-competitive benefits like R&D and innovation.

AI antitrust enforcement and the digital ecosystem

Globally, regulators are increasingly adopting the digital ecosystem framework and antitrust enforcement is focusing on fair access to inputs upstream, and fair distribution of FMs downstream, including via deployment of AI in apps and services. Primarily this approach has targeted firms controlling access to inputs, downstream distribution channels, or both, or holding strong market positions in downstream services. This approach is now being applied as tech firms seek to integrate AI in their existing networks of digital products. For instance, the EC's September 2024 Policy Brief noted that wider ecosystem dynamics may be relevant in assessing the market power of AI products and services.

While the EC acknowledges that the DMA will play a key role in addressing its ecosystem concerns, the DMA's limitations in tackling any issues beyond its scope for non-designated companies and/or core platform services highlight that the EC is likely still to turn to other competition tools, including antitrust enforcement and merger control.

A holistic approach to assessing AI enforcement and regulation will be essential in 2025. Businesses must navigate a growing array of regulations, balancing traditional antitrust tools, AI-specific legislation (e.g. the EU's AI Act), and ex ante regulatory regimes (e.g. the UK's new digital markets competition regime). In parallel, other areas that interplay with antitrust rules will also need to be considered, including data privacy, consumer protection, and IP laws. In the EU, discussions are underway on whether the DMA should be expanded to cover AI functionalities more directly. These ongoing considerations are illustrative of how global regulators are taking a holistic approach in deciding which tools – new or traditional, or a combination of both – are best suited to address challenges associated with AI services, functionalities and technologies.

With thanks to Wenjie Shen, Chloe Luo, Sam Bellet, Dina Madadi and Ziqi Zhou for their contributions to this theme.

9.

The future of cartel enforcement:

Expanding the parameters of collusion

The future of cartel enforcement: Expanding the parameters of collusion

In brief

Signaling and algorithmic collusion have now piqued the interest of regulators, as they seek to broaden the scope of cartel prohibition. By understanding the shifting landscape in cartel enforcement and adapting accordingly, businesses can minimize their competition law risks, while remaining competitive.

Shaping 2025

Understand the widening landscape: In 2025, regulators are expanding their definition of what constitutes a cartel, making it critical to reassess whether compliance programs address these evolving standards.

Stay vigilant of the emerging risks: Cartel enforcement is now targeting new areas, including the use of algorithms and AI, meaning heightened scrutiny.

Manage data proactively: Understanding how data is being shared, exchanged, and processed by algorithms and by third parties is vital to avoiding unintended consequences.

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Dominic Divivier
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Tobias Klose
Düsseldorf

Bruce McCulloch
Washington, DC

The eye of regulatory enforcement is shifting

> Forget 'smoke-filled rooms' – algorithms are the new cartel. Is your AI breaking the law without you even knowing it?
>
> **Tobias Klose**
> Antitrust Partner, Düsseldorf

The future of cartel enforcement is here – and it's bringing new and challenging complexities. From AI-powered collusion to the ripple effects of international investigations, businesses face a new era of risk and cannot afford to fall behind.

As regulators scrutinize how companies use AI, algorithms are emerging as a new battleground. This scrutiny is raising the stakes for businesses, not just in terms of innovation, but in areas like information exchange which remains firmly under the microscope. Sharing even seemingly harmless data in one jurisdiction could trigger concerns, and as enforcement becomes increasingly global, this could quickly escalate into legal challenges worldwide.

In this dynamic environment, vigilance and proactive measures are essential to mitigate antitrust risk, while staying competitive.

Broadening the net: price signaling and information exchange

> Information is a valuable commodity and regulators may find potential collusive activity when competitors share or learn of non-public, sensitive information in the public sphere. Be careful of what you state, where you state it, and to whom you state it because everyone is watching.
>
> **Deba Das**
> Antitrust Litigation Partner, London/Dublin

Signaling refers to public disclosures about strategic initiatives, such as price changes or production quantities, whether shared during interviews, press conferences, earnings calls, break-out sessions from industry association events, or on social media.

The European Commission (EC) has emphasized that public disclosures signaling to competitors how they should act, or how a company might respond to competitors' behavior, can constitute a "by object" violation of EU competition law. A violation occurs when the disclosure offers no clear consumer benefits and is deemed inherently anticompetitive, regardless of its actual effects.

Be cautious of sharing information that could be interpreted as encouraging companies to take certain actions that may benefit industry competitors. Consider whether the information is necessary and whether regulators might perceive it as an attempt to influence competitors' behavior. To protect decision-making processes, businesses should maintain clear records of how pricing and other strategic decisions are made, demonstrating the independent judgment exercised.

One-off information exchanges remain a key topic for antitrust enforcers. A single exchange of information can land a company in hot water if the information is both "confidential" – not publicly available – and "strategic," meaning it could reveal future market conduct. No additional anticompetitive conduct, such as price-fixing, is necessary, nor are anticompetitive effects required.

In 2025, regulators are expected to intensify their pursuit of isolated information exchanges, creating heightened compliance challenges for companies:

- In the EU, the European Court of Justice confirmed in 2024 in the Banco BPN/BIC Português case that standalone information exchanges can qualify as a "by object" violation of Article 101 of the Treaty on the Functioning of the European Union.
- In the US, companies that exchange information now face greater uncertainty as the Department of Justice Antitrust Division (DOJ) and the Federal Trade Commission (FTC) withdrew key policy statements providing practical guidance for information-sharing activities, such as benchmarking. The withdrawal removed guidance on information exchanges that were backward-looking, anonymized, and aggregated. Without these safety zones, (e.g., third-party data, sufficiently aggregated data), companies must now assess whether their ordinary business practices pose antitrust risks.
- In the Asia Pacific region, cartels continue to be commonplace and approaches to information exchange differ across the region, ranging from countries where information exchange isn't a standalone offence (e.g. China) to those where it can be considered a "by object" infringement (e.g. Hong Kong, Singapore and South Korea).

Algorithmic collusion – pricing tools, market analysis software, and other AI-powered systems

> Antitrust regulators are increasingly scrutinizing the use of pricing algorithms and AI to collect and share data, viewing these practices as potentially problematic. Understanding how your data is integrated and later disseminated is crucial to mitigate risk and avoid allegations of collusion.
>
> **Bruce McCulloch**
> Antitrust Partner, Washington, DC

AI is revolutionizing business operations, but this shift comes with new risks. Competition authorities are increasingly concerned about the potential for algorithms to facilitate unlawful coordination and collusion. Key regulatory concerns include how companies share non-public proprietary data with third-party platforms and processes for determining whether and how they implement an algorithm's recommendations. From basic pricing bots to advanced self-learning AI, regulators are taking a close look at how algorithms may unintentionally enable collusion.

Even 'smart' algorithms can break the law. Monitoring algorithms, signaling algorithms, and self-learning algorithms can all trigger unintended collusion allegations if not properly designed and monitored.

> In-person handshakes gave way to phone and fax, and later to email. Algorithms are the new frontier. And, given the amount of information an algorithm can access and digest, this new frontier poses an even greater anticompetitive threat than the last.
>
> **DOJ Statement of Interest**
> In re RealPage Antitrust Litigation

Enforcement in the US is particularly active. The DOJ, Attorneys General, and private plaintiffs have brought suits advancing several theories of harm targeting both the companies using the third-party algorithms and the algorithm providers. Recent examples of enforcement in this area reach across the health insurance, real estate, hotel, and technology industries, with lawsuits against RealPage, Cendyn, Amadeus, CoStar, Yardi, and MultiPlan and the companies that use their software for pricing decisions. The FTC has also launched an investigation to understand how so-called "surveillance pricing" works, including the types of data companies use to fuel their algorithms and where that data is sourced.

US courts have generally refrained from finding collusive activity when companies are not required to follow pricing recommendations and maintain separation of their data from others', but plaintiffs are increasingly pushing this boundary.

Consequently, business should not let algorithms become their downfall. Take proactive steps to understand, control, and audit algorithms to ensure compliance with competition law. Establish robust guidelines governing data usage, sharing, and protection, particularly when engaging with third-party algorithm providers or platforms.

Self-initiated enforcement

> Beware of the EU's 'butterfly effect'. A dawn raid in Europe could swiftly spark a class action lawsuit in the US. Are you prepared?
>
> **Dominic Divivier**
> Antitrust Partner, Düsseldorf

Self-initiated – or ex officio – enforcement is becoming increasingly prominent. Both the EC and the UK Competition and Markets Authority (CMA) have reported that approximately half of their investigations are now ex officio. This shift is a function of the decline in leniency applications as well as a broader trend among regulators to prioritize proactive cartel enforcement.

Key features of this growing trend in ex officio enforcement include:

- Reduced reliance on leniency applications to initiate investigations, resulting in stricter enforcement regimes.
- Regulators opening investigations and identifying potential unlawful conduct through new channels. Specifically, regulators are employing advanced detection methods, such as bid-rigging tools (that spot unusual bidder behaviour and pricing patterns which may suggest bid-rigging has taken place), hybrid/home raids, and whistleblowing tools, and engaging in coordinated cross-border agency activity that may trigger a cartel or other investigation in another jurisdiction. In the context of merger and market investigations, regulators are analyzing large document and data submissions and using additional mechanisms, such as AI tools, web scraping, and data collection to intensify their scrutiny and identify potential breaches.
- Tougher sanctions, such as high fines for destruction of evidence during investigations and greater powers to hold companies and individuals accountable for document and data retention. Particular attention is being paid to the preservation of ephemeral and other types of messaging.
- A 'regulatory butterfly effect'. The UK's new Digital Markets, Competition and Consumers Act, facilitates international cooperation and information-sharing among regulatory agencies. This is expected to drive an increase in parallel and ex officio investigations by the EC and CMA. Investigations and dawn raids in Europe are triggering parallel actions in other jurisdictions, such as the US, where claims have quickly followed. For example, within a week of the EC's January dawn raids at major tyre companies, a US class action was filed referencing those raids.

With thanks to Gabriella Small, Ole Schley, Ellie Mirchandani and George Lumbers for their contributions to this theme.

10.

Antitrust litigation:

Encompassing unlikely theories of harm – where are the limits for antitrust litigation?

Antitrust litigation: Encompassing unlikely theories of harm – where are the limits for antitrust litigation?

In brief

In 2025, claimants and regulators will continue pushing the boundaries of traditional antitrust enforcement by bringing claims based on increasingly novel theories of harm. Allegations of anticompetitive behavior will increasingly encompass consumer, data protection, and environmental issues. Regulators are also expected to rely on less conventional legislative tools – often lacking precedent – to address alleged abuses. Interest in funding large-scale private antitrust claims across jurisdictions remains high. Meanwhile US public enforcement is expected to hew more closely to existing legal precedent while maintaining an active approach under the incoming Trump administration.

Shaping 2025

Be prepared for the boundaries of traditional antitrust enforcement to be pushed. Claims will be based on increasingly novel theories of harm, including consumer, data protection, and environmental issues – already common issues in the UK competition class action regime.

Look out for landmark decisions on the scope of competition damages that could fuel litigation appetite. 2025 will be important in shaping the construction and nature of claims, particularly in the UK, where the Competition Appeal Tribunal (CAT) is expected to issue its first aggregate damages awards under the class action regime. Those decisions may spark a new wave of opt-out claims from claimants and funders who have so far adopted a "wait and see" approach.

Understand how the new Trump administration will influence antitrust litigation. The Federal Trade Commission (FTC) and Department of Justice Antitrust Division (DOJ) are expected to take a more traditional approach to antitrust litigation. However, enforcement against disfavored companies in key sectors is likely to remain a priority.

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Is antitrust litigation having a 'Pandora's box' moment?

With the potential for significant damages awards, claimants are increasingly testing the limits of different antitrust regimes. The trend towards advancing novel theories of harm and expanding the scope of antitrust enforcement beyond its traditional remit looks set to be a key theme of 2025.

Nowhere is the expansive role of antitrust more evident than in the UK, which has a dedicated regime for class actions based on competition infringements, but not (yet) other types of claims. Many class actions brought under this regime seem to arise from a regulatory gap, with class representatives seeking to reframe consumer protection, ESG, and fraud issues as abuses of dominance to access the opt-out class action mechanisms available in the CAT. Recent examples include alleged overcharging of rail tickets, iPhone battery "throttling", and misreporting of sewage discharges by water companies. To date, the CAT has appeared willing to consider these issues through an antitrust lens, pointing to the open-ended nature of abuse of dominance. A final judgment in 2025 could solidify this approach.

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> The UK's low bar to certification of opt-out competition class actions has elevated the regime into a key risk area, with claimants successfully re-framing consumer-type breaches – among others – as abuse of dominance claims.
>
> **Nick Frey**
> Antitrust and Dispute Resolution Partner, London

At the EU level, a clear trend is emerging: key rulings in the sport sector (e.g. Superleague, ISU, Royal Antwerp, and the recent FIFA v BZ decision), marked a turning point in the relationship between competition and sports governance. Aggrieved players, agents and clubs have spotted an "open goal" for novel claims against sporting regulators, often blending antitrust with public law and employment issues. Further landmark sports cases in 2025 such as the Manchester City/Premier League and the Ticombo and PFA/UNFP players cases in Belgium are anticipated.

EU regulators and claimants are increasingly relying on sector-specific regulatory failures and on broader "unfairness" considerations as evidence of competition law infringements. For instance, in 2023, the Court of Justice of the European Union ruled in Meta/Bundeskartellamt that data protection breaches could inform the assessment of competition law violations. Building on this, the 2024 Lindenapotheke case established that damages actions brought by competitors could extend to unfair commercial practices based on alleged violations of GDPR. Additionally, some Member States such as France and Italy have broadened "economic dependence" rules to address abused superior bargaining positions in commercial negotiations, including by seeking to impose unfair commercial terms – expanding competition enforcement beyond traditional abuse of dominance theories.

> ...my view is a healthy antitrust approach is vigorous enforcement everywhere...
>
> **Andrew Ferguson**
> Incoming FTC Chair

Similar trends were evident in the US, where the DOJ and FTC under Biden increasingly pushed the boundaries of what amounts to an antitrust violation by utilizing new litigation tactics and theories of harm. At the same time, the US agencies rescinded prior guidance in favor of an "I'll know it when I see it" approach, making it difficult for businesses to navigate what is or is not permissible conduct. For example:

- The DOJ added unprecedented damages claims to a monopolization case, aiming to bring a complex antitrust case before a jury rather than a judge.
- The DOJ strategically chose jurisdictions known to quickly push cases to trial, potentially shortening litigation timelines.
- The FTC pursued a tech company under Section 5 of the FTC Act – a much less developed area of law that may not require some of the stricter elements of monopolization cases.
- Both the DOJ and FTC have stated their intention to challenge so-called "serial acquisitions" by a company, even if each of those acquisitions, viewed independently, would be lawful. The FTC is also challenging consummated mergers that underwent thorough review during the HSR process.

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> Although we expect the US agencies to return to a more traditional approach to antitrust enforcement, that doesn't mean litigation is going away. Parties – particularly in targeted sectors – must continue to adopt a robust litigation strategy across jurisdictions and have the resolve to defend themselves in court where necessary.
>
> **Eric Mahr**
> Antitrust Partner, Washington, DC

Just how far will antitrust litigation continue to expand in 2025?

Increased availability of litigation funding has been a major driver of competition damages claims in the UK and EU, spurred by the promise of significant returns. Litigation funders have backed large cartel follow-on damages cases, such as the EU-wide trucks litigation and the Italian cardboard cartel. This trend shows no signs of slowing down, with funders increasingly expanding their international activity and investment alongside claimants. In the UK, class settlements have been reached, allowing claimants to recover compensation. Further clarity on the parameters of abuse findings, which will allow for more targeted investment, is expected in 2025.

In the US, although the incoming Trump administration could rely more heavily on tried and true legal theories of harm and sound economic analysis, we do expect continuity in the level of activity. Conventional wisdom dictates that a Republican administration would be less likely to pursue litigation that strays from the consumer welfare standard. However, recent alignment between progressive Democrats and populist Republicans – particularly in their criticism of US tech companies – could sustain aggressive enforcement, particularly when it supports labor and small businesses. Antitrust enforcers under both the Biden and first Trump administrations launched major suits against several tech companies accused of holding illegal monopolies.

At least two data points suggest that strong scrutiny of large tech companies will persist during President-Elect Tump's second term. First, President-Elect Trump selected JD Vance – a vocal critic of "Big Tech" and supporter of aggressive enforcement – as Vice President. Second, when President-Elect Trump announced the identities of his antitrust enforcers, he explicitly indicated that they would hold large tech companies accountable.

> Planning ahead and ensuring consistency is more important than ever. Claimants are looking to leverage favorable outcomes across jurisdictions to maximize damages awards. Early engagement of external counsel with a strategic and coordinating role can help navigate national nuances, while ensuring that defense strategies remain consistent across jurisdictions and pitfalls are avoided.
>
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With thanks to Jess Steele, Cecilia Carli, Abigail Legge and Sara Salem for their contributions to this theme.

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