FRESHFIELDS

10 KEY THEMES – DEAL IMPLICATIONS FOR 2026

Clarity in antitrust

Clarity in antitrust: Deal implications for 2026 is a dedicated M&A edition of our globally recognized, 10 Key Themes in Global Antitrust publication.

Focusing on getting complex deals signed and closed in an environment of intensifying merger control, foreign direct investment (FDI) and foreign subsidies scrutiny, this edition distils the first four themes of our 10 Key Themes in Global Antitrust publication into a concise guide for all those looking to get deals over the line.

In 2026, merger control and FDI sit squarely within industrial policy and geopolitical strategy. The lines between competition law and industrial policy have become more blurred, ushering in new priorities: national security, economic growth, resilience and technological competitiveness. Policy-driven enforcement is reframing the rules, as governments deploy antitrust and foreign direct investment tools in pursuit of broader strategic interests. The pace of change is unforgiving. Those dynamics have a direct impact on deal timelines, conditions to closing, execution risk and, ultimately, valuation.

This is the new antitrust landscape. Mastering its complexities demands globally integrated, technology-supported strategies and deep expertise. In a year in which uncertainty reaches new heights – and regulatory demands shift as never before – your path to clarity starts here.

The four themes in this publication set out the practical consequences for M&A:

1. how geopolitics and policy priorities are reshaping merger control;
2. how new procedural tools and jurisdictional triggers affect deal planning;
3. how a more assertive, asset focused FDI environment is redefining national security risk in cross border transactions; and
4. how policy driven merger review is changing remedy strategy and risk allocation.

Throughout, the emphasis is on what this means in practice for structuring and sequencing deals, planning regulatory engagement and designing documentation that can withstand uncertainty.

1. Antitrust in the geopolitical arena: A calculus for global business

In brief

Geopolitical priorities are recasting antitrust as a tool of industrial and economic strategy, not just a mechanism for protecting consumers. Major jurisdictions now prioritize domestic policy goals in antitrust enforcement. Companies that understand how competition law now interacts with national security, resilience and domestic growth agendas can find opportunities. Those that do not are vulnerable to unforced errors.

> In recent years, antitrust enforcers have broadened the analytical lens they use to evaluate mergers and business practices. Labor, small businesses, supply chain resiliency and national security now frequently play a role in their analysis. This more elastic analytical framework presents both challenges and opportunities for the business community. Knowing which cards to play can make all the difference to an enforcer's outcome.
>
> **Christine Wilson**
> Head of US Antitrust, Competition and Trade, Washington, DC

Dealmaking in 2026 turns not only on classic competition principles but also on the political calculus shaping each jurisdiction's policy goals.

> In 2026, in certain industries especially, US boards and deal committees are being pushed to focus as much on geopolitical risk mapping as on synergies. M&A may now start with a policy narrative, not deal terms.
>
> **Aly Love**
> Co-Head of US Technology and Life Sciences M&A, San Francisco

Deals that support strategic sectors or domestic capabilities/resilience may receive a warmer reception, but only if parties can tell a clear story about why they help citizens and consumers, not just shareholders. However, enforcement styles are deviating and the same deal can land very differently in the US, UK, EU or Asia: an "America First" focus on workers and small business in the US; a growth-driven CMA in the UK; an EU experimenting with industrial policy; and Asian regimes, especially China, tying antitrust to industrial strategy – such divergence is now a core execution risk.

> The strategic reframing of antitrust law in the UK, integrating competition goals with broader domestic economic policy, marks a decisive shift from the 'safety first' mentality of the past. This transition is fostering an environment where industrial policy and national interests are increasingly relevant to antitrust outcomes.
>
> **Martin McElwee**
> Antitrust Partner, London/Brussels

Building an evidence-led policy narrative for each key jurisdiction and investing in early, constructive engagement so strategy is aligned with local priorities rather than at odds with them, is the key to unlocking new opportunities.

> Deal success increasingly depends on being able to see around geopolitical corners and align deals with domestic priorities. The best outcomes go to those who anticipate policy trends, are collaborative with regulators and can clearly articulate both the public interest and the consumer rationale of their transactions.
>
> **Andrew Hutchings**
> Co-head of Global M&A Practice and Global Transactions, Partner, London

Defining 2026

- **Navigate jurisdictional divergence.** Potentially inconsistent enforcement approaches require M&A teams to understand the political objectives influencing competition policy in each major jurisdiction. This insight must inform strategic planning, day-to-day operations, risk allocation and deal execution.
- **Develop evidence-led policy narratives.** For complex transactions, companies need a factual narrative that explains how the deal supports national or regional policy goals – whether by strengthening resilience, promoting innovation or contributing to economic growth.
- **Make early, constructive engagement on remedies a core part of strategy.** In merger reviews, regulators, particularly in the UK, are showing greater openness to creative behavioral and tailored remedy packages. Deal teams that can offer credible solutions that address competition concerns and wider policy priorities, and promote these in internal and external communications, will be better placed to secure favorable outcomes.

2. Mastering new merger control procedures: Opportunity and risk in global transaction planning

In brief

Significant procedural changes are influencing how antitrust authorities assess deals globally. These developments create both hurdles and opportunities for transaction planning and execution.

> Early experience with the CMA's 4Ps shows it is possible to deal with complex cases more quickly at phase 1, provided you are prepared to front-load detailed analysis and move quickly. The greater levels of flexibility offered in the UK open up new possibilities when plotting your course through international regulatory processes. Having a team that is innovative in wielding revised procedures to the maximum effect across jurisdictions will be a competitive advantage for dealmakers.
>
> **Alex Potter**
> Antitrust Partner, London/Dublin

Globally, competition authorities are demanding more documentation, increasing scrutiny and adding new jurisdictional triggers and review tracks. Savvy dealmakers can now unlock streamlined review timetables and use increased procedural flexibility, particularly where they adopt a proactive engagement strategy from the outset. As the overall burden and unpredictability of merger reviews grow – even as some cases move through accelerated review tracks – mastery of the evolving, and sometimes contradictory, processes has become a real advantage. Deep local expertise remains critical, but for international deals, connecting local know-how with proven multi-jurisdictional coordination is essential for transforming these shifts into successful outcomes.

> The global trend in merger control might give rise to some protracted deal timelines and increased execution risk, but it also presents a new opportunity for investors: sponsors who can get ahead of competition issues early and present the sellers in competitive bidding processes with organized data controls will be meaningfully advantaged in future processes.
>
> **Matthew Goulding**
> Private Capital M&A Partner, Boston

Regulators are evolving their merger review procedure. Being below the relevant thresholds no longer means being below the radar of competition authorities – smaller or innovative deals are being pulled into the net, demonstrated by: European *Towercast*-style abuse cases and national call-ins; increasing use of pro-active call-ins and ex-post reviews by the Chinese State Administration for Market Regulation; and, in Australia, a new mandatory regime which retains its broad review and investigation powers.

At the same time, there is a real "pace premium" if the parties front-load preparation and anticipate procedural uncertainties.

> The European Commission has made clear that no transaction is too small to attract attention. With national authorities wielding broader call-in powers requiring little (if any) local nexus, sub-threshold deals remain exposed to referrals and review by the European Commission. Dealmakers should ensure their transaction documents contain appropriate protections to manage this evolving risk.
>
> **Andreas von Bonin**
> Head of Antitrust, Competition and Trade, Brussels

> Buyers need to balance the risk of disruptive ex-post reviews with the additional cost and delay of engaging proactively with regulators, particularly in China and Japan.
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> **Ed Freeman**
> M&A Partner, Hong Kong

Defining 2026

- **Seize windows of opportunity through careful counsel selection.** Deal parties can maximize their chance of clearing difficult transactions by deploying counsel with proven sectoral and procedural experience in navigating diverging systems across key jurisdictions to achieve faster, more favorable outcomes.
- **Account for increased burden of new US HSR form.** Expanded document and information requirements for certain US merger filings now require preparation time comparable to EU and UK merger control filings. This places a premium on coordinated filing preparation and a holistic regulatory strategy when a deal triggers review under two or more regimes. Transaction documents should be carefully drafted to account for the longer timings and additional support needed that should be built into efforts clauses.
- **Anticipate expansive jurisdictional triggers.** Continued use of broad and flexible jurisdictional tools adds a layer of unpredictability, requiring early mapping and assessment of filing and call-in risks across regimes. Springing conditions may be needed to protect buyers in the event of a call-in.
- **Pursue fast-track engagement for low-risk transactions.** Streamlined review systems in certain key jurisdictions enable accelerated review timetables for well-prepared filings and proactive agency dialogue.
- **Treat minority stakes as a standalone risk.** Antitrust issues must be considered carefully when acquiring a minority interest that does not trigger a merger review but gives the investor access to sensitive information. Robust firewalls may help mitigate this risk, and it will be important not to impose no-poach obligations – or other restrictions – on the investment recipient.

3. Protecting national security in 2026: The new face of FDI reviews

In brief

Foreign direct investment (FDI) regimes are maturing amid geopolitical tensions and technological change. In 2026, asset risk will be key: the focus on traditional sectors such as defense will continue and the boundaries of critical technologies, infrastructure, government supply chains and other emerging areas will expand. While acquirer risk will also remain crucial, many sectors are increasingly scrutinized regardless of the investor's origin. Early issue spotting by investors is critical to successful deal execution.

> The UK's NSI regime spans extensive sensitive sectors, from semiconductors to water infrastructure. Investors who fail to anticipate triggers and the risks of intervention early, could face costly delays and complex remedies.
>
> **Alastair Mordaunt**
> Antitrust Partner and Co-Head Foreign Direct Investment Practice, London/Hong Kong/Dublin

Practically, FDI-sensitive deals need to engage in early identification of potential concerns upfront, allocation of resources for extended timelines (potentially 12+ months), and built-in mitigation.

> Boards and Transaction Committees are rightly focused on FDI – particularly where deals involve potentially sensitive sectors – understanding feasibility and potential mitigations are threshold items.
>
> **Meredith Bayley**
> M&A Partner, London

We expect some less traditional areas to emerge as focal points:

- COVID-19 exposed vulnerabilities in **healthcare** supply chains, particularly in the US and EU/UK, prompting governments to reassess the role of national security in life sciences. The Japanese government is also stepping up measures to secure the supply of medical resources, eg, financial support to encourage domestic production of antibiotics, and prolonged FDI reviews in the healthcare sector.
- Transactions involving **medical devices** are increasingly in the spotlight, especially where transactions involve access to sensitive health data or biotechnological innovation with potential dual-use (military) applications.
- Under the UK's proposed reforms, **critical minerals** will be a standalone sector, reflecting their importance for national growth, as demand for net-zero technologies and advanced manufacturing continues to rise.
- Though many FDI regimes do not explicitly cover **real estate**, currently accounting for only 3% of in-depth reviews in the EU, this share is likely to increase. Countries such as France and Japan have proposed reforms to restrict foreign parties' property acquisitions in certain circumstances.
- Looking further ahead, expect more scrutiny of transactions concerning emerging technologies in the **genomics**, **space technologies** and **fintech** spaces under existing sector definitions.

> Companies demonstrating clear awareness of the China risk will find that discipline rewarded in CFIUS review. But vulnerability assessment now commands equal attention: investors from allied nations must understand and address target-side exposure, as US policy increasingly prioritizes resilience and self-reliance.
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> **Aimen Mir**
> Foreign Investment Partner, Washington, DC

Defining 2026

- **Adopt a sophisticated, proactive approach to navigating FDI reviews.** Increased inspection and expansion into new sectors demand a strategic shift in deal planning and execution.
- **Anticipate enhanced scrutiny early. Integrate FDI risk assessments at the earliest stage of deal planning.** Proactively identify potential national security concerns, including sensitive technologies within target companies and any critical data to which foreign investors may gain access.
- **Allocate resources for extended timelines.** Budget for significantly extended timelines – potentially 12 months or more – and higher mitigation costs, especially for deals that are likely to raise heightened national security concerns. Financial and operational planning must account for these extended durations and increased compliance burdens.

> For sellers in sensitive sectors, it is more vital than ever to assess potential buyers through an FDI lens. Knowing which bidders are most likely to clear regulatory hurdles and having tailored mitigation strategies in place can help keep competitive tension high and deals on track.
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> **Kate Cooper**
> M&A Partner, London

4. Policy driven merger review and the new remedy roadmap

In brief

Authorities are weighing broader policy objectives – from supply chain resilience to national competitiveness – alongside traditional assessments of competition. This shift is influencing transaction strategy, review timelines and remedy design. Dealmakers that can demonstrate pro-growth, pro-innovation benefits and anticipate the evolving remedy landscape are better positioned to secure clearance.

> For certain deals, developing a clear, strategic, evidence-backed narrative that shows how a transaction supports national economic and policy priorities – such as innovation, competition and supply chain resilience – can streamline regulatory engagement and reduce friction during merger review.
>
> **Jenn Mellott**
> Antitrust Partner, Washington DC/Brussels

Differences are widening: the UK is increasingly open to behavioral remedies, while the EU prefers structural remedies, although revised Merger Guidelines may open the door for remedies that preserve innovation rivalry or investment incentives. The US favors structural divestitures and China continues to rely on behavioral fixes. Understanding these contrasts and planning for remedies early is becoming essential to navigate complex deals to clearance.

> Successful dealmaking today requires more than reacting to agency concerns as they arise. Regulatory risk can't be managed with recycled efforts clauses or be left until it ripens into a problem; it has to be built into how the deal is structured and negotiated from day one.
>
> **Sanjay Murti**
> M&A Partner, New York

Merger control has moved from a narrow competition test to a broader policy conversation – authorities want to see how a deal supports innovation, supply chain resilience, and national competitiveness. The divergence in preferred approaches to remedies by regulators means that parties to a transaction cannot bolt-on remedies at the end – the key considerations and design need to be front-loaded, with dealmakers thinking hard about commercial boundaries.

There will be even further uptick in the intensity of negotiations of regulatory risk allocations, pressure for ever higher regulatory reverse termination fees, and extended long-stop dates.

> The Vodafone UK/Three UK decision was a trailblazer for a wider reassessment by the CMA of its willingness to accept behavioral commitments where parties can demonstrate real benefits for consumers and the wider economy. Robust evidence is now even more indispensable.
>
> **James Aitken**
> Head of London Antitrust, Competition and Trade, London/Dublin

For deals taking place in 2026, the successes will be those that come in early with a credible policy story, a realistic menu of structural and behavioral fixes where necessary, and contract terms that assume more scrutiny but use it where possible to shorten timetables rather than derail the deal.

> As remedy options develop, pairing creative commitments and efforts obligations with thoughtfully structured break fees gives parties both flexibility in negotiation and confidence in execution to help deals succeed despite regulatory complexity.
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> **Patrick Cichy**
> M&A Partner, Germany

Defining 2026

- **Demonstrate deal benefits.** Be prepared to illustrate how your deal aligns with national policy goals, such as fostering innovation, promoting competitiveness, and bolstering supply chain resilience. Articulating the deal rationale across jurisdictions with diverging priorities can be challenging, but achievable with the right approach.
- **Front-load remedy considerations.** Identify potential behavioral and structural remedies early and assess agency appetite for measures like firewalls or divestitures against commercial objectives and deal rationale – especially when drafting efforts provisions and negotiating risk allocation.
- **Hands-on engagement with authorities.** Proactive engagement can surface concerns and allow the parties to demonstrate the transaction's pro-competitive benefit, shaping the review process and giving regulators time to confirm the policy benefits.
- **Focus on robust risk allocation.** Transaction terms should reflect greater regulatory uncertainty, including detailed efforts provisions, clearer control over strategy and, where appropriate, break fees.
- **Monitor shifting enforcement priorities**. Agency leadership changes, updated guidelines and shifts in political emphasis can influence theories of harm and acceptable remedies. Tracking these trends enables more accurate scenario planning.

5. Key takeaways for M&A/dealmakers

Deal rationale and narrative

- At the outset of any transaction, assess all potential theories of harm and deal rationales – including those that may not be immediately apparent – and continue to reassess as the deal structure and political climate evolve.
- With less predictability in policy priorities, it's critical to understand both the competition and political objectives underpinning competition policy, and consider and address them in discussions with regulators.
- Develop a factual narrative that explains and illustrates how the deal supports national or regional policy goals, and keep it under review as the deal progresses.
- Use early engagement to shape reviews. Take advantage of early engagement opportunities to accelerate timelines and align narratives with regulators.

Negotiating the deal

- Transaction documents should be carefully drafted to account for longer timings and additional support needed:
  - Efforts obligations: Be clear on the limits for Hell-or-High-Water clauses, including the buyer's willingness and ability to offer remedies across its own portfolio.
  - Use of warranties: Buyer is reliant on the target or seller disclosing sensitive activities in due diligence, so water-tight warranties are essential.
  - Flexibility: Draft for procedural uncertainties and longer timelines. Build in long-stop extensions, additional filings and tailored efforts standards.
- Break fees are evolving, with more opportunities to tie them to earlier agency actions such as a Phase II or Second Request investigation – not just outright prohibition.

FDI

- Do not assume that FDI concerns can be allayed by demonstrating the investor is based in a friendly state. While investor risk remains important, asset risk is increasingly critical and will drive much of the scrutiny level.
- Assess FDI risk as early as possible and identify potential concerns upfront, including mapping the target's sensitive or critical technologies and identifying where foreign investors may gain access to sensitive technology or data.
- Proactively identify mitigations, and build them into deal planning, including discussions with regulators. This could involve upfront draft governance and data walls restricting information flow, which could satisfy FDI concerns before they arise.
- Budget for an extended timeline. A long stop date of 12 months or longer is no longer unusual where heightened FDI concerns, in-depth reviews, and mitigations are likely.

Remedy planning

- Front-load remedy planning, and develop behavioral and tailored remedy packages as a core part of the regulatory strategy. Remedies should be weighed against commercial priorities and other relevant regulatory or tax considerations but a growing acceptance of remedies (particularly in the US) may facilitate dealmaking in 2026.
- The return of remedies is reshaping regulatory efforts provisions. Sellers are increasingly pushing for specificity, such as obligations to divest certain assets or offer remedies at defined stages, which needs to be balanced with the overall strategy for obtaining regulatory clearance.
- Parties should be vigilant that their plans do not conflict with remedies imposed by antitrust or FDI authorities.
- Remedy-driven clearance opportunities may shorten long-stop dates for certain deals.

Preparing for reviews

- Prioritize upfront preparation. Gather and vet relevant documents and organizational information early to meet enhanced pre-notification requirements and avoid delays. Consider routine changes to document storage to streamline merger filings.
- Look at jurisdictional and substantive questions in unison, before deal signing or structuring, as these will inform call-in risk (including for non-notifiable transactions) and minority investment reviews.
- Coordinate cross-regime processes holistically as one strategy. Align notifications, messaging, and – if applicable – remedies for cross-border deals or investments to reduce procedural delays.
- Implement immediate (and/or tighten existing) compliance protocols, such as information firewalls, from signing to manage regulatory risks from portfolio companies in related sectors and minority stakes.