FRESHFIELDS

10 KEY THEMES – GLOBAL ANTITRUST

Clarity in antitrust

Insights that bring focus to the defining competition challenges of 2026

In 2025, global antitrust entered an era defined by significant governmental and agency changes against a backdrop of technological, economic and political upheaval.

Competition law became an instrument of industrial policy and geopolitical strategy, with regulators recalibrating their approaches amid shifting national priorities – trends we highlighted in our last edition.

2026 takes these developments even further. The lines between competition law and industrial policy have become more blurred, as governments and agencies have ushered in new priorities: economic growth, resilience, labor markets and technological competitiveness. Antitrust globally serves as a lens through which broader economic and geopolitical forces are now viewed. This 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.

Unlocking opportunities and minimizing risk in this year's antitrust landscape requires anticipation, precision and the ability to convert regulatory flux into competitive advantage. Freshfields' cross-market vantage point distills these developments into the 10 key themes to watch in 2026:

Geopolitics and dealmaking. Dealmakers who can show how their transactions align with evolving policy goals are better positioned to navigate complex merger review and an expanding field of unpredictable jurisdictional triggers. With regulators embracing a broader mix of remedies, dealmakers proposing creative, well-evidenced solutions early have a real chance to unlock approvals.

Foreign direct investment scrutiny is intensifying, with attention shifting from investor origin to the sensitivity of assets – particularly in critical technologies, infrastructure and supply chains. Trade policy has now become a lever for wider political and security objectives, requiring businesses to monitor fluctuating tariffs and bolster supply chain resilience.

New antitrust battlegrounds. Regulators are expanding their sights beyond traditional product markets, targeting wage-fixing, no-poach and non-compete agreements. Labor effects are emerging as a new benchmark in M&A reviews, signaling a wider scope for antitrust intervention.

In high-stakes sectors such as life sciences, technology and defense, enforcement will test the boundaries of competition law – addressing pricing and non-price abuses, early interventions in AI and emerging concerns over access to core inputs and innovation.

Risk and compliance evolution. Procedural compliance is now a strategic imperative, with agencies wielding enhanced investigative powers and enforcing zero-tolerance penalties for breaches worldwide. At the same time, private litigation is growing more sophisticated and coordinated, leveraging AI and technology to drive novel, multi-jurisdictional claims alongside regulatory investigations.

This is the new enforcement 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.

Alastair Chapman
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Antitrust, Competition and Trade Group

With thanks to Karen Slaney for her contribution.

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

Defining 2026

- **Navigate jurisdictional divergence.** Potentially inconsistent enforcement approaches require businesses operating internationally 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 or higher risk business initiatives, companies need a factual narrative that explains how the activity 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.** Across mergers, antitrust investigations and market investigations, regulators, particularly in the UK, are showing greater openness to creative behavioral and tailored remedy packages. Businesses that can offer credible solutions that address competition concerns and wider policy priorities will be better placed to secure favorable outcomes.

Power, policy and the new global landscape

Antitrust enforcement has become an instrument of geopolitical and economic strategy. After a year of political transition across major jurisdictions, authorities are deploying competition rules to advance national security, growth and resilience. The result is a more fragmented and often contradictory global environment in which governments feel empowered to act according to domestic priorities. For businesses, risk and opportunity will track these shifting political currents.

Those that can read and anticipate policy shifts may unlock opportunities that did not exist under a purely competition-focused analysis. The concept of "economic patriotism" means that transactions that bolster strategic industries or sectoral champions; develop domestic capabilities; or advance national resilience may now receive a more receptive hearing, even when they implicate traditional theories of harm. But companies must still demonstrate a credible public interest rationale and explain how consumers benefit. And economic patriotism in one jurisdiction may run up against industrial protectionist tendencies in another. Maintaining constructive dialogue with enforcers remains critical, as does staying close to policy drivers across jurisdictions.

Divergence as the defining feature

As national priorities pull competition policy in different directions, enforcement is diverging not only in outcome but in purpose. Major jurisdictions are increasingly shaping antitrust around domestic political and economic aims rather than a shared analytical framework.

America First antitrust: Protecting workers and consumers

Tension continues between interventionist populism and a desire to reduce regulatory friction. The return of merger remedies and early terminations of the initial waiting period signal an effort to ease the path for transactions that are viewed as pro-competitive or competitively benign. At the same time, US enforcers have emphasized priorities that track national interests and Trump Administration imperatives: promoting AI innovation, protecting workers and small businesses and guarding against foreign influence.

Scrutiny of large technology platforms remains pronounced, including renewed attention to issues concerning content curation. Enforcement in life sciences and healthcare continues with a focus on addressing affordability and consumer concerns about high costs. These dynamics reflect an "America First" orientation: in designing their business strategies, companies must consider their effects on US workers, consumers and the country's strategic position in global trade.

> 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**
> Antitrust Partner, Washington, DC

> The American people are once again facing a generation of economic and industrial change. We are adapting trade policies to put America First and undertaking deregulation that will unleash innovation in AI and other technologies and reshape our economy. [...] Will the American people shape tomorrow's economy, or will others decide what gets made, where it is made, and who makes it? Will our laws be written by Congress and enforced by politically accountable appointees in the Trump Administration, or by technocrats and lobbyists elsewhere?
>
> **Gail Slater**
> Assistant Attorney General, Antitrust Division,
> US Department of Justice

UK: Growth as the organizing principle

The UK is distinctive in its explicit alignment of competition policy with a pro-growth agenda. Economic growth now shapes how the Competition and Markets Authority (CMA) exercises its powers. The government's focus on productivity, investment and economic resilience has prompted a recalibration of enforcement toward proportionate, predictable and transparent intervention. This growth-centric stance extends across all facets of competition law – from merger control to investigations, market studies and digital interventions.

The government's imperative to "not get in the way of investment" is reflected in the CMA's new "4Ps" framework: pace, which accelerates cases to match commercial dynamics; predictability, which strives for clear and consistent outcomes; proportionality, which calibrates intervention to the competition concerns and economic context; and process, which seeks greater efficiency and transparency in case management and regulatory engagement. These principles are already visible in merger control, where recent reforms enable earlier, senior-level engagement and a more pragmatic, evidence-driven dialogue with transacting parties, and are being extended to other CMA processes.

> 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

EU: Balancing autonomy, scale and competition

The Draghi Report, as well as recent European Commission guidance and policy consultations, reveal an EU that sees the importance of integrating industrial and strategic priorities into competition enforcement. The aim is dual: respond to foreign practices that skew EU market dynamics and build globally competitive European firms. Strategic autonomy, innovation and resilience now sit alongside consumer welfare.

Yet the shift remains more rhetorical than operational. Formal integration of these priorities into EU competition law will evolve throughout 2026. The ongoing review of the EU antitrust procedural rules, including Merger Guidelines and Regulation 1/2003, is likely to shape the future of European M&A and antitrust investigations as authorities balance these priorities with traditional understandings of the role and remit of competition law. The key question for 2026 is how far authorities will allow industrial ambition to influence enforcement practice.

> Competition policy is not just about economic efficiency. It is one of the relevant tools we can count on for safeguarding democracy. For balancing power and ensuring that it does not become excessive. [...] never forget: antitrust enforcement was and still is a movement for justice. A movement for people and for wealth creation.
>
> **Teresa Ribera**
> Executive Vice-President for a Clean, Just and Competitive Transition and Commissioner for Competition, European Commission

> The EU is increasingly positioning competition policy as both a shield for strategic autonomy and a catalyst for European scale. The real inflection point in 2026 will be how these ambitions translate into enforcement, reshaping the rules for globally resilient businesses.
>
> **Janet Lang**
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APAC: Shifting national priorities shaping enforcement

Across APAC, competition enforcement remains closely tied to industrial and economic policy, national security, resilience and technological competitiveness but with varying intensity. China will continue using its competition rules to advance state interests – as its competition law instructs – but will flex in response to shifting geopolitical tectonic plates. The region's other major financial powerhouses, Australia, Hong Kong, India, Korea, Japan and Singapore, will likewise adopt a nuanced approach to enforcement as industrial policy, economic growth agendas, trade realignment and public interest considerations evolve. Emerging regimes such as Indonesia, Philippines, Thailand and Vietnam will increasingly flex their enforcement muscles, intervening as necessary to protect national interests.

This multifaceted patchwork in the region extends to merger control and investigations – and FDI where this exists. This signals uncertainty for companies in strategic sectors ranging from defence, semiconductors, AI, critical minerals to commodities but opportunity for others aligned to national priorities.

> Across APAC, antitrust is increasingly shaped by industrial policy, economic growth agendas, trade realignment, public interest considerations as much as traditional competition theory. Differing enforcement priorities, enforcement speeds and intervention levels remain. But convergence is emerging around digital intervention and AI.
>
> **Ninette Dodoo**
> Antitrust Partner, Beijing/Hong Kong

Collectively, these global developments mean businesses must operate in 2026 with a clear understanding that competition enforcement is shaped as much by national economic policy as by conventional competition concerns.

When it comes to M&A, regulatory risk is increasingly linked to how a deal fits with national security, growth, resilience and technological agenda.

> 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

Looking ahead to 2026, companies will need strategic advocacy, a clear execution strategy and a coherent policy narrative to address this evolving landscape.

With thanks to William Cooke, Xiaopeng Lai and Mairead Hughes for their contributions to this theme.

2.

Mastering new merger control procedures:

Opportunity and risk in global transaction planning

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

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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. While offering greater scope to secure flexibility for deals with pro-growth rationales, expanded merger control rules and procedures can heavily impact deal timing and outcomes if not managed correctly.

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. Aligning strategy across key merger control authorities matters more than ever.

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.
- **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.
- **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.

Rising upfront burdens and enhanced disclosure in the US

In the past year, the US Hart-Scott Rodino (HSR) filing form has undergone significant change, moving toward the high upfront documentary and information standard long established in the EU and UK. For transactions with horizontal overlaps or vertical relationships, the revised HSR form now requires broader disclosure of company information, including:

- ordinary course and transaction related documents;
- narratives on competitive overlaps and supply chain relationships; and
- detail on interlocking directorates and prior acquisitions over the last five years.

This new baseline for document production and analysis will impact front-end deal timing globally and demands a strategic rethinking of filing sequencing worldwide.

> Features of the new HSR form may add complexity for private capital – in particular the more detailed disclosures that capture all investments within one or multiple funds. Dealmakers should anticipate calling in counsel earlier to stay on track.
>
> **Marin Boney**
> Antitrust Partner, Washington, DC

Weaponizing jurisdictional unpredictability: Call-ins, referrals and ex-post review

Procedural burdens may be converging, but jurisdictional unpredictability is expanding. Regulators are casting wider nets to capture potentially problematic transactions, forcing dealmakers to contend with ex-post review risk even for below-threshold deals.

Europe: Referrals up and call-ins

Falling below the filing thresholds in Europe is no longer a source of comfort. The European Commission (EC) suffered a high-profile defeat in *Illumina/Grail*, which challenged its policy of encouraging "referral up" by Member States for deals not triggering national merger review. In response, several Member States are pursuing legislative change to obtain call-in powers to review deals that don't trigger national merger filings. The EC's referral policy continues, with the EC accepting referrals of deals that are caught by national call-in powers, although this scaled-down approach now also faces legal challenge following the EC's intervention in NVIDIA's acquisition of Run:ai.

More troubling for deal certainty is the threat of investigation under non-merger control enforcement regimes. Following the *Towercast* judgment, the EC has explicitly threatened to use its abuse of dominance powers against dominant firms that acquire smaller competitors where merger thresholds are not met. At the national level, the tool is already applied outside the dominance context. Without binding review timetables and with the capacity to be applied years after closing, this mechanism poses material deal certainty risk.

> 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.
>
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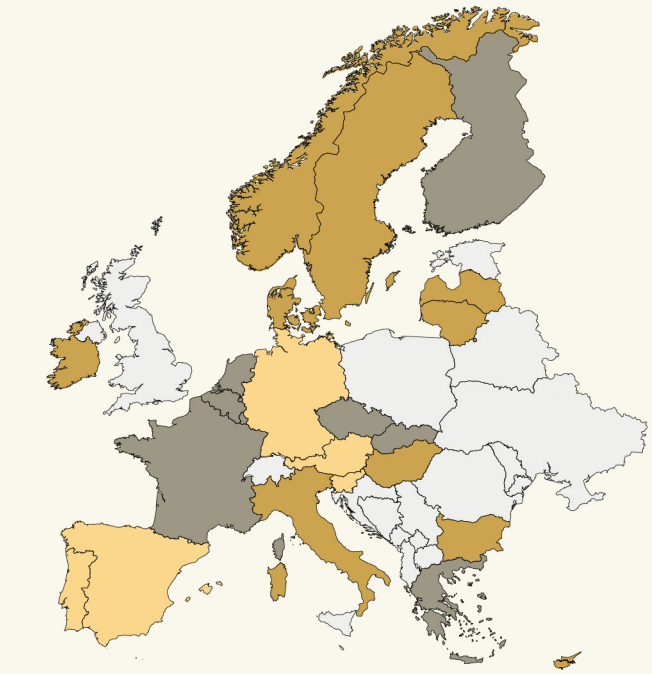
Evolving jurisdictional rules



APAC broadens its approach

This shift toward ex-post scrutiny is also intensifying in Asia. In China, the State Administration for Market Regulation (SAMR) is increasingly proactive in using its call-in powers for below-filing threshold deals. In 2025, SAMR published three decisions involving such transactions – two were remedied and one blocked – even though the deals had already closed. Whether the Chinese merger control thresholds are met is therefore not the only question when assessing filing requirements: both jurisdictional and substantive considerations should now inform whether to approach SAMR with a deal falling below notification thresholds. A proactive approach needs to be weighed against the risk of a disruptive, costly, and lengthy ex-post review. Similar questions arise in Japan, where the Japan Fair Trade Commission (JFTC) recommends proactive engagement for below-threshold transactions that have a meaningful link to Japan. As the JFTC retains the ability to investigate non-reportable transactions, voluntary consultations have become a useful tool to obtain legal certainty, especially where a transaction is subject to parallel reviews in other jurisdictions and cannot immediately close.

Australia's new mandatory merger control regime, effective January 1, 2026, is designed to capture deals that previously flew under the radar, and the Australian Competition and Consumer Commission retains its broad power to investigate and take action against any transaction that it believes substantially lessens competition.

UK: Call in or wait and see?

In the other direction, the UK's Competition and Markets Authority (CMA) has expressed renewed enthusiasm for use of its "wait and see" option on global mergers. Where review by other agencies might be sufficient to protect UK customers and consumers, the CMA may be prepared not to open a full review at the outset.

This forms part of the CMA's focus on a more predictable, proportionate approach to enforcement (see below) and represents a marked shift from the high watermark of intervention in deals where the target had no UK turnover. For merging parties, however, the risk is that the CMA may still intercede in the face of aggressive complaints, calling in a deal for full review at a much later stage in the timetable. The scope for disruption to timing is significant. The CMA's commitment to "wait and see" in appropriate cases appears sincere, but whether the approach survives a third-party court challenge is open to question.

Dealmakers hoping for a subdued and domestically focused CMA may be disappointed. Its current phase 2 caseload includes both significant cross-border deals and more local transactions, and there are signs the CMA is keen to dispel any impression that it has lost its appetite for international merger enforcement in appropriate cases.

The pro-growth window and the pace premium

While the compliance hurdle is rising, certain authorities are establishing pathways that promise a faster, more transparent run for deals that do not raise material concerns or that align with pro-growth agendas. This "pace premium" rewards parties that front-load analysis and engagement.

The CMA – through its pro-growth inspired "4Ps" agenda (Pace, Predictability, Proportionality and Process) – is already demonstrating tangible results. A key element is a commitment to reduce pre-notification periods. With the introduction of a 40-working-day key performance indicator (KPI) for pre-notification and a new culture of early, senior engagement, including "teach-ins", site visits and update calls, the CMA is offering a swifter route into review for complex cases.

CMA KPIs

Pre-notification for straightforward cases

65
working days
(current average)

↘40
working days
(new target)

Straightforward Phase 1 cases

35
working days
(current average)

↘25
working days
(new target)

Experience to date indicates that this commitment is being honored, with clear benefits for deals. More limited and targeted requests for information, fewer document demands and greater levels of feedback have enabled merging parties to engage with the CMA in a focused way, preparing for emerging theories of harm earlier and planning potential remedies more effectively. Achieving this acceleration comes with a low tolerance for less-than-full disclosure and demands hyper-intensive, proactive engagement during pre-notification.

More broadly, the UK government's growth agenda has opened a window for deals that can demonstrate a clear benefit to UK growth potential.

> 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

Procedural streamlining is not limited to the UK. China's SAMR continues to refine its merger process, reducing documentation requirements and working to shorten review periods. In South Korea, the Korea Fair Trade Commission (KFTC) introduced a pre-filing consultation process for complex deals and a voluntary remedy proposal system. This allows parties to design and propose remedy packages much earlier. If the proposal is accepted the review process could be significantly expedited, shortening what traditionally is a long process featuring one or more hearings with the KFTC.

In a similar vein, US authorities have resumed granting "early terminations" and the EC is exploring whether a simplified procedure should be implemented to alleviate the burden of certain Foreign Subsidies Regulation (FSR) notifications.

The procedural landscape is continually shifting. Maximizing use of available flexibilities to coordinate international filing strategy has become a key, early-stage workstream for merging parties.

The Foreign Subsidies Regulation: A new non-competition dimension of timing risk

The upfront challenge posed by the updated HSR form is amplified in Europe by the FSR. While FSR timelines formally mirror those of the EU Merger Regulation, the two processes often diverge in practice. In particular, companies often require significant time to compile the information needed for a first FSR filing, expanding the pre-notification period before the review clock even starts ticking. Compliance can therefore stretch deal schedules, representing a major procedural burden for dealmakers active in Europe.

As long as there is no simplified process under the FSR, companies must integrate FSR risk and data-assembly demands into early-stage due diligence, transaction structuring and timetables, alongside merger control and foreign direct investment reviews.

The EC's recent in-depth review of ADNOC's acquisition of Covestro illustrates the practical impact. FSR reviews can be intrusive, add significant delay and lead to innovative, non-structural remedies as a path to approval.

> The FSR adds another layer of regulatory review and uncertainty for dealmakers. Upfront disclosure requirements are significant, and parties need to strike a balance between transparency vis-à-vis the European Commission and national data regulations restricting transfers of certain information on state funding programs which might have FSR relevance. The risk of FSR call-ins should also not be underestimated.
>
> **Laurent Bougard**
> Antitrust Counsel, Tokyo

Additional enforcement risk: Minority stakes

Agencies are paying closer attention to minority stakes in rivals and private equity ownership of multiple companies in the same market. In the US, the new HSR form now requires buyers to disclose whether their officers and directors also serve as officers and directors of third parties active in the same space as the target. It also requires more detailed disclosures of fund structures, including organizational charts listing affiliate or associate entities. Deal teams should engage with antitrust counsel early to evaluate where existing minority investments, even relatively small ones, may extend review timelines or increase the risk of remedies.

Agency investigatory powers remain robust, and penalties for procedural missteps – including failures to disclose, delays or insufficient responsiveness – are increasing in scope and severity. In Europe, the EC's *Delivery Hero/Glovo* decision is a reminder that uncontrolled use of competitively sensitive information obtained from minority investments can result in significant regulatory and reputational costs. The EC found that Delivery Hero's non-controlling minority shareholding in Glovo facilitated anti-competitive coordination by allowing access to and use of commercially sensitive information and influenced decision-making. The EC also censured no-poach arrangements to which the parties agreed in conjunction with the investments.

Impact on deal terms: Contractualizing risk

This evolving procedural landscape requires changes to both execution strategy and global M&A deal terms. For transactions likely to attract enforcer interest, parties should build in specific, forward-looking contractual protections to manage risk and timing, including cooperation obligations. Internal documentation should be audit-ready, narrative and factual submissions harmonized across jurisdictions and contractual terms robust yet drafted with procedural flexibility in mind.

The ability to front-load regulatory risk management will increasingly distinguish successful transactions from those hampered by delay or escalating exposure.

For deals involving an HSR filing. The complexity of the revised HSR form means it is no longer feasible to rely on very short post-signing filing deadlines. Unless the parties are prepared, before a deal is signed, to invest significant time and money in HSR filing preparation, agreements must build in more time for comprehensive data assembly and document preparation. Contractual obligations to share information early are essential so the buyer can assemble the filing package. Close coordination with other jurisdictions that require similar information – such as the EU, UK and China – is also critical.

For deals involving EC approval. Given the risk of call-in and referrals to the EC, parties should consider the approach to conditionality and risk allocation to preserve deal viability, increase certainty and manage risk. Willingness to commit to a higher efforts standard will depend on the predictability of the review processes, the extent to which they can be accelerated, the information burden and the potential penalties involved. In critical cases, buyers will need to consider whether to test referral risk with the EC, despite the downsides of engaging on a non-notifiable deal.

For deals involving the CMA. Sellers should consider obligations requiring buyers to request the 40-working day pre-notification KPI, including more stringent timing requirements to stay within that KPI. Merging parties should also consider whether deal terms should address if and when a buyer can or must rely on the CMA's "wait and see" policy – a choice that carries risk but can also avoid significant notification costs.

Heightened disclosure requirements for minority shareholdings underscore the need for robust information barriers and defined governance limits, both to prevent unlawful information flows and to ensure careful consideration of board appointments. The pursuit of a full acquisition by a minority shareholder that is also a competitor should strictly adhere to "clean team" and confidentiality protocols to reduce the risk of pre-closing coordination.

> 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**
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Key takeaways for M&A in 2026

- **Prioritize upfront preparation.** Gather and vet relevant documents and organizational information early to meet enhanced pre-notification requirements and avoid delays. Ensure systems are in place for document storage to streamline merger filings and consider routine changes to those systems depending on the filings required.
- **Look at jurisdictional and substantive questions in unison,** before deal signing or structuring, as these will inform call-in risk (including for minority investments) and approach to deal terms.
- **Use early engagement to shape reviews.** Take advantage of early engagement opportunities to accelerate reviews and align narratives with regulators.
- **Draft for procedural flexibility.** Contractual terms should provide robust protection whilst retaining flexibility. Consider long-stop extensions, the potential for additional filings and tailored efforts standards to handle procedural uncertainties.
- **Tighten portfolio compliance.** Implement immediate compliance protocols, such as information firewalls, from signing to manage regulatory risks from portfolio companies in related sectors and minority stakes.
- **Develop a coordinated cross-regime strategy for merger filings.** Coordinate notifications, messaging, and – if applicable – remedies for cross-border deals or investments to reduce procedural delays.

With thanks to Karen Slaney, Charles Ramsey, Jan Jeram, Xiaopeng Lai, Killian Byrne, Andrew Rondeau and Sarah Claypoole for their contributions to this theme.

3.

Protecting national security in 2026:

The new face of FDI reviews

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

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In brief

Foreign direct investment (FDI) regimes are maturing amid geopolitical tensions and technological change. In 2026, asset risk will be key: enforcement in 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.

Defining 2026

As the global investment landscape evolves, businesses engaging in cross-border deals in 2026 must:

- **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.

The new risk landscape: sectoral priorities in 2026

Ongoing geopolitical tensions, shifting national economic priorities and developing technologies are causing FDI enforcement to evolve at pace. Traditional areas such as defense have continued to attract attention globally and will remain a major focus in 2026. But as regimes mature worldwide, governments are expanding national security interventions to a broader range of sectors. In 2026, we expect further development in sectors beyond – and in some cases alongside – defense.

1. Critical technologies

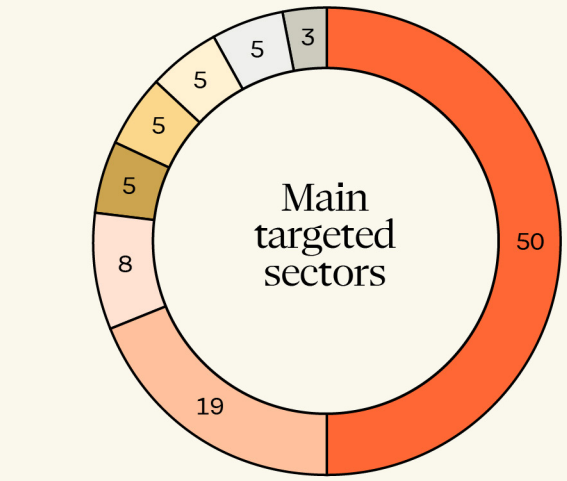
Critical technologies have become strategic levers in global power dynamics, and governments worldwide fear loss of tactical control and technology leakage to geopolitical rivals. Regulators are grappling with transactions involving defense-related technologies, semiconductors, AI, advanced robotics and quantum technologies, as well as emerging areas of concern such as connected cars and data centers.

Protection of critical technologies remains a core concern of the Committee on Foreign Investment in the US (CFIUS), both to prevent technology transfers to US adversaries and, increasingly, to protect and promote domestic production as a national security priority. Direction from the White House, combined with personnel changes and the appointment of more aggressive technology hawks, signal an expansive application of CFIUS's definition of "critical technology." This definition is linked to both CFIUS's mandatory filing regime and to investments related to acquisitions below the level of control.

> FDI screening by EU Member States is maturing from a technical security check into a tool of industrial policy. To get deals done, you must show not just that your deal isn't a threat, but how it aligns with Member States' own goals for resilience and competitiveness.
>
> **Frank Röhling**
> Antitrust and Foreign Investment Partner, Berlin

Critical technologies are in focus across the Atlantic too: 50% of recent in-depth reviews by EU Member States related to manufacturing and 19% concerned information and communications technologies. These reviews centered on defense-related technologies, semiconductors and aerospace, in addition to AI and robotics. This focus will only intensify; expect EU outbound investment controls covering semiconductors, AI and quantum computing to complement inbound screening by mid-2026.

EU Phase 2 main targeted sectors – 2024



In the UK, heightened concern over access to critical technologies and transfer of sensitive know-how to foreign states – combined with widened definitions for semiconductors, data centers and AI – will bring more tech deals into scope for mandatory review or call-in.

2. Critical national infrastructure

Investors should also expect increased scrutiny in critical national infrastructure investments. These include communications infrastructure, such as 5G and satellite systems, which are critical to national security as governments become increasingly wary of foreign espionage or cyberattacks. Energy investments, including renewables and nuclear, are also coming under heightened review due to rising fears worldwide of energy insecurity – brought into focus by Russia's invasion of Ukraine.

Greenfield infrastructure projects are similarly in the spotlight – for example, the Netherlands and Denmark recently enacted legislation to allow screening procedures for pre-operational offshore energy projects. In the UK, several private capital investments in the energy and communications sectors were permitted subject to conditions or even prohibited, in some cases, for non-majority shareholdings. The UK government's recent proposal to bring the water sector into scope for mandatory notification illustrates how the line between economic and national security is blurring, and highlights increasing efforts to protect against emerging threats to infrastructure assets. In Japan, beyond the acquisition of infrastructure assets by foreign parties, suppliers to critical infrastructure face a strict pre-approval regime.

3. Critical suppliers to government

Critical suppliers to government should anticipate increased examination worldwide in 2026, including logistics companies, IT systems, secure communications, manufacturing suppliers and firms indirectly linked to government operations. Governments fear that unfriendly investment in suppliers could expose sensitive or classified information or disrupt critical supply chains during periods of geopolitical tension.

US government supply chain integrity has been a core national security concern since CFIUS's inception. Deals involving government contractors and sub-tier suppliers – particularly those in communications, defense manufacturing, logistics, or sensitive health and biotech – will face headwinds even where the foreign investor poses minimal threat.

In parallel, a push to onshore production of essential technologies and federal participation in trusted-supply initiatives signals that the US government views its promotion of domestic capacity as complementary to CFIUS's deal-specific risk mitigation. The result is a policy landscape where foreign investment reviews and industrial policy increasingly reinforce one another: CFIUS focuses on safeguarding vulnerable supply-chain nodes, while separate federal programs aim to ensure the most strategic technologies are developed, manufactured and secured on US soil.

4. Other developing sectors

> 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 and Foreign Investment Partner,
> London/Hong Kong/Dublin

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.

Acquirer-related risks in 2026: continued spotlight on China and "friendly" investors

Investors should note that FDI regimes increasingly weigh acquirer risk against asset sensitivity. A trend set to continue into 2026 is significant worldwide FDI intervention into transactions featuring investors from "friendly" jurisdictions.

CFIUS assesses risk based on three factors:

i. the foreign investor's threat profile,

ii. the vulnerability of the US target, and

iii. the potential consequences if exploited.

While all three are important, target vulnerability now dominates the analysis, with Chinese investors assumed high-risk and others assessed against this backdrop. Even under a more holistic approach hinted at by the current administration, vulnerability-centric reviews will persist as economic and national security concerns converge. For investors from allied states, the process broadly hinges on two variables: the sensitivity of the US target and demonstrable distance from Chinese influence. Deals involving high-vulnerability sectors face rigorous scrutiny, regardless of the investor's origin. Investors should be ready to detail any China-related exposure and show robust internal safeguards to prevent technology or know-how transfer.

> 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.
>
> **Aimen Mir**
> Foreign Investment Partner, Washington, DC

Acquirer risk in the EU is increasingly asset focused. Even intra-EU deals can face strict enforcement for critical assets. Italy's veto of *Safran/Microtecnica* shows that an EU passport offers no immunity. Spain has similarly blocked or prompted the withdrawal of deals involving investors from other EU Member States. For non-EU investors, scrutiny is equally tough, with investment from friendly states such as the US and Middle East attracting significant review.

In the UK, where the National Security and Investment (NSI) regime reviews domestic deals as well as foreign investment, friendly acquirers can also be treated with a skeptical eye. All acquirers involved in the final orders in FY 2024/25, with the exception of seven Chinese investors, were associated with friendly or neutral states, including 11 investors from the UK – the most of any jurisdiction.

> 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.
>
> **Kate Cooper**
> Global Transactions Partner, London

Increase in NSIA Final Orders

13.2%
2023/24:
Final Orders issued in 5 of 38 call-ins

↗33%
2024/25:
Final Orders issued in 17 of 52 call-ins

Likewise, the Japanese authority has started to cast a skeptical eye over ostensibly friendly acquirers where there may be a stealth nexus to certain foreign governments. We are seeing prolonged reviews and remedy measures in these cases. There is also a move to facilitate the Japanese authority's ability to detect and review minority investors under effective influence by certain foreign governments in Japan-listed companies.

> Japanese reviews are increasingly alert to hidden foreign influence, even in minority stakes.
>
> **Kaori Yamada**
> Antitrust and Foreign Investment Partner, Tokyo

Key takeaways for M&A in 2026

- **Scrutiny increasingly driven by asset risk.** 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.
- **Importance of upfront planning.** 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.
- **Build potential mitigations into deal planning.** Proactively identify mitigations, and build that into deal planning, including discussions with other regulators. This could involve upfront draft governance and data walls restricting information flow, which could satisfy FDI concerns before they arise.
- **Draft with care.** When negotiating deal terms for FDI-sensitive deals, an investor should be mindful of:
  - *Efforts obligations* – Be clear on the limits for Hell-or-High-Water clauses, including the buyer's willingness and ability to offer remedies across the buyer's own portfolio.
  - *The use of warranties* – The buyer must rely on the target or seller to disclose sensitive activities in due diligence, so water-tight warranties and a robust and open disclosure process are essential.
  - *Post-closing plans* – The parties must be vigilant that their plans do not conflict with remedies imposed by FDI authorities.
- **Budget for an extended timeline.** For the reasons above, parties dealing with heightened FDI concerns should budget for an extended timeline – a long stop date of 12 months or longer is no longer unusual where in-depth reviews and mitigations are likely.

With thanks to Sarah Jensen, Colin Costello, Uwe Salaschek, Nick English, Ole Shley and Basile Marin for their contributions to this theme.

4.

Policy-driven merger review and the new remedy roadmap

Policy-driven merger review and the new remedy roadmap

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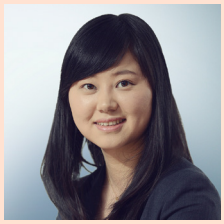

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In brief

Political and economic priorities are recasting merger review across major jurisdictions. 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.

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.

Defining 2026

- **Demonstrate deal benefits.** Be prepared to illustrate how deals align 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 and advance planning.
- **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 need to reflect greater regulatory uncertainty, including detailed efforts provisions, clear 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.

Policy-driven merger review and the new remedy roadmap

A new policy lens is reshaping merger control

Political and economic priorities now sit alongside traditional competition analysis in several key jurisdictions. Deals that can demonstrate contributions to investment, innovation or national resilience – including the creation of regional or sectoral champions – may receive a smoother path to clearance. But these benefits must be substantiated with credible evidence.

UK: Pragmatism and a broader remedy toolkit

The UK's 2025 Strategic Steer has prompted the Competition and Markets Authority (CMA) to align more closely with national growth objectives. After years of assertive intervention – including in global mergers with limited UK nexus – the CMA has announced its intention to adopt a more proportionate approach to merger review that is likely to continue into 2026.

This shift extends to remedies. In updated guidance, the CMA confirms that it will consider behavioral or more complex structural remedies, including divestitures that fall short of a standalone business, even at Phase 1. This marks a departure from earlier guidance that strongly favored comprehensive structural solutions and treated behavioral remedies as insufficient to address competition concerns.

> 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 indispensable.
>
> **James Aitken**
> Antitrust Partner, London/Dublin

EU: Integrating dynamic competition and policy priorities

Recent statements and ongoing guideline revisions indicate that the European Commission (EC) is recalibrating its approach. The emerging framework emphasizes dynamic competition principles, innovation incentives and broader policy considerations such as sustainability and resilience. That direction could support a more holistic assessment of efficiencies and innovation benefits, with remedies tailored to preserve competitive conditions while enabling strategic growth.

Enforcement activity remains strong as regulators grow their arsenal. The EC is intensifying its review of non-horizontal transactions, focusing on portfolio leverage and data access theories. Despite the potential shift toward broader policy aims, classic competition concerns continue to shape outcomes, with the EC prepared to deploy both established and evolving theories of harm to address emerging competitive dynamics. Expanding call-in powers for Member States mean that almost any deal presenting antitrust issues can be reviewed, whether at EU or national level.

> DG Comp is under pressure to accelerate the Merger Guidelines review. The key question is whether priorities from the Draghi report and the Competitiveness Compass will already shape forthcoming decisions in individual cases.
>
> **Thomas Janssens**
> Antitrust Partner, Brussels

United States: A return to legal and economic fundamentals

US agencies have shifted away from the Biden Administration's tendency to deploy procedural mechanisms that increased the time, risk and expense of all deals. Instead, they focus on a case-by-case evaluation of each deal's competitive merits. Early termination of the Hart-Scott-Rodino waiting period – largely suspended under the Biden Administration – has been reinstated, with more than 350 grants issued. "Quick look" reviews are expediting clearance for straightforward deals.

Importantly, the US Federal Trade Commission (FTC) has ended the practice of issuing "close-at-your-own-peril" letters, offering greater certainty when the waiting period expires.

Largely rejected under President Biden, remedies are once again acknowledged as an appropriate mechanism to address enforcers' concerns. The agencies strongly prefer structural solutions and remain skeptical of behavioral commitments – six of the seven remedies negotiated during the Trump Administration have been predominantly structural in nature – and recent practice underlines the need for early divestiture planning. The *Kroger/Albertsons* transaction is a cautionary example: repeated remedy offers failed to address concerns raised by the FTC and several state attorneys general, leading the parties to abandon the deal after losing in litigation. Subsequent disputes over the break fee – centering around whether the remedies offered by Kroger met its obligations under the efforts covenants – illustrate the importance of clear efforts provisions and precise allocation of regulatory risk.

> 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

China: Behavioral remedies remain central

The State Administration for Market Regulation (SAMR) continues to intervene in non-horizontal mergers, particularly in strategic sectors such as technology, where industrial policy and merger control enforcement usually intersect. This reflects the broader policy mandate under China's Anti-monopoly Law to safeguard both competition and national economic interests.

Chinese stakeholders are increasingly vocal during the merger review process, recognizing their influence on outcomes. Parties that can articulate tangible local benefits and propose pragmatic, monitorable commitments often find a clearer path to approval.

> In China, success of complex deals hinges on pragmatic, tailored remedies. The more tangible the local benefit, the smoother the path to approval.
>
> **Hazel Yin**
> Antitrust Partner, Freshfields RuiMin, Beijing/Shanghai

Structural vs behavioral: A widening divide reshaping remedy strategy

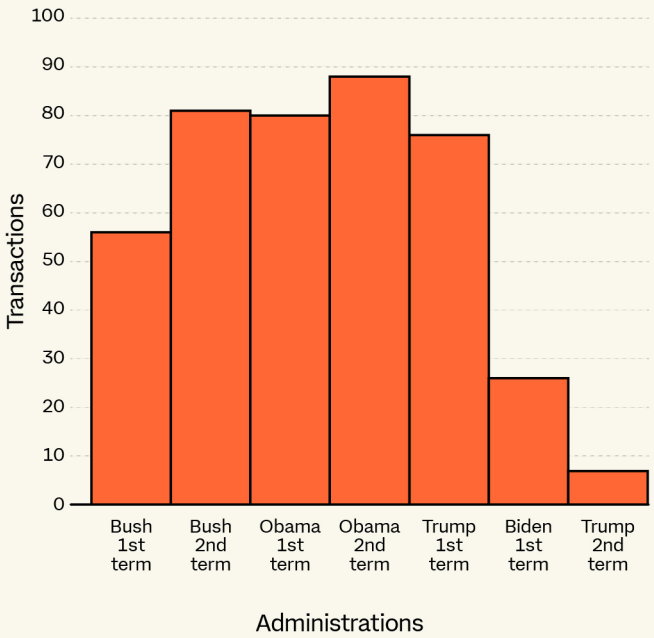
Jurisdictions are moving in different directions on the design and acceptability of remedies. These divergences complicate planning for multi-jurisdictional deals and require early engagement to reconcile expectations.

The UK is signalling an increased openness toward behavioral or hybrid commitments where credible evidence supports their effectiveness, particularly in innovation-driven or rapidly evolving markets, and the EU may well move in that direction too. Both jurisdictions are also updating their frameworks: the CMA's recent guidance signals greater openness to non-traditional structural solutions, while the EU's forthcoming merger guidelines are expected to embed mechanisms that protect R&D incentives and sustainability goals. This flexibility does not reduce the evidentiary burden. Parties will need to engage early, demonstrate that proposed remedies are workable and sufficient, and coordinate timing across jurisdictions to avoid delays.

By contrast, US practice remains anchored in structural divestitures. Agencies prefer remedies that eliminate the underlying competitive concern without ongoing monitoring and continue to scrutinize proposals that rely on conduct-based commitments.

In China, SAMR's long-standing preference for behavioral remedies continues. The Japan Fair Trade Commission is also experimenting with more creative behavioral commitments, particularly in digital markets, supported by closer use of third-party monitoring trustees to improve compliance.

Merger Consent Decrees by Administration



As agencies become more open to complex remedies, dealmakers must address regulatory risk earlier and engage more proactively on the topic of remedies in negotiations. Tailored efforts provisions, break fees and other risk-allocation tools are becoming increasingly important for managing uncertainty and aligning deal terms with shifting enforcement trends. With agencies prepared to consider more complex remedies – even at Phase 1 – effective remedy design and early engagement are critical to navigating regulatory hurdles and securing clearance.

> 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 success despite regulatory complexity.
>
> **Patrick Cichy**
> Global Transactions Partner, Germany

Key takeaways for M&A in 2026

- **Front-load remedy planning.** At the outset of any transaction, parties should assess all potential theories of harm and consider possible remedies – including behavioural remedies, weighing them against deal rationale, commercial priorities and other regulatory and tax considerations. There should be proactive engagement on the topic of remedies early on in negotiations.
- **Opportunity for shorter clearance timelines.** The increased acceptance of a spectrum of remedies provides greater opportunity for achieving a shorter review period, in turn reducing the gap between signing and closing and preserving deal value.
- **Reshaping of regulatory efforts provisions and risk allocation.** With the return of remedies, 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. There will also be increasing focus on break fees, with more opportunities to tie them to earlier agency actions such as Phase II or Second Request investigations, not just outright prohibitions.

With thanks to Kara Reid, Mathilde Beaumunier, Theo Souris, Xiaopeng Lai, Katie Kissinger Wallace and Kate Applegate for their contributions to this theme.

5.

Cartels and coordinated conduct in 2026:

The new playbook for a digital world

Cartels and coordinated conduct in 2026: The new playbook for a digital world

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In brief

Antitrust enforcement is undergoing a notable transformation. Agencies are emphasizing self-initiated cartel investigations as they make investments in data analytics and AI tools, proactive intelligence gathering, and new techniques for monitoring markets. Armed with expansive digital search powers and AI-enabled screening tools, authorities are increasingly detecting cases and pursuing them with greater speed and technical acuity. This shift, coupled with the rise of cross-border digital seizures and assertive enforcement, demands a new compliance posture. Businesses need forward-looking, digitally fluent systems to manage risks before regulators identify them.

Defining 2026

- **AI and 'big data' accelerate the shift away from reliance on leniency applications.** Authorities are using AI to detect conduct and initiate proactive ex officio investigations. AI and data analytics tools now screen for anomalies, suspicious pricing patterns and collusive conduct in public procurement. The risk for companies of conduct being detected through regulator-initiated screening is rising faster than ever before.
- **Investigatory powers modernized for the digital era.** Dawn raid powers have expanded across jurisdictions, with a growing focus on digital evidence. Investigators now routinely seize and sift data from cloud storage and shared workspaces and encrypted messaging apps, including those used on personal devices. In several jurisdictions, these powers extend to residential premises. And the US has successfully deployed its wiretap capability – surreptitiously monitoring communications between competitors in real time – to successfully prosecute executives implementing a cartel through phone conversations.
- **A more aggressive enforcement posture.** Authorities are intensifying scrutiny of information exchanges, minority shareholdings and algorithmic collusion. Bid-rigging in public procurement remains a top priority, with AI screening tools used by regulators and, increasingly, by public purchasers. Businesses should monitor these developments and adapt compliance frameworks to meet rising expectations.
- **Act now.** Update dawn raid manuals to reflect the full range of IT and data issues that arise in digital investigations and strengthen compliance programs with tech-enabled tools. Equip teams for proactive risk management and ensure preservation of data sources. Early movers can turn compliance into a strategic advantage, reinforcing resilience, demonstrating responsible innovation and placing companies in the best position to minimize the legal and financial consequences of a potential infringement.

The rise of proactive enforcement

Cartel enforcement is undergoing one of its most significant transformations in a generation. Powerful AI tools, expanded investigatory powers and a renewed appetite for aggressive action are reshaping how authorities detect, investigate and pursue potential infringements. For businesses, the implications reach far beyond traditional compliance. The architecture of enforcement is being rewired around digital evidence, continuous monitoring and theories of harm that reflect a far more interconnected economy. Understanding these changes is a strategic necessity.

> After spending the last 15 years at the DOJ and most recently as the head of its criminal enforcement program, I have seen firsthand the rapid proliferation of new techniques and theories as agencies around the world evolve their practices to achieve a more aggressive and dynamic enforcement posture.
>
> **Manish Kumar**
> Antitrust Partner, San Francisco/Washington, DC

AI shifts the detection model from reactive to predictive

For decades, cartel detection depended on leniency applicants to point them to coordinated conduct. That foundation is diversifying at speed. Authorities worldwide are investing in data analytics and machine learning, enabling proactive enforcement that does not rely on self-reporting. This marks a structural shift: regulators are actively mining markets for signals of coordination because they recognize that a credible threat of detection is a necessary complement to a voluntary self-reporting regime.

> It is well-known that public procurement is particularly vulnerable to bid-rigging [...] So we intend to intensify our work in this area. For example, by investing further in our detection tools, including – where we can access the right data – using data analytics (including AI) tools to identify suspicious activity.
>
> **Juliette Enser**
> Executive Director for Competition Enforcement, UK Competition and Markets Authority

These capabilities allow for continuous surveillance of public procurement and commercial markets, where data volumes are large and patterns can be algorithmically compared across time, geography or bidder profiles. Bid-rigging remains a systemic concern in procurement, and AI tools are reshaping how authorities identify statistical anomalies and suspicious pricing behavior.

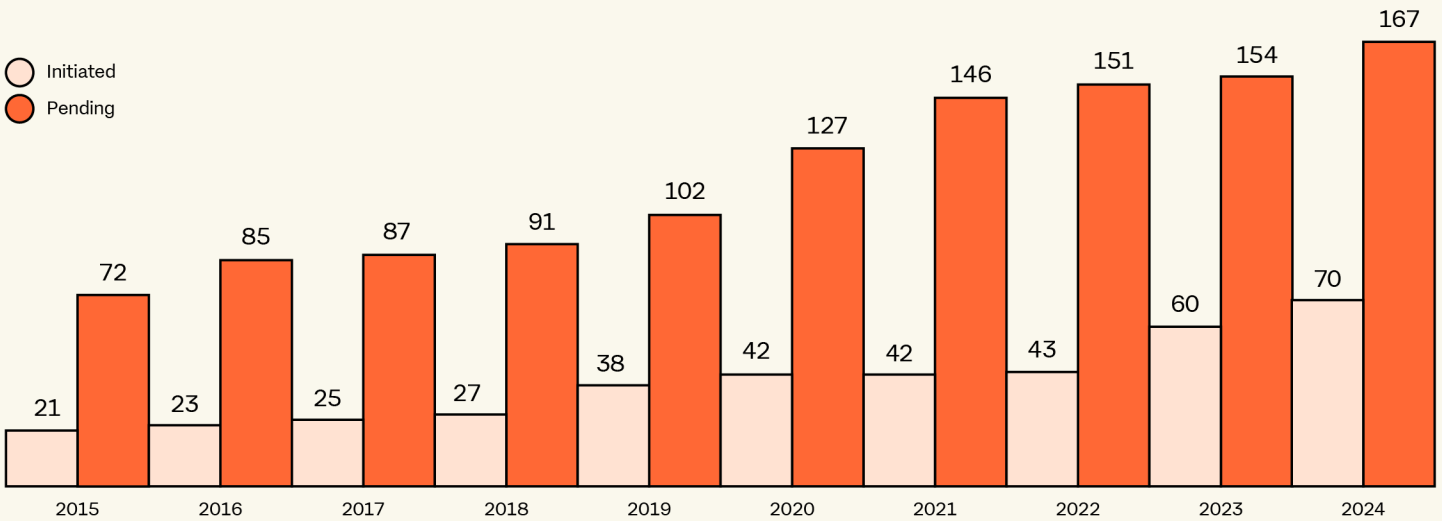
> In today's regulatory environment, AI presents a two-front challenge. On one side, competition authorities are deploying their own AI tools to hunt for infringements. On the other, regulators are heavily scrutinizing AI deployment by businesses, for example regarding pricing algorithms that qualify as "high-risk AI systems" under the EU AI Act. A robust AI strategy must therefore be both a shield for compliance and a tool for innovation.
>
> **Christoph Werkmeister**
> IP Dispute Resolution Partner, Düsseldorf

The shift is already visible. The European Commission (EC) has created a new Head of Technology role in DG Competition – appointing Professor Yves Alexandre de Montjoye – embedding technical expertise into case teams. The Spanish competition authority, CNMC, has built BRAVA (Bid Rigging Algorithm for Vigilance in Antitrust), a machine-learning model that categorizes tender bids as potentially collusive or competitive. In the US, the Department of Justice's (DOJ) Procurement Collusion Strike Force, which boasts more than 150 criminal investigations launched since its inception in 2019, relies on data analytics as a central investigatory tool.

Pricing tools, sales records and public communications are all potential evidence sources that may be captured by regulators' analytical models. The first line of compliance is now digital. Traditional training and manual auditing cannot match regulators' technical capabilities, which means companies need to adopt their own algorithmic and AI-based tools to test, monitor and validate pricing and sales behavior.

The DOJ has made clear that compliance programs' effectiveness will be assessed in part by how they monitor AI-based decision-making. A credible internal governance framework helps reduce antitrust risk during an investigation by demonstrating how third-party data is used, how pricing algorithms are trained and how decision-making systems are supervised and documented.

US: DOJ – Initiated and Pending Criminal Antitrust Investigations



> Although private plaintiffs have led the charge in algorithmic collusion cases thus far, the DOJ's interest is clear and we can expect further scrutiny of algorithmic tools in the future. Companies must ensure that any revenue management tools they utilize are based on public data or the company's own data – and not non-public competitor data.
>
> **Heather Lamberg**
> Antitrust Partner, Washington, DC

In the EU, the AI Act raises the bar. Pricing systems classified as "high-risk AI systems," particularly in essential services such as banking or insurance, will require human oversight and documented risk management systems. These systems must identify, test and mitigate antitrust risks, not only AI-specific failures such as bias or malfunction. It turns what was once good practice into a legal requirement and makes legal teams responsible for bridging AI governance and competition compliance.

Dawn raids evolve into digital seizures

Dawn raids are no longer defined by physical searches of offices. Investigators can now reach cloud servers, shared corporate workspaces, encrypted messaging applications and personal devices. Data can be seized remotely and reviewed off-site, creating a digital-first model that spans borders and devices with equal ease.

The UK's Digital Markets, Competition and Consumer Act 2024 (DMCCA), effective January 1, 2025, reflects this shift. The DMCCA expands the Competition and Market Authority's (CMA) powers to seize digital material directly, including data stored in cloud servers such as Microsoft 365 or Salesforce. These powers can be exercised remotely, and the DMCCA extends "seize and sift" authority to residential premises and personal devices, potentially increasingly intruding on individuals as confirmed in a recent High Court judgment. And with broadened search capabilities, agencies are better positioned to detect obstruction, which carries severe penalties.

The DMCCA also imposes a broad duty to preserve documents as soon as a business or individual knows or suspects that a CMA investigation is likely or underway. This shifts preservation from a reactive obligation to an active responsibility, requiring companies to identify and freeze relevant data quickly.

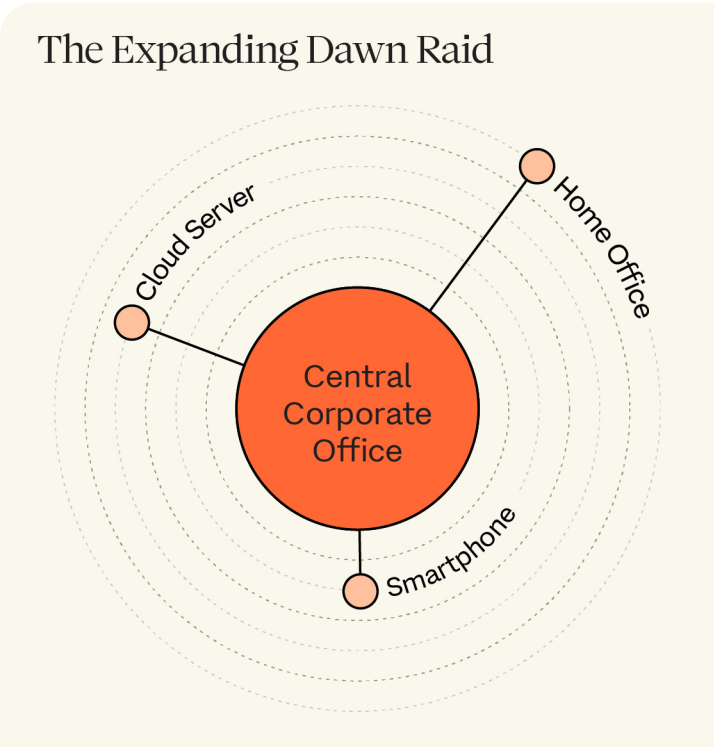
> The CMA isn't just potentially raiding your corporate premises anymore; it can now access your global cloud data from an employee's kitchen table. It is important that your dawn raid processes are adapted to reflect the digital world.
>
> **Bea Tormey**
> Dispute Resolution Partner, London

At the EU level, the EC's public consultation on reforming its procedural rules acknowledges that the existing toolkit was created for a paper-based environment. Proposed reforms would allow the EC to access digital evidence regardless of where it is stored and would create an independent power to order the preservation of digital and physical information. These proposals aim to ensure the EC can manage the massive shift from physical documents to cloud-based communication and data-heavy corporate systems.

Other countries are moving in parallel. The DOJ has long prioritized electronic evidence in antitrust cases. In criminal investigations, the DOJ often uses grand jury subpoenas to compel companies to identify digital repositories and produce data from servers, laptops or mobile devices. The DOJ can also surreptitiously execute search warrants that authorize the seizure of entire systems. Preservation obligations begin immediately once a company is aware of a potential investigation.

Companies must prepare for investigations that target offices, homes and cloud environments simultaneously. Dawn raid manuals should reflect this new reality, setting out clear responsibilities for employees, IT teams and external advisers.

IT readiness is now central. Administrators must have up-to-date access rights and a functional map of the company's digital infrastructure, including third-party platforms, data retention policies, backup systems and archived repositories. Companies with complex or decentralized systems may need external forensic support to ensure data integrity and compliance during a raid.



A proactive and balanced approach to document preservation is equally important. Authorities are increasingly challenging claims that data is inaccessible or burdensome to retrieve. Companies must also ensure that privileged material can be identified and segregated at speed.

The treatment of chat applications requires particular attention. Employees often use messaging apps on personal devices for business purposes, and regulators may seek access to these platforms. Investigators recognize the privacy implications (i.e., that personal data may be swept in) but companies must be able to identify where work-related information resides and how to isolate it. Data minimization requirements under GDPR apply, but they do not eliminate the obligation to cooperate.

The risks of non-compliance are high. Authorities have imposed substantial fines for obstruction in the IT context, and in the UK, individuals may face personal sanctions, including fines or imprisonment.

A more assertive enforcement posture

AI and new powers are not the only forces driving change. Authorities are also strengthening classic antitrust tools and broadening the scope of conduct that may attract scrutiny.

Labor market enforcement

Enforcers around the world have recently emphasized theories of collusion among employers relating to employee wages and hiring. Based on an investigation initiated through a market monitoring exercise and anonymous whistleblower, the EU obtained a EUR 329 million fine for a no-poach agreement in the food delivery sector earlier this year. Similarly, the DOJ recently obtained a criminal conviction and 40-month prison sentence against an executive who conspired to fix the level of wages paid to employees. Enforcers can be expected to be emboldened by these recent successes as they build on this successful prosecution amidst increasing cost-of-living and affordability concerns.

Signaling enters the enforcement mainstream

In the EU, the *Michelin* ruling confirms that public statements can amount to unlawful signaling when they reduce market uncertainty or reveal strategic direction. The EU General Court held that capital markets transparency obligations do not shield companies from antitrust liability. Earnings calls, analyst briefings and Q&A sessions can all create risk if executives use them to convey information that competitors may interpret as guidance on pricing or output.

The EC's use of algorithmic screening to review hundreds of thousands of earnings calls across industries demonstrates both the scale of scrutiny and the capacity to detect subtle patterns. Companies must embed competition considerations into all investor and public communications.

Algorithmic collusion gains global traction

Enforcement bodies worldwide are also examining how algorithms can facilitate coordination. Spain's investigation into Uber, Cabify and Bolt illustrates risks when multiple firms rely on interconnected pricing tools. Poland's inquiries into banking and pharmaceutical pricing reflect similar concerns, and senior EC officials have signaled that further EU action is likely in 2026 as they intensify their crackdown on algorithmic cartels.

> Competition authorities are raising the bar. The question is – are you ready to match their pace? In an era of algorithmic scrutiny and bold enforcement, staying ahead is not an option but an imperative. What once may have been seen as a grey area is becoming a bright red line. With rulings on public signaling and minority shareholdings, the EU is broadening collusion's scope – turning yesterday's common practice into tomorrow's cartel liability.
>
> **Dominic Divivier**
> Antitrust Partner, Düsseldorf

In the US, private litigation and government interest are converging. Lawsuits across sectors – from housing rentals and mortgages to hotels and healthcare – challenge companies' use of algorithmic pricing tools. These cases often hinge on whether algorithms rely solely on public and internal data or whether they incorporate pooled, confidential competitor information. The DOJ's *RealPage* action marks its first major enforcement case in this area and signals broader attention to algorithmic collusion moving forward.

Data protection breaches become antitrust harms

Data protection violations are increasingly treated as elements of antitrust abuse, particularly in Europe. In 2023, the German competition authority found that Meta's data collection practices breached GDPR and constituted an abuse of dominance. That position was upheld by the European Court of Justice. The Digital Markets Act reinforces this approach by prohibiting gatekeepers from combining personal data across services without explicit consent.

Recent case law also holds that GDPR breaches may amount to unfair commercial practices if they create competitive advantages. This convergence of privacy and competition analysis signals a broader enforcement trend in which data governance becomes integral to antitrust risk.

Companies should reassess risk exposure across their entire commercial ecosystems, not just direct competitors. Suppliers, customers, distributors, joint ventures, and portfolio companies may all create antitrust risk when data, algorithms or commercial strategy intersect. Compliance programs must be dynamic, forward-looking and designed to operate across digital, organizational and regulatory boundaries.

With thanks to Claire Leonard, Sarah Erne, Alisha Wright and Jan Niklas Di Fabio for their contributions to this theme.

6.

When politics sets the terms:

The new realities of global trade in 2026

When politics sets the terms: The new realities of global trade in 2026

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Stephanie Brown Cripps
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In brief

The global trade landscape shifted sharply in 2025, driven by geopolitical rivalry, changing domestic priorities and the reorientation of long-standing alliances. As we move into 2026, businesses face both pressure and opportunity. Governments are increasingly leveraging trade policy to advance broader political and security objectives, affecting supply chains, investment decisions and competitive dynamics. These developments will require businesses to track policy moves more closely and sharpen their view of where risk and opportunity converge in the year ahead.

Defining 2026

- **Adopt a proactive and integrated approach to trade strategy.** As trade becomes more politicized, anticipating shifting government priorities and corresponding regulatory initiatives and adjusting commercial strategies accordingly will be essential for resilience and growth.
- **Enhance tariff monitoring and identify policy developments.** Businesses should deepen their understanding and monitoring of tariff regimes and non-tariff barriers to trade.
- **Reassess supply chain strategies through diversification and contingency planning.** Companies should continue to refine production and sourcing decisions to mitigate risks arising from trade tensions while making use of preferential trade arrangements where available.
- **Navigate bilateral and multilateral agreements for new market access opportunities.** The rise of new trade agreements will create openings across digital trade, AI and sustainability-focused sectors.

Tariffs as instruments of political power

Tariffs will shape the trajectory of trade in 2026, reflecting not only economic goals but also geopolitical strategy. Governments are now deploying tariff measures to influence political choices abroad, protect strategic industries and reinforce security interests. The US remains the most significant actor in this shift, although other countries have adopted similar approaches to safeguard their own priorities.

> In this era of geopolitical fluidity, tariffs have become the sharp end of foreign policy and remain a contentious political flash point. Businesses must read political signals as closely as market ones, as today's diplomatic tensions often become tomorrow's trade barriers. In 2026, we stand at a pivotal moment where the intersection of trade, national security and policy will shape the trajectory of the US economy for years to come.
>
> **Stephanie Brown Cripps**
> Sanctions and Trade Partner, New York

The US has expanded its use of country and product-specific tariffs, alongside a new category of "reciprocal tariffs" grounded in national security or national emergency declarations. Measures include "fentanyl tariffs" on Canada, Mexico and China; a 10% baseline reciprocal tariff applied to most US trading partners from April 5, 2025; and continued use of Section 301 powers to counter alleged unfair foreign trade practices. These steps resulted in a 50% tariff on certain Brazilian and Indian products and a Section 301 investigation into China's alleged non-compliance with the US–China 2020 Economic and Trade Agreement.

A challenge to the fentanyl-related and reciprocal tariffs imposed under the International Emergency Economic Powers Act is currently before the US Supreme Court. While a decision is pending, it is possible that a ruling that clarifies the president's authority could roll back some of these tariffs (at least until a new legal basis is established), potentially enabling importers to receive reimbursements for the substantial duty payments they have already made. For importers, the outcome could reshape both risk exposure and planning assumptions.

The rapid volatility of tariff and enforcement policy has heightened compliance risk, particularly around import classification, valuation and rules of origin. Misreporting or undervaluing goods exposes companies to penalties and protracted enforcement action. To mitigate these risks, some companies have warehoused goods in bonded facilities to delay duty payments while confirming the accuracy of their reporting or waiting for regulatory clarity.

Consequently, this environment has accelerated supply chain restructuring which was already a prevalent feature of the global trade landscape during and following the COVID-19 pandemic. Businesses are continuing to pursue more diversified sourcing strategies and investing in "friend-shoring," "near-shoring," or even "re-shoring," especially for critical goods and technologies. Governments and trading blocs are responding with increased use of trade defense instruments to shield domestic industries from redirected imports. According to World Trade Organization (WTO) monitoring, a total of 644 trade measures on goods were recorded between mid-October 2024 and mid-May 2025. Trade remedy initiations and terminations represented the largest share of recorded measures, accounting for 46%. The trade coverage of other trade and trade related measures implemented during the period reached the highest level in over a decade.

> The strategic realignment of supply chains is no longer a matter of optimization but of resilience and even survival. The most durable enterprises in 2026 will be those that move beyond 'just-in-time' to 'just-in-case,' building networks that can absorb both economic and political shocks.
>
> **Andrew Dockham**
> Partner and Co-Chair of the Congressional Investigations Practice, Washington, DC

Retaliation and realignment: Competing to shape the new order

National security concerns, economic competition and geopolitical rivalry continue to drive trade policy. This trend manifests in direct trade restrictions like export controls, and in indirect measures including tighter transshipment rules or stricter rules of origin designed to curb tariff circumvention and advance security objectives.

US-China relations will remain the principal axis around which global trade developments revolve. Despite suggesting moves to reverse certain retaliatory actions, both countries will likely continue implementing responsive measures. Businesses are adjusting accordingly by adopting "China Plus One" strategies: diversifying operations into markets such as Vietnam, India or Mexico to reduce single-country exposure and build resilience against future shocks.

> Even as the global trading system endures the most severe disruptions in 80 years, trade is showing considerable resilience as most WTO members continue to trade normally with each other... We see protectionist measures affecting a substantially higher share of world trade. At the same time, we see a lot of trade-facilitating measures, reflecting a desire by members to reduce trade costs even as barriers rise elsewhere.
>
> **Ngozi Okonjo-Iweala**
> Director-General of the World Trade Organization

Tensions between the US and the EU also persist, particularly around the EU's enforcement of the Digital Markets Act and Digital Services Act. The threat of increased tariffs has already prompted other countries to reassess their own proposals: South Korea has paused its digital markets legislation, while India has withdrawn its version pending further review. These developments underscore how domestic regulatory policies can generate significant international trade friction and reinforce the need for businesses to integrate local compliance into their broader trade risk assessments.

> While the multilateral system faces headwinds, we are seeing the rise of strategic economic blocs and 'minilateral' deals. For agile businesses, this fragmentation creates a new map of opportunity, where understanding the nuances of these more targeted agreements will be key to unlocking growth.
>
> **Lorand Bartels**
> Trade Counsel, London

In parallel, several countries have responded to US measures by negotiating targeted bilateral arrangements. The UK, EU and Japan have all concluded framework trade deals with the US, aimed at reducing tariff exposure. Illustrating its strategic approach, the US has also reportedly begun incorporating "poison pill" termination clauses into certain agreements. These provisions would allow the US to withdraw unilaterally if a partner enters into a trade pact deemed to undermine "essential US interests." Such vaguely worded provisions would grant significant discretion to the US and are widely seen as an attempt to limit other states' ability to advance their independent trade relations, particularly with China.

Beyond unilateralism: The expanding architecture of global trade

Global trade in 2026 will be influenced not only by tariff policy but also by the rise of digital, services-based and sustainability-driven frameworks. Tariff-heavy measures have largely targeted goods, leaving services comparatively untouched. This phenomenon has allowed digitally delivered services to expand as a structural driver of global trade growth.

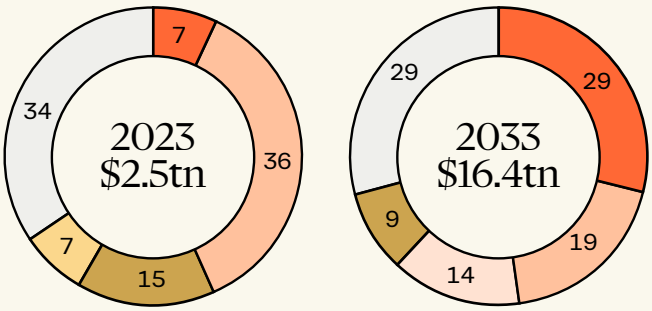
> The digital and green transitions are not only shaping domestic industrial policy; they are creating new frontiers for international trade. From AI-driven goods to the carbon footprint of imports, the next generation of trade rules will emerge at the intersection of technology, sustainability and market access.

Tone Oeyen
Antitrust Partner, Brussels

Beyond US policy, 2025 marked a renewed push among leading economies to deepen economic coordination. Many jurisdictions have been reinvigorating bilateral and multilateral trade arrangements in an effort to reinforce rules-based cooperation and create new free-trade pathways. For businesses that can identify and leverage these evolving frameworks effectively, these initiatives offer meaningful opportunities for expansion. This momentum toward non-US-centric trade agreements is likely to accelerate throughout 2026.

One of the most pronounced trends is the sustained surge in AI-related goods and services. Growth across multiple regions in 2025 points to a structural investment wave in digital infrastructure that will continue into 2026.

Estimated frontier technology market size and share of selected technologies, 2023 and 2033



	2023	2033
Artificial intelligence	7%	29%
Internet of things	36%	19%
Blockchain	0%	14%
Electric vehicles	15%	9%
Solar photovoltaic	7%	0%
Other	34%	29%

Sustainability will also play a critical role in shaping the regulatory context. The green agenda continues to guide industrial policy across major economies, influencing market access requirements and compliance obligations. The EU's Carbon Border Adjustment Mechanism, alongside similar initiatives emerging in the UK, will create new reporting and verification demands for carbon-intensive imports. These measures will affect investment decisions for businesses exposed to high-emission supply chains and may reshape the competitive landscape in energy-intensive sectors.

With thanks to Cara Carr, Noah Lipkowitz, Edward Dean, Ioana Motoc, Ashley Brown, Keian Razipour, and Chloe Goulding for their contributions to this theme.

7.

Competing for talent:

Labor markets as antitrust battlegrounds

Competing for talent: Labor markets as antitrust battlegrounds

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In brief

Hiring, compensation, talent sharing and the labor impacts of mergers are drawing intense global regulatory attention. No-poach agreements and wage-fixing arrangements are joined by HR benchmarking exercises and information exchanges as mainstays of agency inquiries. Labor issues are now complicating some merger reviews, with regulators asking earlier and more pointed questions about how a deal might affect workers or mobility. Preparing for those questions at the front end reduces the risk of unanticipated delays or remedial conversations.

Defining 2026

- **Labor markets are now a core antitrust priority.** Enforcement continues to expand beyond product markets, with regulators treating employment practices as competition issues across all sectors.
- **Labor questions will shape merger reviews.** Transactions may be scrutinized for their potential adverse impact on workers and for what they reveal about existing HR practices. Companies should anticipate labor-related scrutiny and address it early in deal strategy, filings and integration planning.
- **Stronger governance across hiring and compensation is essential.** Hiring, compensation and reward teams need clear, practical competition law guidance – including how to structure labor-related agreements and how to manage the information flows that may raise antitrust concerns.

Labor mobility emerges as a core competition metric

Antitrust enforcement in labor markets is gaining momentum. Over the past decade, cases have increased sixfold, and activity has doubled in the last two years. That growth is not expected to slow in 2026.

Competing for talent: Labor markets as antitrust battlegrounds

> [W]hile all Americans are harmed by unfair business activities that raise the prices they pay when they shop, their ability to earn a living is equally – if not more – harmed by deceptive, unfair, and anticompetitive employer labor practices that drive down what they earn for their labor. [...] I am directing [offices within the FTC] to work together to prioritize rooting out and prosecuting unfair labor-market practices that harm American workers.
>
> **Andrew Ferguson**
> Chairman of the US Federal Trade Commission

While wage-fixing violations have long been on regulators' radars, their attention has shifted toward a wider set of conduct that may restrict worker mobility. No-poach and non-compete clauses have become top enforcement priorities. Authorities are also examining whether minority shareholdings or interlocking directorates may create channels for sharing sensitive employment information or coordinating labor-related strategies.

> Labor issues have emerged as a bipartisan focal point for regulators, driving increased scrutiny at a global level. Wage-fixing, no-poach and non-compete policies are the new frontier of regulators' focus.
>
> **Bruce McCulloch**
> Antitrust Partner, Washington, DC

This shift reflects a broader policy narrative. In the US, leaders of the Federal Trade Commission (FTC) and Department of Justice, Antitrust Division (DOJ) have framed "big monopoly and big government" as threats to "ordinary families," explicitly linking anticompetitive labor practices to broader economic harms. This focus on labor practices was underscored in the FTC's recent request for information seeking to "advance... the agency's publicly stated priority of addressing harmful labor market conduct through case-by-case enforcement and public advocacy." The FTC's recent Labor Markets Task Force also highlights agency concerns with no-poach, non-solicitation, no-hire, and other agreements.

> [...] fairness also means a fair labour market. Our Glovo and Delivery Hero decision shows that employers must compete for talent and cannot limit opportunities for workers.
>
> **Teresa Ribera**
> Executive Vice-President for a Clean, Just and Competitive Transition and Commissioner for Competition, European Commission

The European Commission (EC) warned – both in policy briefs and official guidelines – about the risks stemming from no-poach agreements. It has already issued its first infringement decision in this space, and several national authorities have imposed fines. The UK Competition and Markets Authority (CMA) shares this direction of travel. Labor issues ranked among the CMA's strategic priorities for 2024-2025 and recent investigations and employee-facing guidelines signal sustained attention. The UK government's working paper on options for reform of non-competes in employment contracts, motivated in part by concerns that such clauses may chill innovation in tech and AI, further underscores the focus on worker mobility.

Across jurisdictions, the direction is clear. Enforcement is likely to intensify in sectors where workers move frequently, where digital platforms mediate gig or freelance work (broadcasting, delivery platforms, ride-hailing, tech consulting) and where skilled labor is scarce. Non-competes remain common tools for employers, but authorities are scrutinizing their purpose, duration and necessity.

Employers may need to consider alternatives such as garden leave or notice periods and should anticipate that regulators might broaden their focus to provisions in shareholder or incentive agreements, particularly where equity aligns employees' interests with those of investors.

Rivalry for talent matters as much as rivalry for customers

Companies cannot assume that labor-related competition issues arise only where they compete in product markets. Regulators are increasingly taking the view that companies compete for talent even when they serve entirely different industries. This expanded definition means that agreements with firms drawing from a similar labor pool can attract regulatory attention, whether or not those firms compete commercially downstream.

Here, the US has been a clear frontrunner. The DOJ and FTC's 2023 Merger Guidelines introduced a separate analytical framework for upstream labor markets, and the joint 2025 Antitrust Guidelines for Business Activities Affecting Workers reaffirmed that employers compete for workers, reframing competition as access to labor. The EC's policy brief made the same point explicitly: companies do not need to compete in a traditional product market to restrict competition in the talent market. The CMA's 2025 Competing for Talent guidance reaffirms this understanding, and enforcement agencies in Hong Kong and Türkiye have signaled similar priorities.

> Labor-related arrangements cannot be viewed solely as HR issues. Companies should approach hiring and compensation practices holistically, integrating competition law considerations into their broader compliance measures.
>
> **David Mendel**
> People and Reward Partner, London

This broader concept of competition presents practical challenges. Identifying product-market competitors is routine; identifying talent-market competitors is not. Companies must understand where their employees come from, where they go, and which other firms seek similar skill sets. Compliance teams should consider mapping relevant talent markets and ensure that hiring, compensation and benchmarking discussions do not stray into prohibited information-sharing – even when conducted through third parties such as recruitment agencies. Additional care is required when handling employment data used to comply with the EU Pay Transparency Directive, where interactions with third parties may give rise to competition risks.

Global enforcement converges, but outcomes diverge

Regulators around the world agree that labor market conduct can restrict competition. But the speed, tools and legal theories vary across jurisdictions, increasing the risk of fragmented enforcement. Companies operating globally must adjust accordingly.

In the US, antitrust enforcement has broadened beyond consumer welfare. Policymakers across the political spectrum – both populist and progressive – support labor-focused scrutiny. Prosecutors have pursued wage-fixing and no-poach cases criminally, while the FTC has brought civil enforcement actions targeting non-compete agreements. Following the withdrawal of its short-lived non-compete ban, the FTC is now challenging agreements on a case-by-case basis at the federal level. States remain divided: California continues to prohibit most non-competes, while others – such as North Carolina and South Carolina – permit them more broadly.

In the EU, the EC imposed its first no-poach fine in the food-delivery sector, applying the "by object" standard. Its starting position is that no-poach clauses are unlikely to qualify as ancillary restraints or benefit from exemption unless strict conditions are met. EU courts have taken a similar view. In *Diarra*, the European Court of Justice acknowledged that no-poach agreements may amount to "by object" restrictions. The upcoming *Tondela* judgment is expected to clarify the boundaries further. Enforcement by national authorities remains active, raising the likelihood of divergent outcomes across Member States.

> Enforcement in labor markets is now a global effort. Companies must have proactive strategies in place and compliance must be attuned to national nuances.
>
> **Deba Das**
> Dispute Resolution Partner, London/Dublin

The UK mirrors the continental approach. The CMA's three-year investigation into sports broadcasting concluded with sanctions for exchanging information on wages and pay increases as "by object" infringements. The CMA has made labor issues a strategic priority, and the government's planned review of non-competes suggests continuing momentum.

APAC regulators are taking similarly assertive positions. Australia's Treasury has proposed addressing wage-fixing, no-poach and non-compete agreements under the competition law framework to reinvigorate the job market. China's State Administration for Market Regulation is signaling readiness to intervene in labor-related cases, consistent with government efforts to reduce unemployment and promote labor mobility. The Japan Fair Trade Commission has issued new guidelines restricting exclusive arrangements for performers and limiting restrictions on switching talent agencies.

Amid this global shift, multinationals should ensure that HR and compliance teams apply competition law principles consistently across jurisdictions, while also accounting for local rules that may differ in both substance and enforcement intensity. Particular attention should be given to consultancy arrangements and cooperation agreements involving skilled employees, where labor-related restrictions may arise inadvertently.

The labor market becomes a battleground in merger control

Authorities are increasingly examining whether mergers create or strengthen monopsony power (i.e., buyer power over labor). This trend reflects a growing emphasis on resource allocation, worker mobility and the conditions that allow employees to switch jobs freely. As these theories evolve, labor-market impacts may become as central to merger analysis as product-market overlaps.

In the US, regulators are scrutinizing how mergers affect both product and labor markets. The FTC's cases against *Kroger–Albertsons* (supermarkets) and *Tapestry–Capri* (luxury fashion) included concerns that consolidation could reduce competition for labor. Authorities have also made clear that they will review labor policies and practices during merger investigations, even if those policies are not merger specific. This underscores the need to examine HR practices as part of the broader narrative companies present during the review.

> Scrutiny of labor issues is spilling over into M&A. In addition to carefully handling HR discussions in due diligence and integration planning, firms should be ready to be challenged on potential labor impacts of their deal.
>
> **Ermelinda Spinelli**
> Antitrust Partner, Milan/Rome

The ongoing consultation on the EU's revision of its Merger Guidelines includes a potential standalone labor-market theory of harm, even without clear downstream consumer harm. National authorities have already moved in this direction. In 2025, labor issues featured prominently in DPG Media's takeover of RTL and in the *Alphabet Education/Delta Schools* case, which the Greek authority blocked, citing concerns about market structure and worker mobility.

In the UK, the CMA has not yet prohibited a transaction solely on labor grounds. However, the Digital Markets, Competition and Consumers Act 2024 gives the CMA wide discretion to review non-horizontal mergers, including those involving innovation or dynamic competition. Labor supply considerations may form part of that assessment, particularly where firms employ large numbers of specialized workers.

Against this backdrop, companies should integrate labor considerations into the earliest stages of deal planning. Key tasks include assessing potential labor-market overlaps, developing credible efficiency arguments and being ready to propose remedies that address labor concerns directly. These steps should be incorporated into deal timetables and engagement strategies from the outset, given the potential for extended review periods and targeted information requests.

With thanks to Angela Landry, Florian Reiter-Werzin, Cecilia Carli, Sam Fulliton, Xiaopeng Lai and Emma Appleton for their contributions to this theme.

8.

Compliance as a competitive advantage:

Building future-proof defenses

Compliance as a competitive advantage: Building future-proof defenses

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In brief

In 2026, multinationals will need a more integrated approach to compliance. Monitoring across jurisdictions – increasingly supported by AI tools – will be essential to keep pace with fast-evolving enforcement powers and practices from regulators. In the UK, the Competition and Markets Authority (CMA) has gained enhanced investigative powers. In the EU, expect proposals for new European Commission (EC) powers, including on document preservation; a growing use of AI in enforcement practices; and a focus on non-traditional conduct such as labor or purchasing markets. In the US, the Federal Trade Commission (FTC) and Department of Justice, Antitrust Division (DOJ) continue to target issues such as board interlocks and remain ready to penalize failures to comply with more burdensome Hart-Scott-Rodino (HSR) requirements in antitrust investigations. Across Asia, regulators are rolling out new digital regulation frameworks and intensifying procedural enforcement.

Defining 2026

- **Watch out for significant updates to the EU's enforcement policy** and proposals for revised enforcement powers and monitor how the UK CMA flexes its enhanced investigative powers.
- **Be ready to comply with increasing procedural demands from US regulators**, who are interested in investigating concerns that go beyond standard product or service-market issues.
- **Review data storage, retention and retrieval systems** and be ready for information requests (and dawn raids) from any relevant authority.
- **Adopt an integrated, technology-supported compliance approach**, with robust policies that are regularly refreshed, conduct regular training and use AI tools to monitor compliance and address issues early.

The European Commission seeks enhanced investigative powers

The EC is expected to propose the most ambitious reform of the EU's procedural antitrust rules in nearly 25 years. The package is likely to include new investigative powers, such as requiring document preservation and conducting fully remote inspections – tools that mirror those recently given to the CMA under the UK's Digital Markets, Competition and Consumers Act 2024 (DMCCA). Taken together with the EU's Digital Services Act (DSA), these developments reveal a clear direction of travel: EU institutions want more reach, greater flexibility and earlier insight into business conduct.

> The European Commission's powers to obtain information and tech-based tools used to proactively monitor market behavior are strengthening. Companies need to health-check their systems and processes for their capacity to respond to demanding requests and ensure compliance with competition rules.
>
> **Maria Dreher-Lorjé**
> Antitrust Partner, Vienna/Brussels

The rationale for these additional powers and their place within existing EU frameworks remain contested. Any new power to conduct compulsory interviews of individuals backed by sanctions for non-compliance – envisaged as part of the reforms – would need to respect the right against self-incrimination and navigate the absence of individual liability under EU law. Similarly, the added value of new retention orders is uncertain: much will depend on how they are designed and enforced in practice, and in many cases they may do little more than restate preservation obligations that already follow from existing EU case law. These uncertainties mean companies will need to assess not just the letter of the new rules but how they reshape the practicalities of responding to investigations.

The EC is also expanding the use of its existing powers. Authorities have issued more extensive document production requests to third parties not suspected of wrongdoing, reflecting a willingness to cast a wider net in complex cases. Like the CMA and US agencies the EC also is increasing its use of AI tools to monitor market behavior and trigger inspections or further enquiries. The EU's General Court endorsed this approach in the *Michelin* judgment, confirming that AI-assisted detection can support evidence-gathering and investigative decisions.

Companies should track these developments closely and update compliance practices in anticipation of more assertive and data-driven enforcement.

Digital regimes are converging, but complexity remains

A wave of new digital regulation frameworks is adding an additional layer of compliance. The EU's Artificial Intelligence Act (AI Act), Digital Markets Act (DMA) and DSA, together with the UK's DMCCA, are transforming expectations for transparency, risk management, interoperability and data governance. The proposed EU Digital Fairness Act would push these boundaries further.

> Compliance complexity is increasing globally as regulators seek and obtain new powers, interrelated regulatory regimes proliferate, and aggressive procedural enforcement becomes the new normal. Companies need to ensure their internal compliance processes are up-to-date and make use of new tech capabilities.
>
> **Rikki Haria**
> Antitrust Partner, London/Dublin

At the same time, countries outside Europe – including Japan and Brazil – are adopting or considering DMA-inspired regimes signaling a growing global convergence around certain principles in digital regulation. However, because the scope and application of these regimes vary, are not always clearly defined and reflect divergent regulators' expectations, compliance becomes a moving target.

Regulators are also collaborating more closely. The AI Act will likely drive increased information sharing between market surveillance authorities and antitrust agencies. Joint investigations are already emerging under the DSA. Authorities' increasing use of AI for detecting and investigating competition issues further requires businesses to use AI for proactive compliance monitoring and early remediation.

In this dynamic environment, companies should adopt an integrated, technology-supported approach to compliance. Aligning business and legal functions – especially those responsible for different regulatory regimes – will help ensure consistent decision-making and a cohesive strategy when interacting with different regulators.

> Modernized enforcement means compliance can't operate in isolation. Integrating legal, data and technology functions moves beyond mere risk management; it's how companies stay credible, agile and ahead of regulators' evolving expectations.
>
> **Theresa Ehlen**
> Tech and Data Partner, Düsseldorf/Frankfurt

US agencies are widening the lens of antitrust enforcement

The FTC and DOJ continue to take an expansive view of antitrust enforcement, leveraging broader disclosure requirements.

The recently revised HSR form requires broader disclosures upfront, including ordinary course strategy documents and information on global overlaps and supply relationships. Companies should engage counsel early to review the significantly greater volume of deal documents and develop effective advocacy around potential impacts on competition globally and vertical foreclosure issues that must be disclosed to the US agencies at the outset.

> But when parties and counsel fail to comply and try to delay, obstruct, or play games, they lose credibility. If a party and its counsel cannot comply with legal obligations to preserve relevant communications, how can we trust their representations and their advocacy about the transaction?
>
> **Gail Slater**
> Assistant Attorney General, Antitrust Division, US Department of Justice

DOJ and FTC officials have also reaffirmed their interest in board interlocks. They take the view that Section 8 of the Clayton Act encompasses board observer rights that may facilitate exchange of competitively sensitive information. Reflecting this priority, the new HSR form requires parties to report interlocking directorates between merging companies.

These developments highlight the need for careful management of antitrust compliance. Companies should recognize that disclosures required in one enforcement area may invite scrutiny in others and ensure that internal processes and documentation are aligned with the agencies' broader enforcement approach.

> Procedural violations can not only jeopardize merger clearance and investigation outcomes but can lead to steep civil penalties in the US, in addition to reputational harm. Companies must remain vigilant in meeting all procedural requirements of merger reviews and antitrust investigations.
>
> **Elizabeth Suarez**
> Antitrust Counsel, Washington, DC

Zero tolerance for procedural breaches

Enforcement against procedural violations such as lack of cooperation, incomplete responses and missed deadlines is increasing globally. Companies must therefore adhere to strict document preservation practices and maintain an open dialogue with regulators around scoping their demands and protecting parties' procedural rights.

In 2025, the EC imposed its first fine for providing incomplete information during an antitrust investigation and opened another investigation concerning incorrect or misleading information in a merger review. This follows the EC's first obstruction fine – issued for the deletion of chat messages during an inspection in 2024 – indicating an enforcement posture that is increasingly uncompromising.

In the US, merging companies can similarly expect steep penalties for HSR violations. Amedisys was fined $1.1m after failing to produce required emails, text messages and hard copy documents during a merger investigation – a reminder that procedural missteps can be as costly as substantive infringements. The DOJ also previewed the launch of a "Comply with Care" taskforce to address document obstruction tactics during litigation and merger reviews. While its impact is unclear, Assistant Attorney General Gail Slater has committed that it will help deliver consistent, efficient responses to discovery disputes.

Other jurisdictions are moving in the same direction. In the UK, the DMCCA has expanded the CMA's penalty powers for non-compliance with procedural obligations, introducing fines up to 1% of global turnover for breach of investigatory requirements such as providing false or misleading information. Similar fines provisions exist under the DMA, DSA and AI Act. In China, the State Administration for Market Regulation has imposed fines for refusal to cooperate during or obstruction of an investigation and has held individuals personally liable alongside their companies.

> Regulators across Asia are raising the bar on procedural compliance – from timely information responses to transparent cooperation. How companies engage with regulators is now as important as what they do – effective compliance today is as much about process as it is about substance.
>
> **Wenting Ge**
> Antitrust Counsel, Freshfields RuiMin, Beijing/Shanghai

Given this landscape, companies should review their document retention and production processes, ensure that technology – including AI – is used effectively and respond promptly and thoroughly to information requests. At the same time, they should be prepared to assert their procedural rights, especially where requests appear disproportionate or unclear.

With thanks to Björn Sijtsma, Noelle Choi, Leonie Wittershagen and Joanna Goyder for their contributions to this theme.

9.

Dominance and market power in high-stakes sectors

Dominance and market power in high-stakes sectors

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In brief

Regulators are expanding the reach of dominance and monopolization law across life sciences, pharma, technology and AI. Pricing, patent strategies, product integration and control over essential digital inputs are now tested against political goals such as affordability, innovation and online transparency. As authorities stretch existing theories of harm and pursue new ones – from self-preferencing to non-economic harms linked to content moderation – the risk profile for high-impact sectors becomes more complex and less predictable. Companies should expect earlier intervention, more assertive enforcement and closer scrutiny of models that influence choice, access and innovation.

Defining 2026

Competition law is moving beyond familiar doctrines toward a broader conception of market power – one that blends economic analysis with industrial policy, healthcare priorities and digital governance.

- **Dominance theories will broaden further**, with regulators testing pricing, non-pricing conduct and product integration across life sciences, pharma and tech.
- **Life sciences enforcement will deepen**, especially around patent strategies, lifecycle management and conduct that may influence access or affordability.
- **Digital platforms face dual regulatory pressure**, with US agencies probing speech-related harms while other authorities intensify requirements, such as the EU authorities under the Digital Markets Act (DMA) and Digital Services Act (DSA) and the UK's Digital Markets, Competition and Consumers Act 2024.
- **AI integration will trigger new intervention points**, as authorities examine interoperability, access to data and whether embedded AI functions entrench incumbents or foreclose emerging competitors.

Dominance and market power in high-stakes sectors

Conduct theories are widening as regulators revisit the boundaries of dominance law

Abuse of dominance and monopolization will remain a central enforcement priority in 2026. Authorities continue to challenge both price and non-price conduct, especially where they believe commercial strategies influence market structure or long-term innovation pathways. Regulators remain focused on three broad categories of conduct:

- **Pricing practices**, including allegations of unfair or excessive pricing – an area that carries particular political salience in the pharmaceutical sector given the ongoing public debate about drug affordability;
- **Non-price abuses**, such as practices that may diminish product quality, delay innovation or reduce consumer choice; and
- **Product tying and input foreclosure**, especially within digital ecosystems where access to data, interoperability and technical interfaces can dictate competitive outcomes.

> US competition authorities' recent focus on content moderation represents an attempt to significantly expand the reach of antitrust law to cover not only commercial dealings, but also public debate and political speech.
>
> **Andrew Ewalt**
> Antitrust Partner, Washington, DC

As new European Commission (EC) guidelines on exclusionary abuses come into force, we expect stricter enforcement against alleged dominance infringements. These guidelines will give both the EC and national authorities a clearer framework to pursue complex theories of harm and signal a willingness to intervene earlier and with more assertiveness. Companies in high-profile sectors must prepare for regulators probing the foundations of their business models – including pricing, product design, and commercial relationship structures that rely on data, intellectual property or integrated technical features.

Life sciences enforcement is diverging – and becoming more political

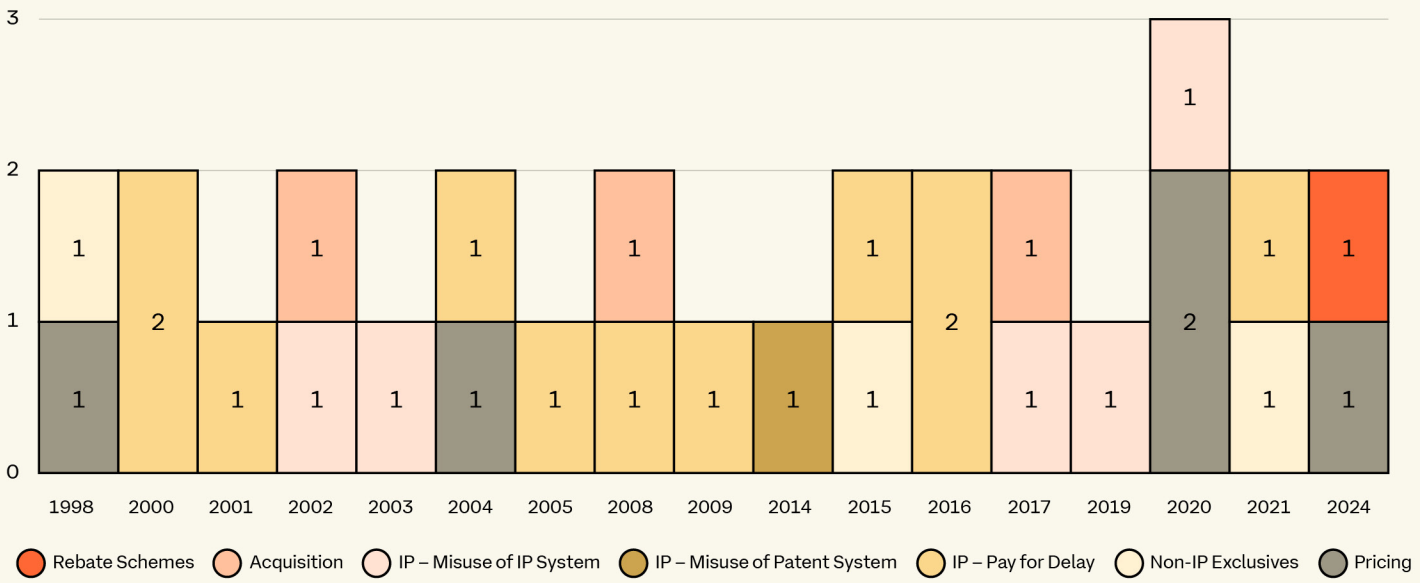
The life sciences industry remains an enforcement priority worldwide, but the focus differs sharply across jurisdictions. Competition law is being used – sometimes explicitly, sometimes implicitly – to advance national healthcare priorities: lowering prices, controlling budgets, accelerating access or safeguarding domestic innovation. That divergence matters. Companies operating globally must navigate not one coherent approach to dominance, but several parallel theories that reflect political agendas as much as competition doctrine.

In the US, the Trump Administration has made lowering prescription drug prices a headline policy objective. Its "most-favored-nation" executive order directs federal agencies – including the Federal Trade Commission (FTC) and Department of Justice, Antitrust Division (DOJ) – to push drug prices toward levels seen in other developed economies. The Administration has coupled this mandate with direct negotiations to reduce prices for specific drugs and has stated its intention to "deploy every tool in [its] arsenal" against what it considers abusive pricing. In practice, this approach reinforces an aggressive enforcement posture. Recent FTC cases targeting pricing conduct and exclusionary rebate schemes (eg, rebates conditioned on limiting access to lower-cost generics or biosimilars) as well as agency listening sessions on formulary steering demonstrate how antitrust is being integrated into a broader affordability agenda.

In the EU, the focus lies elsewhere. EU authorities are targeting non-pricing conduct that they believe impedes the timely entry of generics or biosimilars – especially conduct that manipulates intellectual property to extend exclusivity. The EC has pursued investigations into abusive patent strategies framed as "gaming" the system, and national authorities are following suit. The Italian Antitrust Authority's scrutiny of cross-Atlantic patent settlements for biosimilars illustrates how regulators now look beyond domestic borders when they consider whether global arrangements affect EU entry.

Dominance and market power in high-stakes sectors

US FTC Pharma/Biotech Enforcement Actions



These cases reveal a deeper shift. Regulators are placing increasing weight on internal documents and presenting them as evidence of a conscious strategy to block competition. Lifecycle management strategies that were once viewed as legitimate portfolio decisions may now be interpreted as attempts to extend market power – particularly where the underlying IP claims appear weak. For originators, this means patent enforcement and settlement strategies will be judged not only on legal validity but also on their perceived competitive rationale.

Authorities across the EU are also widening their lens to include denigration and disparagement by dominant firms. The EC's recent Vifor Pharma case, followed by the UK CMA's decision to mirror and extend commitments for the benefit of NHS patients, shows how statements about a competitor's safety or efficacy can be treated as exclusionary conduct. Regulators argue that inaccurate or incomplete claims can restrict entry as effectively as pricing or supply strategies. The expectation is clear: claims must be objectively verifiable, and communications should focus on a company's own products rather than negative assertions about rivals.

> The life sciences and pharma space remains top of mind for regulators worldwide, with a focus on bolstering innovation, increasing investment and reducing prices. Authorities are willing to make use of the antitrust toolbox in an expansive way to achieve these policy outcomes.
>
> **Jenny Leahy**
> Antitrust Partner, London/Brussels

In the UK, enforcement blends the EU's non-pricing focus with a continued interest in pricing conduct, reflecting the pressure on the NHS to manage costs. The CMA's willingness to piggyback on EC investigations, as in Vifor, suggests that UK authorities will use alignment to secure stronger domestic outcomes, particularly where remedies can be adapted to the needs of patients or NHS procurement.

Across Asia, enforcement remains centered on traditional pricing practices such as price fixing, bid-rigging, excessive pricing and resale price maintenance. This focus reflects the overriding priority of affordability and cost control in national healthcare agendas. Authorities in China, Japan, South Korea, Malaysia and Indonesia have continued to pursue high-impact pricing cases, especially in markets that affect consumers directly. China's State Administration for Market Regulation remains particularly active in the active pharmaceutical ingredient sector, and there is no indication that its focus will ease as domestic cost pressures persist.

A single thread connects these otherwise divergent approaches: regulators see competition law as a lever to influence healthcare outcomes, even when the underlying conduct theories differ. For companies operating in the sector, that means traditional antitrust analysis – market definition, dominance assessment, pricing effects – must now be matched with an understanding of the political and fiscal context in which authorities are acting. The risk is no longer limited to high prices or restrictive agreements; it extends to patent strategy, scientific communications, settlement structures, integration decisions and even the tone of market-facing materials. The result is a more assertive, less predictable enforcement environment in which conduct once viewed as peripheral to competition policy may now be treated as central.

Digital enforcement is widening beyond economics – and platforms face conflicting demands

Regulators are expanding the boundaries of digital enforcement, using self-preferencing and related theories to reshape how large platforms design, integrate and present their services. New regimes such as the DMA, Japan's Smartphone Software Competition Promotion Act and China's Anti-Unfair Competition Law now impose affirmative obligations that go well beyond traditional prohibitions on discriminatory conduct. Their underlying premise is clear: platform operators must not only avoid disadvantaging rivals but also create conditions for what authorities define as "fair competition." The US is also inching closer to this logic. For decades, US law held that dominant firms had no duty to assist competitors. Recent court decisions and agency actions suggest a willingness to revisit that boundary, particularly where non-interoperability may limit consumer choice. If these rulings withstand appeal, US monopolization law could accommodate more European-style abuse-of-dominance claims – while retaining a private litigation environment where plaintiffs can pursue treble damages without waiting for government intervention.

At the same time, US agencies are testing a broader array of harms. Both the FTC and DOJ have linked antitrust enforcement to non-economic concerns such as content moderation and the treatment of competing viewpoints. The FTC has stated that "exercises of market power… may reveal themselves in censorship," and has launched a formal inquiry into whether platforms deny or degrade access based on users' speech or affiliations. The FTC's resolution of the Omnicom-IPG merger reflects this shift: the consent order bars the merged entity from restricting advertiser spending based on a publisher's political or ideological views, absent client instruction. The DOJ has gone further by supporting private "deplatforming" claims, arguing that US antitrust law protects competition in the marketplace of ideas.

This expansion places global platforms in a difficult position. EU regulators are simultaneously demanding more intervention, particularly under the DSA, which requires consistent and effective content moderation. The US, by contrast, is examining whether moderation itself may signal discriminatory access or competitive harm. Companies operating across jurisdictions may therefore face contradictory expectations: intervene aggressively in the EU to meet DSA obligations yet avoid interventions in the US that could be framed as censorship.

The result is a new enforcement landscape in which digital conduct is judged along multiple axes – technical, economic and political. Self-preferencing, interoperability, ranking logic and content governance now sit within a single regulatory frame. Any perceived bias – commercial, algorithmic or ideological – can trigger scrutiny across several regimes. For digital platforms, the challenge in 2026 will be navigating this convergence without being pulled into conflicting theories of harm on both sides of the Atlantic.

> The CMA's new powers under the Digital Markets, Competition and Consumers Act create a dual threat in digital markets: a heavy new layer of regulation, coupled with additional avenues and potential inspiration for private damages claims.
>
> **Ramya Arnold**
> Dispute Resolution Partner, London/Dublin

AI integration is redefining familiar theories of harm

Regulators view generative AI as a market still in formation – and therefore one in which early intervention can shape long-term competitive structure. Agencies across jurisdictions have made clear that traditional dominance tools will be applied aggressively to safeguard innovation, access and entry.

> While grappling with digital regulations such as the EU Digital Markets Act, players in the AI space also have to be aware of the risk of traditional antitrust investigations into their development and deployment of AI, especially as authorities continue to grapple with how to capture the perceived risks around AI in the existing ex ante regulatory tools.
>
> **Aaron Green**
> Antitrust Partner, Brussels

In the US, the DOJ has been explicit. Assistant Attorney General Gail Slater underscored the Antitrust Division's focus on ensuring that incumbents "do not unfairly hinder [AI] newcomers and startups," echoing a global concern that entrenched firms could use scale advantages to restrict emerging rivals. That concern underpins the theories of harm regulators have already telegraphed: protecting access to essential inputs; preventing foreclosure of upstart firms; and scrutinizing product integration that may limit choice.

Another central theme is the treatment of integrated AI functionalities. Regulators have signaled that when established firms embed new AI tools into existing products, they may interpret these integrations not as quality improvements but as strategies to entrench market power. The Japan Fair Trade Commission's 2025 interim report on generative AI explicitly highlighted tying existing digital services to new AI capabilities as a potential abuse.

Recent EC enforcement – while not AI-specific – illustrates how this reasoning may evolve. In the *Microsoft Teams* case, the EC treated Teams as a distinct product whose bundling with Office 365 could foreclose rivals. The resulting commitments required Microsoft to unbundle Teams globally and enhance interoperability and API access. Member State authorities have echoed this approach, increasingly treating product features as standalone products capable of being bundled in ways that drive user lock-in. It is not difficult to see this logic applied to embedded AI assistants, analytics modules or foundation-model integrations.

> Some degree of integration with AI will inevitably characterize all digital products and services, and competition authorities are actively weighing how much they want to intervene in this highly dynamic sector. The European Commission's Teams investigation provided a clear signal: beyond the DMA, the 'old school' rules on tying remain one of the EC's primary tools for investigating 'new school' tech. We expect the EC to continue applying this playbook aggressively to new AI integrations, as we are already seeing at the EU Member State level. This trend will require companies to be particularly careful as they adopt novel product designs using AI.
>
> **Gian Luca Zampa**
> Antitrust Partner, Rome

For companies developing or deploying generative AI, the regulatory expectation is clear: avoid structural designs that appear exclusionary. Optionality, interoperability and credible pathways for rival access are becoming indicators of compliant behavior. Regulators also rely heavily on customer feedback and competitor complaints, often treating them as early signals of exclusionary risk.

Taken together, these trends show how AI is pulling antitrust enforcement deeper into questions of architecture, inputs and design – using familiar tools, but with far greater ambition.

With thanks to Drew Henderson, Tyler Garrett, Lucas Vanassche, Elena Brandt, Toyosi Taiwo, and Max Grewe for their contributions to this theme.

10.

Private litigation:

The class action catalyst

Private litigation: The class action catalyst

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In brief

Private antitrust litigation continues to grow. A single antitrust allegation can trigger complex, multi-jurisdictional scrutiny and litigation. Defendants need to respond with a coordinated global strategy that mitigates cross-border exposure while navigating local legal nuances. Plaintiffs are leveraging AI, other technologies and expert networks to pursue sophisticated strategies and identify novel theories of harm across borders. Defendant companies need unified, tech-enabled global defense strategies that anticipate both regulatory and plaintiff-side coordination.

Defining 2026

- **Prepare for a rise in coordinated multi-jurisdictional claims,** as plaintiffs increasingly deploy cross-border strategies, supported by AI, technology and expert networks to pursue novel theories of harm.
- **Leverage technology to strengthen your defense,** as plaintiffs use it to accelerate case preparation, book-building by identifying and reaching out to potential plaintiffs, and economic assessments. Align global narratives and economic analyses while remaining responsive to local legal nuances.
- **Expect discovery to remain a key battleground,** with growing regulatory cooperation increasing the risk of information-sharing and follow-on litigation.
- **Monitor the blurring lines between regulatory enforcement and private litigation,** as private damages actions increasingly run parallel to – or even precede – regulatory investigations in some jurisdictions.
- **Adopt integrated defense strategies,** combining technical, legal and jurisdictional expertise, to coordinate responses and disclosures across jurisdictions, mitigating risk and avoiding adverse spillovers.
- **Anticipate coordinated moves by plaintiffs and regulators** and prepare for the next wave of global antitrust claims with proactive, cross-border planning.

Private litigation: The class action catalyst

Defending against the global complainant

Global markets create global exposure. A single antitrust allegation can lead to numerous regulatory investigations and private damages actions, both individual and collective, in multiple jurisdictions. Plaintiffs are no longer acting in isolation, but instead are orchestrating cross-border strategies involving antitrust complaints and cases across jurisdictions. Plaintiffs are also leveraging technology both at the claim origination stage and throughout a case, exploiting variations in procedural rules between jurisdictions in discovery, privilege and limitation.

> Coordinate early, align narratives across borders, and use technology to anticipate moves; that's how you compress fragmented exposures into a unified, managed strategy.
>
> **Stefanie Spancken-Monz**
> Dispute Resolution Partner, Düsseldorf

There is more material than ever before in the public domain, including court filings, regulatory investigations and press statements, and regulators and courts are pushing for greater transparency in investigations and litigation. Plaintiff firms already use AI to identify potential claims, and we expect this trend to continue with horizon scanning at scale. AI-driven scraping, review and translation allow plaintiffs to find "the needle in the haystack" by spotting patterns, inconsistencies and concessions to identify potential theories of harm.

Once a theory of harm is identified, technology facilitates early economic assessment and accelerates intake and book-building where necessary. One example is the increased use of instant cash offers (i.e. upfront payments to claimants in exchange for assigning claims, irrespective of the final case outcome), which are likely to enhance plaintiffs' book-building. In addition to advanced use of technology, plaintiff firms are also drawing upon a broad network of economists, enabling the rapid development and refinement of economic theories of harm and robust damages assessment.

> In this environment, AI is not just a review tool; it's a strategic weapon. It's how you find the signal in the noise, model economic outcomes before plaintiffs or regulators do, and anticipate the other side's next move.
>
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> Dispute Resolution Partner, Düsseldorf

Defense strategies need to respond to this changing landscape. Defendants require a global playbook to align their core narrative with supporting facts and economic analysis across jurisdictions. Simultaneously, defendants must consider local law nuances including privilege and discovery rules.

United claimants and global pressure demand a coordinated response

There has been a surge in plaintiff firms coordinating across jurisdictions to pursue the same disputes. The same firms are acting in multiple jurisdictions or are partnering with local counsel in jurisdictions where they lack presence (eg, local counsel serving as counsel of record with a larger, global firm or settlement counsel). This united approach is an increasingly relevant factor when assessing defendants' response to antitrust actions, including settlement discussions – the strategy adopted in one jurisdiction may be leveraged in another.

We also expect AI to increasingly shape how law firms interact. Smaller plaintiff firms may leverage AI to expand capabilities, enabling pursuit of larger, more document and data-heavy cases. The result is likely to be a more agile and resilient plaintiff network capable of exerting consistent pressure on defendant companies across jurisdictions. For defendant companies, this evolution demands a forceful, synchronized response – one that anticipates both plaintiff-side orchestration and regulatory coordination.

Private litigation: The class action catalyst

> Businesses should expect that even creative or novel theories pursued in one jurisdiction may be tested in others and prepare accordingly.
>
> **Constance Forkner**
> Antitrust Special Counsel, Washington, DC

Litigation plus regulatory scrutiny: strategic responses to global issues

Coordinated global antitrust enforcement continues to spur a rise in disputes, with companies fighting parallel litigation in multiple jurisdictions against the backdrop of overlapping regulatory investigations.

While one might expect private damages claims to follow regulatory investigations, we increasingly see private damages actions brought in parallel with or prior to a regulatory finding of a breach of antitrust law. The result is that enforcement is effectively moving from regulators to plaintiffs. In some cases, particularly in the UK, regulators are monitoring private damages actions, taking a "watch and wait" approach rather than initiating their own investigation.

During investigations, regulators and plaintiffs may pursue cases grounded in shared factual and legal foundations but seek differing remedies or outcomes. From a business perspective, allegations present a global threat but must still be fought locally. Approaches to substantive competition law and procedural rights vary between jurisdictions and defendants must consider critical issues such as privilege, discovery, cooperation and potential admissions of liability.

The globalization of antitrust claims dovetails with the resurgence of broader theories of harm. In the US, the second Trump Administration has not abandoned aggressive theories pursued under the Biden Administration. Federal Trade Commission and Department of Justice, Antitrust Division leadership continue to emphasize their interest in using antitrust to curb large tech firms' power and minimize price increases for critical purchases such as drugs and housing. As agencies pursue cases scrutinizing previously normal information-sharing, parallel pricing, and supply decisions driven by shocks or tariffs, class actions can be expected to follow – both in the United States and abroad.

Joined forces: litigation risks of regulatory cooperation

We have long seen coordinated parallel public enforcement, such as the dawn raids in the fragrances investigation, and more recently by the European Commission (EC) and UK's Competition and Markets Authority (CMA) in the automotive end-of-life vehicles recycling investigation. We expect that cooperation to increase, including more frequent, structured and extensive information-sharing between regulators. The new EU-UK Competition Cooperation Agreement establishes a framework for structured information exchange and coordinated action for antitrust and merger investigations between the EC and the CMA post-Brexit. Within the EU, the Dutch competition authority is seeking greater cooperation among EU Member State regulators given the rise in issues with potential cross-border impacts.

Within that shifting playing field, businesses must treat engagement with a regulator as part of a proactive global strategy. Businesses must be mindful that statements or documents given to one regulator may have consequences before another, with knock-on effects for years in both regulatory investigations and follow-on litigation. That strategy must account for local differences in leniency regimes, procedural protections and discovery rules.

> With global antitrust regulators intensifying mutual cooperation, businesses do well to recognize that information provided to one local regulator can quickly echo across borders, shaping both regulatory outcomes and litigation risk globally. Developing an early and proactive global defense strategy is crucial to minimizing liability in the event of an antitrust investigation.
>
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Global disputes, local rules: managing disclosure across jurisdictions

Managing discovery remains a critical challenge. Companies must reconcile divergent requirements for confidentiality, privilege and data protection across jurisdictions. Missteps in one jurisdiction can undermine defenses elsewhere, and defendants should anticipate that plaintiffs may use discovery in one jurisdiction to obtain documents unavailable elsewhere. A coordinated litigation strategy – integrating legal, technical and jurisdictional expertise – ensures that companies manage document control, discovery and proactive, consistent engagement with regulators and courts worldwide.

> As private antitrust litigation becomes increasingly global and synchronized, defendants need to adapt to match that increasingly global playing field. That doesn't, however, mean zooming out and discounting local rules: on the contrary, it requires an in-depth knowledge of the differences between jurisdictions to ensure that defendants are not caught out by what might be a sensible course of action in one jurisdiction impacting negatively on strategy elsewhere.
>
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