IN-DEPTH

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THE INCREASING “POLITICISATION” OF MERGER CONTROL AND THE ROLE OF GOVERNMENT AFFAIRS

LEXOLOGY

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In-Depth: Merger Control (formerly The Merger Control Review) provides an incisive overview and analysis of the pre-merger competition and notification regimes across key jurisdictions worldwide, as well as a discussion of recent decisions, strategic considerations and likely upcoming developments. Given the ability of most competition agencies with pre-merger notification laws to delay, and even block, a transaction, it is imperative to take each jurisdiction – small or large, new or mature – seriously.

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The increasing "politicisation" of merger control and the role of government affairs

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Summary

Introduction

The current "politicisation" of merger control is generally perceived to be at an all-time high, at least in modern times. Yet, the relationship between politics and merger control is not new. The landmark prohibition by the European Commission (EC) of the proposed *GE/Honeywell* merger in 2001 and heavily conditioned approval of the *Boeing/McDonnell Douglas* merger in 1997 occurred in the face of extensive transatlantic "lobbying" by the US government, including a threatened tariff war.[1] More recently, the EC prohibited the *Siemens/Alstom* train merger in 2019, despite strong support from the German and French governments to create a European champion to counter Chinese rivals.

These days, the "politicisation" of merger control is back in the spotlight, and businesses and their deal-making advisers are facing the most complex M&A environment of our lifetimes. Shifts in the geopolitical landscape are testing traditional alliances between the United States (US), the European Union (EU), China and other jurisdictions around the world. The tariffs the Trump administration announced against China, the EU and many other jurisdictions have increased the tensions and uncertainties.

Alongside this, governments around the world have adopted policies to drive growth in their home jurisdictions and increasingly look to their competition authorities[2] as key implementers of those policies. Examples include the US's "America First" policy, the EU's "Competitiveness Compass" and the UK's "Growth" policy – all adopted since changes in these jurisdictions' governments in 2024/25.[3] These lodestars of the governments' economic and industrial policies have also been incorporated into the jurisdictions' competition policies, as the following statements illustrate.

1. Former US Assistant Attorney General for Antitrust (AAG) Gail Slater:[4] "America First Antitrust empowers America's forgotten men and women to shape their own economic destinies in the free market. We will stand for America's forgotten consumers. We will stand for America's forgotten workers. And we will stand for the small businesses and innovators, from Little Tech, to manufacturing, to family farms, that were forgotten by our economic policies for too long."[5]
2. US Federal Trade Commission Chairman (FTC Chairman) Andrew Ferguson: "This administration's economic mandate is broad, but it focuses on promoting human flourishing by creating a dynamic business environment. That environment is characterised by increasing innovation, productivity, and growth. The fruits of such an economy will be enjoyed by all Americans, not just the very rich and powerful. It is focused intensely on the welfare of the American worker. Vigorous and effective competition-law enforcement is a key component of this dynamic and pro-worker economy."[6]
3. EC Executive Vice-President (EVP) Teresa Ribera: "We want European Champions, and in fact we have many. But we don't let players concentrate at any cost, not at the expense of competitive markets and consumers. We support mergers that enhance Europe's global position and truly contribute to innovation, technological progress and do not undermine competition."[7]
4.

> UK Minister for Employment Rights, Competition and Markets, Justin Madders: “We have been very clear that we expect regulators to focus on driving economic growth, as well as lending their expertise to support the Government in improving the public sector. We welcome this [annual] plan set out by the CMA [Competition and Markets Authority], which will help it focus on delivering growth and supporting consumers across the country.” [8]

These new policies are taking root and their impact on merger control is becoming apparent:

1. all three jurisdictions are more open to approving mergers and merger settlements and more “politicised” than in the recent past. In 2025, neither the EC nor the UK CMA[9] nor the US DOJ prohibited any mergers, and the US FTC sought to prohibit only two;
2. the FTC and CMA have shown willingness to accept behavioural (rather than structural) remedies in certain cases;
3. the competition authorities are including concepts such as labour, integration of the EU Single Market, resilience and security of supply as well as competition into their investigations;
4. transaction rationales, efficiencies and other benefits and remedies that promote the governments' political and economic goals are carrying greater weight in achieving approvals; and
5. foreign direct investment regimes[10] and, in the EU, the foreign subsidies regime are increasingly giving governments powers of direct intervention in some cases alongside traditional competition-based merger control.

This increasing “politicisation” of merger control requires transaction parties and their advisers to take a broad view of the landscape in which their transaction will be reviewed and to include a government affairs strategy in parallel with, and complementary to, their legal and economic case, to ensure a successful outcome for all but the most straightforward, no-issues transactions – or a successful intervention if advising a third party seeking to prevent or disrupt a transaction (see the “Role of government affairs in an increasingly politicised world of merger control” section).

The “M&A under the Trump administration – America First”, “M&A under the von der Leyen Commission – European Competitiveness” and “M&A under the Starmer government – UK growth” sections explain in detail recent developments in the increasing “politicisation” of merger control in the US, EU and UK respectively. The final section – “Further aspects of the increasing “politicisation” of merger control” – looks at some non-competition aspects of this trend.

Role of government affairs in an increasingly politicised world of merger control

Planning a government affairs strategy to ensure a successful outcome

Undertaking the necessary groundwork and positioning the proposed transaction appropriately for the relevant governments, competition authorities and other stakeholders should be a priority in the risk analysis for any M&A project. Well-advised boards are demanding such strategic assessments, alongside the legal and economic assessments, at the outset when they consider whether to give the go-ahead to a proposed transaction.

A deep understanding of the specificities of each jurisdiction, down to the personal and political ambitions of the key officials concerned, is necessary. In addition to understanding each jurisdiction, it is also important to appreciate the jurisdiction's interactions and relations with other jurisdictions reviewing the same transaction.

Merger investigations are among the few areas where governments or governmental authorities have direct yes-or-no power over corporate initiatives.[11] Companies therefore need to identify the governments and other authorities that will be instrumental in reviewing or influencing the authorisations required for their transactions and to fully understand their policy objectives. In the US, this increasingly means state, as well as federal, authorities. In the EU, member states can be highly influential even when they are not the final decision-makers in a case.

Companies, alongside their advisers, should condition the environment well ahead of announcing a transaction. The first step is to map all relevant stakeholders to understand how they interact and influence one another. Once a picture of key stakeholders has been established, key messages about the transaction's pro-competitive rationale and its benefits for stakeholders can be developed and tested to ensure they will resonate with their target audiences. When this groundwork is complete, a core narrative can be developed together with a comprehensive set of materials, including challenging Q&A, public FAQs, announcement materials, talking points for use by company leadership, briefings for government stakeholder meetings, materials for third parties, media soundbites, videos, website and social media content, and public comment letters and submissions for governments and legislators as well as the competition and any other authorities that will review the transaction.

The earlier the strategising can start, the better. Building relationships with key government officials during the normal course of business is best. Such a wise investment of time and resources can help ensure that the first contact with governments and authorities after a transaction's announcement is not a defensive one. Making sure the industry dynamics are well understood by those in government and the other stakeholders that may be involved in, or impacted by, the merger review process is also valuable. Companies should also identify and educate credible third parties that can effectively advocate for the transaction and explain the market dynamics that will be benefited by it. These efforts can yield significant dividends throughout the review process.

Pre-announcement strategising and planning should also include consideration of possible remedies (or settlements) as well as the case for unconditional approval. Merger investigation outcomes are not necessarily binary – approve or prohibit. Securing remedies that address the governments' and authorities' concerns without negating the transaction's commercial rationale can be a difficult exercise, especially where "political" stakeholders with expansive agendas are involved. Government affairs skills can be instrumental in explaining the impact and effectiveness of the remedies on the competitive and political landscapes to the relevant stakeholders.

Similar "campaigns" may be appropriate if acting for a third party against a proposed transaction, although the content and timing of the messaging will, of course, be different.

Identifying and addressing the stakeholders

The relevant stakeholders will vary from transaction to transaction, so the identification and mapping of relevant stakeholders should always be tailored to the specific transaction. The programme for addressing the relevant stakeholders will also be transaction-specific, as will the appropriate messages. However, a generalised overview of likely stakeholders is shown in the following table.

Stakeholders	Description
Investigating antitrust authorities	US Department of Justice/Federal Trade Commission, European Commission, UK Competition and Markets Authority, and other competition authorities.
National governments	Including foreign direct investment (FDI) investigating authorities and the Committee on Foreign Investment in the United States (CFIUS).
Sponsoring/affected government departments	For example, US Administration, EU Directorates General and EU member states and UK government.
Legislators	For example, US Congress, European Parliament and UK Parliament.
US states/local government authorities	State Attorneys General and other local government bodies in the US and elsewhere that implement and influence policy at regional or local levels.
Commercial stakeholders	Including consumers, employees, suppliers and trade associations.
Experts/thought leaders	Experts and thought leaders influencing governments, legislators and competition authorities.
Media	Including traditional and social media outlets influencing public opinion, governments, legislators and competition authorities.

M&A under the Trump administration – America First

First Trump and Biden administrations

The “politicisation” of merger control in the US is not new. In recent times, for example, the DOJ's (unsuccessful) attempt during the first Trump administration to prevent AT&T's acquisition of Time Warner was believed to have been influenced by President Trump's animosity toward CNN, then owned by Time Warner.[12] President Biden's 2021 Executive Order on Promoting Competition in the American Economy was also regarded by critics as “politicising” antitrust policy.[13] Referencing the pro-competition initiatives of Presidents Teddy and Franklin Roosevelt, the Executive Order established a “whole of government” approach to antitrust policy and enforcement and a White House Competition Council. In his 2023 State of the Union address, President Biden called on Congress to “pass bipartisan legislation to strengthen antitrust enforcement”. This was the first time in 44 years that a US President had mentioned “antitrust” in a State of the Union address.

Vigorous, politicised merger enforcement under the second Trump administration

Merger enforcement under the second Trump administration is demonstrating neither a traditional Republican hands-off approach to merger enforcement nor the continuation of what FTC Chairman Ferguson has called the Biden administration's “pretty obvious ideological predisposition against M&A”.[14] Ferguson has stressed that “if we think [the transaction is not anticompetitive] we're going to get out of the way”[15] rather than seek to run out the clock (as the Biden DOJ and FTC were perceived to have done in some cases). Former AAG Slater put it this way: “We're not doing Bush antitrust, we're not doing Biden antitrust. The pendulum swings, but we're doing Trump antitrust.”[16]

FTC Chairman Ferguson has also said that if the FTC thinks a deal is illegal or poses a real competition problem, the agency will go to court to block it – “we are going to enforce these laws vigorously and aggressively […] you're going to see us in court and if we think it doesn't [violate the law], we're going to get out of the way”.[17] Former AAG Slater said “our merger enforcement will apply our prosecutorial discretion based on the best interpretations of the laws on the books”.[18]

The second Trump administration seems to be focusing on certain sectors including defence, energy, food, healthcare, housing and home construction, pharmaceuticals, retail and technology. In some instances, the administration is seen to be “weaponising” merger control to deliver on domestic policy objectives (eg, DEI and media bias) that are traditionally beyond the scope of US antitrust law.

Politicisation

At the FTC, President Trump fired the two Democratic Commissioners (Rebecca Slaughter and Alvaro Bedoya) from office without cause in March 2025 shortly after he took office in January 2025.[19] This has resulted in the FTC not currently operating as the bipartisan organisation Congress envisaged when the FTC was established in 1914. The two current Commissioners – Andrew Ferguson and Michael Meador – are Republicans. Senate confirmation of a third Republican Commissioner nominee – David MacNeil – is awaited.-[20] The FTC's current practice of referring to the institution as the “Trump-Vance FTC” is noteworthy.

The Supreme Court's decision on whether Commissioner Slaughter was wrongly dismissed and should be reinstated is expected during 2026. The Trump administration is asking the Supreme Court to overturn *Humphrey's Executor v United States*, a 1935 Supreme Court case that upheld for cause removal protection for FTC Commissioners. Slaughter argued that the precedent should not be overturned. The Supreme Court's decision could have wide repercussions for the FTC and other agencies within the administration.

At the DOJ, allegations of political interference in some decision-making have led to litigation in the Courts and Congressional hearings (see below) and conflicting views within the DOJ over the outcomes of some investigations are reported to have been the reason for the departures of several senior officials including AAG Gail Slater in February 2026.[21]

Open to settlements and willing to litigate

The DOJ and FTC have resumed the practice of entering into timing agreements and settlements to resolve competition concerns about a particular transaction, in contrast with the "litigate rather than settle" practice of the Biden administration. Former AAG Slater said she was "open to robust settlements, with a strong bias for divestments".[22] Acting AAG Assefi has recently confirmed this approach: "In many cases, structural relief is more certain, effective, and cost efficient than behavioral remedies. It allows for the resolution of competitive concerns without the need for the Division or Courts to engage in costly monitorship. It doesn't mean structural relief is always preferable to behavioral relief. Structural relief simply allows us to use a scalpel, fix the problem, and get out of the way."[23] FTC Chair Ferguson has stated that an acceptable remedy "involves the sale of a standalone or discrete business, or something very close to it."[24]

The FTC's settlement of Synopsys' acquisition of Ansys[25] and the DOJ's settlement of Keysight Technologies' acquisition of Spirent Communications were the first formally approved divestitures to resolve competition concerns under the second Trump administration.[26], [27] Other settlements have followed including Constellation/Calpine, Sevita/BrightSpring, Columbus McKinnon/Kito Crosby and Reddy Ice/Arctic Glacier. The DOJ has not yet litigated a merger in the second Trump administration[28] but it has said it is willing to do so: "If we cannot reach a settlement agreement, our Division is willing and excited to litigate. We have a highly talented and hardworking staff of attorneys, economists, and paralegals with years of litigation experience."[29]

The FTC filed two merger litigations in 2025 that reached court decisions. It won one (-*Edwards Lifesciences/JenaValve*) and lost one (GTCR/Surmodics).

Keeping the 2023 Merger Guidelines in place, including a focus on labour issues

The DOJ and FTC leaderships have said they are not currently planning to abandon the 2023 Merger Guidelines adopted during the Biden administration, including a focus on labour as well as product and service markets. FTC Chair Ferguson said that maintaining "stability across administrations" is part of the reason that he has elected to retain the 2023 Merger Guidelines, noting that guidelines will "become largely worthless to businesses and the courts" if new administrations keep repealing them but leaving it open "for the agencies to consider revisions as they have done in the past",[30] where appropriate. Former AAG Slater said: "There are clear through lines from the tenures of AAG Delrahim, to AAG Kanter, to the antitrust policies of this Administration, on issues such as the importance of protecting workers".[31]

On labour issues, FTC Chair Ferguson said: "For too long, the antitrust agencies ignored the potential for mergers or other business arrangements to harm workers. Anticompetitive mergers and conduct can deprive individuals of opportunities to flourish, to make the most of their talent, and to profit from their skills and hard work. Antitrust enforcers have an obligation to protect workers and support strong, competitive markets for their labour."[32]

Increased states' involvement

During the first Trump administration, several Democratic State Attorneys General (State AGs) challenged the T-Mobile*/Sprint* merger after the DOJ and several Republican State AGs settled the case. State AGs also brought several self-standing merger challenges during the Biden administration.[33]

In the second Trump administration, certain State AGs are challenging transactions the federal antitrust agencies decided not to – notably in the Tunney Act proceedings for the *HPE/Juniper* transaction (see below). Another example is the *Nexstar/TEGNA* transaction. After the parties received Federal Communications Commission (FCC) approval and early termination from the DOJ – and President Trump's public support for the transaction[34] – a coalition of eight Democratic State AGs filed a lawsuit to block the deal. Separately, a private plaintiff, DirecTV, obtained an order pausing further integration of Nexstar and Tegna and requiring Nexstar to hold separate all Tegna assets pending adjudication of the State AGs and DirecTV's claims on the merits. The court concluded that both sets of plaintiffs had demonstrated a reasonable probability of success on the merits. Nexstar is appealing the ruling. It remains to be seen whether the court decides that the transaction, which has already closed, should be unwound.

Litigation against mergers that the federal agencies have waived through seems likely to increase if State AGs perceive the federal agencies as being insufficiently interventionist in relation to a transaction. This represents a further dimension of the "politicisation" of merger control in the US. In addition, DIRECTV's success may encourage other private plaintiffs such as customers or suppliers to litigate mergers either on their own or in conjunction with State AGs.

In addition to a litigation avenue, some states have recently adopted their own pre-merger notification regimes.[35] Washington and Colorado are the first; several other states have proposed similar legislation.[36]

Amending the Tunney Act

Recent settlements in DOJ antitrust enforcement actions (including the *HPE/Juniper* transaction) have raised questions in Congress and elsewhere about the adequacy of the current procedures for settling federal antitrust cases. Members of Congress have recently introduced legislation to strengthen the 50+ year old Tunney Act that requires judicial oversight of DOJ antitrust consent decrees.

The Antitrust Procedures and Penalties Act (named after its sponsor Senator John Tunney) was enacted in 1974 as a post-Watergate measure to bring transparency and judicial oversight to the settlement of federal antitrust cases.[37] The Tunney Act applies when the DOJ proposes a consent judgment (ie, a settlement) in a merger or other civil antitrust case. In practice, the courts have generally not conducted detailed analyses of DOJ antitrust settlements before approving them.

Two recent DOJ settlements have drawn attention to the Tunney Act and have raised questions about its adequacy. One relates to the *HPE/Juniper* transaction.[38] Originally, the DOJ had announced its intention to sue to block the transaction[39] and the case proceeded towards trial. Two weeks before the trial was scheduled to begin, the DOJ announced a settlement that would allow the deal to proceed.[40] The circumstances around the settlement attracted scrutiny and two senior Antitrust Division officials were fired.[41]

Twelve State AGs and the AG for the District of Columbia intervened in the Tunney Act proceedings to oppose the settlement and examine the circumstances that had led to it.-[42] Democratic members of Congress wrote letters to the DOJ and the judge expressed concerns about the terms of the settlement and the process that led to it. The litigation is ongoing.

In response to the events surrounding the two settlements, Senator Amy Klobuchar and others have proposed the Antitrust Accountability and Transparency Act.[43] It would make significant changes to the Tunney Act including extending the Tunney Act to apply to settlements by the FTC as well as the DOJ and to voluntary dismissals of cases as well as settlements, expanding the disclosure requirements, strengthening the “public interest” standard, requiring the merging parties to remain separate until at least 15 days after the government responds to public comments on the settlement, and facilitate greater involvement by State AGs.

The recent events seem already to have increased State AGs' interest in intervening in Tunney Act proceedings if they consider that a federal settlement is not in the public interest. Courts may also decide to look more closely at such settlements whether or not the Tunney Act is strengthened.

M&A under the von der Leyen Commission – European Competitiveness

President von der Leyen's Political Guidelines

After winning support to serve a second term as EC President, President Ursula von der Leyen issued Political Guidelines for the “Next European Commission 2024–2029”.[44] The Guidelines called for the establishment of an EU capital markets union and a defence union and also contained wide-ranging proposals to restore the EU's competitiveness and boost public and private investment. The Guidelines stated: “Europe needs more investment. From farming to industry. From digital to strategic technologies. But also more investment in people and their skills.” For mergers, the Guidelines called for a new approach to enable EU companies to grow and compete with major global companies: “We need a competition policy that supports companies to scale up. Europe must be the home of opportunity and innovation.” At the start of 2026, President von der Leyen reiterated this message: “We need

European champions. That is why we are revising the merger guidelines…Our objective is clear; merger guidelines that reflect the realities of the global market, not just the European one, and that reflect the emergence of true European champions."[45]

The Draghi Report on European Competitiveness

The von der Leyen Guidelines drew on the report on "The Future of European Competitiveness" that Mario Draghi, former President of the European Central Bank and former Italian Prime Minister, had presented to the EC on 9 September 2024 towards the end of President von der Leyen's first term as EC President.[46], [47] The report analysed the impact of geopolitical and EU developments on the EU's future and highlighted its need for higher economic growth and enhanced productivity to finance investment to pursue the EU's three key priorities: digitalising and decarbonising the EU economy, increasing the EU's defence capabilities and preserving the EU social model. The report proposed a "New Industrial Strategy" based on four pillars: full implementation of the Single Market; alignment of industrial, competition and trade policies; "massive" investment on a scale "unseen for half a century in Europe"; and governance reforms to deepen coordination and reduce regulatory burdens on companies.

In relation to competition policy, the report supported a policy that "delivers lower prices" and stimulates "greater productivity, investment, and innovation" and raised concerns about the rise in concentration around the world over the past few decades. It recommended that competition policy be adapted to a "radically changing world". It also asked whether "vigorous competition policy conflicts with European companies' need for sufficient scale to compete with Chinese and American superstar companies", seemingly suggesting that future EU competition enforcement should not stand in the way of EU companies scaling up to compete with global rivals.

The EC's Competitiveness Compass

President von der Leyen emphasised the Draghi report's importance in framing the EC strategic agenda for its 2025–2029 mandate – the Competitiveness Compass[48] – that was published in January 2025. The Competitiveness Compass stated that the EU "must act now to regain its competitiveness and secure its prosperity". For merger enforcement, it called for speedier and more targeted enforcement, attention to efficient scale, merger guidelines focused on innovation and investment in strategic sectors, and rigorous application of the Foreign Subsidies Regulation to combat unfair competition from outside the EU.

EVP Ribera's mandate for a Clean, Just and Competitive Transition

Teresa Ribera's mandate as EVP for a Clean, Just and Competitive Transition includes competition policy and enforcement. Her mission letter of September 2024[49] from President von der Leyen stated:

> *Europe needs a new approach to competition policy – one that is more supportive of companies scaling up on global markets, allows European businesses and consumers to reap all the benefits of effective competition and is better geared to our common goals . . . Our aim must be to ensure a*

> *level playing field, ensure that business has the incentive to invest, innovate and grow, and help protect consumers from rising prices and lowering quality of goods and services. Competition policy should also reflect the growing importance of resilience in the face of geopolitical and other threats to supply chains and of unfair competition through subsidies.*

In relation to mergers, President von der Leyen requested EVP Ribera to review the EC's horizontal merger guidelines to "give adequate weight to the European economy's more acute needs in respect of resilience, efficiency and innovation, the time horizons and investment intensity of competition in certain strategic sectors, and the changed defence and security environment". The review of the horizontal – and non-horizontal – merger guidelines was launched on 7 May 2025.[50] The consultation period ended on 3 September 2025.[51]

New EC draft revised merger guidance

A more "politicised" and pro-merger regime?

The EC published its draft revised EU merger guidelines (the Guidelines) on 30 April 2026. They seem likely to herald a more "politicised" and pro-merger regime. The EC's current merger guidelines originated over 20 years ago and reflect a very different geopolitical and economic world from today's. Also, they do not take account of the many significant EC merger decisions and Court judgments during the intervening period. A final version of the Guidelines is expected before year end.[52] The EC has indicated it is already applying the Guidelines to its current investigations.

The Guidelines reflect the Draghi report's call for more dynamic, forward-looking merger control and recognition of the benefits of scale, resilience, innovation and global competitiveness for companies doing business in the EU. By contrast, the calls from some political leaders and companies for relaxation of merger control for "European champions" are not recognised as such in the Guidelines.[53] The proposed changes include:

1. explicit recognition that companies scaling up within the EU to compete on global markets "can be procompetitive and have a positive impact on the EU economy and its competitiveness";
2. the introduction of a new "theory of benefit" framework and encouragement to merging companies to put forward and substantiate how the efficiencies resulting from their merger, especially an increased incentive to invest and innovate, would enhance effective competition;
3. a broadened concept of merger benefits beyond the traditional price and quality aspects to include resilience (eg, robust supply chains, security of critical inputs) and sustainability (eg, clean tech, renewable energy); and
4. the introduction of an "innovation shield" under which certain transactions involving start-ups and other small innovation companies or R&D projects should not in principle be regarded as anti-competitive.

While these changes may suggest a more pro-merger approach, the Guidelines also include expanded and potentially more interventionist concepts of market power and theories of harm (eg, loss of investment and innovation, entrenchment of a dominant position, labour market monopsony (buyer power) effects, access to commercially sensitive information, portfolio effects, and minority shareholdings and common ownership across competitors) that could, depending on the facts of an individual case, tip the balance the other way.

The European and global political and economic context

The Guidelines are more than legal instruments. They also have political and economic objectives that should be kept very much keep in mind when formulating and articulating a transaction's strategic rationale and its benefits for stakeholders (see the section on “The Role of Government Affairs” above). Introducing the Guidelines, EC President von der Leyen and EVP Ribera put great emphasis on the complex and challenging political and economic context within the EU and globally in which companies are operating and the imperatives of integrating the EU economy and enabling EU companies to compete globally. EC Commission President von der Leyen said:

> *Europe needs bold, innovative companies that can compete on the global stage. We have the talent. Now we must build the environment for Europe's next champions… This is an ambitious approach to our competition policy – so we can meet the realities of the fiercely competitive global economy and boost our competitiveness, while preserving the predictability and certainty that investors value most in Europe.*[54]

EVP Ribera said:

> *We are updating the merger guidelines for a more complex world, making them a sharper instrument to support Europe's competitiveness and long-lasting prosperity. They provide a more dynamic and forward-looking framework to assess how mergers affect innovation, investment, resilience and the ability of European companies to compete globally. This helps us support operations that strengthen our Single Market, enable innovative companies to scale, and bolster Europe's strategic autonomy.*[55]

Ribera also stressed continuity in approach:

> *[the Guidelines'] founding purpose remains unchanged: protecting strong competitive markets without allowing an accumulation of power that can be abused.*[56]

Subsequently, she expanded her explanation:

> *The central idea behind the new draft is clear. Europe must take into account a more complex world when evaluating transactions, while keeping competition at the heart of every decision.*
>
> *That balance is important. Some have argued that Europe should simply relax merger control so that European firms can become bigger. Others fear that any change could undermine the single market and innovation. Both views miss the point.*

> *The draft guidelines are not about loosening the rules, let alone writing blank cheques.*[57]

Ribera also emphasised the need to enable EU companies to compete against global companies, especially state-supported companies, by integrating the EU internal market:

> *[The Guidelines] … seek to incorporate into the analysis the internal and external realities in which EU firms operate, such as when their research-and-development budgets are dwarfed by state support enjoyed by global rivals, or when supply-chain vulnerabilities could be leveraged geopolitically by a third country…*
>
> *We want businesses to embrace deals that can help deepen the integration of the continent's internal market. When businesses come together to create a new actor that reduces the EU's dependence on other global players, this benefits the internal market and European consumers*

and the importance of facilitating the scaling up of European start-ups:

> *Europe wants more startups to become scale-ups, and more scale-ups to remain European. Our revised approach can give greater certainty to innovators whose value may not be fully visible in today's market shares. It can also help identify cases where a large company acquires a smaller rival not to develop its ideas, but to neutralise a future competitor.*[58]

The multi-dimensional nature of EU merger review

Much as the Guidelines are more than legal instruments, so is EU merger enforcement about more than the EC's Competition Directorate (DG COMP). DG COMP carries out the investigation and EVP Ribera announces the decision in a particular case but the Commission President, other Commissioners and their cabinets, and other Commission Directorates can make their views on a transaction known to EVP Ribera and DG COMP either at their own initiative or encouraged to do so by an intervening third party. In addition, the outcomes of in-depth investigations are decided by the full College of Commissioners and not solely the Commissioner responsible for competition matters.

EU member states also play a role formally through their competition agencies' participation in the Advisory Committee at key stages in an EU merger investigation and also through political channels directly with the Commission President, the Commissioner responsible for competition matters and other Commissioners and their cabinets.

Such an EU-wide array of potential players has resulted in divergent views in past cases. With the Guidelines' broader and potentially more “politicised” approach to merger control, it seems likely that divergent views will occur more often.

M&A under the Starmer government – UK growth

The new Labour government's focus on UK growth

On 10 July 2024, the newly elected Labour government announced its intended focus on growth for the UK economy:

> *One of our Government's central missions is to restore economic stability, to make every part of our country better off. We'll grow our economy, improving the prosperity of the UK, and the living standards of our working people.*[59]

Speaking to a meeting in London of business executives from the UK and around the world a few months later, the UK Prime Minister, Sir Keir Starmer, said:

> *We will make sure that every regulator in this country, especially our economic and competition regulators, take growth as seriously as this room does… The key test for me on regulation is growth. Is this going to inhibit or unlock investment?*[60]

The UK Chancellor of the Exchequer and the then UK Secretary of State of Business and Trade subsequently launched a green paper called "Invest 2035: The UK's Modern Industrial Strategy". It outlined the UK government's 10-year strategy:

> *Growth is the number one mission of this government. Our new Industrial Strategy is central to that Growth Mission... Our Industrial Strategy will bring forward coordinated sector-specific and cross-cutting policies that support businesses to overcome barriers and invest.*[61]

A year later, the Secretary of State of Business and Trade presented "The UK's Modern Industrial Strategy" to parliament. It focused on eight "key growth-driving sectors, identified for their high-growth potential and critical role in economic resilience"[62] and stated: "We have looked at every aspect of the business environment to make it easier and quicker for high-growth businesses to invest".[63]

The CMA's agenda

Reflecting the Government's focus on growth, Doug Gurr, the interim CMA chair,[64] wrote:

> *Last year, the UK again delivered the lowest business investment in the G7. This has been true for far too long. And this is where the CMA comes in – because in my experience, there are many factors in any investment decision but a big one is confidence in a stable, coherent and well-informed regulatory environment.*
>
> *This is our north star: a regulatory environment that encourages the greatest possible level of business investment, subject to respecting the absolute importance of healthy competition and strong consumer protection. We want both domestic and international businesses to see the UK as a great place to invest.*[65]

The government appointed Gurr interim CMA chair on 21 January 2025 following the mid-term departure of Marcus Bokkerink as CMA chair after the government had reportedly become frustrated with what it saw as the CMA's insufficient support of the government's growth policy.[66]

Shortly after this leadership change, the CMA's CEO Sarah Cardell announced "a package of carefully considered proposals for rapid change" in relation to merger enforcement consisting of four Ps:

1. pace – reaching faster decisions on mergers, and minimising in-depth reviews;
2. predictability – clarifying the CMA's remit;
3. proportionality – getting to the right outcomes while minimising the burden on business, and sharpening our focus on the UK; and
4. process – a step change in direct business engagement, underpinned by a new Mergers Charter.[67]

UK government's Strategic Steer and the CMA's responses

Sarah Cardell's announcement of the four Ps accompanied the UK Department of Business & Trade's publication for consultation of the UK government's Strategic Steer to the CMA.-[68] The Strategic Steer contained a clear emphasis on growth and the need to attract investment into the UK:

> *This steer sets out how the government expects the CMA to support and contribute to the overriding national priority of this government – economic growth . . . Investment is a critical driver of growth, and the government expects the CMA's approach to clearly, and unambiguously, reflect the need to enhance the attractiveness of the UK as a destination for international investment.*

The focus on growth and investment also featured in the CMA's 2025/26 Annual Plan "to drive growth by promoting competition, protecting consumers and enhancing business and investor confidence" published in March 2025. Then interim CMA Chair Doug Gurr said:

> *I believe the growth mission as set out by government is vital for the UK . . . I have seen the CMA really challenging ourselves as an organisation on how we can contribute to this goal. And that matters, because the foundations of what the CMA does – strong competition and consumer protection – can make a big difference to achieving it.*[69]

The CMA's strategy for 2026 to 2029 published on 20 November 2025 incorporates the same thinking and adopts five strategic objectives for UK competition policy – "promoting effective competition, championing consumers, helping government deploy tailored pro-competition interventions to support growth, innovation and investment-related policies, fostering a UK regulatory landscape that attracts investment and instils business confidence and prioritising UK interests".[70] It also plans to continue the Growth and Investment Council set up in 2025 to provide "expert knowledge and stakeholder perspectives" and offer "insights and recommendations" to the CMA.[71] The Council comprises senior representatives from 12 business (including startups) and investment organisations.

CMA's independence

Announcing the adoption of the finalised Strategic Steer in May 2025, the UK government also stressed the CMA's independence, seeking to address questions that had arisen in this respect. The Chancellor of the Exchequer, Rachel Reeves, said:

> *We fully support the CMA's independence and welcome the steps it has already taken to act swiftly, predictably, independently, and proportionately to promote competition, protect consumers and strengthen our economy.*[72]

A few days earlier, the UK Minister for Employment Rights, Competition and Markets, Justin Madders, said:

> *We have a rock-solid commitment to respect the operational independence of the CMA.*[73]

More recently, Sarah Cardell said:

> *operational independence does not mean we [i.e., the CMA] exist in a political vacuum. Equally, it does not require us to take an overly narrow, ideological stance in defence of competition. In the current economic, political and geopolitical context that would not, in my view, discharge our mandate in the UK's best interests.*[74]

Merger policy

Implicitly addressing the issue of CMA overreach in relation to some multi-jurisdictional transactions after the UK's exit from the EU – notably, the Microsoft/Activision transaction – the Strategic Steer stated:

> *The CMA should consider the actions taken by competition and/or consumer protection agencies in other jurisdictions internationally, and, where appropriate, seek to ensure parallel regulatory action is timely, coherent and avoids duplication where these parallel actions effectively address issues arising in markets in the UK.*[75]

Sarah Cardell subsequently elaborated on this:

> *I think on the mergers there will be perhaps a handful of global deals that we would have looked at previously that perhaps we decide we don't need to look at . . . [This] is not an invitation, open season for every single anti-competitive merger under the sun. If we see a wave of these coming through then I think our reviews will go up.*[76]

More recently, Sarah Cardell has explained that the CMA has a generally pro-merger and pro-UK policy for all mergers:

> *In merger control… only a tiny handful of truly anti-competitive deals which cannot be effectively remedied operate as a blocker to growth or household prosperity. That is why we say that every deal which can be cleared, either unconditionally or with effective remedies, should be. So, we will continue to take robust action here - but applying a scalpel not a sledgehammer. Being laser focused on deals where the CMA actually needs to step in. Identifying whether there is a real UK impact and whether other agencies will tackle a global concern effectively… But be in no doubt: truly anti-competitive mergers*

do not operate in the interests of economic growth or household prosperity and we will remain resolute in these cases.[77]

Merger remedies

The CMA launched a review of merger remedies in March 2025.[78] This initiative was seen as reflecting the new focus on growth and innovation in UK competition policy, as well as the CMA's increased experience in reviewing complex, multijurisdictional transactions since the UK's exit from the EU in 2020. New guidance was published in December 2025.[79] It marks a shift from the CMA's longstanding preference for structural remedies and indicates a willingness to accept behavioural or hybrid remedies that "work with the grain of competition".[80] It also indicates a continued willingness to accept investment and access remedies as the CMA did in relation to the *Vodafone/Three* at the end of 2024.[81] The revised guidance also provides for earlier engagement on remedies with the merging parties during a CMA investigation.

Changes to CMA decision-making

On 20 January 2026, the Department for Business and Trade published a consultation on proposed changes to CMA decision-making and other matters[82] including how Phase II merger decisions are taken by replacing the current Phase II independent panel[83] with sub-committees of the CMA board. The sub-committees would consist of CMA executives, non-executive directors and non-CMA staff industry experts. That proposed change aims to "ensure that those ultimately accountable to Parliament are directly involved in the most significant mergers and markets decisions", improve consistency between, and predictability of, decisions, and clarify the decision-making structure to businesses, consumers and the UK public.[84] The CMA has announced that it supports most of the consultation's proposed reforms, including the changes to the Phase II decision-making procedure.[85] However, many respondents to the consultation expressed concerns about the CMA decision-makers being exposed to political pressures if the changes went ahead. The government has not yet responded to the consultation but the government's summary of the Competition Reform Bill published after the King's Speech opening a new session of Parliament on 13 May 2026[86] seems to indicate that the government intends to proceed with these and other changes set out in the consultation document.

Further aspects of the increasing "politicisation" of merger control

In some jurisdictions, the merger regime or other regimes for reviewing transactions may also contain scope for "politicisation". This section summarises some examples of this increasing trend:

1. public interest provisions;
2. political overrides;
3. national security and foreign direct investment (FDI) regimes; and

4. EU's foreign subsidies regime (FSR).

Public interest

South Africa

South Africa's merger law has "public interest" as well as competition provisions. South Africa's Competition Commission typically investigates first whether a transaction would reduce competition in South Africa and then whether it is justifiable on "public interest" grounds. The "public interest" includes the transaction's impact on the relevant economic sector, jobs, historically disadvantaged persons and the ability of the sector to compete globally. The "public interest" provision has been used to require purchasers of iconic South African companies to make concessions to gain approval for their transactions.[87]

UK

In the UK, the Secretary of State has powers to issue "public interest" intervention notices and undertake investigations in relation to transactions concerning media plurality, the stability of the UK financial system and public health emergencies.[88] The public health provision was introduced during the covid-19 pandemic. "Public interest" considerations can be evaluated alongside competition issues. Such a dual approach ensures that transactions not only adhere to competition law but also align with broader applicable national interests.

EU

The EC's exclusive one-stop-shop jurisdiction under the EU Merger Regulation over transactions with "an EU dimension" is subject to several exceptions, including the "legitimate interests" of EU member states in public security, media plurality, prudential rules or other interests notified to the EC under article 21(4) of the Regulation. Article 24(1) permits EU member state governments to take action, based on their national laws, to protect a "legitimate interest", other than competition, in relation to transactions with an EU dimension. The EC has recently emphasised its vigilance over the provision's use:

> *It's all the more important, because of the context we're living in, that member states use Article 21(4) in a proportionate, transparent and targeted manner, and for the genuine purpose of achieving a public interest. And we will be very vigilant on that.*[89]

The Guidelines the EC issued on 30 April 2026 (see M&A under the von der Leyen Commission section above) address this issue for the first time. This seems to be a reaction to increasing interventions by EU member states – including through the growing number of national FDI regimes (see below) and other measures that member states have been introducing – that have sought to delay, condition or prohibit transactions that the EC has approved under the EU Merger Regulation.

Political overrides

In some jurisdictions, the government has an express power to override the competition agency's decision. For example, in Germany, the Minister for Economic Affairs and Climate can permit a merger that the German competition authority (the Bundeskartellamt) has prohibited. This is a one-way (pro-merger) override and has rarely been used to date.[90]

In Spain, if the competition authority prohibits a transaction or authorises it subject to commitments, the Minister for Economic Affairs may decide to confirm that decision or refer the matter to the government for review on general interest grounds.[91] Although the competition authority approved BBVA's hostile takeover bid for Sabadell subject to commitments, the Spanish government mandated that the two banks should remain separate legal entities for at least three to five years. BBVA decided not to proceed with the acquisition.[92]

In relation to EC Phase II in-depth merger investigations, the ultimate decision-maker is the "College" of Commissioners, of which the EC Competition Commissioner is only one of the 27 members (see M&A under the von der Leyen Commission section above). The Competition Commissioner's views usually carry the day, although they could be outvoted.-[93]

National security and foreign direct investment (FDI) regimes

Many governments have merger control powers exercisable separately from competition authorities. The direct role that governments can play through the exercise of these powers is having an increasing impact on transactions as the number of national security and FDI regimes around the world increases. FDI is no longer the preserve of only the US's CFIUS (an interagency committee within the US administration), Australia's Foreign Investment Review Board and Canada's Investment Canada regime. Also, governments are taking an increasingly broad view of the concept of "national security", extending it beyond defence and military assets to include, depending on the jurisdiction, advanced technology, critical infrastructure, strategic data, energy, semiconductors, critical minerals and supply chain resilience.

US

The potential for "politicisation" is illustrated by the prolonged review of Nippon Steel's proposed acquisition of US Steel that straddled the Biden and second Trump administrations and various initiatives under the second Trump administration.

Nippon Steel's proposed acquisition of US Steel was announced on 18 December 2023. As an ally of the US, a Japanese company would not normally raise CFIUS concerns. However, US Steel, an iconic US company, is headquartered in Pennsylvania, which is an important electoral swing state. Ahead of the 2024 election, President Biden declared it was "vital" for US Steel to remain "domestically owned and operated".[94] Then-Presidential candidate Trump said that he was "totally against" the transaction and vowed to block it "instantaneously" if elected.[95] Republican Senators called on President Biden to use legal powers to block the sale,[96] which he did on 3 January 2025.[97] After taking office, President Trump reversed his position and sought a negotiated resolution of the transaction.[98] On 23 May 2025, he wrote on social media:

> *US Steel will REMAIN in America, and keep its Headquarters in the Great City of Pittsburgh . . . This will be a planned partnership between United States Steel and Nippon Steel, which will create at least 70,000 jobs, and add $14 Billion Dollars to the US Economy.*[99]

The transaction was approved by a Presidential Executive Order on 13 June 2025[100] subject to the US government having a "perpetual" golden share in US Steel that gives the US veto rights (but no equity stake) over decisions, including any delay to Nippon Steel's agreement to invest $14 billion in US Steel, the closure of plants and certain changes to raw material sourcing.[101] Undoubtedly a high-profile illustration of the "politicisation" of merger control, it remains to be seen how often the Trump administration uses "golden shares" or other mechanisms to secure outcomes under its "America First" policy.

More broadly, the administration's "America First" investment policy aims to facilitate investment from "our allies and partners" and "reduce the exploitation of public and private sector capital, technology, and technical knowledge by foreign adversaries such as the PRC [People's Republic of China]".[102] A "fast track process to facilitate greater investment in US businesses from ally and partner sources" was introduced in May 2025.[103]

UK

The UK, traditionally an open economy with limited powers directed against foreign purchasers of UK businesses or assets, introduced the National Security and Investment Act (NSI) in 2022. The regime operates at the centre of the UK government. It is overseen by the Investment Security Unit in the Cabinet Office, the ministerial department supporting the Prime Minister, and its powers are exercised by the Chancellor of the Duchy of Lancaster. Ministers have powers to call in, review, condition, block or unwind transactions that may give rise to national security risks. It applies to domestic as well as foreign investors.[104]

While Chinese-linked transactions continue to feature prominently in political debate and all seven of the prohibitions under the NSI in the period 2022 to 2023 involved acquirors linked to China or Russia, the NSI has also been applied to purchasers and investors from other jurisdictions, including the United Arab Emirates.[105] In addition, a Chinese consortium-backed acquisition of a majority interest in a Scottish semiconductor design company that was completed before the NSI came into force was called in for investigation after the NSI came into operation. The Secretary of State ordered the holding to be divested. The order was challenged by the consortium but upheld by the court. This illustrates the political reality of the NSI regime: once a transaction is considered to engage national security concerns, the courts are likely to afford the government a wide margin of discretion in assessing the national security risk.

The UK government is seeking to balance the NSI's inherently protectionist regime with the government's focus on encouraging growth and investment in the UK, including from international companies. It therefore wants the NSI regime to be targeted and proportionate while ensuring that it remains responsive to technological and geopolitical developments. Chief Secretary to the Prime Minister, Darren Jones, has said:

> *We are making the right choices for businesses to invest in the UK. We have listened to their concerns and are refining these rules to give businesses the clarity they need – cutting red tape where we can – while strengthening our*

> *controls on critical sectors like water and advanced semiconductors, where our national security interests demand it.*[106]

EU

Most EU member states now have active national FDI regimes. Currently, there is no standalone FDI screening at the EU level, and transactions must navigate a patchwork of unaligned FDI regimes at member state level. The EC has long argued that the patchwork nature of the national regimes creates gaps in coverage and can make it harder to respond consistently to risks affecting the EU as a whole.

In December 2025, the Council and the European Parliament reached political agreement on a revised FDI Screening Regulation. The revised framework will require all member states to operate national screening mechanisms with a common minimum scope. It will cover sensitive sectors including critical technologies, infrastructure, raw materials, media and banking, and will also bring within scope certain investments made through EU subsidiaries where the investor is ultimately controlled by a non-EU person or entity. Decisions on individual transactions will remain primarily with member states, but the EC and other member states will have a stronger coordination role. The EU Parliament voted to approve the Regulation on 19 May 2026 and the European Council adopted the Regulation on 8 June 2026. The Regulation is likely to be applicable by late 2027 or early 2028.[107]

The proposed Industrial Accelerator Act (IAA) would add a further FDI-related dimension. Published by the EC in March 2026, the proposal is primarily an industrial policy measure designed to strengthen EU manufacturing capacity and accelerate decarbonisation in strategic sectors. It also introduces a targeted screening framework for certain large foreign investments in emerging strategic sectors, including batteries, electric vehicles, solar photovoltaics and critical raw materials. The proposal would apply where the investment exceeds €100 million and where the investor originates from a country accounting for more than 40% of global production capacity in the relevant sector. Notably, the IAA would empower the EC, under certain conditions, to review covered investment transactions that fall within its scope in place of EU member state screening authorities.

Foreign subsidies regime

The EC introduced a foreign subsidies regime (FSR) in 2023 that operates at the EU level. The regime enables the EC to investigate and remedy subsidies received from non-EU countries (including the US) that distort the EU internal market. The FSR includes a merger review regime,[108] separate from and in addition to the existing EU merger control regime and member state FDI control regimes. The FSR's political and industrial policy objectives, particularly in relation to strategically important EU businesses, distinguish it from the EU's competition-based merger control regime and the EU and national protectionist objectives of the FDI regimes in the EU.

Although much of the discussion about the FSR has focused on state-backed Chinese purchasers[109] of EU businesses, the FSR is, on its face, country-neutral. The first in-depth FSR merger investigation related to a UAE purchaser (Etisalat's proposed acquisition of Czech PPF group's telecoms assets in Bulgaria, Hungary, Serbia and Slovakia).[110] The transaction was cleared with behavioural commitments in 2024.[111] The second in-depth merger investigation also involved a UAE purchaser – the proposed acquisition by the Abu Dhabi National Oil Company (ADNOC) of a German chemicals company, Covestro. The EC's concerns related to the potentially distortive effect of the acquisition financing (including a state-backed guarantee) on the acquisition process (including other potential purchasers) and EU competition after the transaction closed. The case shows how an FSR review can be significant even when the transaction does not give rise to competition issues under the EC's or EU member state merger control regimes.[112] The EC approved the ADNOC/Covestro transaction under the FSR in November 2025, subject to commitments including removal of the state-backed guarantee and an obligation to continue licensing Covestro's sustainability-related patents to third parties on FRAND terms. These two FSR decisions suggest that future FSR remedies may include behavioural aspects relating to the governance or commercial behaviour of the acquired business in the EU (in contrast to the EC's preference for structural remedies under the EC Merger Regulation).

FSR notifications to date have concerned a wide range of sectors including telecommunications, energy, renewables, retail, food and beverages, pharmaceutical, financial services, aerospace and transport.

Announcing a review of the FSR by the EC in August 2025,[113] EVP Ribera noted the need for the EC's implementation of the FSR to "best address distortions caused by foreign subsidies in the internal market, while minimising the regulatory burden"[114] so as not to deter investment into the EU.

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