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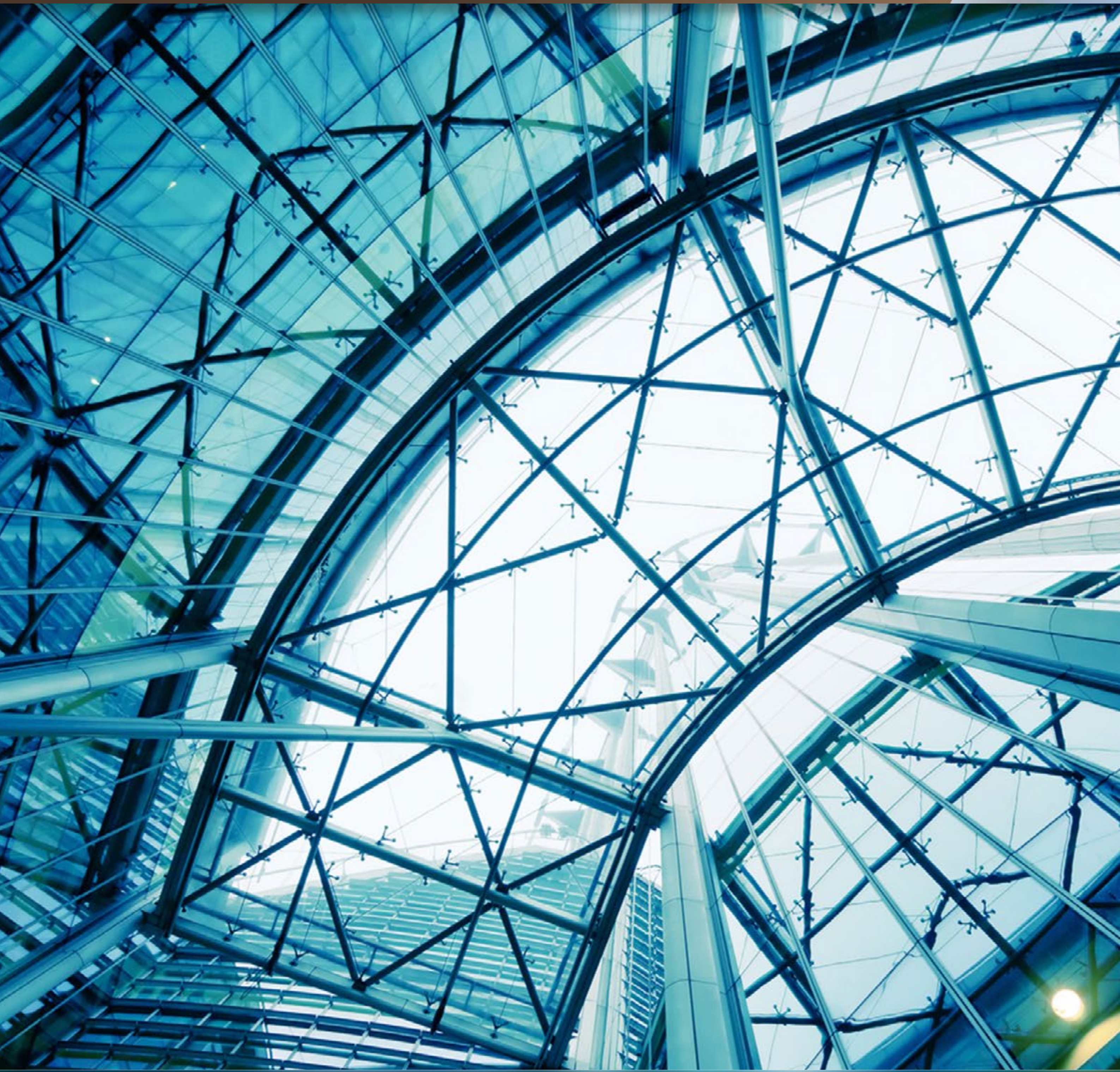


Global Merger Regulation

Key Themes in 2024 and Predictions for 2025: Winds of Change

January 2025

Winds of Change are blowing across the Atlantic in the regulatory landscape. Here are key themes of the past year and our predictions for 2025:

1 Changing of the guard on both sides of the Atlantic

The Biden administration cycle of antitrust enforcement is coming to an end and a new chapter is about to open. Trump 2.0 is expected to maintain a strong focus on tech sector cases but may take a less aggressive approach on M&A generally – reverting to more traditional routes to enforcement and softening the rhetoric on PE. In Europe, Margrethe Vestager has bowed out. Her replacement, Teresa Ribera Rodríguez, has been tasked with fostering a more supportive environment for European champions. Similar rhetoric has been deployed by the new Labour government in the UK, with the landmark approval of the 4-3 mobile merger between Vodafone and Three UK setting the scene for 2025.

2 A new geopolitical equilibrium and renewed industrial policy

Industrial policy is the flavour of the month – perhaps the decade – on one side of the Atlantic, with the Draghi Report sparking a European debate about the extent to which merger control can be used to promote growth-related goals. The UK is threatening to steal the march, with the Technology Secretary proclaiming that "*ripping out*" bureaucracy to speed up innovation would not lead to "*cutting corners*". US antitrust enforcement has traditionally been less connected with industrial policy, however, and we expect that the new Trump administration will continue to be vigilant in the tech and other strategic sectors.

3 Are merger control authorities running out of steam or just catching their breath?

In the US, the Agencies kept up their momentum in 2024 with a number of high-profile abandonments (*e.g.*, *Amazon/iRobot*) and finished the year strong with key victories in *Tapestry/Capri* and *Kroger/Albertsons*. The EU/UK landscape proved a little rockier for enforcement authorities, with the overall proportion of Phase II decisions decreasing materially. For those deals pushed into an in-depth investigation, however, the odds were significantly worse in the UK, where the CMA effectively killed 50% of Phase II cases in 2024 and rarely accepted conditions (25%). By contrast, the European Commission (EC) cleared 60% of its Phase II cases with conditions in 2024 and did not block any deals.

4 New breed of remedies in strategic sectors?

The telecom sector shows signs of being at the forefront of a possible wider shift in approach to prioritising industrial policies in competition enforcement, with the CMA approving the *Vodafone/Three UK* merger in December 2024. This decision turned on an unprecedented behavioural remedy package relating to the companies' investment in their network and rolling out 5G across the UK over the next three years. Meanwhile, under the Biden administration, the DOJ and FTC took staunch positions against any pre-litigation remedy agreements. While this approach enjoyed some success in the courts (*e.g.*, *JetBlue/Spirit* and *Kroger/Albertsons*), we expect the Trump 2.0 administration to re-align with the EU approach in accepting structural remedies in some cases.

5 How to catch a killer (acquisition)

Killer (and reverse killer) acquisitions continue to be a major theme of antitrust enforcement, but authorities have run into difficulties after significant opposition. In the US, efforts to stop killer acquisitions in their tracks have struggled, with the FTC's attempt to block Meta's acquisition of Within notably failing to survive judicial scrutiny. That said, regulators have gotten some traction in bringing cases after an acquisition has occurred, as evidenced by the DOJ's success in having Google declared a "*monopolist*" by Judge Mehta of the District of Columbia. At the European level, the jurisdictional route chosen by the EC to review below-thresholds transactions hit the rocks when the highest European court ruled in *Illumina/Grail* that the EC could not use the Article 22 referral mechanism from EU countries to review mergers that are not otherwise notifiable under national competition regimes. This mechanism is still available for national jurisdictions that have call-in powers for below-thresholds transactions, as demonstrated by the EC's review of *Nvidia/Run:ai* following a referral enabled by Italy's broad call-in powers.

6 Partnerships and acqui-hires: a new frontier of merger enforcement

A related theme is the increased use of partnerships and other innovative transaction structures (including acqui-hires) which companies, particularly in the digital sector, are exploring partly in reaction to the recent intensity of merger control scrutiny. Many have occurred in high-tech sectors, most notably in respect of AI technology. Authorities have shown eagerness to find grounds to review these transactions – with mixed results and diverging outcomes as they push the limits of their jurisdictional power.

7 New HSR rules set to shake up US antitrust reviews

The biggest non-case development in US antitrust in 2024 was the finalization of the FTC's new "*HSR*" notification rules. These are expected to come into force in early 2025 despite the change in administration. While ultimately less extreme than an earlier draft suggested they could be, the new rules nonetheless reflect a dramatic departure from the status quo. They will impose greater burden and cost on parties submitting HSR notifications, and require more extensive and invasive disclosure than under existing rules. And, although adopted by the FTC on a 5-0 vote, the door is always open for future changes paring the final rules back or litigation seeking to curtail them.

8 CFIUS under Trump (version 2.0)

CFIUS has maintained a robust case load and demonstrated an expanding focus on diligence, compliance and enforcement, issuing three times more penalties from 1 January 2023 through 14 August 2024 than it had in the previous nearly 50-years since its establishment. Moreover, investment security is a rare area of bipartisan attention and support. Notably, the Trump administration supported and implemented FIRRMA, which represented the most significant expansion of CFIUS and its jurisdictional remit to date.

9 FDI and National Security remains a top priority in Europe

FDI regimes have continued to proliferate and expand in scope throughout Europe. In the EU, 24 of the 27 Member States have FDI regimes in place, with the remaining three (Croatia, Cyprus and Greece) having taken steps to introduce screening mechanisms. Over in the UK, notification volumes remain high but the Government continues to apply a proportionate approach to in-depth reviews, with only 41 of the notified transactions (4.5%) called in for further scrutiny (representing a slight decrease from 2022-23).

10 First blood: first-ever conditional approval under the EU's foreign subsidies regulation

In 2024, the EC conducted its first in-depth review under the FSR regime, culminating in a decision to conditionally approve the partial acquisition of a European telecommunications provider by a United Arab Emirates company (*E&/PPF Telecom* case).

Theme 1

Changing of the guard on both sides of the Atlantic

The Biden administration cycle of antitrust enforcement is coming to an end and a new chapter is about to open. President-elect Trump's announcement to nominate Gail Slater as head of the Antitrust Division at DOJ and Andrew Ferguson as the future Chair of the FTC both confirm Trump 2.0 will maintain a strong focus on the tech sector, which Trump has described as having "*run wild for years*". Gail Slater is an Irish-born and European-educated competition lawyer with experience in private practice, in-house with media and tech companies as well as in Government with the FTC. Ferguson has an equally-impressive resume, having clerked on the US Supreme Court, worked at prominent law firms, counselled key Republican political leaders, and, most recently to his FTC appointment, acted as the Solicitor General of Virginia.

As always, the change in administration is also expected to yield a number of changes in management-level employees at both antitrust agencies. Further changes are expected at the FTC. While both Slater and Ferguson are expected to be "*tough on tech*," they are generally anticipated to take a less aggressive approach than the current administration on M&A activity. That said, it is important to recall that high profile mergers were opposed during the first Trump administration – and some of the same may be expected during the second term.

Over in Europe we are also witnessing a change of the guard. After 10 years and over 3,500 merger reviews (including a few controversial negative decisions ranging from the European industrial sector to telco and tech mergers), Margrethe Vestager bows out – The proverbial end of an era. A new EC is now in place until 2029 and Teresa Ribera Rodríguez, formerly a Spanish Deputy Prime Minister and Minister for Ecological Transition from the Socialist party, has been appointed Executive Vice-President responsible for EU competition (as well as climate) policy. Following two influential reports, European competitiveness is at the centre of the policy agenda and the EC President in her mission letter has asked the new Commissioner to direct her policy to being "*more supportive of companies scaling up in global markets*".

In the UK, whilst there has been a change of government with the election of Sir Keir Starmer's Labour party, the CMA leadership remains unaltered. However, a gradual shift of priorities has emerged, and regulatory authorities have been encouraged to be mindful of the need to consider growth and investment. In the merger control arena this resulted in a veritable paradigm shift, with the CMA approving the 4-3 mobile merger between Vodafone and Three UK subject to an unprecedented behavioural remedy (discussed below). The CMA chief executive, Sarah Cardell announced that the CMA will hold a review in the new year into whether it should more frequently use "*behavioural remedies*" when approving deals.

Theme 2

A new geopolitical equilibrium and renewed industrial policy

In the EU, two recent influential reports – the Letta Report and the Draghi Report – emphasised the need for Europe to bolster its competitiveness and innovation efforts to bridge the gap with the US and China and reduce its reliance on external suppliers for critical goods.

The Draghi Report in particular has been critical about various aspects of the enforcement of European competition policy (including on mergers) and the lack of its current integration with wider industrial policies. The extent to which these reports will impact EU merger control review remains to be seen. Newly appointed Commissioner Ribera, has signalled an appetite for a shift, expressing her commitment to review the EU Horizontal Merger Guidelines and noting that "*EU merger control must continue to evolve to capture contemporary needs and dynamics like globalisation, digitalisation, sustainability, innovation and resilience.*"

UK Prime Minister Starmer also promised in October to "*rip up the bureaucracy that blocks investment*" and "*make sure that every regulator in this country – especially our economic and competition regulators*" takes growth seriously. Technology Secretary Peter Kyle noted that "*ripping out*" bureaucracy to speed up innovation, would not lead to "*cutting corners*"; highlighting that "*you need to regulate smartly and you need to regulate creatively.*"

Antitrust enforcement in the US has traditionally been less connected with industrial policy. During the Biden administration there was an attempt to integrate the regulation of market power into other policies across Government. The FTC in particular spearheaded these initiatives and this also had repercussions onto merger control. Whilst we expect the approach to be different under the Trump 2.0 administration (and we expect a softening of the anti-PE rhetoric), early signs indicate that some sectors (in particular tech) will remain under sharp focus whilst others might increasingly be caught by sectoral or national security powers on the basis of new geopolitical equilibria.

Theme 3

Are merger control authorities running out of steam or just catching their breath?

In the US, the Agencies kept up their momentum in 2024 with a number of high-profile abandonments (*e.g.*, *Amazon/iRobot*) and finished the year strong with key victories in *Tapestry/Capri* and *Kroger/Albertsons*. In fact, the Agencies' only 2024 loss — in *Novant/CHS* — was negated when the parties subsequently abandoned the transaction after it was stayed pending appeal. While overall litigated cases have experienced a slight downturn in 2023 and 2024, the data suggest this is due in large part to an increase in pre-litigation abandonments, rather than a diminishment in enforcement activity. There are also ongoing high-profile challenges, like the DOJ's lawsuit to prevent UnitedHealth Group from acquiring home health company Amedisys, that will continue into 2025.

Figure 1 – US Antitrust Enforcement Activity: Complaints and Abandonments

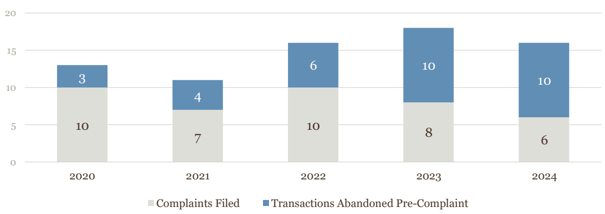


Figure 2 – US Antitrust Enforcement Activity: Complaints, Abandonments, and Settlements

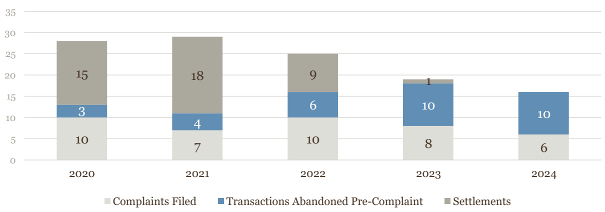
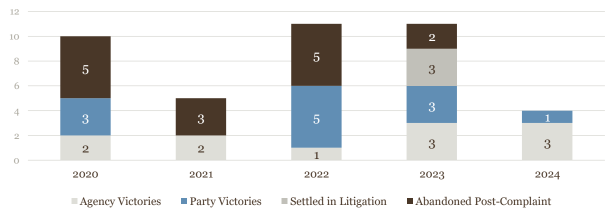
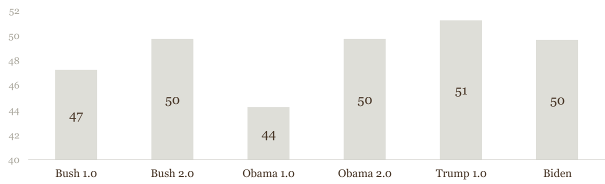


Figure 3 – US Antitrust Enforcement: Litigation Outcomes



As noted above, we expect largely more of the same in the Trump 2.0 administration, which will continue on litigating the long-term conduct cases that focus on Big Tech companies (*e.g.*, the Google litigation), though we are optimistic that changes in policy at the margins — such as a greater willingness to engage in settlement talks — ease the regulatory pressure on dealmaking. We find the number of Second Requests issued under Trump 1.0 and Biden as indicative of the steady pace at which regulators review deals, regardless of administration.

Figure 4 – US Antitrust Enforcement: Average Second Requests/Year, by Administration



Theme 3

Are merger control authorities running out of steam or just catching their breath? (*Continued*)

In the EU, the total number of merger decisions increased (from 332 in 2023 to 398 in 2024), of which 5 (1%) were cleared subject to remedies in Phase I, a decrease from 4 (1%) conditional clearances in 2023 and 10 (3%) in 2022, and only three deals were cleared conditionally at Phase II. There have been no unconditional Phase II decisions nor any formal prohibitions (although 2 mergers were abandoned in the face of an inevitable negative decision). Therefore, the number of *de facto* prohibitions remained flat compared to 2023.

In the UK, the total number of merger decisions decreased (from 32 in 2023 to 30 in 2024). Of the 30 decisions, 20 (66%) were cleared unconditionally in Phase I and 5 were cleared conditionally (17%). Four decisions were cleared in Phase II (two which were unconditionally cleared, two cleared conditionally) and unlike in the EU, the CMA prohibited one transaction (Spreadex / Sporting Index).

Figure 5 – Phase I: Proportion of Cases Involving Remedies

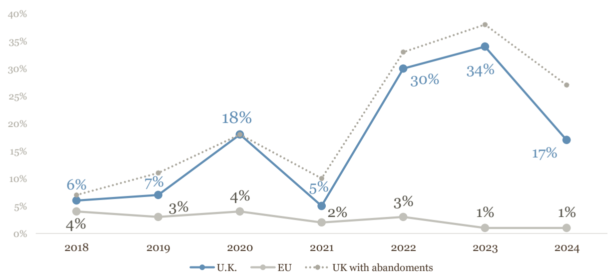
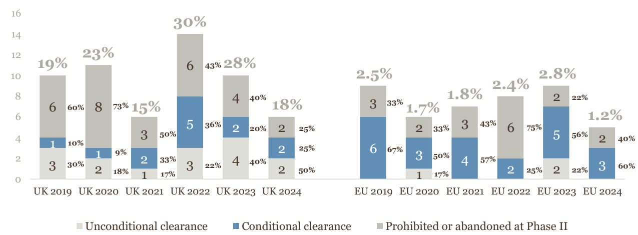
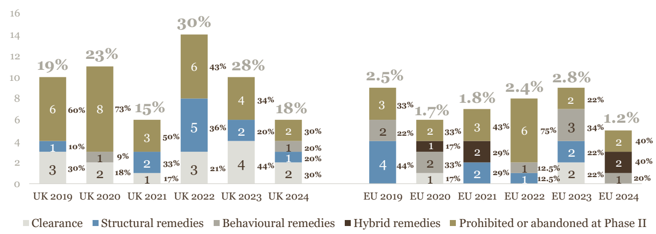


Figure 6 – Phase II Outcomes



Up to the end of 2024 the CMA continues to kill a higher percentage of deals than the EC (40% in 2023 and 50% in 2024) and rarely accepts conditions (20% in 2023 and 25% in 2024).

Figure 7 – Phase II: Breakdown of Remedies



The EC relied far more heavily on conditions: it cleared 60% with conditions in 2024 (no deals were blocked). Conditional clearance rate is at a constant rise from 2022, when only 25% of deals were allowed to proceed with remedies.

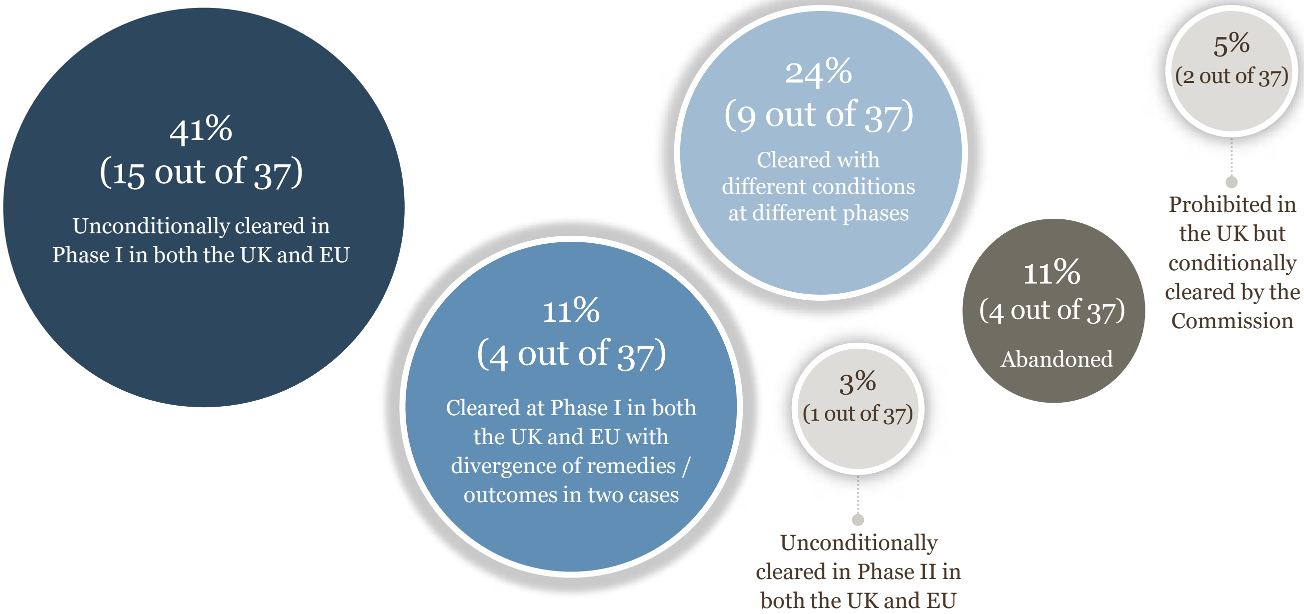
Proportion of total Phase II decisions in the UK has significantly decreased in 2024 (to 18% for the UK). In the EU, proportion of total Phase II decisions decreased slightly to 1.2%.

The CMA and EC continue to diverge in noticeable ways, including as to the types of remedies issued. 26% (37 out of 141) of CMA merger cases decided since 1 January 2021 have been subject to parallel review by the EC. Out of the decided cases, 24% were cleared with different conditions at different phases. This may in part be attributed to the ways in which each authority is responding to the increased political desire to ensure competition enforcement prioritises growth and innovation alongside traditional concerns.

Theme 3

Are merger control authorities running out of steam or just catching their breath? (*Continued*)

26% (37 out of 141) of CMA merger cases decided since 1 January 2021 have been subject to parallel review by the EC. Out of decided cases:



One sector where these types of public interest considerations have certainly had an impact is TMT, as we explore in our next theme.

Theme 4

New breed of remedies in strategic sectors?

The telecom sector is already showing signs of being at the forefront of a possible wider shift in approach to prioritising industrial policies in competition enforcement. For years the industry made the case for a more lenient approach to consolidation, in both pan-European and in domestic markets. The EC under Vestager held its ground, prohibiting the landmark "*four-to-three*" merger in 2016 (and ultimately successfully defending its decision before European courts) or imposing structural remedies. This approach was on display once again in 2024 with the *Orange/MasMovil* merger, which was approved with conditions including a spectrum divestment (*i.e.*, still a structural element).

However, the UK CMA – traditionally amongst the most hawkish authorities – now appears to have broken ranks and approved a four-to-three merger analogous to the one prohibited in 2016. The decision turned on an unprecedented behavioural remedy package relating to the companies' investment in their network and rolling out 5G across the UK over the next three years. This marks a notable departure from the CMA's longstanding preference for structural commitments, a true paradigm shift.

Meanwhile, the US has vacillated on remedies from Trump 1.0 to Biden. Under Trump's first term, the DOJ approved the *T-Mobile/Sprint* combination, subject to similar "*structural*" remedies as were applicable in the 2024 *Orange/MasMovil* deal in the EU: a spectrum divestment, combined with assets required to create a new fourth player in the market, as well as obligations to hasten 5G access for American consumers and more. Under Biden, we saw a strict reversal on remedies, with both Kanter and Khan, leaders of the DOJ Antitrust Division and FTC, taking staunch positions against any pre-litigation remedy agreements. While this approach enjoyed some success in the courts (*e.g., JetBlue/Spirit* and *Kroger/Albertsons*, both of which failed despite the existence of robust divestiture packages), we expect the Trump 2.0 appointees to re-align with the EU approach in accepting structural remedies, and potentially even join the CMA in considering behavioural ones.

We nonetheless expect that some cases in strategic sectors will be subject to similar remedies that seek to reconcile competition concerns and industrial policy considerations.

Theme 5

How to catch a killer (acquisition)

Killer (and reverse killer) acquisitions continue to be a major theme of antitrust enforcement, but authorities have run into difficulties after significant opposition and some criticism, including on the policy side in Europe as outlined in the Draghi Report.

In the US, efforts to stop killer acquisitions in their tracks have struggled. For instance, the FTC attempt to block Meta's acquisition of Within did not survive judicial scrutiny. Although the court in that case sided with the FTC on the proposed narrow market definition (VR dedicated fitness apps) and agreed that potential competition can be a basis for blocking a merger, it held that the FTC did not meet its burden in proving that, absent the transaction, Meta would have entered the relevant market and been an independent competitor there. As the court explained: "*Meta did not have the 'available feasible means' to enter the relevant market other than by acquisition.*"

Regulators have received significantly more traction in bringing cases after an acquisition has occurred and where there is an actual track record of harm to competition. For instance, in one of the highest-profile decisions of 2024, the DOJ succeeded in having Google declared a "*monopolist*" by Judge Mehta of the District of Columbia. Proceedings remain ongoing to determine what remedy will be imposed.

At the European level, the jurisdictional route chosen by the EC to review below-thresholds transactions hit the rocks. The highest European court ruled in *Illumina/Grail* that the EC could not use the Article 22 referral mechanism from EU countries to review mergers that are not otherwise notifiable under national competition regimes. Consequently, the EC has now formally withdrawn the notice setting out its policy on Article 22 referrals.

Since the events underpinning *Illumina/Grail*, multiple EU countries have introduced broad powers to call in below threshold-notifications (*e.g.*, Denmark, Ireland and Italy). Others may follow suit. However, broad call-in powers without a local nexus requirement raises the same questions in relation to legal certainty, so may be subject to similar challenges in national or EU courts. The first test of this new approach wrapped up at the tail-end of 2024, with the EC clearing Nvidia's below-threshold acquisition of Israeli AI business Run:ai following a Phase I review. The deal did not meet EU or national turnover thresholds but was referred to the EC by the Italian competition authority under the Article 22 mechanism, on the basis that it satisfied Italy's residual call-in power. This creates a helpful blueprint that the EC will undoubtedly follow to assess future deals under Article 22.

On this topic, the European Court of Justice's 2023 *Towercast* judgment must not be forgotten, as it held that national authorities could undertake ex-post investigations of below-threshold transactions as potential abuses of dominance under Article 102. Some national authorities have already made use of this power and we may see more cases of this type.

Theme 6

Partnerships and acqui-hires: a new frontier of merger enforcement

A related theme is the increased use of partnerships and other innovative transaction structures (including acqui-hires) which companies, particularly in the digital sector, are exploring partly in reaction to the recent intensity of merger control scrutiny. Many have occurred in high-tech sectors, most notably in respect of AI technology. Authorities have shown eagerness to find grounds to review these transactions – with mixed results and diverging outcomes as they push the limits of their jurisdictional power.

In the UK – which has one of the most flexible regimes to assert jurisdiction – a number of partnerships and investments in the AI sector have been vetted, and either approved or found not to qualify for merger control investigation.

The CMA has to date opened five investigations in total (including *Microsoft/Inflection*) of which, three did not qualify for investigation under the UK merger provisions (*Microsoft/Mistral, Amazon/Anthropic* and *Alphabet/Anthropic*).

In *Microsoft/Inflection*, the CMA cleared Microsoft's hiring of Inflection employees and, in doing so, established jurisdiction over "*acqui-hires*." The EC similarly confirmed that, whilst Microsoft's Inflection deal would not be reviewed by the EC, "*acqui-hires*" constituted a concentration under EUMR.

In the EU, Microsoft's partnership with OpenAI has escaped a formal merger investigation on the basis that the agreement fell short of a notifiable merger. Meanwhile, the CMA is still grappling with whether it has jurisdiction to review the partnership.

We expect the competition authorities to closely examine these partnerships from a merger control perspective. In cases where the partnership cannot be classified as a concentration, competition authorities may also deploy ex-post intervention tools to target the perceived enforcement gap in the field.

Theme 7

New HSR rules set to shake up US antitrust reviews

The biggest non-case development in US antitrust in 2024 was the finalization of the FTC's new "*HSR*" notification rules. While ultimately less extreme than an earlier draft suggested they could be, the new rules–contemplated to go into effect in early 2025 — nonetheless reflect a dramatic departure from the existing rules. They will impose a greater burden and cost on parties submitting HSR notifications, and require much more extensive and invasive disclosure than under existing rules.

One of the key changes is the inclusion of the requirement to submit various "*ordinary course*" documents along with the initial HSR form. This expansion of what are broadly known as "*Item 4*" documents is coupled with a requirement to submit documents not only from officers and directors, but also from so called "*supervisory deal team leads*." Together, these changes substantially increase the volume of documents that must be submitted with HSR filings.

The Rules also require greater proactive disclosure in relation to competitive overlaps between the parties; in particular, for the first time, parties will need to draft a narrative discussion of competitive overlaps and the impact of the transaction on competition, bringing the US more in-line with international notification requirements.

The Rules incorporate a number of other changes as well, all of which require greater and more burdensome disclosure, such as making submissions regarding contemplated co-investors and lenders and discussing the impact of the transaction on labour markets.

Although controversial, the Rules were adopted by a 5-0 vote of the FTC Commissioners and are unlikely to be withdrawn as a result of the election. For instance, future-Chair Ferguson commented: "*Were I the lone decision maker, the rule I would have written would be different from today's Final Rule. But it is a lawful improvement over the status quo. . . . I therefore concur in its promulgation.*" At the same time, Ferguson did leave the door open for future changes, noting that "*[i]f post-promulgation experience teaches us that some parts of the rule are not working well, we can and should get rid of them in subsequent rulemakings.*"

Simpson Thacher

Theme 8

CFIUS under Trump (version 2.0)

The caseload of the Committee on Foreign Investment in the United States (CFIUS) has continued to be robust, even in a period of overall decreased global merger and acquisition activity. According to CFIUS's Annual Report to Congress released 23 July 2024, the total number of covered transactions reviewed or assessed by the Committee in 2023 was 342. While this number represents a decrease from a record-level of cases over the prior two years, it is still the third-highest caseload after these successive annual peaks of activity, with an increased caseload appearing likely for 2024 amidst general improvement in the M&A landscape.

Just as filing activity has continued apace, regulation of foreign direct investment relating to the US also continues to grow in priority. CFIUS has in particular demonstrated an expanding focus on diligence, compliance and enforcement, issuing three times more penalties from 1 January 2023 through 14 August 2024 than it had in the previous nearly 50-years since its establishment. Reflecting this prioritization, in 2024 CFIUS issued the first substantive update to the monitoring and enforcement provisions of the CFIUS regulations since the implementation of the landmark Foreign Investment Risk Review and Modernization Act of 2018 (FIRRMA). The new enforcement and mitigation rules (i) allow compression of the timeline for parties to negotiate mitigation agreements, (ii) expand CFIUS's ability to investigate compliance and demand a broader scope of information from parties to the transaction and third parties not directly involved in a transaction and (iii) increase the range of penalties for certain violations. We expect the new rules to broaden existing administrative practices around investigations concerning non-notified transactions, increase the scope and distribution of information demands from CFIUS, and accelerate CFIUS's ability to impose mitigation on parties in a variety of contexts.

In addition to the recently finalized enforcement and mitigation rules, the fourth quarter of 2024 has also seen the promulgation of rules expanding CFIUS's authority to review certain transactions involving US real estate and establishing regulatory controls on certain outbound investments by US persons related to the People's Republic of China, Hong Kong and Macau. Although each of these rules have been issued at the tail end of the Biden administration, investment security is a rare area of bipartisan attention and support. Notably, the Trump administration supported and implemented FIRRMA, which represented the most significant expansion of CFIUS and its jurisdictional remit to date. The FDI screening considerations of the US Government are also expected to become increasingly pertinent globally, given the focus of CFIUS and other US national security policymakers on engagement with their foreign counterparts. The US' new FDI rules and associated trends should accordingly be an area of priority attention for the global investment community, with national security-focused investment requirements and enforcement meriting increased consideration and education early in the investment cycle.

Theme 9

FDI and National Security remains a top priority in Europe

FDI regimes have continued to proliferate and expand in scope throughout Europe and the world. In the EU, 24 of the 27 Member States have FDI regimes in place, with the remaining three (Croatia, Cyprus and Greece) having taken steps to introduce screening mechanisms. In the EU, the EC reported a "*similar picture*" in the proportion of formally screened cases as in 2023 (EU figures are reported with a one-year lag), at 56% (55% in 2022). Of these, 85% were cleared unconditionally and only 1% prohibited (5% when abandonments are taken into account).

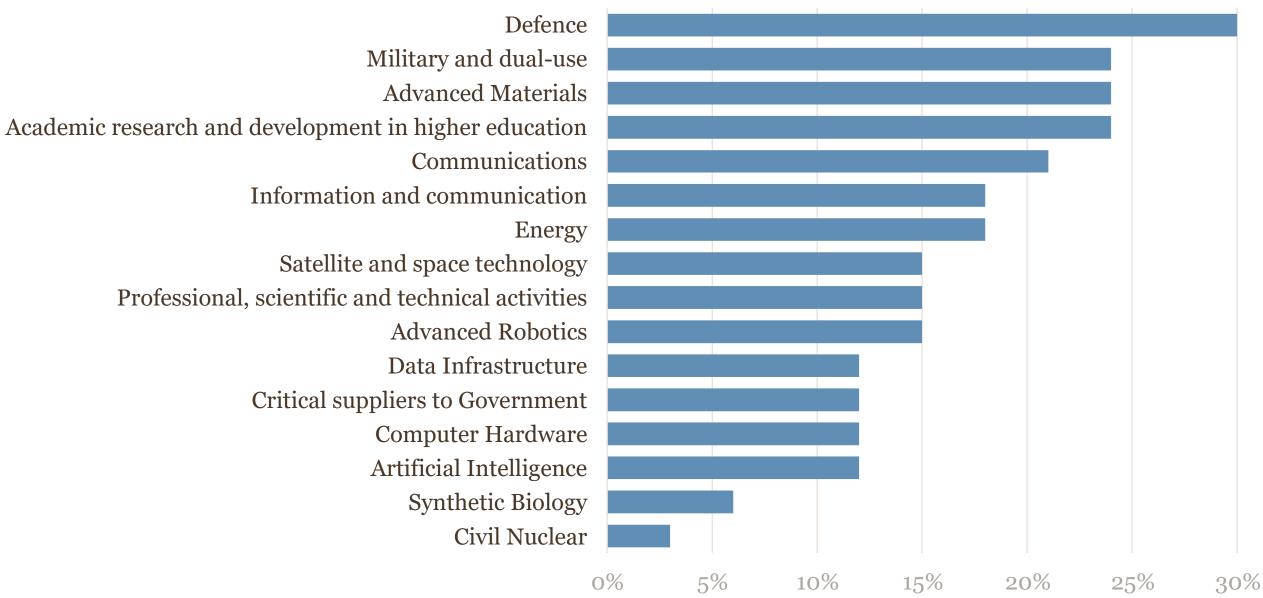
More than 1,500 transactions have been notified by Member States to the EU cooperation mechanism since the EU Regulation's entry into force in 2020. The EC notes a clear upward trend in notifications via the cooperation mechanism, with an increase of 18% between 2021 and 2023. The group of "*top notifiers*" (Austria, Denmark, France, Germany, Italy, Romania and Spain) accounted for 85% of all notifications to the cooperation mechanism in 2023. The UK FDI regime has now been in force for almost three years. Notification volumes remain high, with 906 received in the 12 months to March 2024. But the UK Government has also continued to apply a proportionate approach to in-depth reviews, with only 41 of the notified transactions (4.5%) called in for further scrutiny. This represents a slight decrease from 2022-23, when 7.2% of notifications were subject to an in-depth review.

Interventions also decreased – and by a significant margin – with the number of final orders imposed falling from 12 (in 2022-23) to only five in the year to March 2024. All five orders imposed conditions and, unlike the position in 2022/2023, there were no prohibitions during this reporting period. It would be wise not to read too much into these outcomes, however, as they may suggest that potential investors have learned from previous years and pulled back from the most controversial deals. Perhaps the most high-profile intervention was the conditional approval of the *Vodafone/Three* UK merger, which required the companies to establish a "*National Security Committee*" to oversee sensitive work.

Predictably, of the 17 mandatory notification sectors, the defence sector was the most closely associated with the need for an in-depth review, followed by military and dual-use.

In addition, Chinese investment continues to attract scrutiny: of the 41 acquisitions called in, 41% related to acquisitions involving acquirers associated with China. Of the 10 deals that were withdrawn during the reporting period, eight of these involved investors with ties to China.

Figure 8 – Areas of the UK Economy Associated with Call-in Notices (Q1-Q3 2024)



Theme 10

First blood: first-ever conditional approval under the EU's foreign subsidies regulation

2024 marked the first full year of operation of the new EU Foreign Subsidies Regulation (FSR). By the end of September 2024, the EC said it had entered into pre-notification discussions for more than 120 deals, 91 of which were formally notified, far exceeding the EC's initial prediction of 33 notifications per year.

This was higher than the estimated 33 notifications the EC expected to receive annually (but considerably lower than the 115 notifications the EC received under the EUMR in that same period).

The EC also reported that a significant proportion of those transactions involved investment fund(s). The EC received over 100 notifications in the same period, nearly three times its initial estimate of 36 cases annually.

In 2024, the EC conducted its first in-depth review under the FSR regime, culminating in a decision to conditionally approve the partial acquisition of a European telecommunications provider by a United Arab Emirates company (*E&/PPF Telecom* case).

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