A&O SHEARMAN

Global trends in *merger control enforcement*

2025

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Introduction

Geopolitical uncertainty and a softer M&A market made for a challenging environment for dealmaking in 2024. A heightened risk of antitrust and foreign investment intervention added to this complexity. But, looking ahead, there is cause for optimism. A surge in dealmaking is expected in 2025, fueled by "pro-business" and growth agendas in key jurisdictions and a trend towards a generally more permissive regulatory environment.

In this tenth edition of our global merger control enforcement report, looking back over the past year we observe that antitrust authorities frustrated more deals in 2024 than in any of the previous four years. They largely remained unwilling to accept merger remedies, focused on novel concerns, and subjected merging parties to lengthy review procedures. As a result, abandoned cases rose by over 50%.

We consider the antitrust obstacles faced by tech M&A and how AI partnerships grabbed the attention of authorities. We also turn the spotlight on private equity, looking at the mounting regulatory burden on PE firms as well as the increasing scrutiny of roll-up strategies by PE and non-PE buyers. And we reveal how many antitrust authorities pushed hard to get, and use, powers to review transactions falling below merger control filing thresholds.

Beyond merger control, we examine how new and expanding foreign investment screening regimes and the EU Foreign Subsidies Regulation (FSR) raised regulatory hurdles.

We analyze how all these factors played into risk allocation and the negotiation of deal protections last year. We also give you our predictions for 2025.

Perhaps more than at any other time over the last decade of this report's publication, merger control today is at a critical juncture in key jurisdictions.

New political leadership in the U.S., EU and U.K. have been explicit about their goals of removing barriers to growth (including regulatory barriers) and creating a pro-business, pro-investment environment.

We therefore anticipate a degree of regulatory easing over the coming months and years. At least from a merger control perspective, dealmakers should see more paths to closing.

We have collected and analyzed data on merger control activity for 2024 from 26 jurisdictions [1]. We have also gathered statistics on the operation of key foreign investment control regimes. In this report we give you the key trends and developments from the past year, focusing on the U.S., EU, U.K., and APAC.

1 Australia, Belgium, Brazil, Canada, China, COMESA, the Czech Republic, the EU, France, Germany, Hungary, India, Ireland, Italy, Japan, the Netherlands, Poland, Romania, Singapore, Slovakia, South Africa, South Korea, Spain, Turkey, the U.K. and the U.S.

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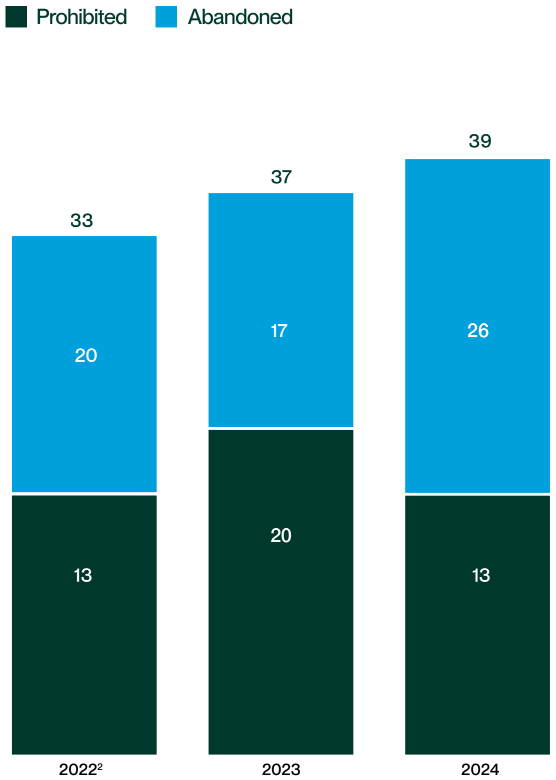
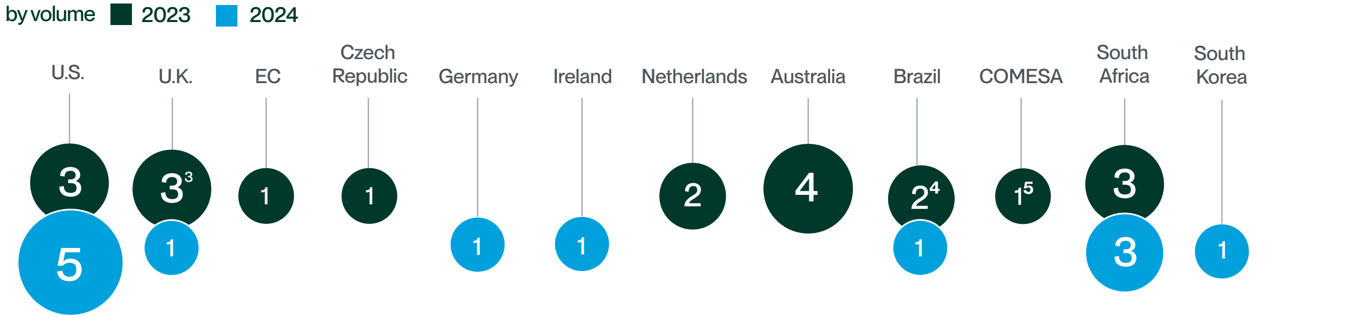
Antitrust and foreign investment conditions precedent and related remedies obligations are heavily negotiated as merging parties continue to prioritize the allocation of an execution risk that has become increasingly hard to quantify.

01 Merger control frustrates more M&A, *but are the tides turning?*

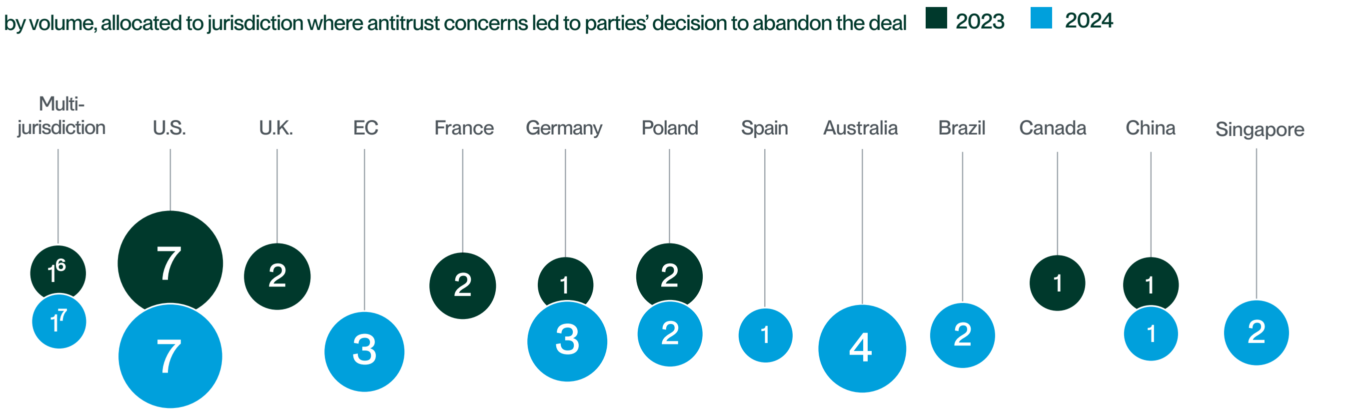
Total deals frustrated



Deals prohibited



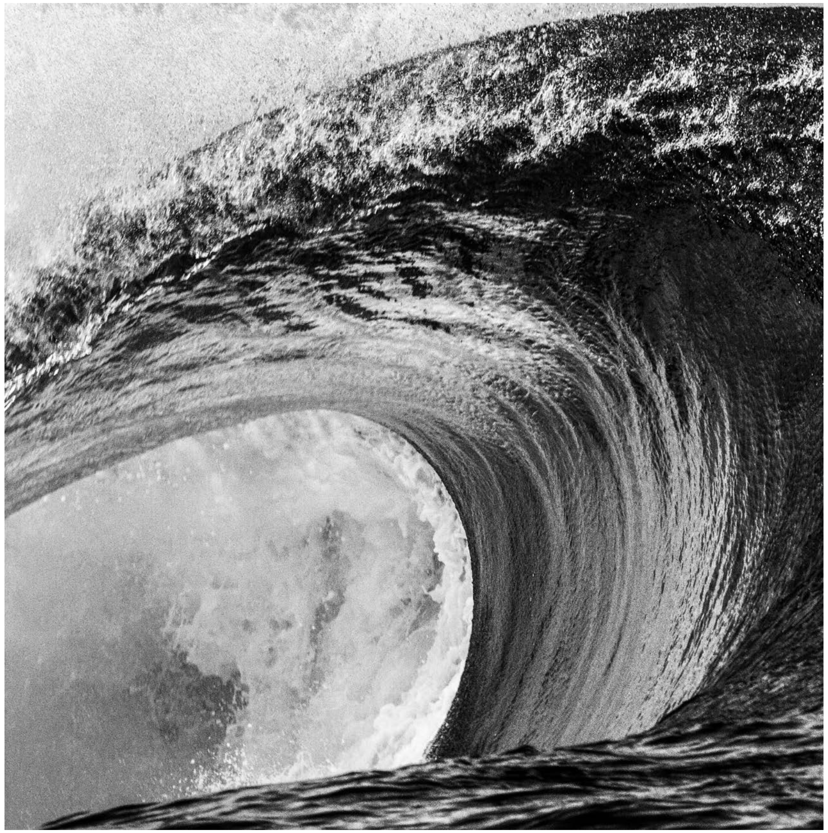
Deals abandoned



2 Includes EC decision to prohibit Illumina/GRAIL, withdrawn in 2024 following a court ruling that overturned the EC's jurisdiction to review the deal.
3 Includes Cochlear/Oticon, which is a partial prohibition (the CMA approved the sale of one business to the acquirer).
4 Includes the prohibition of a joint venture to create a platform to exchange information related to the auto industry, which was conditionally cleared in 2022 and then blocked in 2023 after the parties did not comply with the remedies.
5 Prohibition was partial and only related to certain COMESA Member States.
6 Adobe/Figma, abandoned due to antitrust concerns in the U.K. and at EU level.
7 Qualcomm/Autotalks, abandoned due to "lack of regulatory approvals in a timely fashion". It was being reviewed in the U.S., the EU and the U.K.

Antitrust authorities killed more deals in 2024, marking a third year of rising mortality levels. Where prohibition was on the cards, many dealmakers abandoned their transactions rather than staying the course.

The U.S. agencies led the charge in taking a tough approach. But change is on the horizon. New administrations are expected to adopt a more balanced attitude to merger control enforcement in the year ahead.



In 2024, 13 transactions were prohibited and a further 26 were abandoned due to antitrust concerns. Frustration levels across the jurisdictions surveyed have increased by 30% since 2021, despite fewer merger control filings.

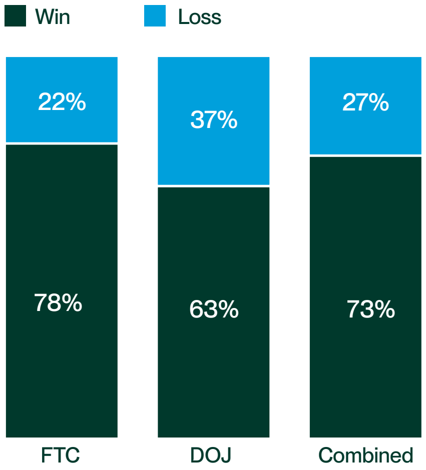
In two thirds of deals frustrated, the parties walked away from the transaction due to authority concerns, up from just under half in 2023.

This is striking. It suggests that in the face of significant antitrust hurdles, merging parties have become less willing to fight their case to the end. Authorities' persistent skepticism over remedies, their focus on non-traditional concerns such as innovation, labor issues and ecosystems, plus lengthy review procedures, have all likely played a part.

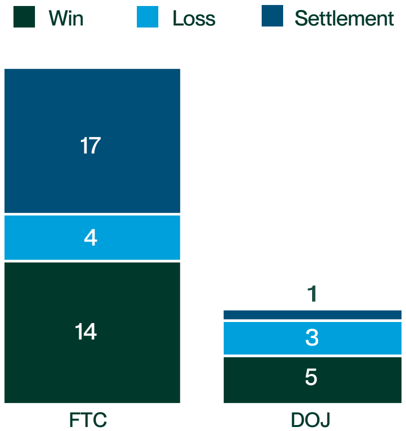
Our data on abandoned M&A is only part of the picture. It does not capture cases where antitrust risk forced parties to drop transactions at an early stage, in some cases even before a formal notification. For many antitrust authorities, this "deterrence" is itself a mark of success.

However, the tide may be turning. New leaders of antitrust agencies have been appointed in key jurisdictions at a time when a growing number of governments are prioritizing domestic growth, innovation and "competitiveness" over perceived regulatory burden. We expect political agendas to nudge at least some antitrust authorities toward a more permissive approach to merger control in 2025 and beyond. As a result, we expect some strategic deals that were previously seen as untenable to be back on the table.

Win rate of U.S. agencies under Biden administration
(as a proportion of contested deals resulting in a trial verdict)



Outcomes of U.S. agency complaints under Biden



U.S. agencies are the standout enforcers but for how long?

The Biden administration's tough approach to merger control continued in 2024.

Five deals were formally prohibited, the most reported in a year since starting this report a decade ago. A further eight transactions were abandoned due to U.S. antitrust concerns[8]. Enforcement hit a wide range of sectors, including consumer, tech, healthcare and transport.

The U.S. antitrust agencies also won all but one merger challenge in federal court. This has boosted their total win rate during the Biden-era to 78% for the Federal Trade Commission (FTC) and 63% for the Department of Justice Antitrust Division (DOJ). Together, they won at trial in nearly three quarters of cases during President Biden's term.

Last year, litigation was buttressed by the 2023 revised merger guidelines. These set out a lower concentration threshold for presuming illegality of horizontal mergers. They also promote less traditional theories of harm, such as serial acquisitions, vertical mergers and potential adverse impact on labor markets.

The guidelines have already received judicial endorsement. But the agencies must take care to substantiate their claims. In Kroger/Albertsons, a district judge dismissed the FTC's labor market concerns as lacking evidence. Ultimately, though, the judge found sufficient harm to competition to block the deal, rejecting the parties' offer to sell off 600 stores/assets and make multibillion-dollar investments.

Internal documents have been key to the U.S. agencies' arguments in many merger challenges. Statements that merged firms can, for example, "kneecap competitors and dominate the market" have appeared front and center in complaints.

It is a clear reminder that what the merging parties communicate about a transaction, in internal and external materials, can impact how a fact finder views the likely competitve effects of a deal.

This will be even more important now the updated Hart-Scott-Rodino (HSR) filing form has taken effect. It requires far more extensive disclosure, including on overlaps, labor issues, minority interests, prior acquisitions, foreign subsidies, and ordinary course documents. This raises the stakes for merging parties. It not only significantly increases their administrative burden but also gives the agencies access to more information upfront on which to assess a deal.

In the coming months, all eyes will be on just how far the new Trump administration's "pro-business" agenda, as well as new heads of the FTC (Andrew Ferguson) and DOJ (Gail Slater, once appointed) will impact the agencies' policies and enforcement.

We are unlikely to see a relaxation of merger control enforcement across the board. Challenges to M&A are still expected. These may well focus on sectors that have a direct impact on consumers (such as energy, healthcare and transport) and tech M&A.

However, we anticipate a greater openness to accepting merger remedies (see chapter 2). And, while the agency heads have said they will continue to apply the revised merger guidelines as the framework for their analysis, we may see them recenter their focus on more traditional theories of harm (rather than novel concerns such as labor market issues).

The upshot? More M&A is likely to proceed unscathed, with fewer deals being challenged, blocked or abandoned.

8 Includes Qualcomm/Autotalks—see footnote 7.

EU focuses on innovation concerns as new commissioner takes the helm

No deals were blocked at EU-level in 2024, but four were abandoned after the European Commission (EC) raised concerns[9].

The impact of M&A on innovation continued to be a focus. In Amazon/iRobot, for example, the EC was concerned that possible foreclosure strategies, including self-preferencing, could lead to less innovation (as well as higher prices and lower quality) for consumers of robot vacuum cleaners. The parties walked away from the deal late in the in-depth review.

Innovation concerns look set to remain high on the EC's agenda going forward.

New Competition Commissioner Teresa Ribera took office on December 1, 2024, amid a flurry of debate over the future of EU merger control policy.

Influential reports by Enrico Letta and Mario Draghi called for greater European growth, competitiveness and innovation.

Draghi recommended the introduction of an "innovation defense" to enable innovation-enhancing effects of a deal to outweigh any harm to competition. He also recommended greater significance be given to security and resilience in antitrust assessments, particularly in energy, defense and space sectors, and for more consolidation in certain industries, such as telecoms.

Ribera's mission statement encapsulates some of these elements.

She is tasked with modernizing EU competition policy, including reviewing the EC's horizontal merger control guidelines to give "adequate weight" to the EU's needs in respect of resilience, efficiency and innovation.

What will this mean in practice?

We could see the EC becoming more supportive of European companies scaling up in global markets.

We might also see the EC accepting efficiency arguments (which under current guidelines are subject to a very onerous standard of proof), perhaps based on pro-innovation effects or environmental/sustainability grounds. The latter is a key focus for Ribera—her antitrust portfolio is combined with responsibility for implementing the European Green Deal.

But this does not equate to waving all deals through the EU merger control process.

Ribera is clear that any action will not be at the cost of competition and consumers in Europe. She says that rigorous antitrust enforcement will continue, albeit "more focused, more targeted, more efficient."

9 Includes Qualcomm/Autotalks—see footnote 7.

U.K. hits completed deals, updates thresholds and gets a new chair

The number of frustrated deals in the U.K. fell to two in 2024[10]. However, the Competition and Market Authority (CMA)'s enforcement action once again showed the authority's hard-hitting powers to unwind completed transactions.

In blocking Spreadex's completed acquisition of Sporting Index, the CMA required the sale of the entire target business. This will be a tricky maneuver for the parties—the target's sports spread betting platform was shut down as a result of the deal and must be redeveloped to form part of the divestment package. Spreadex is appealing.

The U.K. has just updated its merger control thresholds for the first time in over two decades.

In addition to an increased turnover test and a "safe harbor" for small mergers, a new threshold enables the CMA to take jurisdiction more easily over non-horizontal mergers and killer acquisitions. In theory, this could lead to more frustrated M&A, particularly in the digital sector (see chapter 3).

In terms of enforcement policy, the U.K. is at a similar crossroads as the U.S. and the EU.

The U.K.'s 2024 general election brought in a Labour government that is urging the CMA to prioritize growth, investment and innovation.

Chancellor Rachel Reeves has said that "[e]very regulator, no matter what sector, has a part to play by tearing down the regulatory barriers that hold back growth," while Prime Minister Keir Starmer took direct aim at the CMA when he announced to an international investment summit soon after the election that "[w]e will rip up the bureaucracy that blocks investment… We will march through the institutions and make sure that every regulator in the country—especially our economic and competition regulators—take growth as seriously as this room does."

Perhaps consistent with that rhetoric, in a dramatic move in January 2025, ministers replaced the CMA's chair with a former Amazon executive.

What this might mean for U.K. merger control enforcement is starting to take shape.

The government's strategic "steer" to the CMA sets out broad objectives, including that the CMA should use its powers in ways that enhance growth, international competitiveness and/or investment, and should act in ways that minimize uncertainty for businesses.

In parallel, the CMA has announced areas for improvement, such as shorter review periods and a "step change" in engagement with businesses. It will also review its approach to merger remedies, looking at when behavioral commitments may be appropriate as well as the scope for remedies that lock in efficiencies or preserve customer benefits. And it will consider, in global transactions, whether action by other authorities could resolve any U.K. concerns.

Arguably, a shift in direction was already underway—late last year, the CMA approved Vodafone's merger with Three subject to unprecedented behavioral remedies, including price caps (read more in chapter 2).

Ultimately, all this could pave the way for a more light-touch approach to merger control enforcement in the U.K. Developments over the coming months will be pivotal.

"In terms of enforcement policy, the U.K. is at a similar crossroads as the U.S. and the EU."

10 Includes Qualcomm/Autotalks—see footnote 7.

Some loosening in Asia but watch out for Australia

Several Asian countries relaxed aspects of their merger control rules in 2024:

- China's increased notification thresholds have resulted in around 20% fewer filings.
- South Korea introduced new exemptions (including for private equity) and raised reporting thresholds for business transfers. However, it remains tough on deals raising antitrust concerns, and last year notched up its first prohibition in eight years.
- Certain thresholds have been increased in India, although this is balanced by a new deal value threshold which brings more mergers—including killer acquisitions—in scope (see chapter 5).

Australian merger control will soon have more teeth. A new mandatory, suspensory merger control regime will take full effect from January 1, 2026, with transitional provisions kicking in from mid-2025. Notification thresholds are low and complex deals, as well as serial acquisitions, will face closer scrutiny. Parties with ongoing or upcoming deals with an Australian nexus should start preparing now.

A "whole of antitrust" approach

As the armories of antitrust authorities expand, some are taking a more holistic approach, using the full breadth of their toolkits. We have seen links between merger control and behavioral antitrust enforcement.

In the U.S., the FTC challenged serial acquisitions using a combination of rules prohibiting monopolies, unfair methods of competition and anticompetitive acquisitions (see chapter 4). In two merger remedy cases the FTC banned the target's CEO from having a seat on the acquirer's board due to alleged concerns over collusion.

The EC opened an investigation into Delivery Hero and Glovo. It suspects that market allocation, information exchange and a no-poach agreement could have been facilitated by Delivery Hero's minority stake in Glovo. In Belgium, the antitrust authority launched an investigation into whether a below-threshold acquisition in the flour sector amounts to an anticompetitive agreement (applying the Towercast case law—see chapter 5 for more on this). In Brazil, a probe into whether car makers engaged in anticompetitive conduct started after the antitrust authority blocked their joint venture under the merger control regime.

There is also interaction between merger control scrutiny and other regulatory mechanisms. Both the EU and U.K. digital markets regimes require designated digital firms to submit information on transactions, even where merger control thresholds are not met.

The web of antitrust-based regulatory oversight is becoming even more tangled.

The storm before the calm?

It could take time for new enforcement policies to fully emerge in key jurisdictions.

Even if the result is a relatively more permissive (or at least a more traditonal) approach, the interim period—especially for multinational M&A raising novel or complex antitrust issues—will be uncertain.

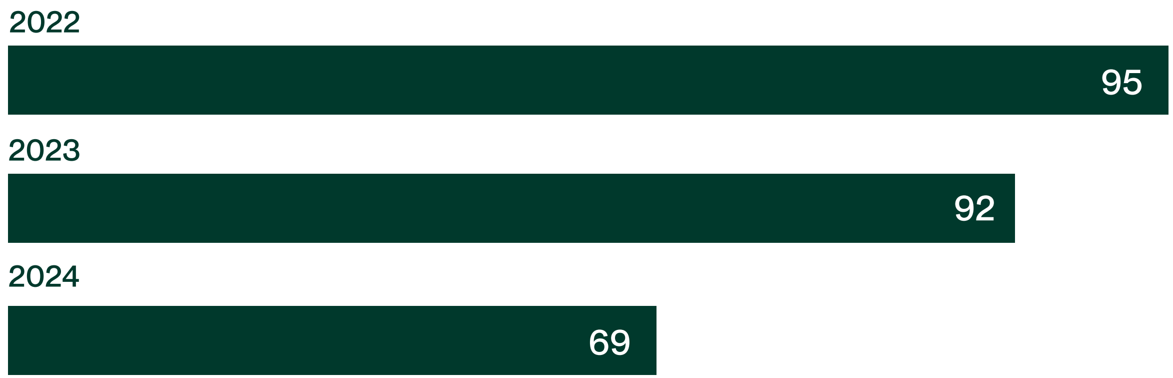
Considering antitrust and other regulatory risk from the outset will help merging parties navigate any choppy waters.

They should factor in the time and resources needed to steer through multiple regulatory processes. Negotiating appropriate risk allocation mechanisms in deal documentation is a must.

02 Antitrust authorities' skepticism of merger remedies *causes headwinds for dealmakers*

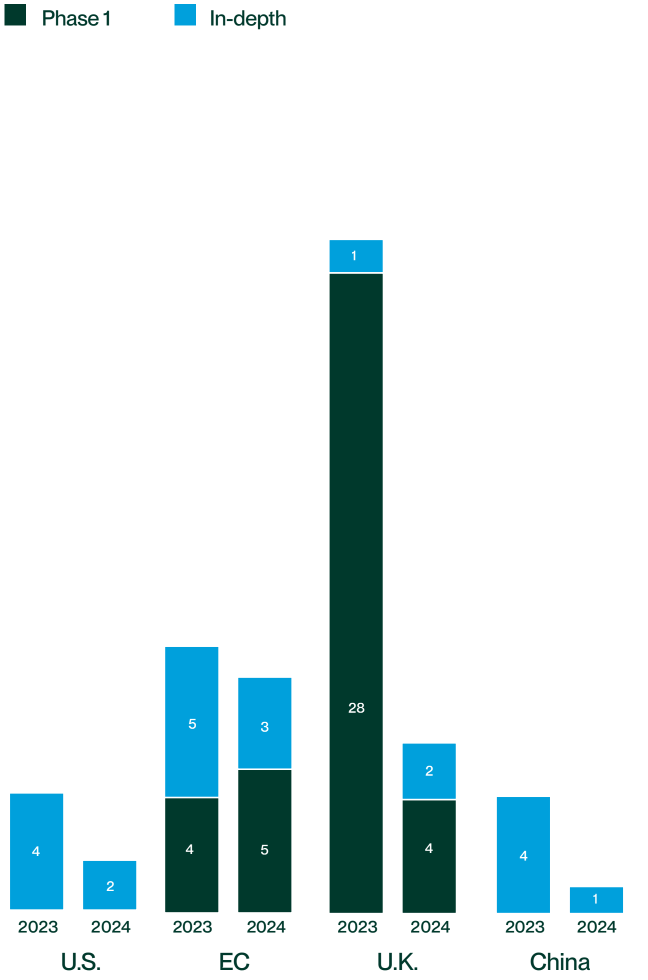
The number of deals cleared with conditions fell sharply in 2024. Many antitrust authorities remained skeptical of whether merger remedies can effectively address antitrust concerns, choosing instead to challenge and ultimately seek to block M&A. Paradoxically, where remedies were agreed, authorities were increasingly creative. Over half of cases contained behavioral commitments. We are now on the precipice of a paradigm shift. A more permissive merger control environment should mean less resistance to merger remedies. All things being equal, dealmakers should have an easier path to clearance.

Total remedy cases[11]



11 Excluding South African remedy cases, where the authority's concerns focus on public interest alongside antitrust issues.

Remedy cases in selected jurisdictions



Remedy cases fall as skepticism continues (for now)

A total of 69 deals were cleared subject to remedies in 2024. This is a steep drop from 2023. Even accounting for the fact that 20 of the 2023 remedy cases were attributable to two series of U.K. veterinary practice transactions, there was still a year-on-year decrease.

Why the decline? Antitrust authorities in key jurisdictions continued to doubt whether merger remedies can effectively address antitrust concerns.

In the U.S., there were only two consent decrees in 2024, half the previous year's already low tally.

Each was entered into by the FTC and both comprised an unusual behavioral obligation (see below). Under the Biden administration, the U.S. antitrust agencies, particularly the DOJ, have been unusually resistant to negotiated merger remedies, instead preferring to challenge deals or see them restructured outside the normal consent decree process.

The U.K. saw a considerable reduction in conditional clearances. Phase 1 remedy cases fell to four, the lowest since 2021 (with two conditional approvals at phase 2, up from one in 2023). But this still meant that one in five investigations ended in conditions, given a drop in total decisions.

China's State Administration for Market Regulation (SAMR) accepted commitments in just one case, a semiconductor transaction. This is down from four in 2023. Ongoing reviews into M&A in strategic sectors may, however, lead to more remedy cases in 2025.

Get set for an about turn

This downward trend may be short-lived. A return to pre-Biden levels of merger control enforcement is predicted under the "pro-business" agenda of Trump 2.0 and a more balanced approach may emerge following political pressure on EU and U.K. authorities to boost growth and innovation.

This could translate into a greater willingness on the part of antitrust authorities to accept merger remedies—both structural and behavioral—particularly in strategic sectors.

Merging parties would then have a clearer path to resolving antitrust concerns, meaning a better chance of obtaining clearance.

Movement already as behavioral remedies gain traction

As part of a recalibrated approach to merger remedies, we may see some antitrust authorities reassess their position on behavioral remedies.

In recent years, U.S. (including under Trump 1.0), EU and U.K. antitrust regulators, among others, have consistently voiced their strong preference for structural divestments over behavioral commitments. They view structural remedies as the best way to address antitrust concerns in a clear-cut way.

But we are already seeing a shifting of the dial.

In the U.K., CMA chief executive Sarah Cardell announced that a review of the CMA's approach to merger remedies will kick off in March 2025. Significantly, it will consider when behavioral remedies might be appropriate.

Shortly after, the CMA cleared the mobile tie-up between Vodafone and Three subject to novel behavioral conditions. These oblige the parties to deliver a pre-agreed business plan on network upgrades, with oversight by the CMA and communications regulator Ofcom. The parties also agreed to maintain pricing on certain mobile tariffs and data plans and to commit to pre-set prices and terms of access for mobile virtual network operators, in each case for a three-year period, as measures intended to protect customers during the early stages of the parties' network roll-out.

These developments have been heralded as part of a broader watershed moment for U.K. merger control policy.

However, looking across the jurisdictions surveyed in our report, they are not out of line with the international merger control landscape.

Our data shows that, while there were fewer remedy cases overall, behavioral commitments are back in fashion. In 2024, 51% of cases involved remedies that were behavioral or hybrid (i.e., combining structural and behavioral elements). This is up from just 40% in 2023.

In China, behavioral commitments have long been a mainstay in SAMR remedy decisions. All ten conditional clearances in the past three years have included them. We expect this to continue.

At EU level, the EC has accepted various behavioral remedies in recent years, despite stating it prefers structural fixes. In 2024, all three phase 2 conditional merger clearances included behavioral obligations alongside divestments, although these were mostly designed to complement and promote the effectiveness of the structural remedies.

Both U.S. consent decrees last year were behavioral in nature. In each case the target's CEO was banned from gaining a seat on the acquirer's board or serving in an advisory capacity. The circumstances of the cases were very specific, involving FTC allegations of the potential for future collusive activity by the individuals in question. However, they show that even the Biden FTC required only non-structural solutions in two cases, despite the U.S. agencies' recent hardline approach to remedies.

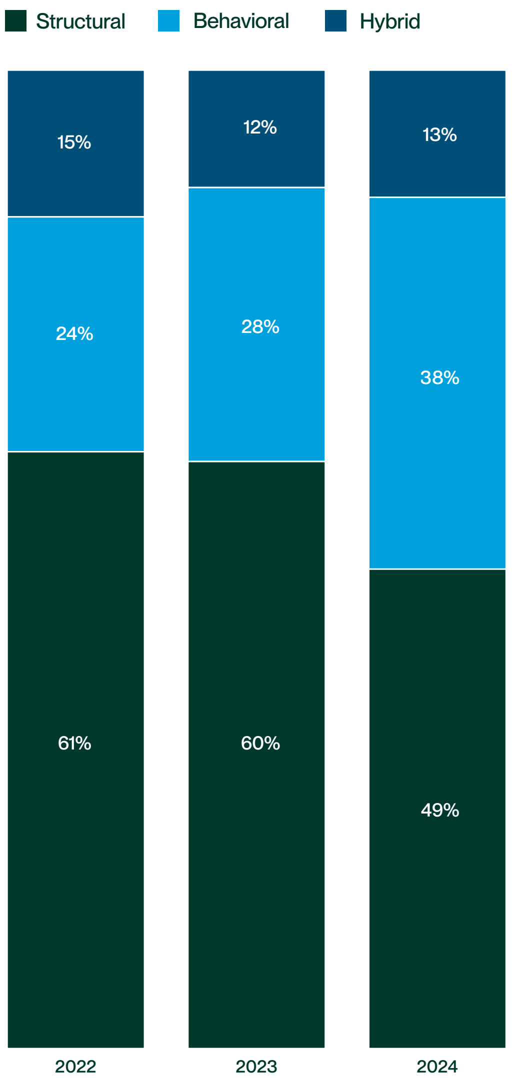
Behavioral remedies were also accepted in a number of other jurisdictions, including Brazil, Belgium, the Czech Republic, France, Hungary, Italy, Singapore, South Korea, Spain and Turkey.

Ultimately, whatever the authorities' approach to behavioral commitments or appetite for creativity in their design, the type of remedies we see will be dictated by the type of transactions coming across their desks.

Vertical deals and digital mergers, for example, often raise concerns over access, interoperability or reduced incentives to innovate, which are usually most proportionately addressed by non-structural fixes.

Transactions in regulated sectors—such as telecoms—may also be good candidates. This is especially where there is a sector regulator to help monitor compliance with the commitments, a factor that the CMA repeatedly emphasized in justifying its acceptance of price-based behavioral remedies in the 4-to-3 U.K. mobile telecoms deal.

Conditional clearances by type of remedy[12]



12 Excluding South African remedy cases.

International cooperation is key for global remedy solutions

In multinational deals, antitrust authorities remain keen to coordinate possible remedy packages with their international counterparts.

For merging parties, having a single set of global remedies is often preferable to a patchwork of different national commitments.

Recent reforms to the U.K. phase 2 merger review process are aimed at helping parties align parallel reviews and allowing time for early consideration of remedies. The EU/U.K. competition cooperation agreement—expected to be signed during 2025—will also help. And the CMA is exploring when it might be appropriate, in global transactions, to see whether action by other agencies could resolve U.K. concerns.

Some authorities have even reassessed their own conditional clearances as other remedy decisions emerged.

The South Korean authority, for example, adjusted the conditions imposed in Korean Air/Asiana in light of later commitments agreed in other jurisdictions.

It will be interesting to see if this becomes a more common occurrence.

Decline in upfront buyers/fix-it-first commitments

With the decline in structural merger remedies in 2024, it is no surprise that we saw fewer upfront buyer and fix-it-first commitments.

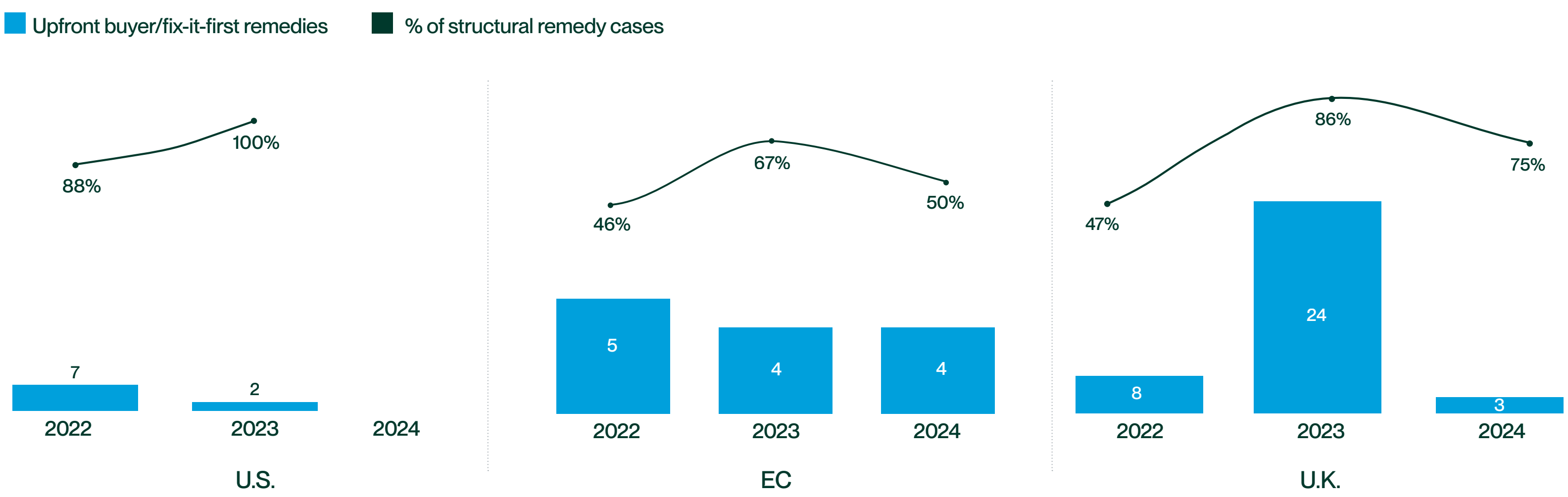
But authorities continued to use them last year to bolster structural remedies and minimize implementation risk:

- In the U.K., an upfront buyer was required in each of the structural remedy cases agreed at phase 1.
- At EU level, the EC unusually agreed to both an upfront buyer and a fix-it-first commitment in its conditional clearance of Korean Air/Asiana Airlines. We saw one upfront buyer and one fix-it-first requirement in its other two phase 2 conditional clearances.

In the U.S., structural remedies usually require an upfront buyer. A greater openness to divestments under the Trump administration can be expected to lead to a revival of upfront buyers in U.S. consent decrees involving a structural remedy.

We saw some parties propose a purchaser of divestment assets when defending a U.S. merger challenge in court. However, persuading the judge of the fix might not be easy. In Kroger/Albertsons, the parties' offer of substantial store divestments to C&S Wholesale was rejected. The judge ruled that C&S would not replicate the competition lost as a result of the merger. This is a reminder that parties must provide credible and clear justifications as to why any remedy taker will be effective.

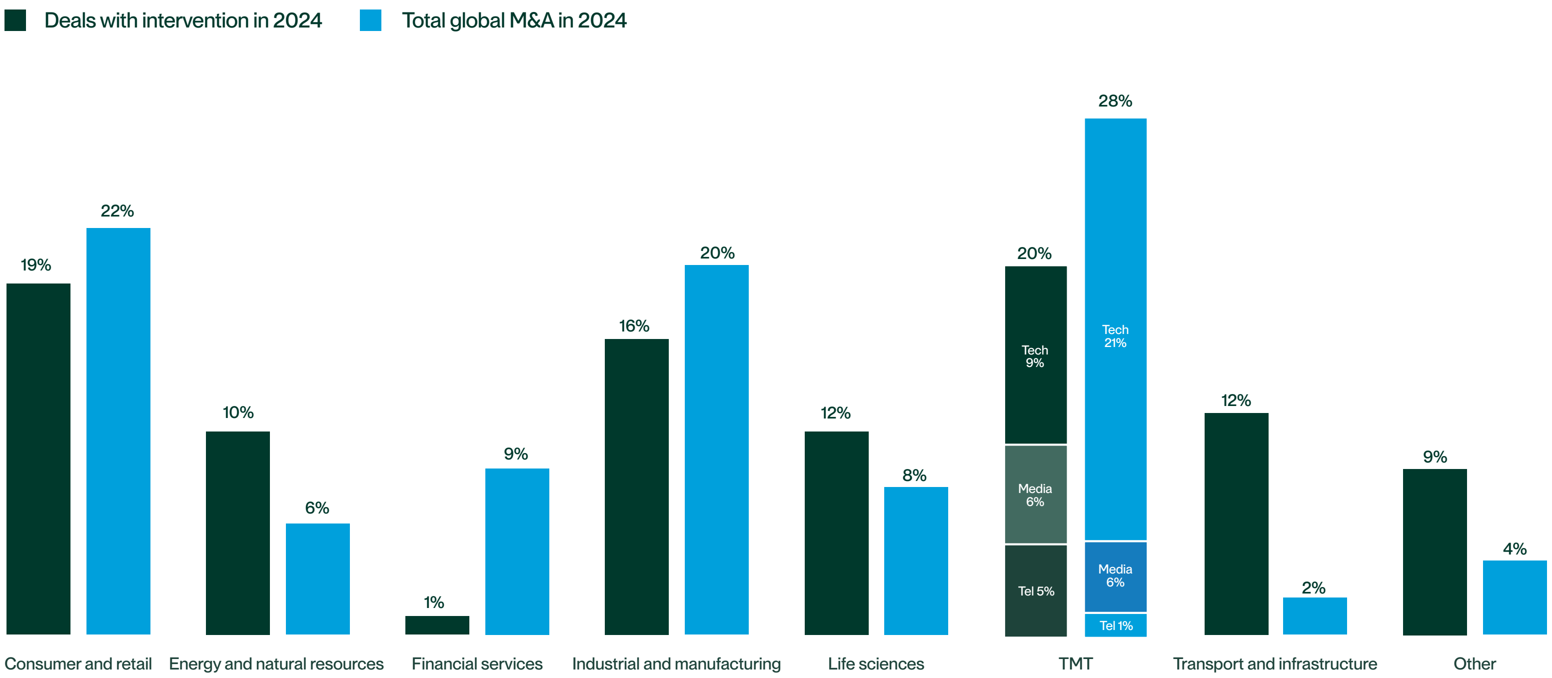
Upfront buyers/fix-it-first in key jurisdictions



03 Stormy skies for tech deals as *antitrust scrutiny intensifies*

Tech sector deals are seeing rising mortality rates. AI partnerships are moving up the authorities' agenda for scrutiny and enforcement. Overall, however, antitrust intervention in 2024 once again focused on transport, energy and life sciences M&A, as well as telecoms consolidation.

Total antitrust intervention by sector (by volume)



More digital/tech deals frustrated

The level of antitrust intervention in tech M&A (9%) last year remained comparatively lower than the proportion of global M&A accounted for by tech deals (21%).

But tech and digital deals continued to face acute antitrust scrutiny. Looking only at mergers frustrated (i.e., prohibited or abandoned) due to antitrust concerns, over a fifth were tech sector transactions, up from 16% in 2023.

In a number of cases, the threat of antitrust intervention caused the parties to walk away.

High profile examples included Amazon/iRobot, abandoned after the EC looked poised to block the deal. Qualcomm terminated its purchase of Autotalks due to headwinds in the U.S., EU and U.K.

In some jurisdictions, amendments to filing thresholds will bring more digital deals under review. In the U.K., a new test now bites when only one party meets turnover and share of supply thresholds and the other has a nexus to the U.K. The CMA has tech acquisitions—particularly small target purchases or vertical tie-ups—in its sights. India introduced a new deal value threshold in September 2024.

Elsewhere, antitrust authorities are using powers to review non-notifiable tech M&A, particularly in the semiconductor sector. Qualcomm/Autotalks was one of these, although ultimately the EC's review would have fallen away after a court ruling overturned the EC's ability to accept referrals in such cases (see chapter 5). In China, SAMR has used its below-threshold call-in powers to request the notification of Synopsys/Ansys. We expect to see similar cases in future.

Deals involving AI activities are also grabbing attention, although intervention levels so far have been low. Part of the challenge for antitrust authorities, as we discuss below, is whether certain AI arrangements even fall within the scope of the merger control rules.

Finally, new digital market regimes emerge and bed down with some (e.g., the EU and the U.K.) imposing additional notification obligations on in-scope firms. This adds an extra layer of disclosure for tech dealmakers.

Looking ahead, the U.S., EU and U.K. agencies (among others) have mandates to crack down on the market power of Big Tech. Scrutiny of digital deals may further intensify.

AI partnerships in the merger control net?

Partnerships between Big Tech firms and AI providers are fast becoming an antitrust target. These often include IP licenses, distribution arrangements, provision of computing infrastructure and sometimes control, consultation rights, board representation or exclusivity rights. They also encompass "acqui-hires" of talent.

However, authorities are grappling with whether these non-traditional deal structures amount to "mergers" within the scope of their rules.

The U.K. CMA is a frontrunner here and is building a body of precedent that will help participants assess merger control risk. Minor (e.g., less than 1%) voting rights are unlikely to be enough to trigger CMA jurisdiction. Nor are non-exclusive arrangements. But the CMA has looked at the hiring of core employees teamed with IP licenses (Microsoft/Inflection). It has also indicated that exclusive supply/distribution agreements or situations where the acquirer has consultation rights or particular expertise may fall in its purview. So far, however, the CMA has had no cause to intervene.

The CMA is well-known for its long jurisdictional reach. Other authorities might not be able to take a similarly wide approach, at least under existing rules. But they may well give it a go:

- In a policy brief, the EC said it is on the watch for acquisition strategies aimed at eliminating nascent competitors or absorbing key employees and critical know how. It concluded that Microsoft/Inflection was a "concentration" under the EU Merger Regulation, although the turnover thresholds were not met. In contrast, it found that Microsoft's partnership with OpenAI was not a concentration on the basis that Microsoft had not acquired control on a lasting basis.
- In Germany, too, the Federal Cartel Office (FCO) concluded that Microsoft/Inflection was a merger for the purposes of the German rules but could not take jurisdiction due to a lack of local nexus. The FCO head wants to enable AI partnership scrutiny by lowering the country's deal value filing threshold and expanding it to include possible or future (and not just actual) activities.
- The U.S. FTC has released a report on the potential antitrust implications of partnerships between the largest cloud service providers and AI developers. It says they could impact access to inputs, increase switching costs for AI developers and give cloud service providers access to sensitive business information.
- Brazil's antitrust agency is investigating several instances of failures to notify AI partnerships.
- The Korean antitrust authority has pledged to strengthen oversight of the AI sector and will review the need to update merger control rules to address new forms of business partnership.

More turbulence for airline mergers

Antitrust intervention in transport M&A (12%) was six times higher than the proportion of global M&A in 2024. Airline transactions made up most this enforcement activity.

In the U.S., JetBlue's acquisition of Spirit was blocked. Alaskan/Hawaiian was allowed to proceed with commitments to a sister federal agency, the Department of Transportation.

At EU level, IAG and Air Europa's tie up was abandoned after the EC rejected the parties' remedy offer. The EC did, however, accept remedy packages in Korean Air/Asiana and Lufthansa/MEF/ITA. Each combined divestments with behavioral commitments.

Further consolidation in the sector is expected to attract close scrutiny.

Life sciences M&A throws up widespread concerns

Life sciences M&A remained a focus for antitrust authorities. Their proportion of antitrust intervention reached 12%, compared to the 8% of global M&A accounted for by deals in this sector.

The U.S. agencies were particularly active, intervening in hospital tie-ups and other healthcare mergers. Deals were also frustrated in Australia, Brazil and Germany.

Former DOJ Head Jonathan Kanter called for a fundamental redefinition of antitrust policy in the healthcare sector, raising concerns over "platformization". A DOJ task force was formed to investigate widespread concerns including serial acquisitions.

Energy deals under fire

Energy transactions accounted for 10% of antitrust intervention in 2024, compared to the 6% of global M&A made up of deals in this sector. As in previous years, conditional clearances accounted for almost all the total, spanning several jurisdictions.

The only two remedy cases in the U.S. last year were both in this sector. The FTC has said it will continue to investigate oil and gas M&A.

Telecoms consolidation sparks differing approaches

The proportion of antitrust intervention in telecoms deals (5%) was five times higher than the sector's share of global M&A.

Several cases were cleared with conditions, but we saw a marked difference in the approach to those remedies. The EC accepted a structural fix (spectrum divestment) in Orange/MásMóvil. The U.K. was satisfied with unprecedented behavioral remedies in Vodafone/Three (including price caps). Italy, too, accepted behavioral commitments when clearing Swisscom/Vodafone (see chapter 2 for more on these cases and remedy trends more generally).

Whether these diverging positions will continue remains to be seen. In the meantime EU-based telecoms firms are pushing for more lenient merger control treatment of their deals. Their calls echo the Draghi report, which recommends facilitating investment through cross-border integration and the creation of EU-wide players.

Direction of travel unlikely to change

There is every sign that transport, healthcare, energy and telecoms deals will continue to be a target for merger control intervention in 2025. Transactions in these sectors usually have a direct impact on consumers, making close scrutiny a priority for many antitrust authorities.

We also predict rising enforcement action against tech M&A, as authorities iron out their approaches to assessing transactions involving digital activities.

04 Private equity and serial acquisitions continue to feel the *antitrust heat*

Private equity acquisitions—notably roll-up strategies—continued to face antitrust scrutiny in 2024. As did serial acquisitions by non-PE acquirers. Headwinds were particularly strong in the U.S., but breezes from other jurisdictions are starting to gain momentum. Overall, the regulatory burden, especially for PE firms, is mounting.

Serial acquisitions under attack

Concerns over serial acquisitions gathered pace during 2024. Antitrust authorities want to look closely at purchases of small businesses with a view to combining them into a larger entity that concentrates market power. Often, however, these individual acquisitions fall below merger control thresholds, creating review challenges for agencies (also see chapter 5).

While serial deals by industrial, tech and healthcare companies are being scrutinized, antitrust authorities also have a particular focus on PE "roll-ups".

The U.S. antitrust agencies have led the charge. The updated HSR filing form now requires greater disclosure of certain prior acquisitions. Revised U.S. merger guidelines set out how the agencies should consider the impact of serial acquisitions in their assessments. The agencies have launched a public inquiry on serial acquisitions, emphasizing that PE firms engage in this strategy across a variety of industries.

"Antitrust authorities have a particular focus on PE 'roll-ups.'"

U.S. takes action against Welsh Carson

In 2023, the FTC lodged a groundbreaking challenge against Welsh Carson and portfolio company U.S. Anesthesia Partners (USAP). The agency alleged that the firms violated antitrust rules by engaging in an anticompetitive roll-up strategy to purchase 17 anesthesiology practices over a ten-year period, as well as setting prices and allocating markets.

In federal court, the FTC suffered a blow. Last year, a District Judge dismissed the claims against Welsh Carson. It ruled that the PE firm held only a minority (23%) interest in USAP at the time the FTC opened its investigation. The judge was not willing to expand liability to minority investors whose subsidiaries reduce competition.

Despite this loss, the FTC indicated it would pursue a second, administrative, case against Welsh Carson. Early in 2025, the FTC reached a landmark agreement with the PE firm to settle this potential action.

Welsh Carson must freeze its investment in USAP and reduce its board representation. It will have to obtain prior approval for certain future investments in anesthesia anywhere in the U.S. and give advance notice of certain deals involving hospital-based physician practices, again, nationwide. Welsh Carson must also cooperate with any future litigation, a notable commitment given that the FTC's federal case against USAP is ongoing.

New FTC, new approach?

The Democratic commissioners heralded the Welsh Carson settlement for its novel treatment of PE defendants and its application of the 2023 merger guidelines. They said it was a blueprint for future FTC orders "involving financially sophisticated investors".

However, Republican Commissioner Andrew Ferguson cautioned against reading too much into the case. He supported the action but said it is irrelevant that Welsh Carson was a PE company. He noted that the analysis would be the same for any individual or institutional investor.

Ferguson has since been appointed FTC chair. His comments suggest that while serial acquisitions may still feature in future FTC enforcement action, PE may not be singled out for special treatment.

Serial acquisitions under pressure outside the U.S.

Scrutiny of serial acquisitions—whether by a PE firm or a strategic buyer—continues to climb the antitrust enforcement agenda in other jurisdictions.

In 2024, a supermarket chain deal was reviewed in Brazil for a second time after concerns were raised over the PE buyer's acquisition strategy. It was ultimately unconditionally cleared (again) but with a promise to monitor future purchases by the acquirer. The Dutch antitrust authority looked at a serial acquisition strategy for the first time (see chapter 5 for more on this case).

In Australia, the new mandatory merger control regime, applicable from January 2026, includes a threshold that catches cumulative Australian turnover from acquisitions in the same market(s) over a three-year period. These aggregated acquisitions will also be considered in the authority's substantive assessment. Even before the new rules kick in, the Australian Competition and Consumer Commission has accepted divestment commitments in a pet retailer deal to address concerns over a number of non-notified acquisitions. It is also looking at possible creeping acquisitions by a PE firm in the insurance sector.

Consolidation in certain sectors is similarly in the spotlight.

The veterinary sector is the prime example. An ongoing market review in the U.K. includes an assessment of concentration levels. The head of the Dutch antitrust authority has warned that regulators should be particularly concerned about PE acquisitions in markets such as vets, where consumers have a high willingness to pay.

Mounting filing burden—especially for PE

Aside from heightened antitrust enforcement risk, PE firms face increasing administrative burden when complying with merger notification requirements, even for no-issues deals.

As well as certain additional information about prior acquisitions, the new HSR filing form requires further disclosure of ownership structures. It covers relationships between affiliated or associated entities and information on limited partners who can influence decision-making post-transaction. Full compliance with these onerous requirements is vital.

Beyond merger control, the EU FSR is having a noticeable impact on PE investors. Latest statistics show that 50% of notifications under the regime involve an investment fund as a notifying party (see chapter 9). The information gathering and disclosure requirements on PE are onerous.

05 Rising review risk for deals *not meeting merger control thresholds*

Antitrust authorities continue to make use of powers to scrutinize deals falling below merger control filing thresholds. Many that don't have that ability, want it. The EC remains the frontrunner in efforts in this area although, after a crushing court defeat, it needs a new strategy. Overall, a complex patchwork of approaches is emerging with increasing uncertainty for merging parties.

Below-threshold digital and pharmaceuticals transactions—especially so-called "killer acquisitions"—are seen as most likely to raise antitrust concerns and, unsurprisingly, remain top of most authorities' hitlists.

But the focus is not exclusively on these sectors. In 2024, antitrust authorities also pursued assessments of non-notifiable deals relating to ports, cement, food and pallets, including serial acquisitions in these markets. PE-backed roll-up strategies have also raised concerns (as discussed in chapter 4).

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JURISDICTIONS SURVEYED CAN REVIEW BELOW-THRESHOLD DEALS

Rethink for the EC after court loss

In its groundbreaking Illumina/GRAIL ruling, the European Court of Justice (ECJ) held that member states cannot refer a transaction to the EC for review under Article 22 of the EU Merger Regulation where they have no competence to review the deal under national merger control rules.

The judgment severely limits the EC's powers to assess below-threshold mergers. It eliminates the uncertainty created by the EC's approach to Article 22 (following its policy change in 2021), which included the possibility of a post-closing review.

The EC now faces a dilemma: how to ensure that potentially problematic deals escaping the EC's turnover-based merger control jurisdictional thresholds are effectively scrutinized. Options include lowering the filing thresholds, introducing a deal value test and/or granting the EC the power to call in transactions it considers may raise antitrust concerns. But these would require legislative change, which would take time and are by no means certain to receive approval.

The more likely route—at least in the short term—is for the EC to rely on member states to use their powers to assess transactions falling below turnover-based thresholds and then refer any potentially problematic mergers to the EC.

For the EC, this alternative course has already started to prove fruitful. In October, Italy used its call-in powers (obtained in 2022) to require Nvidia to notify its purchase of Run:ai Labs. It then referred to the deal to the EC, which reviewed and cleared it in late 2024.

For merging parties, this reintroduces unpredictability. It is not surprising that Nvidia has challenged the EC's jurisdiction over the Run:ai deal. Whether the EC's approach will stand up in court remains to be seen, especially given the importance placed on the principle of legal certainty by the ECJ in Illumina/GRAIL.

We expect the new competition commissioner to consider the EC's position on below-threshold deals early in her term. Before taking office, she pledged to "swiftly find the best way" to ensure that killer acquisitions do not escape EC scrutiny and has committed to looking into all options "without creating any unnecessary additional administrative burden or legal uncertainty for companies". Balancing these objectives will not be easy.

EU member states seek to expand their toolkits

The antitrust authorities in eight member states can already call in/review deals that do not meet national merger control thresholds.

In addition to Nvidia/Run:ai, Italy made use of its powers several times during 2024. This led to in-depth investigations and conditional clearances. The Irish CCPC has asked for information about below-threshold deals although has not yet called one in.

Other member states are pushing for similar powers (or thinking about it). This includes Belgium, the Czech Republic, France, the Netherlands and Slovakia.

The Netherlands is even creatively using its existing merger control framework to review non-notifiable serial acquisitions. It took an in-depth look into Foresco's acquisition of rival pallet producers, assessing Foresco's past and future acquisition strategy, but ultimately cleared the deal. In Belgium, we saw a case where the remedy package included an obligation to inform the authority of future non-notifiable transactions for a period of ten years.

Assessing below-threshold acquisitions under the abuse of dominance rules (and, by analogy, the rules prohibiting anticompetitive agreements) is also a possibility following the ECJ's 2023 Towercast ruling. Since then, only Belgium (in two cases) and France (in one) have relied on the Towercast case law. But if member states fail to obtain the call-in powers they seek, it may become a more attractive option.

Not all member states agree with a call-in power expansion. The head of the German FCO is concerned it would undermine predictability and certainty. He is convinced that deal value thresholds are the best way to catch transactions that might otherwise escape scrutiny and is considering lowering Germany's existing deal value test. This divergence of views only adds to the regulatory complexity faced by dealmakers.

Non-EU authorities have below-threshold M&A in their sights

China's SAMR requested the notification of semiconductor deal Synopsys/Ansys, despite it not meeting Chinese merger control thresholds. This follows SAMR's first imposition of remedies on a below-threshold pharmaceutical transaction in 2023. All eyes are on whether SAMR will step up the use of its call-in power in sensitive or strategic sectors.

In Canada, important changes to the merger control rules have extended the period in which the Competition Bureau can challenge non-notifiable deals from one to three years post-closing.

Under the new Australian merger control system (applying from January 1, 2026), ministerial directions will target certain sectors (such as supermarkets) and require incumbents to notify all transactions. Plus the current prohibition against mergers that substantially lessen competition in a market will continue to apply to below-threshold or non-notified deals. This will likely mean that small deals that materially consolidate local markets will need to be self-assessed and voluntarily notified.

An M&A portal established by the U.S. FTC encourages the public to provide comments on proposed mergers. It could prove a useful source of information about deals that do not trigger the HSR reporting obligation. Whether the U.S. agencies take any action as a result will depend on the priorities of the new administration.

The future looks...unpredictable

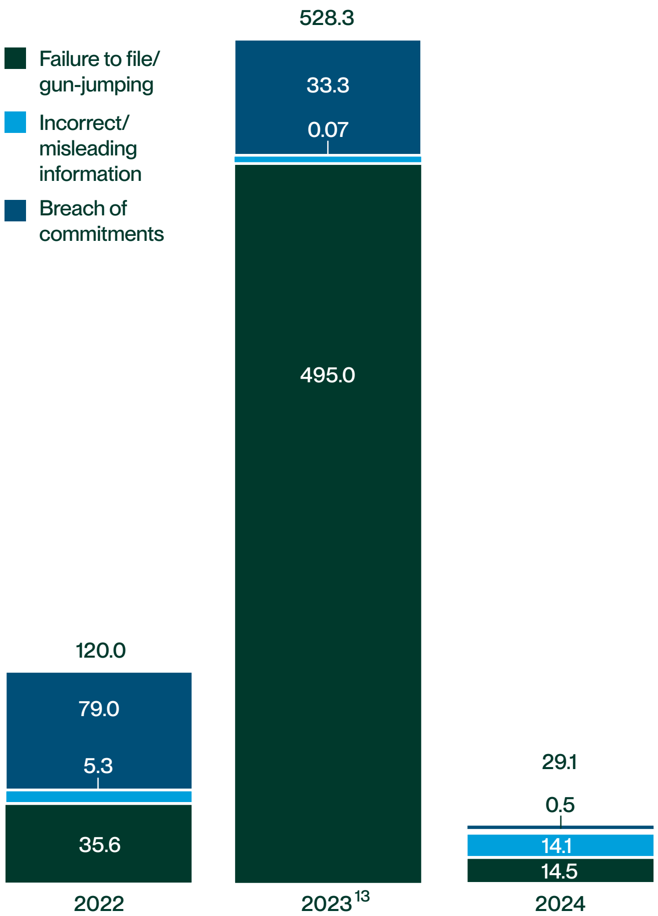
Antitrust authorities' increasing powers, evolving policies and creative approaches, mean that non-notifiable deals—especially in sensitive sectors—are increasingly likely to face merger control scrutiny. This will usually be pre-closing, but post-completion assessments cannot be ruled out.

Assessing the possibility of a review early in the process is vital. As is negotiating appropriate deal conditions and protections to deal with potential filing obligations. Parties to digital and pharma transactions should be particularly alive to the risks.

06 Antitrust authorities on high alert for *merger control violations*

Sanctions for procedural merger control infringements in 2024 did not meet the lofty heights of previous years. But merging parties should not be complacent. The number of infringement decisions increased. The U.S. and China stepped up enforcement action. Individuals faced sanctions. And maximum penalty levels rose in key jurisdictions.

Total fines split by fine type (USDm)



Antitrust authorities imposed a total of USD29.1 million fines across the jurisdictions surveyed.

This is significantly lower than 2023 penalty levels, even excluding the EC's USD467m gun-jumping fine in Illumina/ GRAIL, which was withdrawn in 2024 after the EU's top court struck down the EC's decision to take jurisdiction over the merger.

However, it is not a sign that authorities lack the appetite to pursue procedural breaches. The number of infringement decisions rose by over 40% to 41. So far in 2025, we have seen groundbreaking actions and record fines.

A surge in U.S. enforcement

The U.S. antitrust agencies have been relatively quiet on procedural enforcement in recent years. 2024 was different:

- The DOJ filed a suit against Legends Hospitality for obtaining beneficial ownership of ASM's business before the HSR waiting period had expired—the first U.S. gun-jumping action since 2017. Legends agreed to pay a USD3.5m penalty and to comply with other measures, including appointing a compliance officer.
- The FTC secured a penalty of nearly USD1m from GameStop CEO Ryan Cohen to settle charges that he failed to file an HSR form and abide by the relevant waiting period before closing an acquisition of shares.
- As part of a suit to block UnitedHealth Group's acquisition of Amedisys, the DOJ is seeking penalties against Amedisys for allegedly failing to produce millions of documents and not disclosing the deletion of materials.

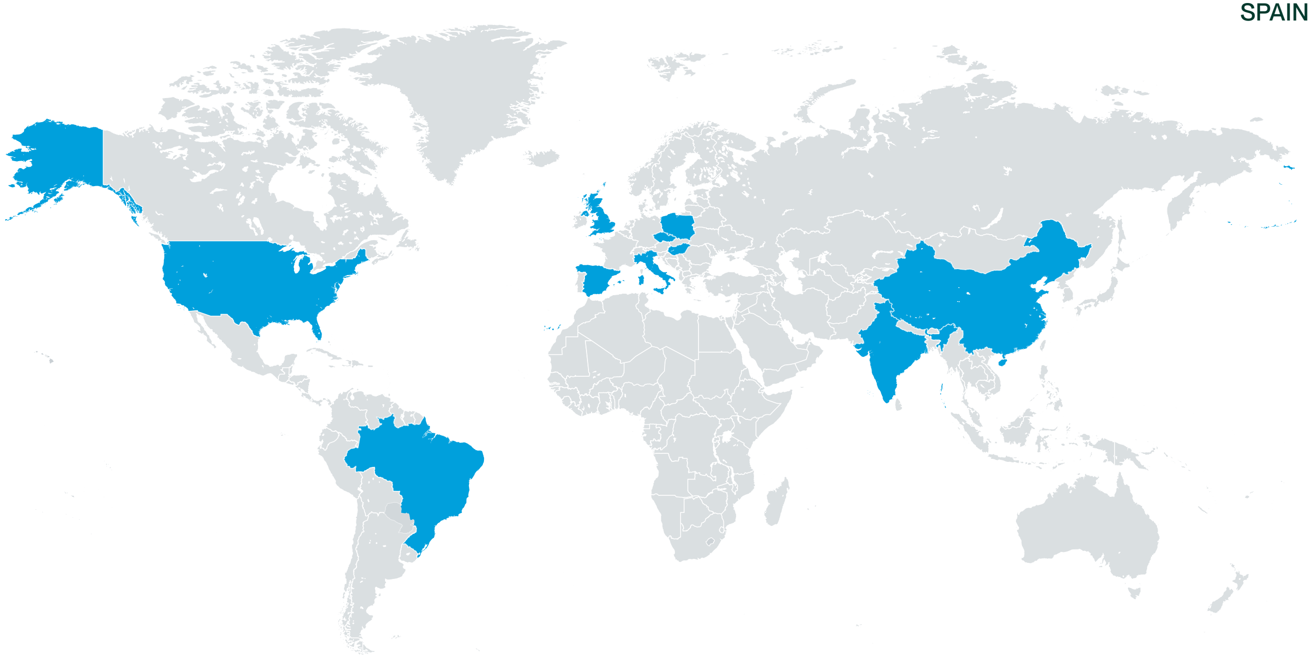
The agencies have started 2025 with a bang. They announced a complaint against three oil companies, alleging that the acquirer and its sister company assumed operational and decision-making control over a target prior to closing, in violation of the HSR waiting period. The proposed penalty is USD5.68m, the highest-ever U.S. fine for gun-jumping.

A week later, the DOJ filed a suit against KKR for what it alleges are "serial" and "systemic" violations of the premerger review process. It claims the PE firm altered documents in HSR filings, omitted required materials and failed to make filings. The DOJ cites internal documents that it says "reveal a pervasive culture of noncompliance with the HSR Act." It notes that the maximum possible penalty exceeds USD650m.

The key takeaway: the U.S. agencies are on high alert for HSR Act violations, regardless of whether a deal raises antitrust concerns.

13 The EC's USD467m (EUR432m) gun-jumping fine on Illumina and GRAIL is included in the data but was withdrawn in 2024.

Imposed *fines*



Jurisdictions where fines were imposed in 2024 (USDm)

17.2

TOTAL EU

CZECH REPUBLIC **0.9**

HUNGARY **0.04**

ITALY **0.04**

POLAND **0.2**

SPAIN **16.0**

4.5

U.S.

2.0

U.K.

0.9

CHINA

4.6

BRAZIL

0.01

INDIA

China takes advantage of new fining powers

There are signs that SAMR is once again ramping up gun-jumping enforcement (or at least the action that it makes public). In 2024 it notched up total fines of over RMB6m (approx. USD0.9m) for failure to file transactions in the manufacturing, construction and energy sectors.

Like the U.S., SAMR has continued this trend into 2025. It has already imposed two fines of RMB1.75m (approx. USD245,000) each. In one of these, the parties made a filing but closed the deal during the public comment stage of the review.

The tally of public infringement decisions is now five since mid-2022, showing SAMR's willingness to use recently beefed-up powers to impose higher fines.

Separately, SAMR announced in late 2024 that it was investigating Nvidia over suspected antitrust violations, including failures to comply with behavioral commitments in relation to its 2020 acquisition of Mellanox. This is an unusual move, likely triggered by trade tensions with the U.S. The outcome of the investigation will be eagerly awaited, as will any signs that the authority plans to take similar action against other non-Chinese firms.

Individuals face sanctions

The U.S. GameStop case is an important reminder that individual investors can fall foul of merger control rules. Significant penalties can follow.

Acquirers are not the only enforcement targets. In Brazil, six individual sellers were fined alongside the purchaser for completing a deal before receiving merger control approval.

Admitting a breach can win you a discount

Last year, we saw a number of cases where merging parties came forward to report a breach, voluntarily made a missed filing and/or reached a settlement with the relevant authority. Brazil, the Czech Republic, Italy and Spain each had examples.

Parties often received a sizeable reduction in fines as a result—as large as 60% in some instances.

While it is generally better to stay on the right side of merger control rules in the first place, if parties become aware of a breach, these decisions show that dealing with it head-on can be the best strategy.

Looking ahead to 2025

Merging parties should keep compliance with procedural merger control rules in sharp focus over the coming year. Here are three reasons why:

1

As information requirements in merger filings and subsequent reviews become more onerous, we expect authorities to zone in on suspected failures to submit documents or the provision of false or misleading information. This could lead to notifications being declared invalid and/or to heavy fines. Parties must commit appropriate resources to collecting required materials and to responding carefully and fully to questions. This includes the provision of ephemeral messages—strategies should be put in place so that these can be preserved if needed.

2

Failures to file will continue to face strict enforcement. This could include serial acquisitions or novel transaction structures such as AI partnerships (e.g., in Brazil, the authority is already investigating possible filing infringements for a number of these arrangements—see chapter 3). Keeping on top of authorities' evolving thinking around which types of arrangements are caught by merger control rules is crucial.

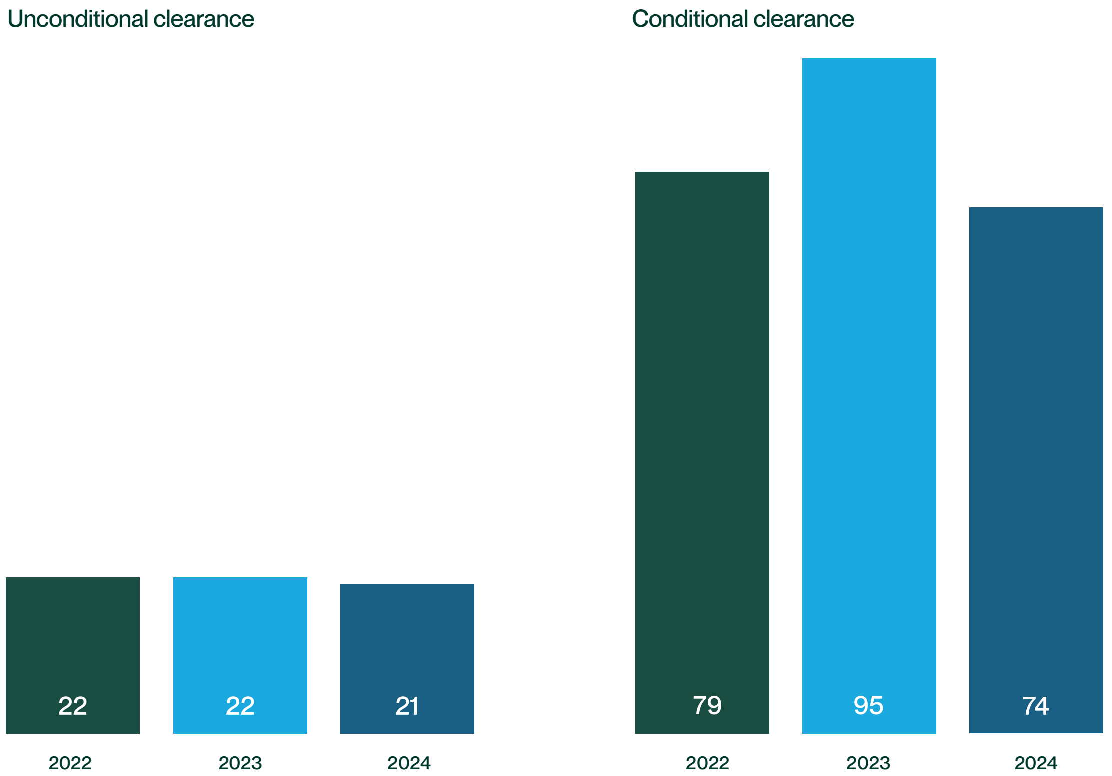
3

Jurisdictions that have recently obtained tougher fining powers are likely to make full use of these. This includes China, which is already making its mark, and the U.K. where maximum penalties for certain procedural breaches increased to 1% or 5% of global turnover from January 1, 2025. In the EU, the EC is unlikely to be deterred from imposing heavy fines, despite the withdrawal of its Illumina/GRAIL decision. In the U.S., the agencies could well continue to break penalty records.

07 Merger control reviews speed up *(at least for straightforward cases)*

Speeding up review periods remained a priority for antitrust authorities outside the U.S. They did this through formal rule changes or adjustments in practice. But the increasing complexity of the issues raised by some deals, combined with the appetite of certain authorities to challenge and intervene, has led to lengthier investigations in key jurisdictions.

Average phase 1 review periods (working days)[14]



Authorities' efforts have paid off, at least for initial stage reviews. For the first time since 2020, the average time to get an unconditional clearance at phase 1—by far the most likely outcome of a merger review—dropped to 21 working days across the jurisdictions surveyed.

Average review periods in phase 1 cases ending in remedies have also fallen to 74 working days, the lowest we have seen in three years.

However, in line with previous years, the length of a phase 2 investigation varies widely from jurisdiction to jurisdiction. We saw some authorities take up to or even over a year to reach a final decision, including in deals that were ultimately cleared subject to conditions.

14 Weighted average across all jurisdictions surveyed, with some exclusions where data was unavailable.

Authorities make strides in accelerating reviews

Driven by a need to reduce the burden on both merging parties and their own case teams, antitrust authorities continued efforts to shorten review periods.

Some introduced formal rule changes to achieve this:

- In the U.K., a streamlined phase 2 process kicked in and is having an impact. In its first investigation under the new procedure, the CMA reached a provisional decision on antitrust concerns in just over 60 working days. This is 30% quicker than the average time to get to this stage in the four phase 2 cases launched last year under the old process. Further reductions are expected after a new fast-track procedure took effect on January 1, 2025. The CMA has also committed to shortening target timeframes for pre-notification and straightforward phase 1 cases by June 2025. If effective, this will shave around six weeks off a typical phase 1 review.
- In India, shorter statutory timelines now apply across the board. The phase 1 period has been reduced from 30 working to 30 calendar days and the total review period is now 150 calendar days, down from 210 (although exclusions apply where the authority requests information).

In other jurisdictions, changes in practice look set to yield results:

- The French antitrust authority initiated a "trust agreement" in mid-2024, meaning that simplified cases (which account for over 90% of French reviews) no longer require pre-notification.
- Building on the introduction of a new electronic filing system for fast-track cases, Brazil's antitrust agency plans to use AI to accelerate the assessment further. It says some deals will be analyzed in just 24 hours.

Parties use tactics to achieve clearance at phase 1

Last year, we saw more merging parties withdrawing merger control filings during the initial review and then resubmitting later. This was a tactic used frequently in the U.S., as well as in the EU and Germany.

It can be useful if an authority has initial concerns about a deal or needs more time to test the market data submitted, but where a tight phase 1 review period does not allow it enough time to get comfortable that there are no antitrust concerns or to assess the proposed remedies.

In most cases, parties using this strategy managed to avoid an in-depth investigation.

Stop-the-clocks cause delays in the EU and China

At EU level, two of the three phase 2 decisions in 2024 (all conditional clearances) involved lengthy suspensions—93 and 114 working days. This effectively made the EC's assessment twice as long as the standard statutory phase 2 period.

In China, the "stop-the-clock" mechanism, introduced in 2022 to inject greater flexibility and remove the need for parties to refile their transaction if SAMR was unable to complete its assessment by the statutory deadline, does not appear to be shortening review periods.

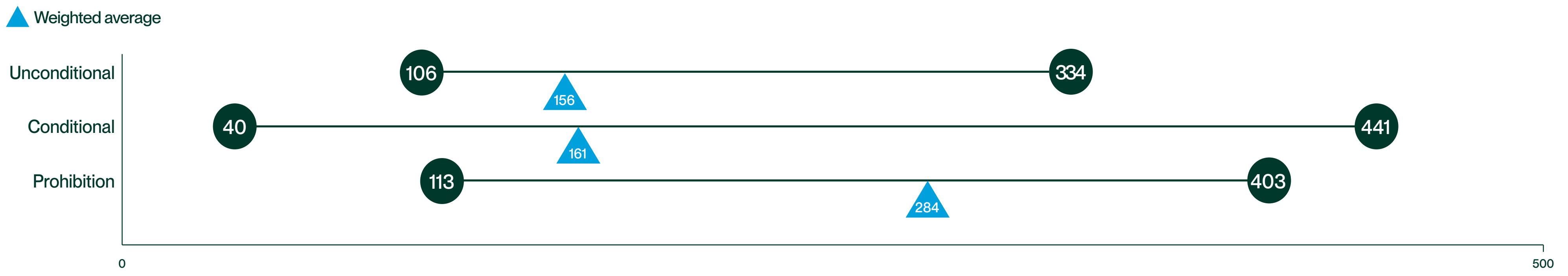
The review of JX Advanced Metals/Tatsuta was paused for nearly 11 months before SAMR granted conditional clearance. This is nearly double the longest stop-the-clock period from 2023 and means that the full assessment was nearly three times the statutory 180-day deadline.

But it is worth bearing in mind that these lengthy reviews are reserved for complex cases raising antitrust concerns.

In the EU, 88% of all 2024 decisions fell under the simplified procedure, where clearance is typically issued in around 16 working days. In China, 98% of simplified procedure cases were cleared at phase 1 in an average of 11 working days. This is in line with SAMR's internal goal, introduced in early 2024, to accept simplified notifications within 20 days and grant clearance in a further 20.

Duration of in-depth investigations

As a range from jurisdiction with the shortest average to jurisdiction with the longest (working days)



U.S. reviews impact deal timetables at both ends

The revamped HSR filing form, that applies from February 10, 2025, increases the information load on merging parties (see chapter 1). More time will therefore need to be factored in before the formal waiting period can even start.

The U.S. antitrust agencies estimate an additional 68 hours (on average) per filing. This likely significantly underestimates the extra burden, especially for transactions involving overlapping products or services. We do not anticipate a significant reversal of this burden under the new administration. Hopefully, however, this time can be partially offset for many transactions by the long-awaited reinstatement of "early termination", which in theory will allow some parties to close their deals earlier than the standard 30-day waiting period.

The U.S. agencies' continued willingness to challenge M&A in 2024 meant that where transactions were likely to raise antitrust concerns, parties had to account for possible protracted litigation when setting deal deadlines.

Even careful planning may not be enough, and the time required to go the distance in court could prove incompatible with the parties' contractual obligations. When Tapestry and Capri walked away from their tie-up after a federal district court ruling against them, they cited the uncertain ultimate outcome of the U.S. legal process and the fact that it was unlikely to be resolved by the long-stop date.

Outside the U.S., we also saw parties forced to extend long-stop dates to account for merger review periods. Regulatory uncertainty played into average long-stops increasing from six to seven months in 2024, based on our analysis of private M&A deals[15].

Expect more of the same in 2025

Limited authority resources and a desire to cut administrative burden to encourage investment will likely continue the trend towards shorter merger review periods in the coming year, at least for no-issues cases. Speeding up enforcement is, for example, part of EU Competition Commissioner Ribera's mandate. CMA leadership (urged by the U.K. government) has committed to make investigations and processes "as simple and rapid as possible" and to "minimise the end-to-end length" of merger reviews.

Whether this results in significant timing improvements for more complex in-depth investigations remains to be seen. But with document submissions running into the millions, increasingly complex theories of harm being applied and the negotiation of intricate remedy packages often all in play in such cases, merging parties should expect continued unpredictability and plan deal timelines accordingly.

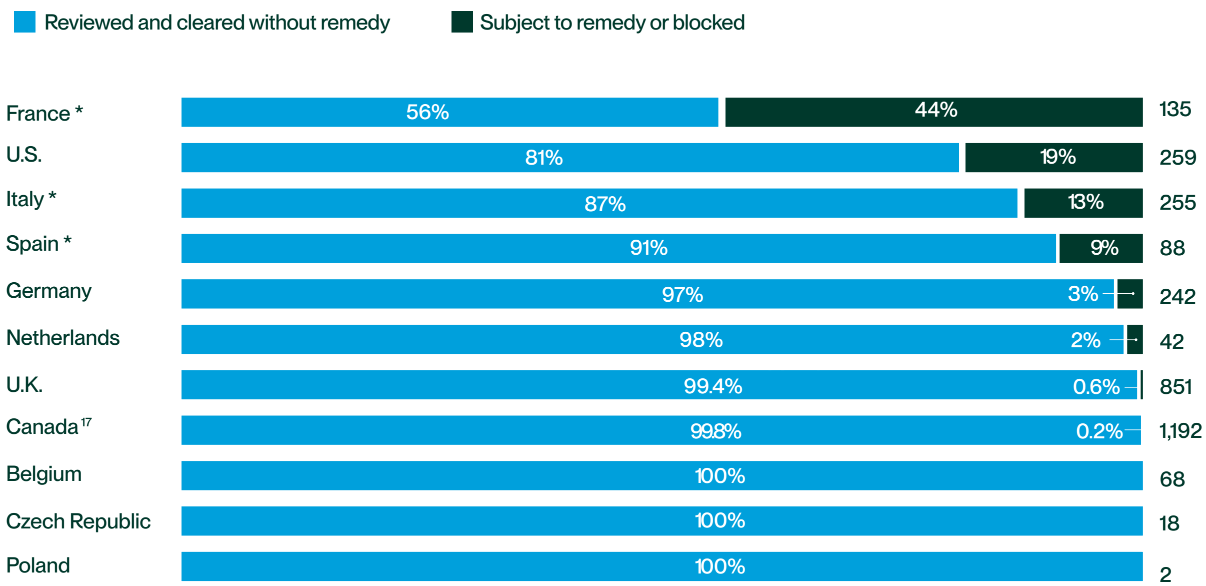
15 Global trends in private M&A—research based on 2000 M&A deals on which A&O Shearman has acted (including legacy Shearman deals signed since January 1, 2024).

08 Foreign investment control regimes *reach far and hit hard*

Foreign investment (FDI) screening regimes continued to present challenges for dealmakers. We saw tough intervention in key jurisdictions. New and expanding rules added to regulatory burden. Overall, most deals are cleared without remedies. But the road ahead is hard to predict, with protectionist headwinds expected to add to an already complex environment.

Outcome of FDI screening review[16]

Based on last published report by government/regulator



* In each of these jurisdictions a large proportion of notifications are deemed out of scope (France: 53%, Italy: 55%, Spain (including voluntary consultations and requests for authorization): 45%).

The global FDI landscape continues to paint a mixed picture. Latest available data shows a dip in the number of FDI decisions in key jurisdictions, including the U.S. and Italy. Elsewhere, review levels rose as expanded—and brand new—regimes subjected more deals to FDI review.

Intervention was similarly varied. FDI concerns resulted in prohibition or remedies in a high proportion of cases in, for example, France (44%) and the U.S. (19%). By contrast, in nearly two thirds of the jurisdictions we analyzed, over 97% of deals notified were cleared without remedies.

FDI reviews continued to impact deal timetables. Most assessments are completed within three months. But even in straightforward deals, FDI clearances often take longer than merger control approvals (see chapter 7). Assessment of deals raising substantive issues is likely to take significantly longer.

16 Excludes Australia, where reviews cannot be categorized in this way.

17 Excludes the outcome of reviews under "net benefit to Canada" provisions, which are usually subject to undertakings (full data is not available).

CFIUS steps up enforcement and U.S. outbound investment rule kicks in

In 2023 (the most recent period for which data is available), the Committee on Foreign Investment in the United States (CFIUS) imposed more mitigation measures—in around one in five notifications. Some were far-reaching, including divestment of the entire U.S. business.

The proportion of deals blocked remained broadly in line with previous years, at around 4%. In 2024, all eyes were on the review of Nippon Steel's acquisition of U.S. Steel. President Biden's decision to block the deal in early January 2025 has sparked claims by the parties that the CFIUS process was politicized. The outcome of their appeal will be much anticipated.

CFIUS increased its focus on non-notified transactions and on policing compliance with procedural requirements or mitigation measures. In 2023 it assessed or imposed four civil penalties for violations, double the number issued in its 50-year history.

Parties subject to mitigation measures should not underestimate the burden of compliance and the seriousness of any breach. In 2024, CFIUS fined a telecommunications company USD60m for failing to disclose data breaches in violation of conditions attached to an earlier acquisition.

A U.S. outbound investment rule took effect on January 2, 2025. It prevents or requires notification of certain U.S. outbound investment in Mainland China, Hong Kong and Macau and bites on specific transactions relating to semiconductors and microelectronics, quantum information technologies and AI.

President Trump's plans for U.S. foreign investment are starting to take shape. In February he announced an "America First Investment Policy," which focuses on promoting foreign investment from allies and partners while seeking to address threats posed by certain foreign adversaries. This does not change any laws, but will likely have significant implications for investors, businesses and markets.

EU FDI screening nears a full house

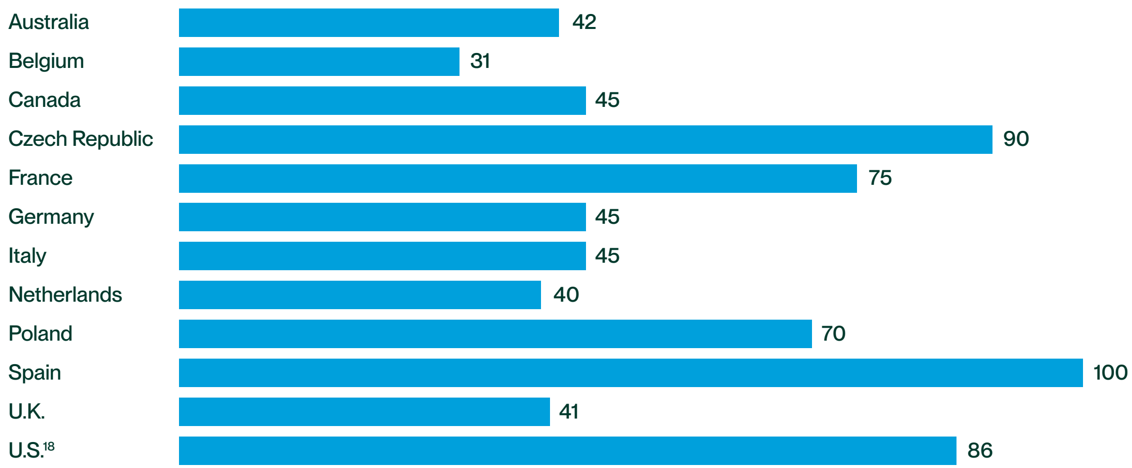
In the EU, 24 member states now have national FDI screening mechanisms, although the regime in Bulgaria is not yet operational. The remaining three (Croatia, Cyprus and Greece) have rules at various stages of the pipeline. The pace of change has been dramatic: in 2017, only 11 member states had FDI rules in place.

Some member states are looking to expand their rules. The Dutch government is consulting on bringing additional investments in scope, including in AI, advanced materials and biotechnology.

Reforms to the EU FDI Regulation, including setting minimum standards to be applied by member states and enhancing cooperation and information sharing, were delayed by the EU elections. Work on the proposals has now resumed. We should see further developments in the coming months.

The EC is progressing its work to determine whether outbound investment controls are needed. In early 2025, it called on member states to review past, ongoing and new outbound investments in semiconductors, AI and quantum technologies. The exercise will run into 2026.

Indicative review period across surveyed jurisdictions (calendar days)



In all cases, the timing is indicative and there can be significant variations. Substantive issues will typically result in longer review periods.

18 Average review period for notices that close in the investigation period (average review period for declarations is 30 days).

U.K. intervention soars but investment in key sectors is approved

Intervention under the U.K. National Security and Investment Act (NSIA) fell in FY23/24. Only five deals resulted in conditions (down from 15) and there were no prohibitions.

Since then, however, there has been one prohibition and 11 sets of conditions. It appears that—despite its growth agenda—the new Labour government is continuing to apply just as much scrutiny to deals.

But overseas investment in the U.K.'s strategic sectors remains possible, albeit potentially with remedies. In the past year, the government has conditionally approved telecoms deals, including Vodafone's merger with Three and the acquisition of 24.5% of BT by India's Bharti Televentures. Acquisitions in the energy, defense and post sectors also received a green light, subject to conditions.

2024 saw the conclusion of the first appeal under the NSIA. The court endorsed the government's wide discretion when making decisions relating to national security. It also confirmed that parties cannot be compensated for the cost of complying with remedies, even if this results in financial loss. The ruling has not deterred other appeals—FTDI Holding is challenging the government's decision ordering it to sell its stake in a Scottish semiconductor company (although in deference to the government's discretion in national security reviews, the court has refused an application to suspend the government's divestment order pending the outcome of the appeal).

Currently unclear is the government's position on certain changes to the regime, proposed by the previous leadership, including the introduction of an exemption for intragroup reorganizations. We may learn more during 2025.

Tightening here, loosening there

Outside the U.S., EU and U.K., other FDI regimes are expanding. Tweaks to the Canadian regime last year give the government wider powers, and the minister has announced increased scrutiny of investments in the digital media and critical minerals sectors.

Elsewhere, eager to promote investment, some countries are loosening the reins. In China, new measures lower thresholds and relax requirements for foreign strategic investment in listed companies. They also allow foreign investors to use equity in an overseas company or newly issued shares as payment for such investment. All restrictions on investment in the manufacturing sector have now been removed.

In Australia, the Treasurer's issue of five disposal orders in a quarter and four ongoing Foreign Investment Review Board (FIRB) investigations underscores a heightened focus on national security reviews and call-ins. Changes introduced in a May 2024 policy document will mean greater focus on sensitive proposals and tax arrangements. But, from January 1, 2025, Treasury has indicated a new streamlining process will be implemented. This should hopefully mean faster approvals for known investors with a good compliance record making investments in non-sensitive sectors.

We are yet to see this play out in practice.

It's not all about China

While Chinese investors drew the attention of many FDI regulators, non-Chinese investment in particularly sensitive sectors—including from the U.S. and U.K.—has also seen intervention in 2024. This captures intervention against global investment funds.

Italy, for example, accepted commitments in relation to the sale of Telecom Italia's fixed line network to U.S. PE fund KKR. It also conditioned minority stake acquisitions, including BlackRock's purchase of 3% in an Italian defense and aerospace firm.

In Canada, the government required commitments in relation to a U.S. firm's acquisition of a Canadian steel company. Japanese government officials have said they will assess on national security grounds any takeover of retail chain 7-Eleven by Canada's Couche-Tard.

Domestic investment can also face intervention in some jurisdictions, again depending on the deemed importance of the relevant target business for national security. We saw this in Italy and the U.K. last year.

Remember that FDI screening casts a wide net

FDI screening rules are typically broader in scope than merger control regimes. They can catch transactions that are not typically considered to be "mergers" or even deals in a wider sense, including internal reorganizations and fund transactions (e.g., continuation funds).

FDI mechanisms can also impact financing arrangements and security. Last year we saw the Italian government view the grant of a pledge over shares as a trigger for filing (rather than the notification obligation arising only on enforcement of the pledge). U.K. government guidance has been revised to remove a statement that loans, conditional acquisitions, futures and options are unlikely to be called in.

In addition, certain FDI regimes (including the U.K.) automatically treat in-scope deals that completed without the required pre-notification and approval as legally void. As a result, providers of debt finance looking to take security over the shares or assets of a target business are increasingly requiring borrowers to demonstrate compliance with any applicable FDI regimes.

Investors to face increased global FDI scrutiny?

The coming months will see mounting geopolitical and economic tensions create uncertainty, unpredictability and, as a result, increased execution risk.

Some foreign investors will likely face progressively protectionist headwinds in certain jurisdictions. And, while other governments/regulators are keen to decrease barriers to foreign investment, in practice the regulatory burden on dealmakers will grow.

09 EU Foreign Subsidies Regulation rains down *new challenges for M&A*

The transaction notification regime under the EU FSR is now over a year old. To date, intervention levels are low. But assessing whether a filing is required, and gathering the extensive information required for the notification form, can be challenging and resource intensive. And the number of filings triggered has far exceeded the EC's estimates, biting on investment fund–backed deals in particular. The mechanism has significantly increased the regulatory burden for M&A with an EU nexus.

As a reminder, companies must notify a transaction to the EC if the acquisition target or joint venture (or, if a merger, at least one of the merging parties) is established in the EU and has EU turnover of at least EUR500m, and the parties received combined "financial contributions" from non-EU countries of more than EUR50m across the three year period prior to the date of the transaction.

The EC has wide powers to act if it finds there are foreign subsidies that distort competition in the EU internal market. These include prohibiting deals.

So far, the authority has only intervened once, clearing a transaction with remedies. With vigorous enforcement of the FSR marked as a priority for the new EC, we could see more action in the coming year.

Statistics from the first 12 months of the FSR transaction notification tool[19]

115 cases in total

89 cases formally notified

76 cases closed

01 in-depth review and conditional clearance

80%+ of cases also subject to EU merger control review

50%+ of cases also subject to FDI screening in 1+ EU member state

50% of cases involve an investment fund as notifying party

19 Reported by EC officials during conferences.

Filings soar beyond the predicted level

The EC initially estimated that 30 transactions a year would require notification. The actual number of notifications in the first year was three times this level.

The majority of deals filed under the FSR also require notification under the EU merger regime and trigger one or more member state foreign investment screening reviews. The FSR is now firmly established as a third regulatory approval hurdle for M&A with a connection to the EU. Managing filings under all three sets of rules requires strategic coordination and alignment.

Deal timetables are significantly impacted

Dealmakers are having to take full account of the FSR process in transaction timetables:

- Determining whether a filing is required is often complex and challenging due to the extremely broad definition of "financial contribution". Even if the notification thresholds are not ultimately met, time needs to be factored in for this resource-intensive analysis.
- If a notification is triggered, the timetable must allow for the preparation of the filing as well as pre-notification with the EC. The EC says that pre-notification averages around two months, though notes it is decreasing, presumably as parties and the authority get more familiar with the regime. Multiple requests for information are common at this stage, adding to the burden.
- The EC's initial review period is 25 working days, in line with phase 1 of the EU merger control regime. However, unlike the merger control rules, the FSR lacks any fast-track or simplified procedure for deals raising no concerns. The EC has indicated that one may be introduced, but it could be a year or more away.

Acute burden on PE/investment funds

The FSR filing regime is biting particularly heavily on investment funds and PE.

With multiple portfolio companies, the task of collecting the information on non-EU financial contributions needed to apply the notification thresholds can be formidable. As can preparing the disclosures required on the notification form.

Investment fund/PE-backed deals are also triggering many filings.

The EC reports that half of all FSR cases involve an investment fund as a notifying party. While there are some disclosure exemptions available (e.g., in certain situations, only foreign financial contributions granted to specific PE funds need to be reported), determining whether these apply can be tricky.

It seems that EC officials are alive to this burden. Their discussions around possible simplified treatment of cases hint at having PE transactions in mind. Steps to introduce relaxations as soon as possible would be welcome.

Intervention is rare (so far)

While an additional M&A approval regime heightens the administrative burden on dealmakers, in good news the risk of intervention appears to be low.

The EC has only accepted a remedy proposal in one transaction. It opened an in-depth review and ultimately accepted remedies in relation to PPF's acquisition by e&. e& is a telecoms company controlled by the Emirates Investment Authority (EIA), a UAE sovereign wealth fund.

The EC had concerns that alleged foreign subsidies from the UAE—an unlimited guarantee to e& and grants, loans and other debt instruments to EIA—could artificially improve the merged entity's capacity to finance EU activities and increase its indifference to risk. The ten-year remedy package includes a prohibition on EIA and e& financing PPF's EU activities and a requirement for e& to inform the EC of all future acquisitions.

With only one intervention to date, and no comprehensive guidance on the EC's procedure and substantive assessment, it is hard to draw firm conclusions on the authority's FSR enforcement practice.

Full guidelines on the regime should add more color but will not be published until January 2026. Until then, parties must rely on piecemeal clarifications issued by the EC and any other enforcement cases in the meantime.

Risk of call-in and post-closing probes

The FSR gives the EC powers to call-in M&A that falls below the notification thresholds. There have been no such cases to date.

However, officials have indicated that the EC is screening transactions and sending inquiries to market players. Plus, as noted above, e& has committed to inform the EC of all future acquisitions—even if not notifiable under the FSR.

It is plausible that an increased appetite to scrutinize deals falling below EU merger control thresholds (see chapter 5) could seep into FSR practice.

Post-closing reviews are also a possibility under the EC's "own initiative" powers. So far it has used these only twice and has not focused on transaction structures. But action against completed M&A cannot be ruled out.

Looking ahead in the EU and beyond

The EC's FSR practices will evolve over the coming year as the regime continues to bed down. The new competition commissioner has said she will give enforcement of the FSR the "highest priority" and will not hesitate to use the full powers of the tool where appropriate.

Concerns over the impact of foreign subsidies on M&A are not confined to the EU.

In the U.S., the revised HSR filing form requires parties to describe any subsidies received from certain governments or related foreign entities. It is not clear what the U.S. antitrust agencies will do with this information. But with the Trump administration likely to adopt a protectionist stance, any perceived adverse impact of foreign subsidies on post-merger competition could prove a hurdle to clearance.

Assessing the impact of domestic and foreign subsidies on market competition is also advocated by new Chinese horizontal merger guidelines. If there is evidence that these subsidies could harm competition, the Chinese authority could request detailed information.

Other jurisdictions may follow suit. Early identification and consideration of any foreign subsidies that either benefit the acquirer's operations or facilitate the transaction will be key to assessing execution risk.

10 Uncertain regulatory climate makes *deal protections crucial*

Regulatory intervention levels are rising. The concerns of antitrust authorities and foreign investment (FDI) regulators are evolving and can be unpredictable. Allocation of merger control execution risk in deal documents therefore remains front of mind for buyers and sellers alike.

Sellers approach antitrust and FDI conditions with caution

Our research on global private M&A deals[20] shows a slight decrease in conditional deals in 2024.

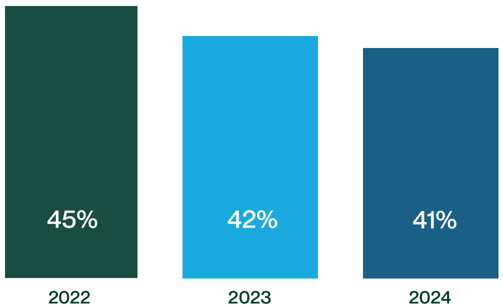
The proportion of our transactions subject to antitrust-based merger control approval conditions fell slightly to 41%. It was a similar story for FDI conditions, which dropped to 18% of our deals. Unsurprisingly, however, looking just at big-ticket deals (deal value of USD500m+), a much higher proportion were subject to antitrust or FDI approval conditions—67% and 33% respectively.

This could simply reflect year-on-year fluctuations. Or it could come down to the attitude of sellers. In an environment where merger control and FDI enforcement remains uncertain, sellers may be preferring to engage with buyers that present less antitrust or FDI risk.

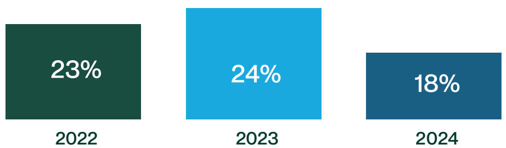
2025 may prove a turning point. Optimism that merger control enforcement will become more balanced under the new U.S. administration and in other key jurisdictions should help sellers get more comfortable with conditional agreements.

Next year's report may show some significant developments.

Antitrust conditions in private M&A



FDI conditions in private M&A



20 Global trends in private M&A–research based on 2000 M&A deals on which A&O Shearman has acted (including legacy Shearman deals signed since January 1, 2024). Please get in touch with your usual A&O Shearman contact if you would like to learn more about the results.

Regional variations in reverse break fees

Sellers continued to push hard for reverse break fees—a useful protection should a regulator intervene to block a transaction.

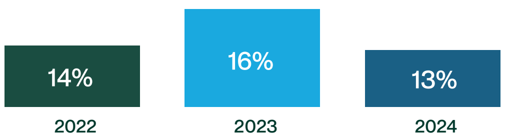
Our data on private M&A deals shows they had some success in North America. Reverse break fees featured in 33% of transactions subject to antitrust conditions in the region. Elsewhere, they got less traction. Overall, reverse break fees appeared in 13% of our deals with antitrust conditions in 2024 (and 12% of our deals with FDI conditions).

The average fee across our transactions was 4% of enterprise value, with a range of 0.8% to 8%. This is slightly lower than we saw in some high-profile deals in the wider market last year.

For example, IAG paid a EUR50m (USD54m) reverse break fee to Air Europa, which amounted to 12.5% of deal value, after it terminated its planned purchase due to antitrust concerns in the EU.

We do not know the precise reason for the higher fee level in this case. But this was the second time the deal has faced antitrust roadblocks: the parties similarly walked away in 2021 after the EC raised concerns. This may well have been a contributing factor.

Reverse break fees in private M&A with antitrust conditions



Hell or high water commitments still out of favor

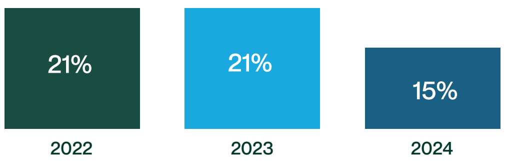
"Hell or high water" (HOHW) commitments compel the buyer to do everything in its power to secure merger control clearance.

We saw their use decline by over 50% in 2022 and level off in 2023. Last year they fell further to only 15% of our private M&A deals with an antitrust condition. It was a similar story for transactions with an FDI approval condition.

With many antitrust authorities remaining skeptical about whether merger remedies can effectively address antitrust concerns, this is no surprise. Sellers may see little point in pushing for HOHW provisions where authorities are more minded to prohibit a deal.

Equally, from a buyer's perspective, where an authority is willing to accept remedies to clear a deal, these may be hard to predict, especially where concerns are novel. Buyers will therefore be less inclined to give HOHW commitments (in effect, a "blank check") that could force them to make difficult to predict and far-reaching concessions.

"Hell or high water" commitments in private M&A with antitrust conditions



Best efforts commitments in the spotlight

Over the past three years we have seen a steady increase in obligations on the buyer to use best or reasonable efforts to secure antitrust approvals. These appeared in 44% of our private M&A deals with an antitrust condition in 2024, up from 34% (2023) and 29% (2022).

Best efforts commitments made the headlines late last year. After federal and state courts secured a preliminary injunction to block Kroger's USD24.6 billion takeover of Albertsons, Albertsons promptly sued for significantly more than the agreed USD600m break fee. It alleged that Kroger failed to comply with its contractual obligation to exercise best efforts and take "any and all actions" to secure regulatory approval by "repeatedly providing insufficient divestiture proposals that ignored regulators' concerns". As of publication, this case is ongoing. Where it lands could have important implications for dealmakers.

Going forward, we expect a continued focus on the negotiation of efforts clauses.

A future shakeup in risk allocation?

Looking ahead, a pro-M&A outlook in the U.S., and a possible rekindling of key antitrust authorities' willingness to accept merger remedies may shift the balance and nature of deal conditions and protections.

Other factors may also play a part, including an unpredictable geopolitical climate, the continued proliferation of FDI regimes, any need for EU FSR approvals and uncertainty over whether M&A falling below notification thresholds could be called in for review and face intervention.

Get set for some interesting times.

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Our global team comprises over 120 specialist antitrust lawyers, located in 23 offices in Europe, the U.S., APAC and Africa. We are one of the leading firms in the world for antitrust, advising on the full spectrum of issues including merger control, sector-specific regulatory issues, cartel and behavioral investigations, antitrust litigation, abuse of dominance, competition compliance and counselling, vertical and horizontal agreements, market investigations, state aid and general EU law issues.

We have extensive experience of securing merger control clearances for clients and have advised on some of the largest and most high-profile cases. We advise on all aspects of the merger control process from no-issues filings to in-depth investigations, including complex remedies where required. We act as a one-stop shop, ensuring necessary filings are identified and processed as efficiently and expeditiously as possible.

Examples of our recent merger control matters include advising clients in relation to: Anglo American/Vale S.A, Bilfinger/Stork, Vodafone/Three, Corporación Masaveu/Aboño power plants, DLG/RSA, EasyPark/Flowbird, Friesland Campina/Theo Müller, Genmab A/S/ProfoundBio, Haelon/TSKF, Hapag-Lloyd/JM Baxi Ports & Logistics, ICG / Uriach and Ineldea, JetBlue Airways Corp. Spirit Airlines, Korean Air/Asiana Airlines, Maspex/Becherovka, Mastercard/Minna Technologies, Moeve/Ballenoil, NatWest/ Sainsbury's Bank, News UK/Daily Mail, Noble Corp/Diamond Offshore, SAP SE/ LeanIX, Strategic Sports Group (SSG)/ PGA TOUR, Thales/Cobham Aerospace, Valeo Foods/IDC Holding, and WillScot Mobile Mini Corp./McGrath RentCorp.

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