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COVINGTON

Antitrust / FDI Environment for Tech

Antitrust Backdrop

Until the last year, merger control in the UK has been fairly hostile towards tech deals, with a highly interventionist competition authority taking an uncompromising line on global deals; even where those deals had only a limited nexus to the UK. The EU has generally taken a more pragmatic approach, clearing Google's acquisition of Fitbit in 2020, and Microsoft's acquisition of Activision in May 2023, following the acceptance of remedies by the tech firms. However, it, too, has taken some more hardline positions, such as prohibiting the Booking.com/etraveli merger based on a novel theory of harm related to the Booking.com travel ecosystem.

This has all taken place against the backdrop of an explosion of tech regulation (see our prior blog post here). The wave of new rules also introduced new merger filing requirements for those tech firms who have been designated as gatekeepers in the EU (under the Digital Markets Act (DMA) (2022)), or firms with strategic market status in the UK (under the Digital Markets Competition and Consumers Act (DMCCA) (2024)). Just this month the CMA designated Google with strategic market status (SMS) in general search and search advertising services. This comes, almost to the day, two years after the EU's designation of Google's parent company and five others as gatekeepers. More tech regulation is on the horizon, for example the remaining parts of the AI Act, on general-purpose AI, are due to enter into force in the EU in August 2026.

New focus for regulators

More recently, we have seen a change in approach towards a considerably more deal-friendly environment — most noticeably in the UK, but also in Europe.

The UK and the CMA

The UK has seen huge changes in the area of merger control in the past 12 months, resulting in a regulatory environment that is significantly more pro-business than many would have predicted this time last year.

Having gained a reputation for taking bold stances on global mergers with limited nexus to the UK (such as Facebook/Giphy and Sabre/Farelogix), the CMA came under the Government's spotlight, late last year, as an obstacle to growth

Authors


Louise Nash
M&A
lnash@cov.com


Phil Cheveley
M&A
pcheveley@cov.com


Lyndsey Laverack
M&A
llaverack@cov.com


Josh Gray
Technology Transactions and Regulatory
jgray@cov.com


Claudia Berg
Antitrust and FDI
cberg@cov.com


Ross Evans
Antitrust and FDI
revans@cov.com


Gabrielle Ohlsen
Technology Transactions and Regulatory
gohlsen@cov.com

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and investment. The Government promised to ensure that UK regulators take growth seriously, and in January replaced the incumbent CMA Chair, Marcus Bokkerink, with Doug Gurr (ex-Amazon UK); the latter having been charged with acting as a bridge between the CMA and the business community. Under the leadership team of Doug Gurr and CEO Sarah Cardell, the CMA has embraced the pro-growth agenda, and we have seen a flurry of activity (centred around the so-called “4Ps” i.e. pace, predictability, proportionality and process) designed to “drive growth, investment and business confidence”.

In a further push for growth, the Government announced in October more reform to the CMA. It will consult on whether to replace the panel model for overseeing in-depth merger reviews with a committee model, potentially representing a big change to the CMA’s structure. Chancellor Rachel Reeves celebrated this as a reform “to grow the economy and to unlock the power of investment”.

Also this year, the CMA launched consultations on its approach to remedies (March 2025) and on changes to its mergers procedural guidance (June 2025). These consultations have both closed and the CMA is currently analysing the responses. In both cases, the proposed changes signal a shift in mindset at the CMA towards pro-growth aims and a more business-friendly approach to merger control.

On **jurisdiction**, signs suggest the CMA will review fewer global deals; in particular, where there is only limited UK nexus and other regulators are reviewing the deal (the so called ‘wait and see’ approach). Silence from the CMA on recent foreign-to-foreign tech deals (e.g. Google’s acquisition of New York based cyber security company Wiz in June 2025) may be evidence of its reduced appetite for standing in the way of global tech deals.

On **substance**, the CMA is signalling a willingness to show more flexibility in finding solutions to get deals over the line. In particular, it has shown a willingness to be more open to behavioural remedies in future cases, in marked contrast to its more rigid approach of the past. The investment remedies accepted in Vodafone/Three are an example of this openness. We are also likely to see more focus from the CMA on preserving pro-competitive merger efficiencies and merger benefits, alongside supporting innovation and growth.

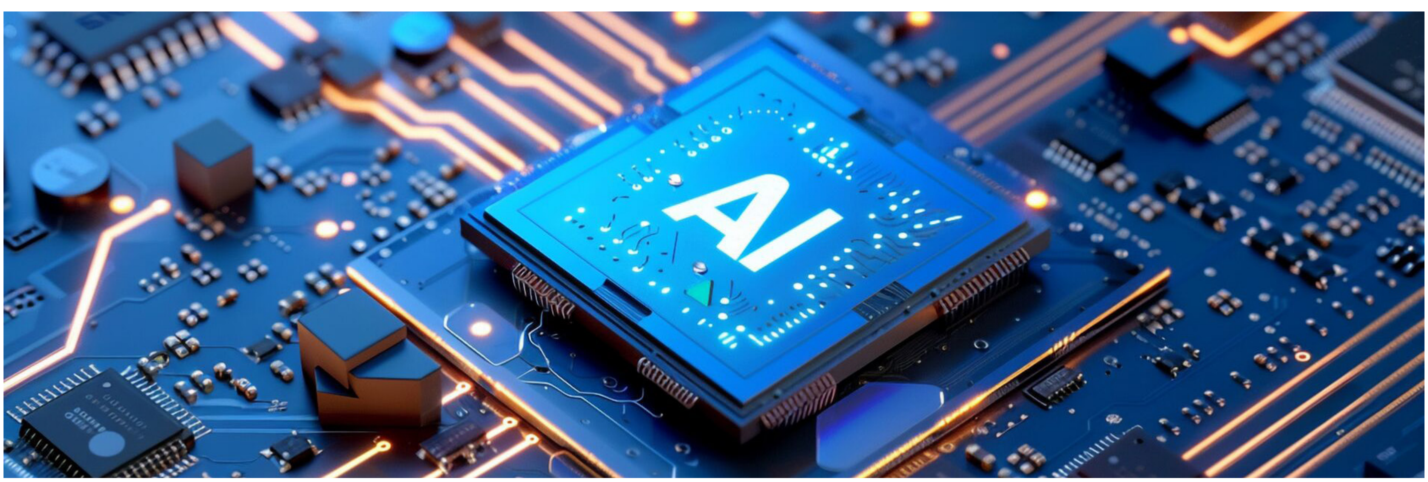
On **process**, the CMA has made clear its intention to be more efficient, and provide better access to senior staff, including during early engagement. New KPIs will increase the pace of both pre-notification and simple phase 1 cases (40 and 25 working days respectively).

The EU and the Commission

The regulatory environment in Europe is also evolving. Mario Draghi’s September 2024 report "The future of European Competitiveness", commissioned by Commission President Ursula von der Leyen, painted a stark picture of the challenges facing industry in the Single Market and set out a series of recommendations to put Europe on a different path. In respect of merger control, Draghi set out a number of recommendations to ensure that EU merger control does not act as a barrier to growth and innovation. His report recommended that the EU Merger Guidelines should be revised, with greater weight given to innovation and future competition in the analysis.

Draghi’s report formed the backdrop to von der Leyen’s mandate to Teresa Ribera, Competition Commissioner since November 2024, which highlighted the need for a “new approach” to competition policy in Europe, with more support for companies scaling up in global markets. Von der Leyen’s instructions underlined the need to ensure that business has the incentive to invest, to innovate, and to grow.

The European Commission has launched a far-reaching review of the EU Merger Guidelines to update the assessment framework for mergers. The consultation documents reflect the steer from



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Draghi to place greater focus on innovation and efficiencies. This consultation also raises the prospect of incorporating broader considerations, such as industrial policy and national security, into the substantive assessment. However, the extent to which this can be done without changing the law remains to be seen.

The revised Guidelines are expected by the end of 2027 — a notable difference from the UK, where the ousting of the CMA Chair by the UK Government in January 2025 led to an immediate change in policy.

How to take advantage of the current deal-friendly environment

There are practical ways for deals to account for the shift towards a more business-friendly approach to merger control:

Early and constructive engagement.

Early engagement can simplify the review process dramatically. Take advantage of an environment that is more open to early interaction at a senior level and don't be afraid to engage early on tricky issues. Doing so will make sure that the right people are on top of the key points, equipped with as much time as possible to resolve them. This is equally true of remedies discussions. In an environment where more complex remedies are possible, engaging early will give you the best chance of getting them over the line.

Know your regulator.

In the current politically-charged environment, it is more important than ever to engage with the right people at the right level of seniority. Personalities matter — there is no one size fits all approach to successful engagement.

Focus on growth and innovation.

While technical arguments are important, it is worth considering the wider messaging carefully, given the current climate. This includes how your deal will support the pro-growth agenda.

'Economic security' and foreign investment screening

FDI backdrop

Foreign investment screening, meanwhile, is evolving from a phase of rapid expansion to one of greater sophistication and deeper assessment. Over the past five years, European governments have built or expanded regimes at pace; attention is now turning to how those tools are applied. Authorities are developing a deeper understanding of technology's role in critical infrastructure, key national industries, and essential supply chains — and how to weigh national and economic security considerations against a public demand to deliver economic growth.

A fragmented environment

Investors still face a fractured landscape. Screening regimes across Europe and the UK are disparate and vary in scope, timing and transparency; creating complexity for cross-border transactions. There is no one-stop-shop to approve transactions at the EU level. The European Commission's proposed revision of the FDI Screening Framework Regulation, expected to be finalised before the end of the year, seeks to partially harmonise those differences (although will likely only go so far as setting a minimum scope); strengthening the cooperation mechanism, and giving the Commission a more active coordinating role.

The UK is also pursuing refinements to the National Security and Investment Act regime that has been in force since 2022. Its ongoing consultation (which closes on October 14) would revise how extensively the mandatory regime applies to key sectors — such as artificial intelligence, critical minerals, biotech, and government suppliers — and would introduce a new mandatory sector for semiconductors.

The rate and nature of intervention and imposition of conditions on M&A deals also diverges. The French government reports a much higher rate of detailed review than other European states, with over half of foreign investment authorisations involving mitigation conditions. Others, such as Germany and the UK, have shown greater openness to allow parties to address concerns directly without imposing remedies under the investment screening laws. For U.S. investors, outright prohibitions across Europe remain very rare, but conditional clearances are common — where perceived to be necessary to protect strategic domestic capabilities.

Authorities are also taking an increasingly global outlook in their reviews. Authorities now probe investors' activities in higher-risk jurisdictions. For strategic investors, this creates both risk and advantage: those able to demonstrate transparency, governance maturity and trusted-partner credentials are often rewarded with a faster and more predictable path to clearance.

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