



HERBERT SMITH
FREEHILLS
KRAMER

Merger Control – Recent Developments in Europe and Asia Pacific

June 2025

Kyriakos Fountoukakos, Partner, Global Head of Competition, Regulation and Trade, Brussels

Adelaide Luke, Partner, Head of Competition – Asia, Hong Kong

Dr Carmen Appenzeller, Senior Associate, Tokyo



HERBERT SMITH
FREEHILLS
KRAMER



01

02

03

Contents

01

Merger Control
Trends – Global
overview

02

Merger Control
Trends European
Union

03

Merger Control
Trends Asia
Pacific



HERBERT SMITH
FREEHILLS
KRAMER



01

02

03

01

Merger Control Trends – Global overview



01

02

03

Merger Control Updates – Global Overview

UK

- Expanded merger control powers for CMA under DMCC act.
- Increase of notification threshold to £100m and introduction of safe harbour

EU

- Review of merger guidelines including public consultation
- Increased focus on “below-threshold”

US

- Significant changes to HSR filing form
- Record gun-jumping penalty (USD 5.6m)

APAC

- **Australia** to move to mandatory filing
- Changes to **China** merger control thresholds and introduction of Horizontal Merger Control Guidelines
- New deal value threshold in **India**

AFRICA

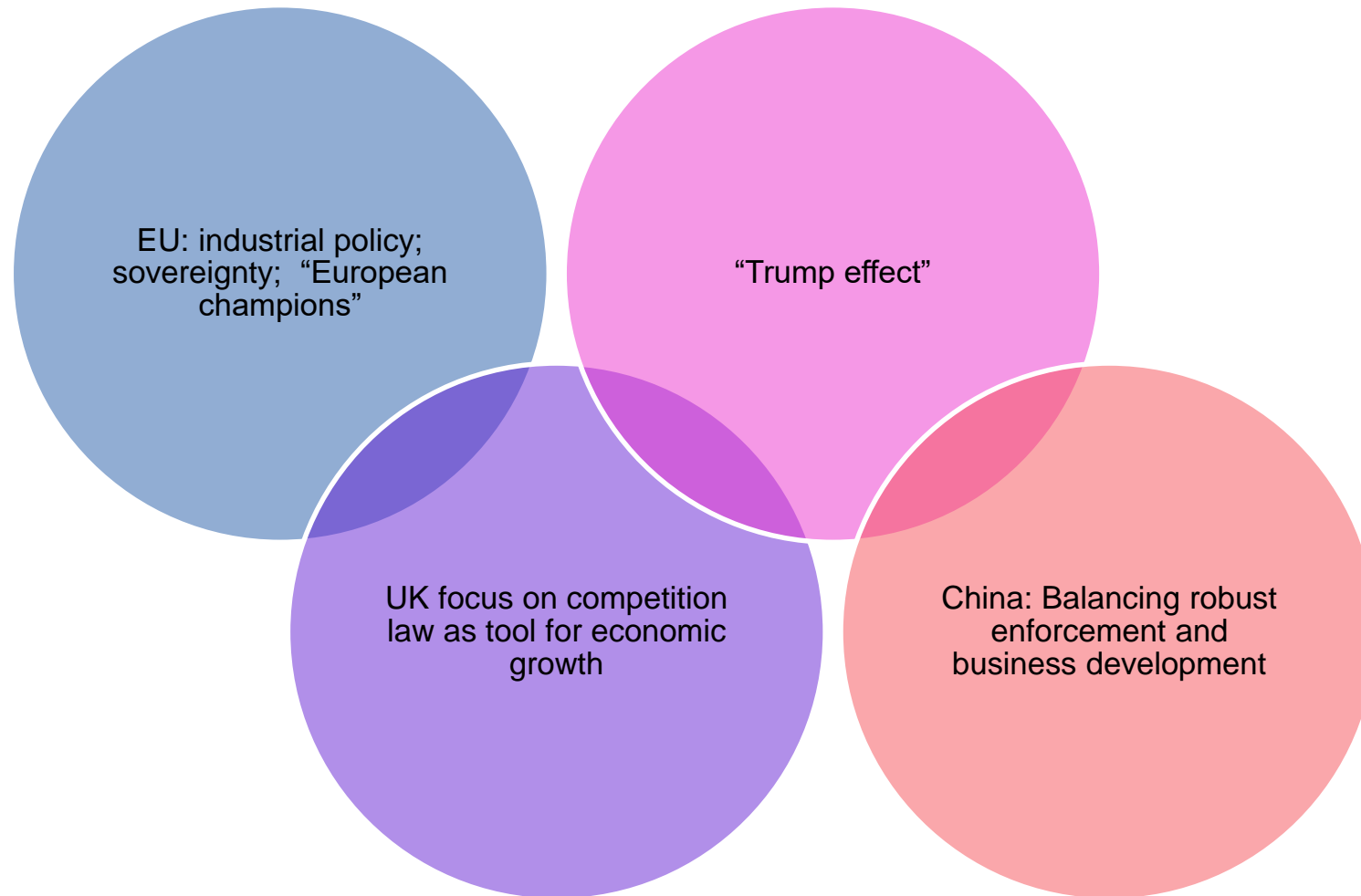
- COMESA
- ECOWAS
- **Egypt**: new thresholds introduced

MIDDLE EAST

- **UAE**: New thresholds – combined local turnover of AED 300m in target’s market
- **Saudi Arabia**: Clarification of local nexus requirement for target



Political environment and global regulatory trends





HERBERT SMITH
FREEHILLS
KRAMER



01

02

03

02

Merger Control Trends European Union



01

02

03

EU Merger Control – Key Statistics and Cases

Key Statistics for 2024

- 392 merger notifications; 104 in Q1 2025; both figures represent an increase compared to the previous year.
- 0 prohibition decisions (2023: 1)
- 3 Phase II investigations (2023: 9)
- 8 transactions cleared subject to remedies, of which 5 at Phase I and 3 at Phase II (2023: 7)
- 9 cases withdrawn before decision, of which 7 at Phase I and 2 at Phase II (2023: 5)
- **FSR**: over 100 filings relating to M&A, and 1,108 filings relating to public tenders

Key Cases

- CJEU ruling in Illumina/Grail and impact on call-in of **below-threshold transactions**.
- EC consideration of potential strengthening of dominant position in main markets of multi-product **ecosystems** in Adobe/Figma and Booking/eTraveli.



01

▶ 02

03

Illumina/Grail CJEU Ruling and Below-Threshold Referrals

Article 22, EUMR

“One or more Member States may request the Commission to examine any concentration...that does not have a Community dimension...but affects trade between Member States and threatens to significantly affect competition within the territory of the Member State or States making the request.”

Case Background

- In **March 2021** the French competition authority **referred Illumina/Grail to EC**, which did not meet French jurisdictional thresholds. Several other member states joined the referral, and the EC accepted the referral in April 2021, making it the **first Article 22 referral under the EC's revised approach**.
- In **March 2021**, the EC issued **guidelines** indicating that **Member State authorities can refer transactions falling below national thresholds** to the EC for review
- The parties **appealed** the EC's acceptance of the French referral to the **General Court**, which **rejected** their appeal entirely in **July 2022**.
- In **September 2022**, the EC **prohibited the transaction**. The parties **appealed** the General Court ruling.

CJEU Ruling

- On **3 September 2024**, the CJEU **set aside** the General Court's ruling and **annulled** the EC's decision accepting the referral request from the French competition authority.
- The CJEU held that the EC's interpretation of the Article 22 referral regime under its revised approach was wrong and that the General Court erred in establishing that the EUMR provides for a corrective mechanism for the effective control of all concentrations with significant effects on the structure of competition in the EU.
- The CJEU focused on the importance of **predictability** and **legal certainty** for the parties to a concentration, describing **clear thresholds** for determining whether or not a transaction must be notified **"of cardinal importance"**.

Practical Implications

- While the CJEU ruling is a blow for the EC, the EC (in the words of previous Commissioner Vestager) will still *"consider the next steps in order to ensure that the Commission is able to review those few cases where a deal would have an impact in Europe but does not otherwise meet the EU notification thresholds"*.
- The EC will continue to accept Article 22 referrals by Member States that have jurisdiction over a concentration under their national rules, and a number of Member States have made changes to their merger control regimes under which they can "call in" deals below the thresholds.
- The CJEU's judgment may therefore not in practice mean that the Commission reviews fewer so-called 'killer acquisitions'.



01

02

03

EU – Recent Below-Threshold Transactions

Nvidia / Run:ai (2024)

- First Article 22 EUMR referral after CJEU ruling in *Illumina/Grail*.
- Proposed transaction involves US chipmaker Nvidia acquiring Israeli start-up Run:ai.
- Deal did not meet any EU thresholds.
- Italian antitrust regulator used national “call-in” powers to refer the transaction to EC.
- Referral challenged by NVIDIA before the General Court (Case T-15/25, pending).
- NVIDIA argues that the Italian antitrust regulator lacked jurisdiction and missed the Article 22 deadline.

Brasserie Nationale / Boissons Heintz (2024)

- Proposed transaction involves Luxembourg brewer Brasserie Nationale acquiring local drinks distributor Boissons Heintz.
- Deal did not meet any EU or national merger control thresholds (Luxembourg does not have a national merger control regime).
- Luxembourg Competition Authority referred the transaction to the EC under Article 22.
- Referral challenged before the General Court (Case T-289/24, pending).



01

02

03

Call-in powers: Catching Below-Threshold Transactions

- TowerCast CJEU ruling (2023): national competition authorities (NCAs) and courts can review acquisitions by dominant entities under abuse of dominance rules, even if those acquisitions are not notifiable under EU or national merger control law (followed by Proximus/EDPnet case in Belgium)
- Post-*Illumina/Grail*, national competition authorities (**NCAs**) of EU Member States are increasingly relying on “call-in” powers to review below-threshold mergers.
- “Call-in” powers allow NCAs to require notification of a transaction that is not notifiable under normal thresholds, if competition concerns exist.

Member States with call-in powers

- Cyprus
- Denmark
- Hungary
- Iceland
- Ireland
- Italy
- Latvia
- Lithuania
- Norway
- Slovenia
- Sweden

Member States seeking call-in powers

- Czech Republic
- Finland
- France
- The Netherlands
- Belgium
- Greece

“Avoiding killer acquisitions is our main concern. We are still thinking how we can work effectively with national authorities and involve the European Commission. This will probably be the most compelling concern.”

Teresa Ribera

ABA Antitrust Spring Meeting, Washington, DC, April 2025

“I’m not so sure today, if I look at what the courts made out of the transaction value threshold... maybe call-in powers are a better way forward.”

Andreas Mundt

ICN 25 Conference, Edinburgh, May 2025



01

▶ 02

03

Novel Theories of Harm in merger control

Link to article:
[CRT contribution to
Global Competition
Review \(GCR\)
EMEA Antitrust
Review published](#)

Particular focus: digital Sector

- Theories of harm relating to self-preferencing and potential competition also gained prominence as the Commission applied these theories particularly to transactions in the digital sector.
- In Amazon/iRobot, the Commission initiated a Phase II investigation due to concerns that the transaction could allow Amazon to impede competition in the robot vacuum cleaners market and strengthen its position as an online marketplace provider.
- In Adobe/Figma, the Commission considered that the transaction would prevent 'Figma's potential growth into an effective competitor to Adobe's asset creation tools'.

Theories of harm: Ecosystem

- The Commission has for the first time—in the Booking/eTraveli case—blocked a deal due to concerns related to the 'ecosystem'. The Commission assessed both horizontal and non-horizontal aspects of the transaction and concluded that the merger of the two complementary businesses would strengthen Booking's purported dominant position in the online hotel travel agency market.
- Ecosystem theories have also been gaining prominence in merger review and have been considered by the Commission in recent merger investigations, for example Microsoft/Activision Blizzard and Amazon/iRobot.



01

02

03

Mario Draghi: “Do something!”



*“You say no to public debt. You say no to the single market. You say no to creating the capital market union. You can’t say no to everything. Otherwise you have also told me to be consistent, that you are not able to deliver on the fundamental values for which this European Union has been created. **So when you ask me what is best to do now, I say I have no idea. But do something!**”*

Speech to European Parliament, 27 February 2025

*“The response must be fast, because time is not on our side. With the European economy stagnating, while much of the world grows. The response must be commensurate with the size of the challenges, and it must be laser focussed on the sectors that will drive the growth. Speed, scale and intensity will be essential. **We must create the conditions for innovative companies to grow in Europe, rather than staying small or moving to the United States.**”*

Keynote speech to European Parliament, 18 February 2025

Should the new Commission "relax" competition law?

Growth and industrial policy agenda

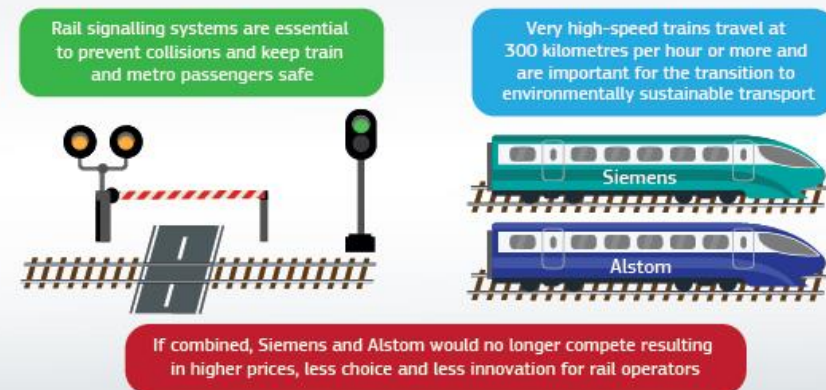
Draghi report: "The future of European competitiveness", 9 September 2024

- Key recommendations:
 - Emphasise the weight of **innovation and future competition** in DG COMP decisions, enhancing progress in areas where the development of new technologies would make a difference for consumers.
 - **Security and resilience** criteria should be developed by expert authorities and given more weight in DG COMP assessments.
 - The new powers associated with the enforcement of the Digital Markets Act (DMA) and the Foreign Subsidies Regulation (FSR) need to be applied effectively to **respond to a new economic and geopolitical situation**, and result in the intended benefits for EU consumers and businesses

Background:

Criticism that DG COMP is hindering European companies from scaling up through mergers or state aid to rival players from China or the U.S.

Commission prohibits Siemens-Alstom takeover to protect rail operators and passengers





01

02

03

Competitiveness and European Champions



*"Europe needs a **new approach to competition policy** – one that is more supportive of companies scaling up in global markets, allows European businesses and consumers to reap all the benefits of effective competition and is better geared to our common goals, including decarbonisation and a just transition."*

Ursula von der Leyen's mission letter to Teresa Ribera, 17 September 2024

"(...) it's clear that we can't just stick to business as usual: we need to rethink all of our tools and how we use them, to make sure they are fit for the new realities. And that includes also the tools of competition policy.."

Teresa Ribera, CRA Annual Conference, 10 December 2024



"We will work to establish competition rules at EU level for world-class European champions to emerge in key sectors"

Joint editorial by Friedrich Merz and Emmanuel Macron in *Le Figaro*, 7 May 2025



01

02

03

One Focus Area: Telecoms sector

Recent merger cases in the telecoms sector

- **Vodafone/Three JV (2024): CMA** conditionally approved the creation of a joint venture (JV) combining the UK businesses of Vodafone Group plc and Three UK subject to behavioural remedies. The CMA confirmed acceptance of a remedies package previously outlined in a remedies working paper published on 5 November 2024, including a legally binding commitment to undertake an £11 billion network investment programme and time-limited price caps on key tariffs pending roll-out of the 5G standalone network envisaged by the investment programme.
- **Orange/MasMovil (2024): EC** cleared conditional on spectrum being sold to a new entrant, despite a slightly higher combined market share of the Spanish operators than in previous cases, and slightly higher predicted price increases on the retail market than in previous cases.

Merger control reform in the Draghi Report

- Developing a forward-looking approach by focusing more on innovation and future competition than on current market share levels (thus potentially allowing more consolidation than is currently the case).
- Defining the telecoms markets at the EU-level, as opposed to the national level, particularly when this facilitates cross-border integration and the creation of EU-wide players.
- Focusing remedies on "commitments to invest according to detailed schedules, launch of services or access to data or platforms, rather than partial de-consolidations or the transfer of physical assets".



01

02

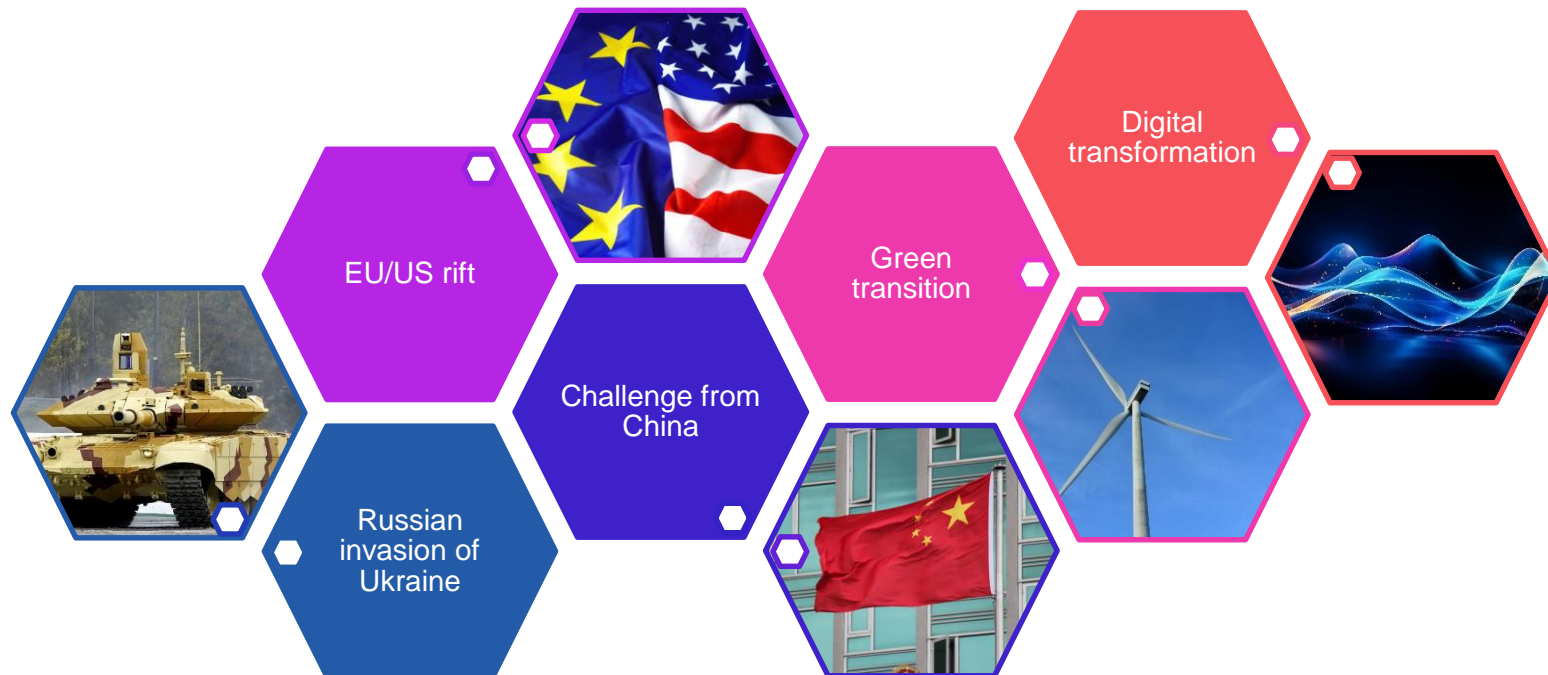
03

Consultations on horizontal and vertical merger control guidelines

Once-in-a-generation review

Context

- New EC sees Competition as part of solution to increase EU's productivity and competitiveness. Stronger competition delivers lower prices, greater productivity, investment and innovation.
- Merger control needs to reflect **new business models**, **market realities** and **geopolitical context**.





01

02

03

Consultation: timeline and next steps

Ongoing parallel consultations 8 May – 3 September



Indicative estimate of adoption date of the revised merger guidelines is **2027**.



01

02

03

Themes of the consultation

EC stress that the aim of the consultation is not to ask stakeholders “*what*” it should be doing in terms of its legal standards, but “*how*” it should be applying them.

Topic A

- Competitiveness and resilience

Topic B

- Assessing market power using structural features and other market indicators

Topic C

- Innovation and other dynamic elements in merger control

Topic D

- Sustainability and clean technologies

Topic E

- Digitalisation

Topic F

- Efficiencies

Topic G

- Public Policy, security and labour market considerations



01

02

03

Topic A: Competitiveness and resilience

Effective competition boosts competitiveness by stimulating productivity, investment, and innovation, enabling firms to grow, contributing to the Single Market's resilience.

Context

- Mergers can increase resilience through access to reliable/diversified supply sources.
- Mergers can harm resilience by reducing number of reliable suppliers available for buyers.
- Scale can be double-edged sword – can bring benefits but also lead to market power which harms SMEs.

Consultation seeks views on:

- What framework should the EC use for assessing negative effects/benefits on resilience of supply chains? (Theories of harm, metrics and evidence)
- How to assess real and tangible benefits of increased scale
- Characteristics of markets where scale is needed to compete effectively



01

02

03

Topic B: Assessing market power using structural features and other market indicators

Revision of the guidelines offers a chance to adjust or add new indicators of market power and reflect on the use and level of presumptions.

Context

- Market shares as a sliding scale: the higher the shares, the more evidence needed to rebut the presumption of market power.
- Other metrics used to assess likelihood of market power (e.g. profit margins, diversion ratios).

Consultation seeks views on:

- Are existing indicators fit for purpose?
- Do we need legal presumptions?
- What are the more appropriate indicators/metrics to establish a SIEC?



01

02

03

Topic C: Innovation and other dynamic elements in merger control

In addition to price competition, firms also compete by investing in their long-term competitiveness. Innovation is fundamental for competitiveness and competition is a key driver of innovation.

Context

- Mergers can increase the ability and incentive of the merged firm to innovate but also harm innovation competition.
- “Dynamic” merger effects often more difficult to predict than price effects, meaning that any framework of assessment needs to be sufficiently accurate yet administrable.

Consultation seeks views on:

- In which circumstances can mergers positively/negatively impact the ability/incentive of the merged firm to innovate?
- Framework for “killer acquisitions”
- Framework for assessing likely future developments (e.g. potential competition and potential entry as a countervailing factor)



01

02

03

Topic D: Sustainability and clean technologies

Clean transition results in new demand and supply for “clean” products. Competition serves the EU’s decarbonisation goals by providing incentives to innovate clean solutions.

Context

- Sustainability as a non-price competition parameter.
- Theories of harm based on loss of “green” innovation.
- “Green” efficiencies must be sufficiently substantiated and not a mere greenwashing attempt.

Consultation seeks views on:

- Framework for sustainability as a parameter of competition (metrics, evidence)
- Possible types of harm/benefits generated regarding clean and decarbonised products/technologies/services, circular economy
- Ensuring verifiability (vs. greenwashing), necessity (vs e.g., cooperation agreements), merger specificity.



01

02

03

Topic E: Digitalisation

Digitalisation is probably the most transformative change in the economy and a powerful tool to close the innovation gap. Companies of all sizes should have a fair chance to seize the opportunities it brings.

Context

- Markets shaped by digitalisation have specific characteristics:
- Prone to tipping in favour of dominant player
- Fast-moving/nascent and carry uncertainty
- Mergers can present both horizontal and non-horizontal effects (ecosystems?).

Consultation seeks views on:

- What evolutions linked to digitalisation should be reflected in the Guidelines (e.g. network effects) and how?
- Theories of harm based on entrenchment, data accumulation, access/interoperability concerns
- Evidence to assess likely future market trends.



01

02

03

Topic F: Efficiencies

Merger efficiencies are only assessed if a merger is deemed harmful for competition. Burden of proof is on the merging parties. Standard is high because without real and tangible efficiencies, mergers are harmful.

Context

- Efficiencies should:
 - Benefit the consumers that are otherwise harmed by the merger
 - Be merger-specific and not possible to achieve in a less anti-competitive way
 - Be real, verifiable and substantial to outweigh harm to consumers
- Complex balancing exercise given asymmetries between negative and positive effects, and short-term and long-term effects.

Consultation seeks views on:

- Metrics and evidence to verify efficiencies?
- Appropriate timeframe for timely efficiencies?
- How to trade off short-term harm vs long-term benefits
- How to assess whether less anti-competitive alternatives are reasonably practical/plausible.



01

02

03

Topic G: Public Policy, security and labour market considerations

Healthy competition (indirectly) contributes to other policy objectives: e.g., balance of public and private power, media plurality, competitive defence industrial ecosystem, high quality jobs. Legitimate interests can be invoked by member states to intervene in mergers scrutinised by the EC.

Context

- Article 21(4) EUMR allows Member States to object to (unproblematic) mergers on public security grounds.
- Reducing number of players in media can impact pluralism and have a knock-on effect on democracy.
- Mergers can be harmful for workers.

Consultation seeks views on:

- How can issues of defence and security, media plurality and buyer power on labour markets be relevant and, if so, taken into account in the EC's merger assessments?



HERBERT SMITH
FREEHILLS
KRAMER



01

02

03

03

Merger Control Updates Asia Pacific



01

02

03

Australia





01

02

▶ 03

Australian merger control – How it works now

Substantial lessening of competition test

- Will there be a meaningful adverse effect on competitive process?
- Counterfactual test, compare future **with/without** acquisition

Notifying ACCC is presently voluntary (but may need to consider mandatory foreign filings)

ACCC can investigate and has the power to seek an injunction preventing completion

FIRB will notify the ACCC of transactions

1. Informal clearance process

- Test: substantial lessening of competition
- Timing: usually between 4 – 24 week process, but no real time limits

2. Merger authorisation

- Test: substantial lessening of competition OR public benefits
- Timing: 3 months for ACCC review + further 3-4 months for Tribunal review + longer if judicial review



01

02

▶ 03

New mandatory ACCC regime

Key features

- **Mandatory notification** based on monetary thresholds + specific thresholds for certain sectors or acquisitions.
- To address **serial acquisition concerns**, all mergers in the prior 3-year period will be considered
- **Voluntary notification** remains for deals that **substantially lessen competition**
- Acquisitions of direct/indirect **“control”** of assets or shares caught
- **ACCC** is now the **first instance administrative decision-maker**, with merits review to Australian Competition Tribunal and only judicial review to Federal Court
- Completion must occur within **12 months** or the notification becomes stale



01

02

▶ 03

Notifiable Transactions

- Acquisitions of shares or assets obviously caught
- Intention to capture acquisitions of leases and land
- Uncertainty around application to certain transaction structures and contractual arrangements – e.g., “acquisition” of a legal or equitable interest – noting intention to extend definition of “asset” to include non-proprietary rights (*should be resolved following further regulatory guidance / instruments*)
- May depend on transaction structure, although anti-avoidance measures will exist
- Can apply to government contracts / awards depending on structure of grant



01

02

▶ 03

Acquisition of “Control”

- Adopts “control” test in section 50AA of Corporations Act
- Key considerations:
 - a) Capacity to determine the outcome of decisions about another entity’s financial and operating policies
 - b) Issue for consideration is practical influence that can be exerted rather than the rights that can be enforced
 - c) Practice or pattern of behaviour affecting financial and operating policies to be taken into account (even if contrary to SHA or other agreements)
- Need to assess contractual arrangements/rights, what is happening in practice now, any proposed amends to SHA or management agreements as part of transaction etc
- Uncertainty around how moves from joint to sole control and shifts in joint control will be captured (*again, should be resolved following further regulatory guidance / instruments*)
- *Although note proposal for Ministerial direction to capture all private transactions involving >20% stake where monetary thresholds met*



01

02

▶ 03

Notification thresholds

Three key thresholds applying to all transactions

1. General thresholds:

Combined Australian turnover of all parties >AUD 200 million;

AND

The target business or assets being acquired have Australian turnover >AUD 50 million;

OR

The transaction has a global value >AUD 250 million.

2. Very Large Business (VLB):

Acquirer (VLB) has Australian turnover >AUD 500 million;

AND

The target business or assets being acquired have Australian turnover >AUD 10 million.

3. Serial acquisitions:

Acquirers with Australian turnover >AUD 200 million;

AND

Cumulative Australian turnover from acquisitions in previous 3 years was at least:

- (i) AUD 50 million; **OR**
- (ii) AUD 10 million, if a VLB is involved.



01

02

▶ 03

Notification Thresholds

Additional thresholds applying to specific sectors or transactions

- Can be introduced by the Treasurer
- Supermarkets, fuel, liquor, oncology radiation + some land acquisitions exempted
- Acquisitions > 20% in private or unlisted company where one company has >\$200 million annual Australian turnover

Local effects requirement

- Guidance relating to calculation and of turnover to come, but likely to include all businesses / funds where you have controlling interest (even where business irrelevant to transaction at hand)
- Proposal for local nexus test to avoid over-capture of offshore transactions – likely related to Target “doing business in Australia”



01

02

▶ 03

Who is required to notify the ACCC?

Notification is required by the “principal party” – the party (or parties) acquiring:

1. An interest in shares
2. An interest in assets
3. Anything else determined by the Minister*

Note: if **more than one acquirer**, notification should be made **jointly**

What happens if there is a failure to notify?

- The principal party **and** any person who aids, abets or attempts to contravene the notification obligation is exposed to maximum **civil penalties**:
 - **Companies**: greater of \$50m, 3x value of benefit gained or 30% of turnover for duration of contravention
 - **Individuals**: \$2.5m
- Cf. proposed notification fee of \$50k-\$100k*

**Currently under consultation and will be set out in the final Competition and Consumer (Notification of Acquisitions) Determination 2025.*



01

02

▶ 03

How to notify the ACCC

Notification forms

- Short and long form notification forms have been released for consultation
 - The “short form” is intended to be used for acquisitions unlikely to raise competition concerns,
 - The “long form” is more detailed for other acquisitions, requires substantial upfront detail concerning aspects of the market and includes a significant document request
- ACCC guidance says that long form notification should be used where:
 - **Horizontal acquisitions:** combined entity would have $\geq 40\%$ market share and the incremental increase is $\geq 2\%$, or the combined entity would have 20-40% and the incremental increase is $\geq 5\%$
 - **Vertical acquisitions:** a party active in upstream/downstream market has $\geq 30\%$ market share and the other party has $\geq 5\%$
 - **Conglomerate acquisitions:** the parties supply adjacent products or services and at least one party has $\geq 30\%$.
- ACCC will determine whether a notification is “complete” and timeline for review can be commenced – *pre-notification engagement will be important*

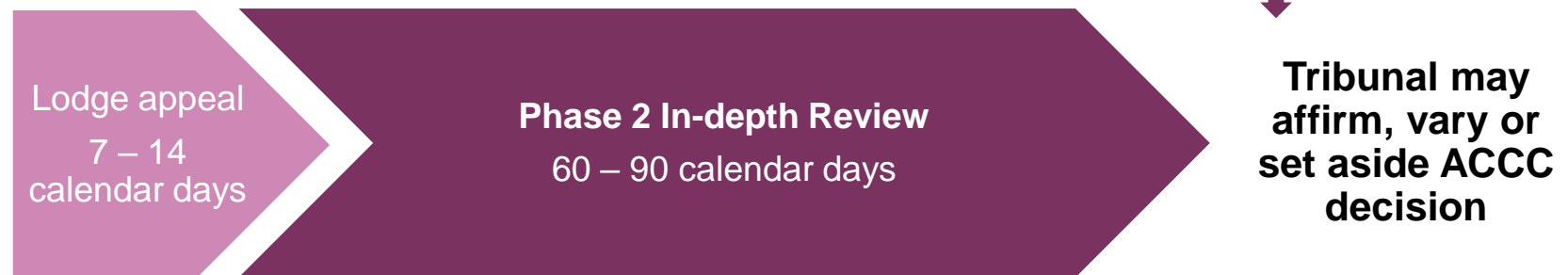


Phased review process

ACCC review



Appeal to Australian Competition Tribunal



Timelines subject to potential for ACCC to “stop the clock” for information requests



01

02

▶ 03

Practical considerations and ACCC approach

Transition Period

- Application of **transition period** to transactions happening this year:
 - **New regime** will commence from **1 January 2026**
 - But **voluntary notification under new** regime possible from 1 July 2025
 - ACCC clearance obtained under existing regime between **1 July 2025 and 31 December 2025** provides 12 month exemption for completion

Future considerations

- **Mandatory ACCC clearance may be required** where ACCC engagement would not previously have occurred
- Applications and information not published but **ACCC's review will be public**
- **Early planning** to assess and plan (1) need for filing (2) timing of ACCC engagement
- **Fast track** (15 day) review or **waiver possible** where clearly no competition concerns



HERBERT SMITH
FREEHILLS
KRAMER



01
02
03

China

China – draft rules for calculating fines for gun-jumping (2024)

Amended Anti-Monopoly Law (2022)

- **Increased fines for gun-jumping**
 - For technical breaches (no anti-competitive effect): maximum fine increased from **RMB 500,000 (approx USD 71,000)** to **RMB 5 million (approx. USD 0.71 million)**
 - For breaches with the actual or potential anti-competitive effect: maximum fine **further increased to 10%** of the company's revenue in the previous year

Guidelines for Discretion in Administrative Penalties for Illegal Implementation of Concentrations of Undertakings (March 2025)

- Fines will be calculated in the following manner:

Step	Without Anticompetitive Effect	With or Potential Anticompetitive Effect
1. Base Fine	RMB 2.5M standard ↓ RMB 1M (lighter circumstances) RMB 4M (heavier circumstances)	No fixed base fine Discretionary approach based on case complexity
2. Adjustment	±10% per mitigating/aggravating factor ↓ Min: 40% of base fine Max: RMB 5M	Same adjustment logic may apply, but not explicitly defined
3. Incremental Fine	2–5x base fine for serious violations (bad effects, grave consequences)	Direct 10% of previous year's sales in 3 serious scenarios: <ul style="list-style-type: none"> • Implemented despite SAMR warning • Breach of prohibition • Malicious implementation

- SAMR has discretion to **forgo penalties** for certain cases
- Important for companies to **enforce internal antitrust compliance**



01

02

03

China – trial run of gun jumping fine rules

- Five gun-jumping cases spanning various industries and companies since the introduction of the new AML

Case	Sector	Fine imposed (CNY)
<i>Minglian Lamp and Hentaifeng</i>	Power transmission/distribution	1.75 million
<i>Ming Ming Hen Mang and Zhao Yi Ming Food</i>	Food & beverages	1.75 million
<i>Xi'an Longi and Hopewind</i>	Hydrogen energy technology and electric equipment	700,000
<i>Maoming Construction and Zhongyuan</i>	Power transmission/distribution	1.75 million
<i>Highly and Qingdao Haier</i>	Air conditioning	1.5 million

- SAMR imposed significant fines in all cases despite not finding *any* anti-competitive effects
- All cases were above threshold transactions and firmly within SAMR's jurisdiction
- SAMR has published a Self-Calculation tool for business available below:

[Self-calculation of the amount of penalties for illegal implementation of concentration of undertakings](#)



01

02

▶ 03

China's First Horizontal Merger Review Guidelines (Dec 2024)

- Guidelines aim to increase **transparency** and **predictability** of SAMR's review process
- Clarify that SAMR's general approach is based on **market share** (though market concentration is also an important factor):
 - Combined market share exceeding 50% - anticompetitive effects presumed unless rebutted
 - Combined market share ranging from 25% to 50% - likely have anticompetitive effects
 - Combined market share ranging from 15% to 25% - usually no anticompetitive effects
 - Combined market share below 15% - SAMR would presume no anticompetitive effects
- When anticompetitive effects are identified, SAMR will look into countervailing effects (e.g. efficiency for customers)
- Accepts **open market definition** – aligning with global practices
- SAMR can ask deal parties to submit materials where evidence shows **government subsidies** have had an adverse impact into competition – response to EU's Foreign Subsidy Regulation?



01

02

▶ 03

SAMR's stricter standards for simple case qualification

- According to SAMR's **regulation on merger review**, a deal qualifies for a **simple case review** if:
 - a **horizontal deal**'s combined market share falls below 15%
 - a **vertical deal**'s market share in each of the relevant markets falls below 25%;
 - if the market share in each of the relevant markets falls below 25% for deals that are **neither horizontal nor vertical**;
 - the deal relates to an "**offshore joint venture**" with no activities in China; or
 - the deal involves the transfer of control of a **collectively controlled joint venture** to one or more **existing controllers**.
- SAMR to allegedly adopt a **tighter review attitude** towards borderline simple case review
- Borderline simple review cases to be placed under **normal procedure** if they involve any potentially anti-competitive effects
- SAMR will focus on:
 - deals with market share statistics on the verge of the relevant threshold
 - deals involving the transfer of control in a joint venture



01

02

▶ 03

Ansys / Synopsys – semiconductor / below threshold transaction

Synopsys / Ansys

- Called in in China, even though it was a below threshold transaction
- Long form notification
- Conditional on **merger clearance** and **FDI approvals** from multiple jurisdictions
- Conditional clearance received from various jurisdictions: South Korea, Japan, UK, EU, US
- The only clearance pending is from China
- Synopsys wants to combine its **semiconductor** electronic design automation with Ansys' complementary simulation technology for designers of microchips, cars and planes
- SAMR ordered Synopsys to file the transaction for review despite being below the mandatory thresholds
- Currently in Phase III – SAMR has also stopped the clock



01

02

03

China – Stop the clock mechanism / Conditionally approved cases

- **Stop the clock mechanism** introduced: Amendments to the Antimonopoly Law in 2022 introduced a new “stop-the-clock” mechanism
- SAMR **conditionally approved** 4 concentrations in 2023, and 1 in 2024
- 4 cases were subject to stop the clock. Longest **review period** was **16.9 months**
- All 5 cases were in **sensitive sectors**

Case	Sector	Duration of review (from filing to clearance)	Type of remedies
Wanhua Chemical/Yantai Juli	Chemicals	7.9 months	Behavioral (including requirement to lower price of products if price of raw materials falls)
MaxLinear/Silicon Motion	Semiconductor related	10.4 months	Behavioral (including requiring parties to retain engineers in mainland China and banned the insertion of “malicious codes” in NAND controllers in China)
Simcere Pharma/Tobishi	Pharmaceuticals	14.8 months	Behavioral + Structural
Broadcom/VMware	Semiconductor related	14.6 months	Behavioral
JX Metal/Tatsuta	Semiconductor related	16.9 months	Behavioral (including requiring distributors to supply under FRAND principles)

Contacts



Kyriakos Fountoukakos

Managing Partner, Competition Regulation and Trade, Brussels

T +32 2 518 1840

kyriakos.fountoukakos@hsfkramer.com



Adelaide Luke, Partner, Head of Competition – Asia
Hong Kong

T +852 2101 4135

E adelaide.luke@hsfkramer.com



Dr Carmen Appenzeller, Senior Associate, Competition, Regulation & Trade
Tokyo

T +81 3 5412 5423

E carmen.appenzeller@hsfkramer.com

For a full list of our global offices visit **[HSFKRAMER.COM](https://www.hsfkramer.com)**
