

2025: Antitrust Year in Review

Perkins Coie Antitrust Team

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Speakers

Speakers



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Chris advises on all aspects of merger control, including regulatory clearance; transaction structure and antitrust risk allocation in M&A agreements; preparation of merger notification filings, including filings that implicate the Hart-Scott-Rodino Antitrust Improvements Act; and advocating for clients in Second Request investigations by the U.S. Department of Justice and the Federal Trade Commission.



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Shylah focuses her practice on antitrust litigation, investigations, counseling, and regulatory advocacy and defense. She has extensive experience working with multinational companies across the market spectrum. Whether involving the FTC, DOJ, state attorneys general, or private litigants, she has represented a diverse set of industry-leading clients. Her industry experience includes telecommunications, social networking, big data, gaming, platform markets, semiconductors, computer software, pharmaceuticals, manufacturing, retail, the internet, and aerospace. Shylah is particularly adept at providing practical and strategic counseling to achieve business-critical objectives.

Speakers



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Miranda helps a broad range of companies with transactional and behavioral matters, advising on merger control; foreign direct investment and foreign subsidies reviews of mergers, acquisitions, and other transactions; abuse of dominance and anticompetitive agreements under Articles 101 and 102 TFEU and Chapters 1 and 2 of the U.K. Competition Act (including vertical and collaborative arrangements); technology transactions; issues relating to intellectual property, access, standardization, and interoperability; and issues related to information exchange and data, digital regulation (including the EU DMA and AI Act and U.K. DMCC Act), and compliance and advisory strategies and programs.

Speakers



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Ryan is a seasoned antitrust lawyer with extensive experience in antitrust litigation, merger reviews, government investigations, and antitrust counseling. Ryan has advised and, while at the FTC, investigated companies in myriad industries, including pharmaceuticals, e-commerce, consumer goods, healthcare providers, medical devices, health insurance, groceries, and retail.

2025 Review: US

Agency Update

A Republican-Only Commission

The FTC Enters a New Era Without Minority Commissioners

- Early in the Trump Administration, the President removed both Democratic Commissioners
 - In a divergence from precedent, the Supreme Court upheld these terminations
- There is no indication the Administration will nominate any Democrats to fill those two open seats
- FTC is currently comprised of Chair Ferguson and Commissioner Meador – both Republicans
 - Administration had nominated Ryan Baasch for the third seat but withdrew his nomination last week
- In practice, however, the absence of Democrats is unlikely to impact the enforcement agenda, which is largely set by the Chair



Agencies Face Significant Resource Constraints

Agencies Face Significant Staff Departures

- Both the FTC and DOJ have faced considerable staff departures during the first year of the Trump administration
- While there is some on-going hiring, neither agency is seeking to replace all the attorneys that have left
- In testimony before Congress, Chair Ferguson stated that the FTC is looking to significantly reduce head count
- Agency resources have been a major factor in enforcement decisions during both Democratic and Republican administrations
 - This reduction in staffing will require the agencies to make tough calls about which investigations to open and cases to bring



Antitrust Conduct in 2025: The Highlights

Epic v. Apple: The Saga Goes On

Epic v. Apple: The Background



Epic Takes Aim at iOS Restrictions

- Epic filed suit against Apple for its policies that forbid developers from utilizing links for off-app purchases
- The district court held the policies violated California’s Unfair Competition Law but did not find Apple in violation of federal antitrust law
- Enjoined Apple from banning off-platform links, noting that “a remedy to eliminate the [restriction against links] is appropriate”
- The court, however, declined to “micromanage” Apple’s business and allowed Apple to adopt policies consistent with the injunction

Epic v. Apple: The District Court Scolds Apple



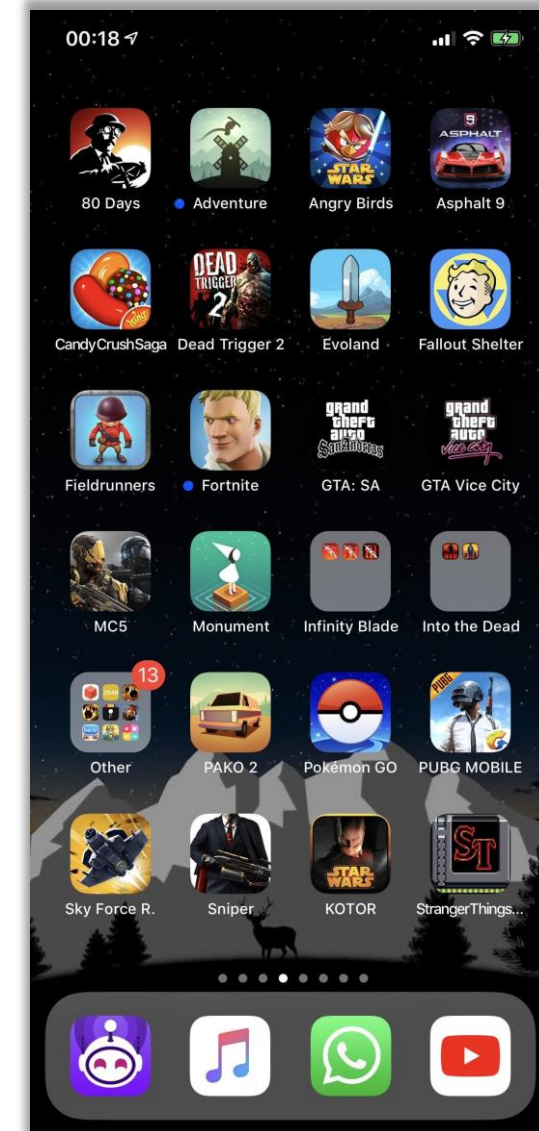
District Court's Scathing Opinion

- In response to the injunction, Apple adopted numerous restrictions on developers and imposed a 27% commission for all off-app purchases
 - Epic challenged Apple's compliance with the injunction
- The district court found that Apple had willfully violated the injunction and concluded Apple had chosen the "most anticompetitive option" at every turn
- The court forbid Apple from placing any restrictions on developers' links and from charging any commission
- The court also referred Apple and its executive for criminal sanctions, finding that an executive had lied under oath

Epic v. Apple: The Ninth Circuit Weighs In

The Ninth Circuit Largely Sides with Epic

- Apple appealed the decision to the Ninth Circuit, who largely affirmed the district court decision, but pared back a few portions; allowing Apple to:
 - Charge a commission tied to its “genuinely and reasonably necessary” costs
 - Apple is not permitted to charge a commission until the district court determines the amount
 - Require developers to display prompts for in-app purchases as prominently as their own links
 - Require developers to comply with its content moderation policies
- The court also found that the injunction did not violate *Trump v. CASA*’s limitations on nationwide injunctions
 - Potentially opening the door for other developers to challenge any of Apple’s policies that violate the injunction
- Apple has sought en banc review



Algorithmic Pricing: The Enforcement Trend Continues

DOJ's First Algorithmic Pricing Settlement

An Insight into Future Cases and Proactive Guardrails?

- The DOJ recently entered into its first settlement related to algorithmic pricing
- The settlement focused on the use of real time competitively sensitive data, and requires the company to:
 - Cease the use of competitors' nonpublic competitively sensitive information
 - Only utilize data that is more than 12-months old
 - Limit the algorithm to analyze geographies on a state level
 - Remove features that inhibited price decreases or aligned pricing between competitors
 - Cease surveys seeking competitively sensitive information



State Enforcement on the Horizon

State	Industries	Prohibited Conduct
California	All Industries	Unlawful to use or distribute an algorithm if (1) it amounts to an agreement not to compete; or (2) someone coerces another to adopt its pricing recommendations
Connecticut	Residential Rental Housing	Unlawful to use a “revenue management device” to set rental rates or occupancy levels.
New York	Residential Rental Housing	Unlawful to use an algorithm to (1) facilitate an agreement not to compete; or (2) set or adjust rental pricing or terms

What's Next for Algorithm Enforcement?

An Ongoing Enforcement Priority

- Pricing algorithms have caught the attention of state and federal enforcers alike
- It is a near certainty that we will see additional investigations and potential litigation in the coming year
- Some have speculated that non-pricing algorithms, such as ones that suggest production levels, could be enforcers' next target
- Any business that relies on algorithms in their competitive decision making should be proactively reviewing their policies to minimize antitrust risk



RPA: A New Life or Last Gasp?

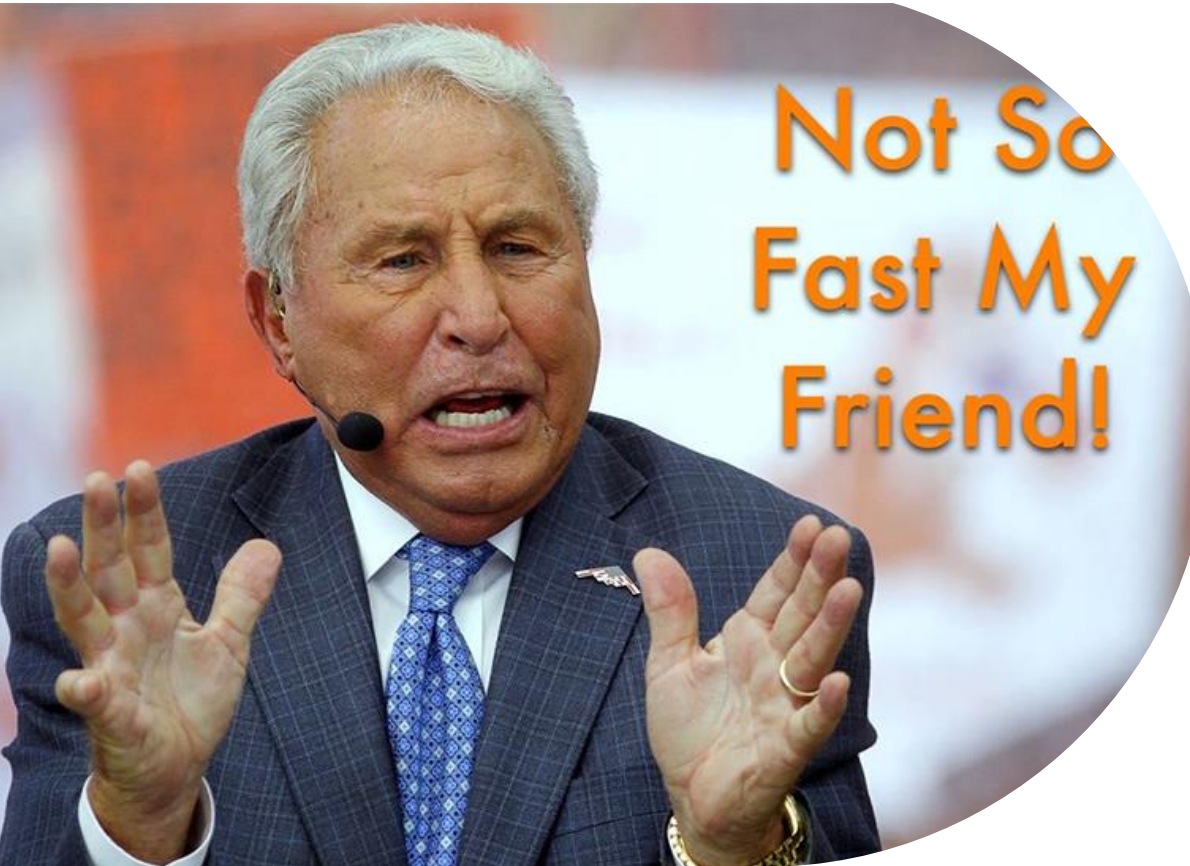
Biden Administration's RPA Revival Attempt: One Year Later

Biden Era RPA Cases: One Dies, the Other Marches On

- Former Chair-Khan's FTC filed two RPA cases during the twilight of the Biden administration
- Chair Ferguson took the extraordinary step of issuing written dissents to both litigations
 - He argued both the cases should not be filed during a lame duck period and that both cases lacked the factual record to support a claim
 - But also stated he would support the right RPA case
- His FTC, however, has only dismissed one of the two cases
- The other case, *Southern Glazer's*, continues forward and survived a motion to dismiss this year



More Federal RPA Enforcement? Not So Fast



Don't Expect Additional Enforcement from the FTC

- Despite Chair Ferguson's and Commissioner Meador's RPA-curious statements, businesses should not expect more federal RPA enforcement from the Trump administration
 - There has been no indication the agency is interested in additional RPA investigations
- Enforcing the RPA, which economists widely agree increases price, would run counter to the Trump Administration's goal of lowering prices
- These cases are extremely complex and resource intensive
 - Chair Khan sought to bring an RPA case her entire tenure and only succeeded in the twilight of the Biden Administration
 - The FTC's significant resource constraints further reduce the likelihood of further enforcement

Content Moderation and Fact Checking: Collusion?

The DOJ and the “Marketplace of Ideas”



Content Moderation as an Antitrust Violation?

- The DOJ and FTC have begun to investigate conduct in the novel “marketplace of ideas”
- Last summer, the DOJ filed a Statement of Interest arguing that coordinated content moderation within an industry suppresses competition in the “marketplace for ideas”
 - Under this theory, for example, social media sites collectively deciding to remove vaccine misinformation could be a Section 1 violation
- The Statement of Interest argued this conduct was so facially improper that courts should adopt the “quick look” rule of reason when analyzing claims
- AAG Slater has stated the DOJ will vigorously protect this “marketplace of ideas”

The FTC's Battle Against Content Ratings



The FTC Takes Aim at Fact Checking and Media Rating

- The FTC has likewise investigated what some argue are purely partisan issues
- In a consent order approving the *Omnicom/IPG* merger, the agency forbid the merged company from:
 - Directing advertising spend based on factors such as political ideology and viewpoint diversity
 - Providing clients “exclusion lists” or “inclusion lists”
- The FTC has also opened an investigation into “potential anticompetitive collusion” to “withhold advertising from disfavored media”
 - This investigation has targeted perceived left-wing organizations such as Media Matters and the Global Disinformation Index
 - Both filed for preliminary injunctions arguing the CIDs were retaliation for their speech
 - Media Matters won in District Court and the matter is on appeal
 - GDI’s motion has not been decided

Merger Enforcement in 2025

Enforcement Update

Mergers: One Year into Trump 2.0

- FTC and DOJ take different paths
- Divestitures are back
- Prior approvals are out of consent decrees
- Early termination is available



Political Lobbying: A New Trend in Merger



One is an Anomaly, Two is a Pattern

- Allegations of back room deals and political lobbying to aid merger clearance at the DOJ
- HPE/Juniper
 - Post-Litigation Consent Decree
 - Fired DOJ Principal DAAG: “there are other people inside and outside government who offer and accept the silver cup and who care little for the antitrust laws.”
- Compass/Anywhere Real Estate
 - DOJ allowed waiting period to expire after a pull and refile despite reporting that AAG Slater wanted to issue a Second Request

Social and Political Issues Enter Merger Review



Merger Investigations Extract Policy Concessions

- Omnicom/Interpublic Group of Companies
 - Consent decree imposes restrictions on Omnicom from coordinating to direct advertising away from media publishers based on the publishers' political or ideological viewpoints
- Will concessions on diversity and other social programs be required for future merger clearance?

The States Enter the Fray

States Taking an Increased Role in Merger Review

- States can investigate and challenge mergers under Section 7 of the Clayton Act and certain state antitrust laws
- Uniform Antitrust Pre-Merger Notification Act
 - Enacted: Washington & Colorado
 - Introduced: California, DC, Hawaii, Indiana, Nevada, Utah, and West Virginia
- Other State Legislative Developments



States Go it Alone



An Ongoing Trend

- States often join federal case
- State Antitrust Enforcement Venue Act
 - State AG antitrust ineligible for consolidation in multi-district litigation
 - Empowered states to file separate antitrust actions, including merger challenges in their venue of choice, including state court
- Trend is likely to continue

The HSR Form: One Year Later

The New HSR Form: What We Have Learned

- We have learned a lot in the past year
- Burden varies widely based on the deal and parties
- Large conglomerates and PE buyer face a greater burden as do filers with overlaps or vertical relationships
- Ordinary course document creation is more important than ever as certain “Plans and Reports” are required to be submitted with certain overlap filings
- Plan proactively and involve counsel early



The New HSR Form: Expedited Review?



The Jury Is Out

- Some in the government have claimed the new HSR form has expedited review and reduced review burden
- New response may raise new questions and do not always align with how staff requests information in VALs
- Remains to be seen how Overlap Description impacts relevant market definition
- More utilization of end notes and additional explanation in the form
- No indications that agencies are using more subjective requirements to bounce filings
- Are parties being given a grace period? Will agency practice change?

2025 Review: EU and UK

Agency Updates

New Leadership (and Direction?)

DG Competition: EVP for a Clean, Just and Competitive Transition

- Teresa Ribera: Spanish lawyer and Spanish ex MP and Minister
- Mission: “Europe needs a new approach to competition policy”
 - Modernizing merger and enforcement guidelines
 - Use of state aid and FSR as strategic tools
 - Focus on industrial/climate goals



CMA: Interim Chair

- Doug Gurr: ex head of Amazon UK
- Appointed to support UK government steer toward growth-focused and pro-investment enforcement, implementing the “4Ps” agenda
 - Pace
 - Predictability
 - Proportionality
 - Process

Antitrust Enforcement Highlights

EU Antitrust: Horizontals

First labor-market cartel decision: *Food Delivery Services*



- Delivery Hero minority investment (15%) in Glovo, gradually increased until acquired sole control in 2022
 - Labor collusion: reciprocal SHA no-hire clauses re “key employees” and general non-solicitation clauses— without specified duration or territory
 - Non-labor collusion: (1) Delivery Hero board member shared Glovo’s documents and CSI; (2) Delivery Hero used shareholding to influence Glovo’s business strategy (incl. aligning geographical footprint); and (3) excessive staff ties
- No-hire obligations not objectively necessary or proportionate: (1) unlimited duration and territory; (2) de facto reciprocal—i.e., beyond what was required to protect investors’ interests in Glovo; and (3) did not apply to all investors
- Fined €329 million for exchange of CSI, market allocation, and employee no-poach agreements

EU Antitrust: Verticals

Luxury/fashion brands fined for RPM and price fixing



- Gucci, Chloé and Loewe enforced RRP, discount caps, promo limits and price alignment
- Active monitoring and pressure on non-compliant retailers, both online and offline
- Hardcore vertical restraint: defense of preserving luxury image and selective distribution failed
- Fined c. €157 million for RPM restricting retailers' pricing freedom

Territorial supply constraints for confectionary products

- Restrictions on where distributors of various confectionary products could sell, preventing parallel passive sales
- Hardcore vertical restraint: restricting passive sales and parallel trade between EU Member States
- Abuse of dominance: refusal to supply and supply discrimination
- Fined €337.5m for restricting cross-border trade

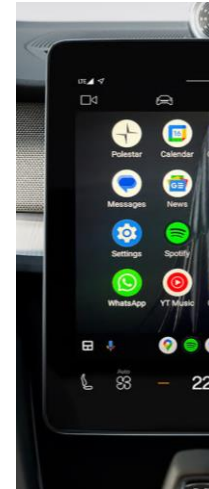


EU Antitrust: Dominance

Focus remains on tech cases



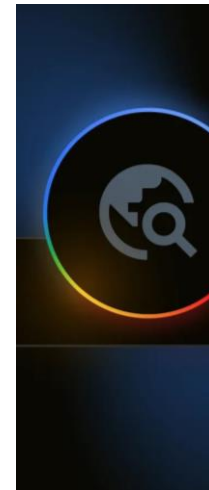
- Google found to have self-preferenced **ad tech** services (publisher ad server DFP, programmatic tools Google Ads/DV360)
- Fined €2.95 billion for abuse of dominant position in the ad tech (advertising technology) market
- Google required to end conflicts of interest and self-preferencing in ad tech supply chain



- Appeal of Italian NCA decision fining Google €102 m for blocking rival EV charging app from **Android Auto**
- CJEU: Refusal to make Android Auto platform accessible to third-party apps found to be an abuse of dominance even though the platform was not “indispensable”



- Investigation re **Microsoft** tying **Teams** to Office/Microsoft 365, potentially foreclosing competition
- Closed subject to commitments: (1) unbundle Teams from Office/Microsoft 365; (2) improve interoperability and data portability for competing collaboration tools



- Ongoing investigation of **Alphabet** for alleged failure to compensate publishers and content creators for use of their content (without consent) in AI powered services and to train Gen AI models

Tech Regulation

EU: DMA Year One

The first decisions



Apple Steering

- Article 5(4) DMA: Allow business users to communicate and promote offers to users, and conclude contracts for free
- Apple business terms restricted steering: (1) Link-outs only to the developer's website; (2) Prohibit routing link-outs to web view; (3) Restrict including data in URLs; (4) require display of “scare screen”
- Steering not just “theoretically permitted.” Developers “... choose and promote distribution channel of their choice and engage in any ... communication and promotion.”

Interplay with other regulations/ investigations

Ongoing App Store investigation (including CTF)



Meta Consent or Pay

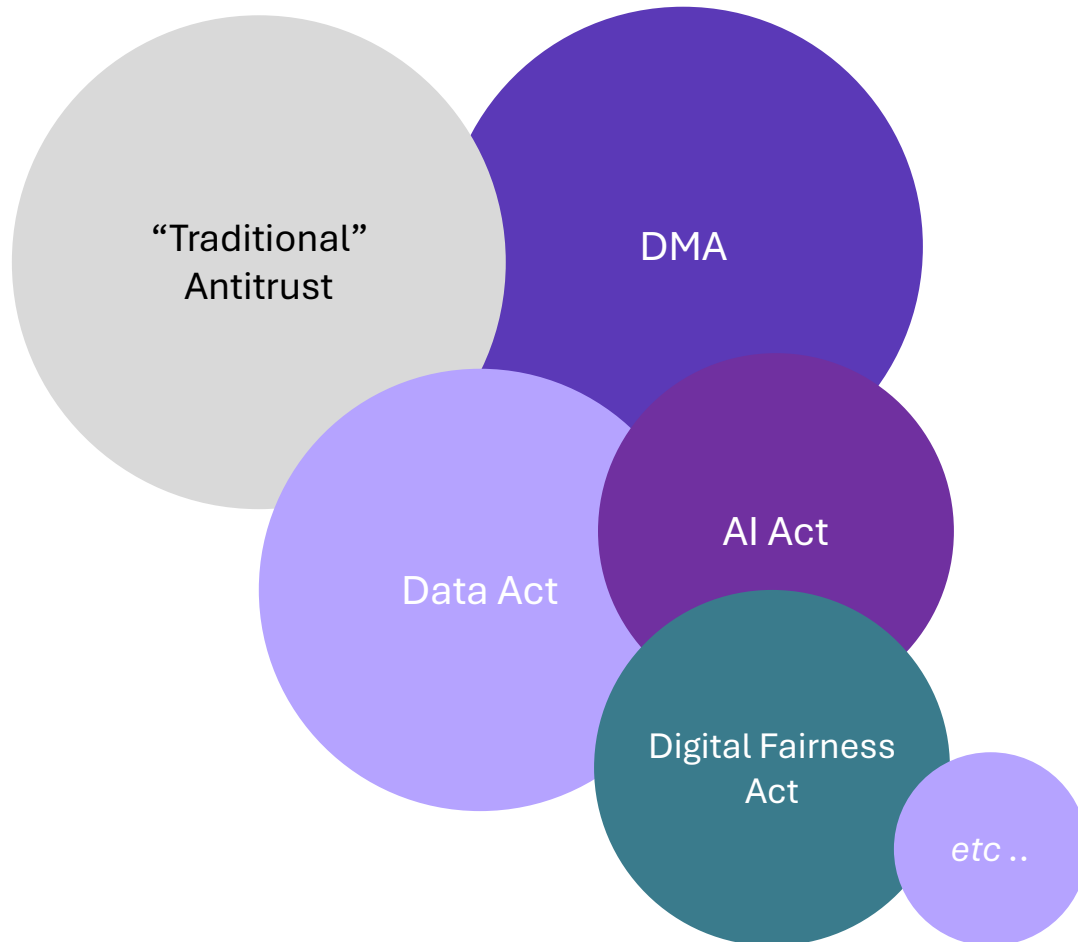
- Article 5(2)(b) DMA: Consent for personal data combination (if not, less personalized but equivalent alternative)
- Meta required consent to personal data combination for personalized advertising ... or pay for an ad-free service
- Binary choice found to not offer users (i) service using less personal data but otherwise equivalent to “personalized ads” service; or (ii) right to freely consent
- Fine €200 million (under appeal)



GDPR (e.g., “valid consent” per Articles 4(11) and 7 GDPR)

EU: Additional Imminent Regulations

Swath of recent or upcoming EU regulations



vs.

EU Digital Omnibus Simplification Package

- Streamline and simplify some of the EU digital rulebook: amend GDPR, Data Act, ePrivacy Directive *etc.*
- Boost competitiveness and innovation: Clarify legal definitions (e.g., personal data, consolidate overlap data frameworks) *etc.*
- Reduce admin overhead and improve coherence: unified incident reporting, streamlined cloud-switching rules *etc.*

UK: Digital Markets, Competition and Consumers Act 2024

DMCC Regime

- Designed to address perceived entrenched platform power by imposing ex ante obligations (similar to DMA)
- CMA can designate firms that have “substantial and entrenched market power” and a “position of strategic significance” in respect of a digital activity
- CMA can impose (1) tailored conduct requirements to ensure fair dealing, open choice and transparency in the digital activity; and (2) behavioral or structural pro-competition interventions

SMS Designation Decisions

- **Apple Mobile Platform:** iOS, iPadOS, native app distribution (including the installation, distribution and operation of native apps through the App Store and functionalities such as mobile cloud management tools and APIs), and Mobile Browser (Safari) and Browser Engine (WebKit)
- **Google Mobile Platform:** OS (Android, including certain intermediary OS-level functionalities), native app distribution (Google Play) and mobile browser and browser engine (Chrome and Blink)
- Implications:
 - Not a finding of wrongdoing; only frames scope for potential tailored measures in the five-year designation period
 - Road map for potential measures and consultation pending



Mergers

Mergers

EU Reviews Merger Guidelines – once in a generation review



- Modernize the horizontal analytical framework for merger control after 20 years; expanded to include non-horizontal framework
- Consider how innovation, resilience and investment incentives should be systematically integrated into merger assessment
- Calls for clearer treatment of:
 - Efficiencies (including non-price and dynamic efficiencies) and better evidential standards to balance such claims against competitive harm
 - Data, digital ecosystems and network effects, and how they should factor into competitive impact analysis

UK

- Introduces new “hybrid” test, mandatory regime for SMS-designated firms and “de minimis” threshold for share of supply test
- Strategic Steer and Mergers Charter
- Consultation on draft revised merger remedies guidance (inc. greater openness to behavioural remedies, even in Phase 1)
- Updated guidance on jurisdiction and procedure (material influence, share of supply tests, and 40 wd pre-notification KPI)



EU and UK: Summary Statistics 2025

EU	
Phase 1 Clearance	359
Phase 1 remedies	9
Phase 2 Clearance	2
Phase 2 Remedies	0
Phase 2 Blocked	0
Article 22 Referrals	1
UK	
Phase 1 Clearance	25
Phase 1 remedies	5
Phase 2 Clearance	2
Phase 2 Remedies	1
Phase 2 Blocked	1*

*Remittal (Spreadex/Sporting Index)

Industrial Policy and Geopolitics

EU/UK: Industrial policy and geopolitics

EU

- “Draghi Report” steer to increase the weight of innovation and investment commitments, sovereignty debate
- Modernize competition tools to support European competitiveness
- Specific initiatives, e.g., European Competitiveness Fund for large-scale investment into strategic sectors to close the EU’s “innovation gap”
- Potential tension between industrial policy priorities and strict enforcement of antitrust rules
- State Aid and FSR can be used as strategic tools

UK

- CMA strategic steer to support the growth agenda
- Unclear how the 4Ps will impact substantive decision making at the CMA
- Clear reduction in CMA enforcement activity (and aggressiveness)

... but impact of the U.S. government on EU/UK enforcement yet to be seen