A summer of big-tech trouble
A summer of big-tech trouble

Barely a day has gone by this summer without news of another competition investigation, market study or report involving one of the Big Four – Google, Amazon, Facebook or Apple (GAFA). Regulating the tide of big tech growth is firmly at the top of the to-do-lists of most competition authorities this year and will shape the way competition law operates in most jurisdictions.

This has been evident in various reform proposals covering digital markets, including merger control assessment and digital advertising. As a result, going forward, online platforms and tech businesses will need to carefully examine their commercial relationships and future acquisition plans.

A stream of antitrust investigations into platforms

In the U.S., both the Department of Justice and the Federal Trade Commission have been taking steps to launch formal antitrust investigations into the large platform providers – most recently a rumoured investigation into a partnership between Apple and Amazon. The targets of the DOJ’s probe have not yet been named, described only as “market-leading online platforms” providing search, social media, and some retail services online. However, the implication is that this refers to Google, Facebook, and Amazon. Facebook has since publicly acknowledged open antitrust investigations by both the FTC and the DOJ.

Amazon is also facing scrutiny across the pond, with the European Commission launching an investigation on the grounds of both abuse of dominance and entering into anti-competitive agreements. It has at its heart Amazon’s dual role as (i) a marketplace that hosts sellers, and (ii) a retail business selling branded goods in competition with the same sellers. The EC aims to establish whether competitively sensitive data collected by Amazon from independent sellers on its marketplace is used for the benefit of its retail business and whether this in turn is in breach of EU competition rules.

Click on a story above to read the related article
The investigation follows Amazon’s recent settlement with antitrust authorities in Germany and Austria, agreeing to amend its business terms for online traders that use its Marketplace platform. Meanwhile, Italy’s competition authority continues to scrutinise whether Amazon’s e-commerce business unfairly favours its own delivery business.

These examples highlight an increasing trend of investigation and enforcement against digital platforms, in particular those that both host services and compete with them. Other cases to watch include the EC’s rumoured probe following Spotify’s complaint in respect of Apple’s policy of “penalising” users of rival content-streaming services earlier this summer and China’s State Administration for Market Regulation’s investigation into potential exclusionary conduct by electronic platforms.

This general trend is underscored by Google’s €1.49bn EU fine earlier this year for imposing a number of restrictive clauses in contracts with third-party websites, preventing rivals from placing their search adverts on those websites.

**Addressing perceived missed opportunities to intervene in M&A**

Authorities are looking to change the way they assess digital mergers. This comes against the backdrop of increasing concern about “killer acquisitions” – the alleged practice by big tech (and also pharma) of buying up small innovative players to prevent them from becoming effective competitors – and the perception that authorities have missed opportunities to robustly scrutinise GAFA acquisitions such as Facebook/WhatsApp and Facebook/Instagram.

Brazil’s CADE is working with competition authorities in the other BRICS countries on a digital markets report, which will study how the authorities should review mergers, acquisitions and conducts in digital markets. The U.S. platform investigations are also likely to involve a review of historical mergers – an exercise conducted in the UK as part of the CMA-commissioned Lear Report – to inform merger policy going forward. The EC’s report on competition policy in the era of digitisation also suggests changes to the approach for substantive assessment of mergers.

**Ads in the spotlight**

Digital advertising is a key area of focus for authorities reviewing platforms’ conduct. The French Competition Authority has issued a report on online advertising and the UK Competition and Markets Authority has recently launched a market study into digital advertising markets. In Australia, the Australian Competition and Consumer Commission published its final report following a study of digital platforms, which found that large platforms are able to squeeze out competitors in the advertising space.
A summer of big-tech trouble

These initiatives will likely translate into closer scrutiny of tech mergers globally. They may also lead to increased intervention, particularly in jurisdictions like the UK that have jurisdictional tests that can be interpreted flexibly to catch smaller acquisitions or investments (see, for example, the CMA’s recent unexpected merger inquiry into Amazon’s investment in Deliveroo).

Rethinking the toolbox

Beyond enforcement under existing rules, the past year has involved a lot of soul-searching by competition authorities, with a plethora of reports, both completed and on-going, from the EU, U.S., India and beyond. These reports seek to make sense of the current competitive landscape in a digital world and to identify the appropriate toolkit to tackle it.

Digital markets exhibit a unique set of characteristics. For example, they often have significant barriers to entry, where access to vast amounts of data and a certain size are required to be profitable. Services are often offered for free, meaning the standard price-based competition analysis does not apply. They are also fast moving, meaning authorities must react fast to avoid anti-competitive behaviour damaging the market.

This raises the question whether competition authorities, applying their traditional framework and set of tools, are currently well equipped to understand these markets and intervene effectively. For example, in response to the fast moving nature of digital markets, there have been calls in the UK for greater use of interim measures, while the EC is set to impose interim measures on Broadcom.

Most competition authorities that have considered these issues in depth think that, while a major overhaul of competition rules is not required (as per the joint statement issued by competition authorities of G7 Member States), a sector-specific application is required in digital markets.

New specialist bodies to enforce competition rules in digital markets?

A common proposal across most reports is to create a specialist digital body or unit to develop expertise in digital markets and algorithms. This would help to overcome the information asymmetry that has so far left competition authorities following in the trail of big tech companies. The ACCC’s final report recommends the establishment of a specialised unit within the ACCC that could “build on and develop expertise in digital markets and the use of algorithms.” The UK Furman Report has proposed creating a new digital markets unit with specific powers including to set a code of conduct for companies with “strategic market status”. And in the U.S., the Stigler Report suggests creating a specialist agency for digital platforms that would apply different rules to companies with “bottleneck power”.

"Competition authorities are determined to get to grips with how digital markets work, especially in relation to digital platforms and the role of big data. Translating this better understanding into a more coherent and effective framework for intervention will be the real challenge going forward."

Christian Ahlborn
Why comply: The value of an effective compliance programme
Competition law infringements attract significant financial penalties, both in terms of fines and private damages claims.

Logically, many companies seek to establish effective antitrust compliance programmes designed to help employees follow the competition rules and avoid costly breaches. In more and more jurisdictions competition authorities encourage companies to instil a robust compliance culture by dangling the “carrot” of a potential fine reduction in the event of a subsequent breach. Over the summer, the U.S. authorities joined the ranks of those enforcers that give credit for effective antitrust compliance programmes.

The question is, how best to design a robust compliance programme that will cut the mustard globally?

**Major reversal in U.S. approach to compliance “carrots”**

In July, the DOJ announced that it will offer companies credit for having in place “robust” corporate antitrust compliance programmes, reversing its longstanding policy on this issue. Going forward, the DOJ will consider compliance programmes in deciding whether to file criminal charges and in calculating fines for antitrust infringements. Also, when a company faces charges, it will now be eligible for a Deferred Prosecution Agreement, rather than having to plead guilty (see our Insights).

This about-turn by the DOJ has shone a light on the debate over the merits of crediting compliance efforts. The argument in favour is that giving credit for pre-existing programmes provides an incentive for companies to invest properly in antitrust compliance, thereby preventing violations, rather than waiting until a violation occurs.
Other jurisdictions that offer discounts

The new U.S. policy brings the DOJ into line with a significant number of competition authorities – including Australia, Brazil, Canada, Israel, Italy, Malaysia, Singapore, South Africa, Spain, Switzerland and the UK. These authorities will, in principle, consider a compliance programme as a mitigating factor in the calculation of fines.

Some authorities have also provided express guidance as to what may be considered sufficient to merit a reduction in any fine – and the potential amount of such a reduction. For instance, the CMA’s penalties guidance notes that an existing compliance programme may be taken into account in granting a fine reduction of up to 10% and in deciding whether to impose a director disqualification order, and that the CMA will consider carefully whether evidence of any compliance activities in a particular case merits a discount. The mere existence of compliance activities will not be enough. The CMA has published separate guidance to assist businesses to achieve competition law compliance.

Meanwhile, the Italian authority has had formal guidelines in place since 2018 which set out in detail the required content of any effective compliance programme and the criteria that it will apply to determine whether, and to what extent, it will award a fine reduction.

Most recently, Russia’s Federal Antimonopoly Service introduced a draft bill to Parliament, which seeks to foster a culture of compliance by defining the requirements for compliance programmes in the Competition Law. This is a small step following previous attempts to make compliance programmes mandatory – if not for all companies active in Russia, then at least for those which are controlled by the Russian state – and, at the same time, to remove or reduce liability for competition law breaches by companies that have taken all reasonable steps to implement a robust compliance policy and acted in accordance with it. But including a legislative definition should facilitate adoption of further reforms in this area in the future.

The DOJ issued detailed guidance on what it will look for when evaluating corporate compliance programmes. The key principles highlighted by the DOJ are to: (i) ensure the programme is well designed; (ii) assess whether the programme is being implemented effectively; and (iii) ask whether the programme works in practice.

This is largely in line with best practice developed in other jurisdictions. We have condensed the most important and common elements of guidance provided by competition authorities globally to comprise a list of top tips for building effective compliance:
Proper design and comprehensiveness

Whilst it is generally recognised that there is no “one size fits all” model, authorities will consider a programme’s design, format and comprehensiveness, as well as its accessibility for employees and who takes operational responsibility for the programme within the company.

Risk Identification

Effective compliance programmes should be tailored to a company’s business. The key competition law risks will vary depending on the nature and size of that business.

Risk assessment

This involves considering in turn each of the risks identified above and assessing them as high, medium or low, for instance by reference to employees’ degree of exposure to antitrust law risk.

Risk mitigation

This typically involves implementing suitable training activities, policies and procedures.

Periodic risk monitoring and review

An effective compliance programme should feature review procedures and include proactive auditing - such as the collection of metrics and information – specifically aimed at uncovering any antitrust violations.

Culture of compliance

Management (from the top down) must demonstrate a clear and unambiguous commitment to competition law compliance throughout the organisation.

Reporting, incentives and remedial action

Compliance programmes should include mechanisms that allow employees to anonymously and confidentially report antitrust violations, provide incentives to ensure a programme is enforced and a process for handling remedial action taken by companies to prevent recurring violations.

“Given that this year the U.S. government has released guidance on its expectations for anticorruption, sanctions, False Claims Act, and antitrust compliance, it is an opportune time for companies to re-examine their programs to make sure they measure up.”

Douglas Tween
It is as important as ever for companies to invest in developing and implementing a robust compliance policy from the top down – not only to reduce the risk of wilful or unintended breaches of competition law by employees, but also to potentially benefit from any available reduction in fines ultimately imposed by authorities down the line.

Jonas Koponen

The opposing view: no reward for ineffective compliance measures

Meanwhile, the EC continues to refuse to treat compliance programmes as a mitigating factor when setting cartel fines, its reasoning being encapsulated in former Commissioner Almunia’s question “why would I reward a compliance programme that has failed?”. Similarly, Belgium, Japan and South Korea do not provide for any mitigation of fines, whilst both France and India have reversed their earlier, more generous, approach and now rule out discounts for any compliance programmes that are implemented after the anti-competitive conduct occurred.

For other jurisdictions, the position is unclear, or the law is silent. This is the case, for instance, in Germany and China.

Does greater compliance = less enforcement?

In recent years, a debate has raged over the causes behind a reduction in enforcement by authorities in the cartel space. This may in part be due to companies being less inclined to apply for leniency to avoid having to deal with burdensome and inconsistent approaches between jurisdictions and the risk of follow-on damages. However, an additional important likely factor is that efforts over many years to instil a culture of antitrust compliance within organisations have indeed led to companies being better able to detect, and therefore prevent, any potential anti-competitive conduct at an earlier stage.

The ultimate goal: no infringement at all

The increasing use of compliance “carrots” reinforces the importance for clients of maintaining an effective compliance programme. Roughly half of the top global economies in the G10 and G20 have implemented or are implementing some mechanism for reducing or mitigating fines based on compliance efforts either prior to or after discovery of an infringement. For most multinational companies, these jurisdictions will represent a significant percentage of their fine exposure based on volume of commerce.

The potential reduction in any fine or other regulatory sanction should be seen as an important incentive for businesses to develop and implement effective antitrust compliance programmes or to review their existing ones.

But ultimately the driving force behind any compliance programme should be to avoid an infringement – and any ensuing investigation – in the first place. Regulatory sanctions are by no means the only consequence of an antitrust infringement. The reputational damage and the risk of private follow-on claims for damages can often dwarf any administrative fines in terms of financial liability.
Respect for merger review process at the top of enforcers’ agenda: top tips for survival
Over recent months, competition authorities around the globe have shown no signs of backing down from intervening in mergers which they consider raise competition concerns.

It is therefore important for merging parties to prepare competition workstreams as early as possible and engage proactively with authorities. As authorities place an ever-stronger reliance on internal documents to inform their view of a transaction and the markets, parties should focus on document preparation from the early stages. The greater coordination we have been seeing between authorities also increases the importance of maintaining a cohesive strategy across all filings to avoid getting caught out.

Prohibitions, prohibitions, prohibitions

The EC has prohibited three mergers in recent months, while in the UK, there have been three effective prohibitions (including cases which have resulted in divestment of the UK business). It appears that in a further five cases the parties abandoned the deal upon referral to Phase 2 or after receiving the CMA’s provisional findings. The authorities’ approach has been largely attributed to the growing public perception that, despite the “consumer welfare” goal of competition regulation, ordinary consumers do not feel that competition law works for them. Nor can they rely on markets to self-correct their own failures.

The U.S. authorities have also been vigorously challenging mergers, including based on vertical theories of harm as illustrated by a number of contentious FTC decisions. State attorneys general have become more active in intervening where they believe that federal enforcement falls short. Examples are the Colorado AG’s challenge in UnitedHealth/DaVita endorsed by the Democratic Commissioners, plus several states’ objections to the DOJ settlement in Sprint/T-Mobile.
Tougher remedy requirements

Merging parties are finding themselves subject to tougher remedy requirements. Remedies that would have previously been considered sufficient to address competition concerns are now found wanting. This is because authorities are keen to ensure that the divested business will remain viable and competitive going forward and now regularly seek divestiture commitments as a condition to closing the main deal (a so-called “upfront buyer” remedy). This means that parties can only close the main transaction once they have signed a binding sale and purchase agreement for the divestment business with a purchaser approved by the authority.

Around 85% of U.S. and 35% of EU divestiture remedy cases now require an upfront buyer. The U.S. agencies have even imposed global hold separates in some deals in lieu of an upfront buyer requirement (see e.g. Bayer/Monsanto and Linde/Praxair). The consequences of a global hold separate can be far-reaching and potentially costly, as the parties will not be able to integrate their operations anywhere in the world before the U.S. agencies agree to lift the hold separate order – which typically will only occur once the divestiture sales have closed. There are also signs that U.S. courts may seek to play a more active role in approving settlements with the DOJ in a departure from their historical practice. We saw this in CVS/Aetna, where the judge held hearings to consider whether the agreed divestiture to WellCare was an adequate remedy.

Parties must devote considerable time and resources to prepare complex asset divestitures. It is not uncommon for merging parties to negotiate – and in some cases even sign – divestiture agreements with potential buyers well before the main deal is approved. Sometimes this occurs even before the authority has engaged with the parties regarding remedies. While such strategies gain time, they carry significant risks if, contrary to the parties’ expectations, the authority requires a different divestment and/or buyer. Not every proposed buyer will be a “suitable” buyer. In particular, strategic buyers operating in the same industry as the divestiture business may not be acceptable. Conversely, there has been some increased reluctance to accept private equity buyers on the basis of a perceived lack of market-specific expertise.

Greater reliance on internal documents

Authorities are relying more heavily on parties’ internal documents – e.g. board papers, presentations and certain internal emails – to draw conclusions on market definition and the competitive assessment. Requests by the EC to produce millions of pages of documents on short notice are becoming commonplace, resulting in parties undertaking significant document trawl exercises using e-discovery tools. Meanwhile, the ACCC has flagged that it intends to take a more document-heavy, evidence-based approach, including issuing more compulsory requests for documents.
Failure to comply fully with document requests within a short time frame will mean delays in the review timetable. Sanctions are also possible for the provision of incomplete or misleading information. For example, in August the CMA fined Rentokil Initial £27,000 for failing to provide without reasonable excuse the information requested during the CMA’s Phase 1 investigation into its acquisition of the pest control business of MPCL Ltd (formerly Mitie Pest Control Ltd). Rentokil argued that it had received the CMA’s approval regarding its internal document search methodology, which it had then applied in good faith. But according to the CMA the company was ultimately responsible for ensuring that the manual searches it conducted produced sufficiently robust results.

**Greater coordination among agencies**

Increased coordination and dialogue among authorities can be a very good thing; for example, in Linde/Praxair, close regulatory cooperation enabled the EC to rely on the U.S. remedy to issue its clearance decision. But it can also play against the parties, with complaints, concerns or evidence presented before other authorities being taken into account. In AB InBev/SAB Miller, the EC relied heavily on internal documents that were identified by the DOJ, and which were ultimately used as evidence for the EC to ask the parties for additional remedies.

**Stricter enforcement of suspension obligations**

The EC’s record €124.5m fine imposed on Altice last year is a cautionary tale of how things can go wrong pre-closing and highlights the importance of ensuring appropriate pre-closing covenants and safeguards for exchanging commercially sensitive information. More recently, Canon has been the subject of gun-jumping fines in China, the U.S. and the EU in relation to its two-step acquisition of Toshiba Medical Systems. While an outlier case based on extreme facts, the conclusions by the EC and DOJ this summer are a clear reminder that caution should be exercised when using two-step structures given the risk of authorities “looking through” and treating them as one transaction that transfers control of the target after the first step.

The bigger question is whether more robust structures would carry a lower risk of being viewed as breaches of the EU and U.S. gun jumping rules. In this regard, we expect that internal documents will be key to the assessment of whether a warehousing or option structure can be considered genuine.

Meanwhile, SAMR continues to aggressively pursue failures to notify and has already imposed five penalties this year, while the ACCC issued its first gun-jumping fine – against Cryosite Limited – in February.

“

The challenges for companies seeking to combine their activities are continuing to increase. Merger enforcement is on the rise across the world with higher intervention rates, longer and more demanding reviews and sometimes tougher remedies than expected. A good early analysis of the possible antitrust risks and, where possible, early engagement with the agencies may be important to avoid unpleasant surprises and unforeseen delays for your deal.

Gerwin van Gerven

"
### Top tips for getting your deal over the line without surprises

<table>
<thead>
<tr>
<th>Task</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prepare and prioritise</td>
<td>Assess deal documents and data against potential competition concerns, prepare and map out filings and strategy for clearances. Allocate risk and then stick to the narrative. Don’t forget foreign investment screenings. In sensitive/political deals plan government affairs and PR strategy in advance of announcement.</td>
</tr>
<tr>
<td>Consider deal drivers and valuation</td>
<td>What is the narrative for deal rationale and what do internal documents and evidence say about this? Valuation is particularly important where target is a potential entrant or active in digital sectors.</td>
</tr>
<tr>
<td>Don't score an own goal via internal documents</td>
<td>Consider what documents say when read “cold”. Put in place document creation guidelines early and ensure that they are implemented. Be ready for huge document trawls: on big deals, forensic software will be needed.</td>
</tr>
<tr>
<td>Prepare the exit ramps</td>
<td>Identify buyers with a critical eye, they will play an important role. Note increasing requirements being placed on “suitable” buyers. Consider a wider than conventional remedies assessment – at what point do the deal economics break?</td>
</tr>
<tr>
<td>Watch out for gun jumping and accuracy of filings/responses to information requests</td>
<td>Put in place guidelines (including around any integration planning) from the outset and ensure that they are implemented in practice. Mistakes will be costly (see Altice).</td>
</tr>
</tbody>
</table>

> Enforcement of global deals has become more connected, with agencies often coordinating in relation to evidence and outcomes. Against this background, the best strategy is to be open and consistent. Telling a different story to different agencies may lead to delays and make the parties lose credibility.

Antonia Sherman
Competition vs. industrial policy: where do we draw the line?
Something old, something new

Debates about the interplay between industrial and competition policy – and whether competition law can and should prevent the creation of national champions – are nothing new. But this issue has gained considerable momentum around the world as both the technological revolution and the political shift towards national protectionism continue at pace.

Political backlash against EU competition policy in the wake of Siemens/Alstom

The EC’s decision in February to prohibit the Siemens/ Alstom railway merger sparked intense criticism – particularly from France and Germany – on the basis that the merged entity would have been able to compete more effectively with Chinese and U.S. industry players. However, according to the EC, the parties could have – but failed to – adequately address its legitimate competition concerns by offering suitable remedies.

Indeed, notwithstanding often extensive lobbying, the EC is legally required to apply a competition-based test in merger control cases and has no powers to consider industrial policy concerns. By contrast, there is no constraint under EU law on a government of a Member State taking into account industrial policy concerns to approve an anti-competitive merger over which its national competition authority has jurisdiction, and many Member States have such mechanisms in place – albeit they are used rarely in practice.

A joint manifesto published in July by France, Germany and Poland rows back from the previous joint manifesto published by France and Germany in February, which advocated the softening of the EU competition rules, including by enabling ministers to intervene “in well-defined cases” on industrial policy grounds. The new proposal suggests that the EU’s Competitiveness Council (made up of Member State ministers) should have input on merger policy, while an Advisory Committee in merger control should feed input from Member States into EC decision-making based on the competitiveness of EU industry.

However, the prospect of increased state intervention has been met with concern in many quarters, most recently in a position paper by the Dutch government, on the basis that competition enforcement should remain independent from politics and that bigger is “not always better”.

It is clear that there is no uniform view on this topic among the Member States and it remains to be seen whether these initiatives will lead to actual change, or whether they are just the most recent example of a recurring theme over past decades.
Light at the end of the (railway) tunnel – other ways to ensure a coherent industrial policy

Notwithstanding the EC’s resolve (so far) to apply only competition-based principles when reviewing mergers, Competition Commissioner Vestager has acknowledged that there is still room for a European industrial policy. Indeed, it has been suggested that she may take on this portfolio herself. While EC President-elect von der Leyen’s policy programme is largely silent on reforming the EU Competition rules, she has indicated that she will “update” the EU’s industrial policy.

In the meantime, the EC has pointed to other ways to apply industrial policy objectives and to level the playing field with non-EU countries:

> More flexible application of State aid rules. EU State aid rules only cover aid granted by Member States and do not cover potential distortive effects of unfair subsidies or support by third countries. The EC plans to identify before the end of 2019 how to address this. In the meantime, the EC has already relaxed the rules for Important Projects of Common European Interest, in relation to which Member States can pool their resources to support a project of common European interest in all sectors and can grant support to cover up to 100% of the funding gap. For example, the EC recently approved an alliance among France, Germany, Italy and the UK to finance €1.75bn worth of research into micro-electronics.

> Reciprocity in relation to public procurement rules. The EC has urged Member States to accelerate stalled talks over the International Procurement Instrument, which could be implemented as soon as this year to provide the EU with additional leverage to request reciprocity in rivals’ markets. This approach has been echoed in a recent statement by Aegis Europe, a cross-industry alliance, which has called for greater assertiveness by the EU in the context of trade with China.

> Introduction of new foreign investment screening powers. Responding to the growing concerns around large foreign investment streams coming into Western countries (in particular from China), the EU has adopted new rules to strengthen the screening of foreign investment. A number of other jurisdictions have introduced or strengthened existing foreign investment regimes to more closely scrutinise inward investment.

Faced with the challenges of a rapidly evolving digital economy and the populist trend towards protectionism, there is a now a clear division between what some stakeholders want from competition policy and what the current framework is able to deliver.

Thomas Elkins
U.S. calls to include broader policy factors in competition reviews

The substantive test applied by U.S. agencies is generally limited to competition considerations. Non-competition issues, such as effects on labour rates and industrial policy, can only be considered under the expanding scope of the U.S. foreign investment review process. Nevertheless, several high-ranking politicians have called for new rules to expand the agencies’ powers to include broader policy factors.

Separately, it has been suggested recently that industrial policy considerations around the need for U.S. leadership in 5G technology have crept into the DOJ’s antitrust enforcement policy. For example, the DOJ (together with the Department of Defense) has unprecedentedly sought to intervene in the FTC’s successful enforcement action against Qualcomm seeking a stay of the remedies pending appeal, arguing the order would “potentially undermin[e] U.S. leadership in 5G technology and standard-setting, which is vital to military readiness and other critical national interests.” In addition, the terms of the DOJ’s settlement with Sprint/T-Mobile are rumoured to consider in part the parties arguments on the need for a combined entity to effectively compete in the roll out of 5G technology. This is set against the backdrop of active CFIUS enforcement and the recent sanctions against Huawei.

Trade tensions between the U.S. and China

While considerations of a transaction’s impact on the Chinese economy may be considered explicitly or implicitly during the merger review, SAMR and its predecessor have never explicitly challenged a transaction on this basis. In theory, such considerations could support domestic consolidation or create additional challenges in securing expeditious merger clearance for cross-border transactions and inbound investments.

The trade tension between the U.S. and China over the last 12 months has raised fears that the authorities would use their merger review powers to political ends, especially after Qualcomm was forced to drop its attempted acquisition of NXP because of an unfinished lengthy review by SAMR. For example, there was much speculation that United Technologies/Rockwell Collins or Disney/21st Century Fox would fall victim to the U.S./China trade war. But during one week in November 2018, SAMR cleared both deals.

Fredrik Lowhagen

“

The EU State aid rules only cover aid granted by Member States and do not cover potential distortive effects of unfair subsidies or support by third countries. These rules could be more flexibly used to strengthen European industries in strategic sectors, especially by facilitating cross-border collaboration.”

Fredrik Lowhagen
Contacts

Christian Ahlborn
Tel: +44 20 7456 3570
christian.ahlborn@linklaters.com

Sir Christopher Bellamy QC
Tel: +44 20 7456 3457
christopher.bellamy@linklaters.com

Jonas Koponen
Tel: +32 2 505 02 27
jonas.koponen@linklaters.com

Douglas Tween
Tel: +1 212 903 9072
douglas.tween@linklaters.com

Fay Zhou
Tel: +86 10 6535 0686
fay.zhou@linklaters.com

Gerwin van Gerven
Tel: +32 2 505 03 05
gerwin.vangerven@linklaters.com

Nicole Kar
Tel: +44 20 7456 4382
nicole.kar@linklaters.com

Thomas Elkins
Tel: +33 1 56 43 58 35
thomas.elkins@linklaters.com

Antonia Sherman
Tel: +1 202 654 9268
antonia.sherman@linklaters.com

Fredrik Lowhagen
Tel: +34 91 399 61 35
fredrik.lowhagen@linklaters.com

linklaters.com

© Linklaters LLP. All Rights reserved 2019

Linklaters LLP is a limited liability partnership registered in England and Wales with registered number OC326345. It is a law firm authorised and regulated by the Solicitors Regulation Authority. The term partner in relation to Linklaters LLP is used to refer to a member of Linklaters LLP or an employee or consultant of Linklaters LLP or any of its affiliated firms or entities with equivalent standing and qualifications. A list of the names of the members of Linklaters LLP and of the non-members who are designated as partners and their professional qualifications is open to inspection at its registered office, One Silk Street, London EC2Y 8HQ, England or on www.linklaters.com and such persons are either solicitors, registered foreign lawyers or European lawyers.

Please refer to www.linklaters.com/regulation for important information on our regulatory position.