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Antitrust & Foreign Investment Legal Outlook 2025

> 2025 is shaping up to be a year of seismic shifts in how regulators approach competition policy, as political changes and concern over national and economic priorities dominate.
>
> Processes and enforcement rooted in neoliberal thinking are under pressure. This might create windows of opportunity for projects that support competitiveness, growth or help addressing the other challenges that economies are facing."

Bernd Meyring, Global Head of Antitrust and Foreign Investment

All change ahead

Looking ahead to 2025, regulators' approach to competition law is expected to see considerable shifts. On a tide of concern for national and economic security – and following a year with considerable political change – expect government pressure to prioritise growth, investment and innovation, to shape how regulators review transactions and enforce antitrust rules.

While dealmakers may see increasing obligations and longer timeframes in cases with substantive issues, regulators may be more amenable to dialogue with parties and accepting alternative remedies, in the interests of "getting the deal through".

Concerns about the cost-of-living will see consumer law looking to fill gaps in antitrust enforcement this year. Cross-border coordination is likely as enforcers tackle Gen AI and digital markets to fill the perceived gaps left by traditional antitrust rules and digital regulations, while advanced investigative tools and increased numbers of penalties mean greater risk for companies.

Read on to find out more on what to look out for in the year ahead and how best to prepare.

M&A regulatory hurdles in 2025

Regulators batten down the hatches: focus on protectionism, economic growth and innovation

As we move into 2025, global geopolitical changes will prompt a fresh outlook on merger control rules. An increased focus on national security and growth – alongside the "changing of the guard" in the EU, UK and US – is anticipated to result in a global shift towards more 'traditional' (but protectionist) merger enforcement.

In the US, after years of aiming to deter anti-competitive mergers from "making it out of the boardroom", the advent of the new President could bring a change in rhetoric from the FTC. Efforts to protect US companies from being "taken advantage of" may well be reflected across trade and merger policy in 2025. While signs are currently that vigorous enforcement against problematic transactions will continue in the US across many key sectors – including big tech – agencies may focus on more traditional enforcement theories and be more open (than in recent years) to negotiating a broader range of remedies to address concerns.

New competition chief, Teresa Ribera, has plans to modernise EU merger rules, including the Horizontal Merger Guidelines, enabling EU companies to remain competitive and reducing dependence on third countries. As proposed in the Draghi report, this may involve allowing European companies to gain scale through mergers, combined with a new innovation defence (to allow for consolidation in strategic sectors, including telecommunications and defence). Recent signs from the usually-interventionist UK's CMA also suggest a change of tone (following a year with only one merger prohibition) – perhaps fanned by government pressure to prioritise economic growth, investment and innovation – with possible implications on merger enforcement beyond UK borders.

Notwithstanding the investor-focused rhetoric, wider public interest considerations may continue to impact merger review – for example, this year, South Africa will apply guidelines on the influence of public interest factors in merger evaluation. And although sustainability related concerns have featured less in merger reviews this year than expected, they remain a core consideration for regulators. But while the impact of consolidation on worker mobility has been a focus for the FTC, we expect that this will be pared back under future leadership.

Keeping energy prices competitive

Energy will remain a key focus for regulators in 2025, interlinked with the impact of its cost on prices in other sectors and broader concerns over national and regional competitiveness. Following enforcement in Australia and Japan on energy prices and the establishment of an energy task force in New Zealand, expect more action to keep prices competitive in the coming year. The EU will consider a new State aid control framework for sectors like energy, with more aid allocated to support cross-border innovation. The UK is also bringing in a special regime for mergers of energy networks, with a view to achieving cost savings for consumers.

Back to the drawing board – catching the right deals

Despite the Court of Justice's pivotal overturn of the Illumina decision (hailed as a win for legal certainty), the EC has been clear that below-turnover threshold deals will not escape scrutiny. Front of mind are mergers and partnerships in the AI space (involving targets with a very low or zero turnover) (see *Spotlight* section for more on Gen AI), in addition to pharma deals.

Legislative changes may be considered, as in Germany – and as proposed in the Draghi report. In the interim, the ability to catch these deals will increasingly depend on Member States obtaining call-in powers for below-threshold deals ("actively encouraged" by the EU) and referring these transactions, albeit – at the cost of potentially undermining the very legal certainty called for by the Court. Expect this to move fast – many Member States (including Denmark, Hungary, Ireland, Italy and Sweden) already have such powers and as many as two-thirds may have them in place by the end of 2025.

Elsewhere, incoming regimes are seeking to build in this flexibility – the new Australian regime is likely to include threshold rules aimed at capturing killer acquisitions of nascent competitors, and to call in below-threshold mergers. Even in China, where reforms in 2024 saw the removal of its "killer acquisition" provision, SAMR retains residual jurisdiction to call in transactions falling below turnover thresholds (although this is currently rarely used).

As for transactions meeting turnover thresholds, vertical mergers and serial acquisitions continue to draw attention. Incoming Australian rules have explicitly targeted these, the US FTC has highlighted these as areas of focus, and the UK and China are each consulting on national guidance on the review of non-horizontal mergers. In Brazil, CADE was poised to block a merger based on vertical integration concerns for the first time, which has now been abandoned.

"Regulators are ever conscious of perceived enforcement gaps in certain sectors of M&A, but will feel pressure to balance this against a need for certainty and investor confidence. This dynamic will be evident in transactions in the coming year."

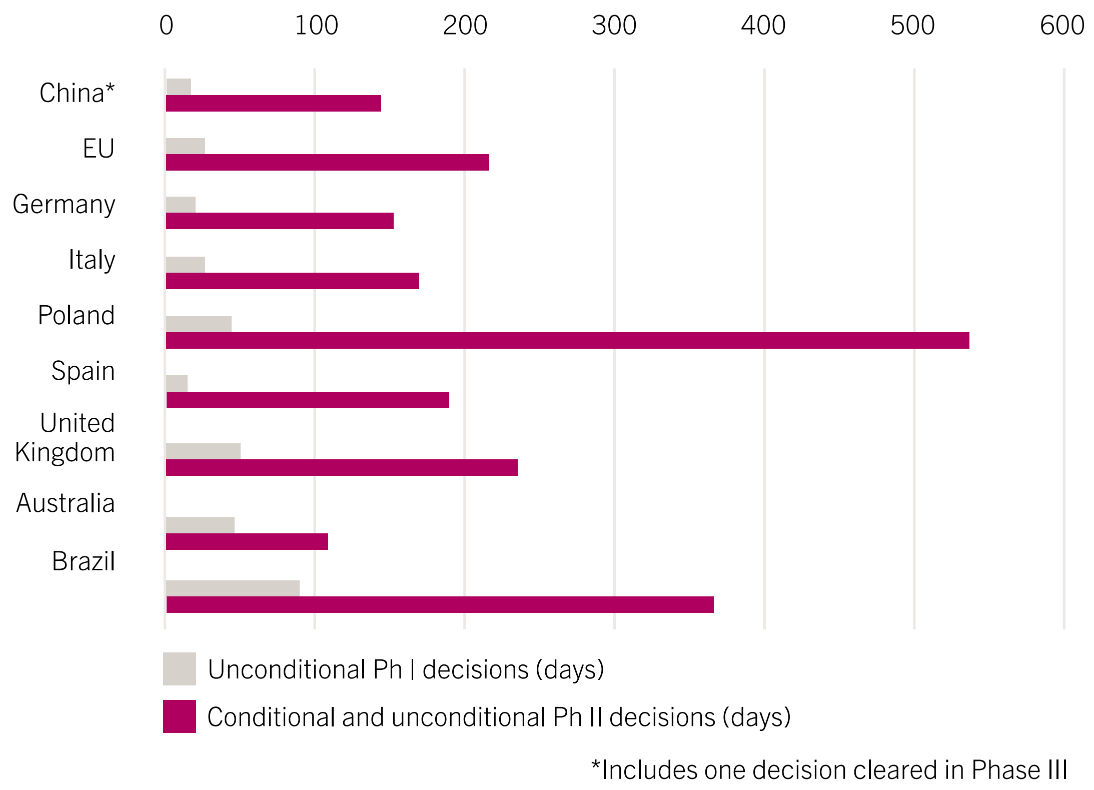
Natura Gràcia, UK Head of Antitrust and Foreign Investment

Merger control in 2024 — a review

Various authorities are trying to simplify the process for no-issues deals — e.g. China's SAMR has seen fewer merger filings and a reduction in processing times following its threshold reforms in January. However, for deals with substantive issues (Phase II decisions), the review timeline in many jurisdictions appears to be increasing.

Average Phase I and II timeline

(1 April - 30 September 2024)



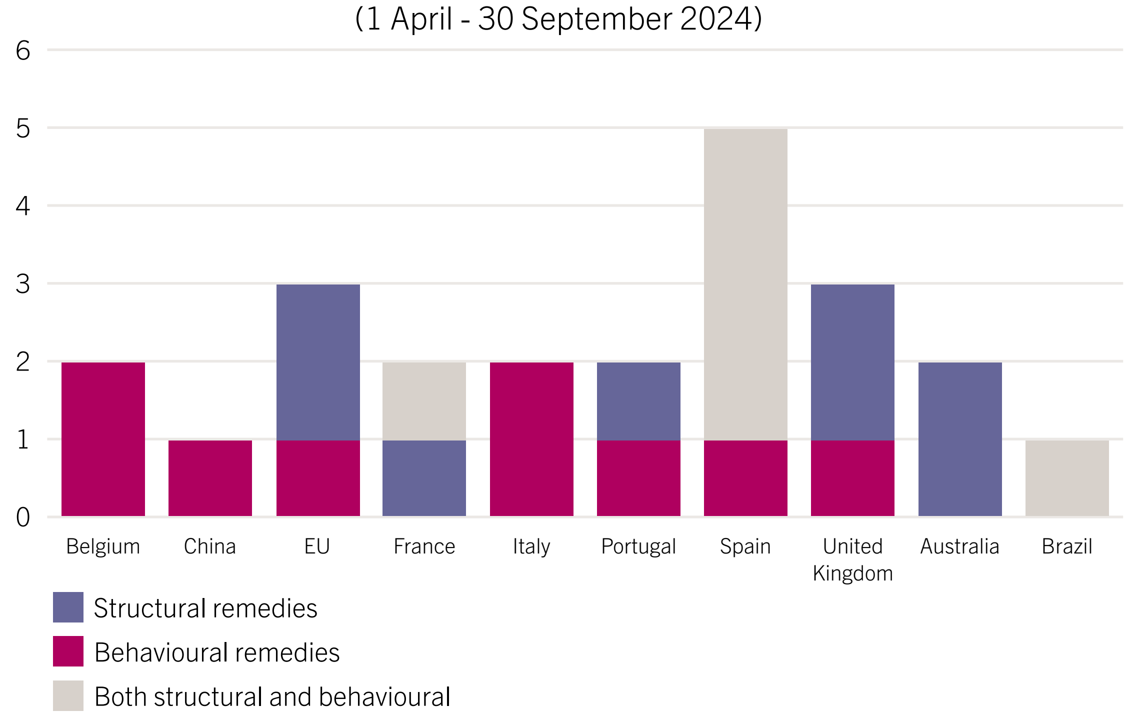
There has been a slight uptick in the mortality rate at Phase II in some jurisdictions (including Italy and Portugal). In the US, record numbers of transactions have been abandoned in recent years (21 since December 2021). However, the UK has seen a decrease in prohibitions (from five in calendar year 2022 to one in 2024 to date).

M&A deals involving US review are expected to see a significant expansion in filing requirements in 2025 — including burdensome documentation and expanded disclosure requirements. But while the FTC's rule in its current form received unanimous bipartisan approval (after extended deliberation), its scope could be further carved back under the new administration.

There have been fewer structural remedies in the six month period covered below than in the equivalent period for 2023, as authorities increasingly embrace behavioural solutions. The CMA has seen a significant drop, from five in the same period last year. Combined with its unexpected approval of behavioural remedies in *Vodafone/Three* and a wider review of remedies planned for early 2025, this hints at increased "flexibility" in decisions — which could, in turn, put pressure on other authorities. Even the EU accepted behavioural remedies in three cases in 2024 (not all shown in the time period below).

Type of remedies approved

(1 April - 30 September 2024)



Investment screening and subsidy control — a wider range of sectors, with friendly investors caught in the crosshairs

Domestic and regional concerns will result in close regulatory scrutiny of M&A transactions, outside of merger control, in 2025. The EU's Foreign Subsidies Regulation (FSR) is likely to be rigorously enforced under the new Commissioner, keen to prioritise a "level playing field" for EU companies. Over the last year, the EC has far exceeded its original predictions (of 33 merger notifications), receiving over 120 merger pre-notifications. And while its in-depth probes have generally involved third country parties, EC officials have been at pains to emphasise that of transactions reviewed, 40 percent have been solely between EU companies (and 45 percent between EU and non-EU entities).

The EC will be under pressure to improve transparency, as it attempts to ramp up investigations and conduct more *ex officio* probes in 2025 — but will need to navigate resource and staffing constraints, which are already having an impact.

> ...we do not want Trojan horses that challenge the existing European businesses that compete on a level playing field..."
>
> **Teresa Ribera**, Executive Vice-President, European Commission

As for investment screening, after years of sharp increases in notifications, there are signs of a slowdown in more mature regimes (see chart below). In the US, the number of CFIUS filings decreased, and this is in line with the trend we are seeing in EU jurisdictions and the UK – suggesting, to some extent, that fewer precautionary filings are being made. However, newer EU regimes such as Belgium and Sweden may continue to see higher levels of filings.

The pace of reforms has also slowed, with only a few EU countries still lacking an investment screening regime. But a number of important changes are expected nonetheless, including Ireland's new rules (which are due to start applying in January), as well as wide-ranging reforms to the German regime after February's elections. In addition, planned reforms to the EU's FDI screening regulation may see better alignment of multi-jurisdictional reviews (which made up more than a third of EU notifications in 2023) (although these reforms are not expected before the second half of 2025, and full implementation may take until 2027/28).

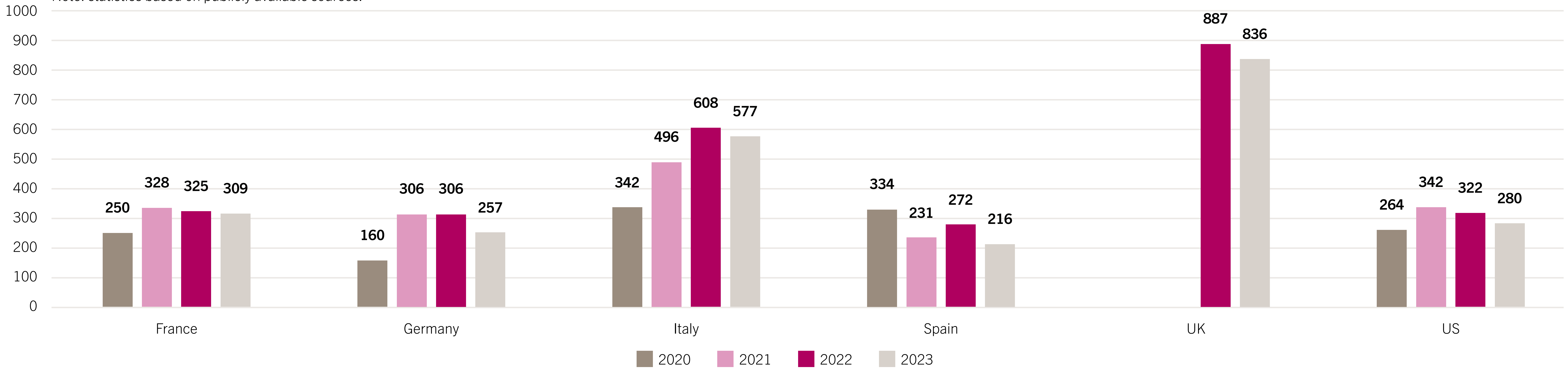
Approaches to Chinese investment are also shifting – the EU is reportedly poised to ease market access for Chinese companies willing to transfer advanced technologies and invest in R&D. These plans are advancing quickly under the newly formed EC, with potential adjustments also targeting trade defence tools aimed at pressuring Chinese companies to comply. This more stringent EU approach to Chinese investments would seek to regain a competitive edge globally amid sluggish economic growth, and take advantage of the fact that, in light of barriers – existing or threatened – in other global markets, China may be more willing to negotiate with the EU.

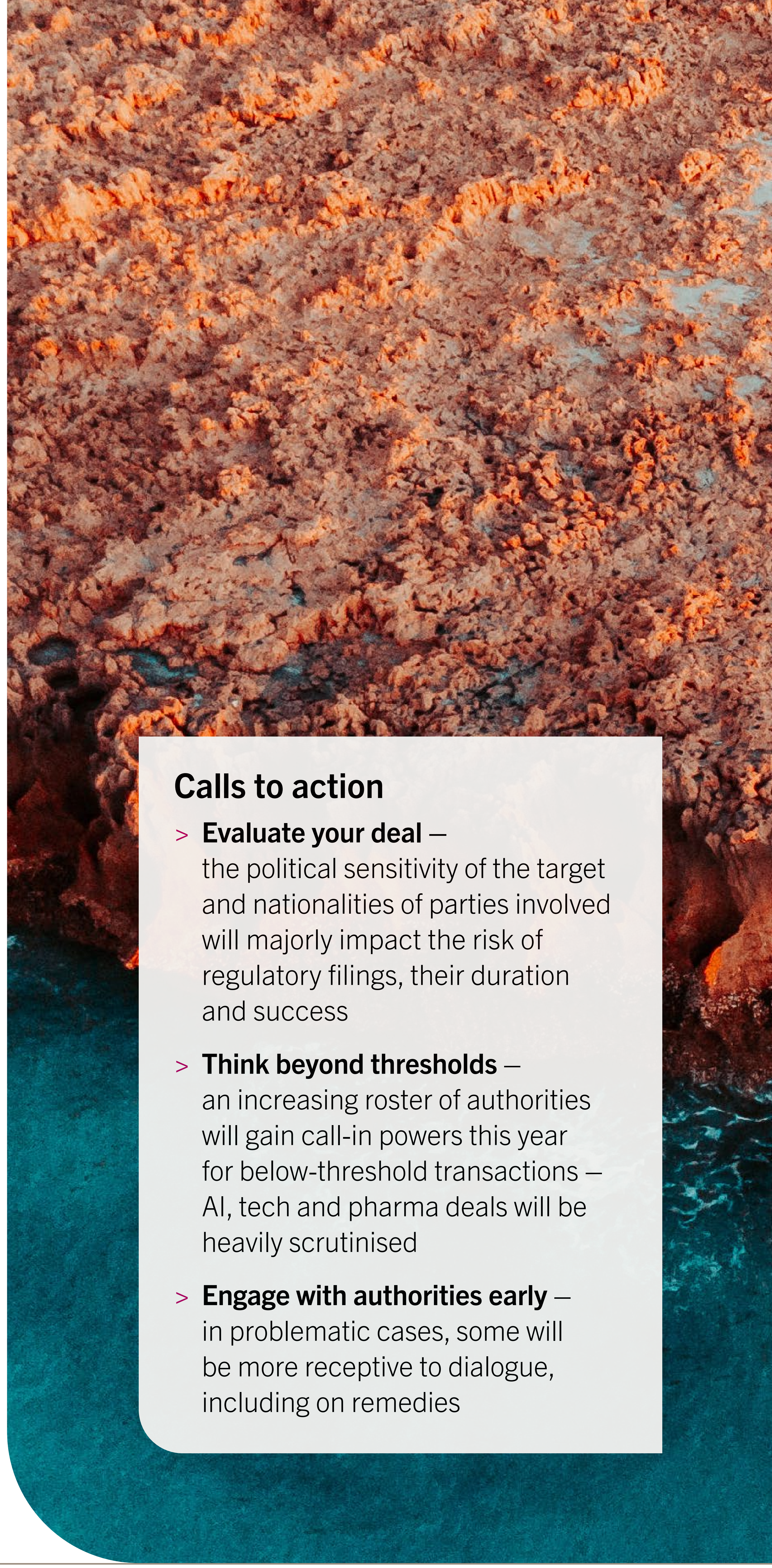
The UK has been considering an expansion of sectors to better capture digitisation and advanced technologies, including AI. We should expect to hear "soon", according to the UK's Investment and Security Unit, what the new, growth-oriented Labour government's approach to the sectors will be.

As for outbound investment, EU guidelines are expected shortly. These would follow the US Treasury's final regulations, and clarification from the UK government that outbound investments may already fall within the scope of the NSIA. Considering the lack of alignment of interest within the EU, we expect that outbound investment control will, for an initial stage, be focused on monitoring investment activities and obtaining intelligence on technologies involved.

Investment screening notifications in key jurisdictions (2020-2023)

Note: statistics based on publicly available sources.





Calls to action

- **Evaluate your deal** – the political sensitivity of the target and nationalities of parties involved will majorly impact the risk of regulatory filings, their duration and success
- **Think beyond thresholds** – an increasing roster of authorities will gain call-in powers this year for below-threshold transactions – AI, tech and pharma deals will be heavily scrutinised
- **Engage with authorities early** – in problematic cases, some will be more receptive to dialogue, including on remedies

Antitrust enforcement in 2025

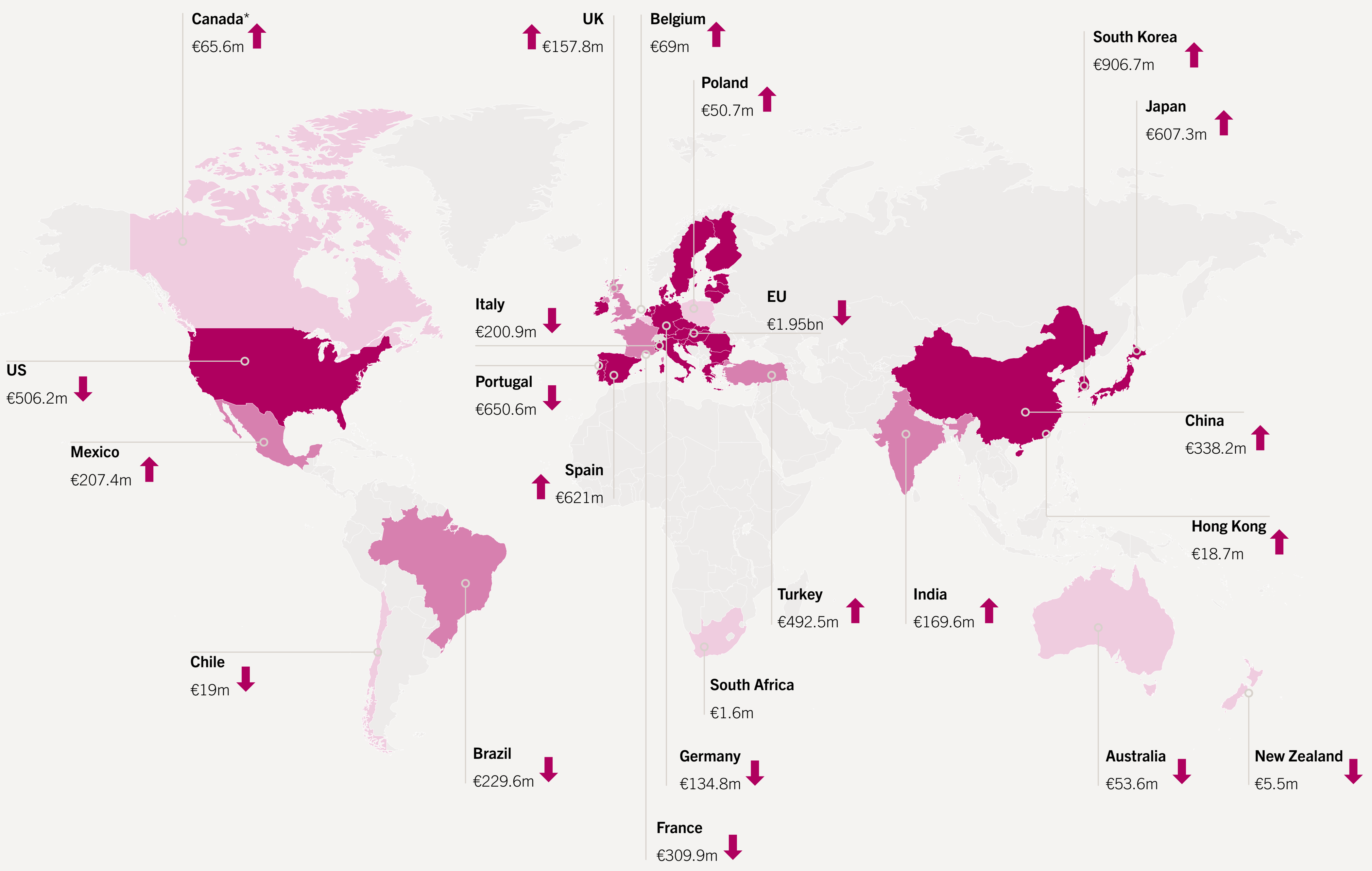
The broader picture

Recent years have seen a rise in numbers of antitrust fines and in investigations (see our Global Antitrust Enforcement Index 2024 (GEI) for more on this), with 139 new investigations opened in certain key jurisdictions in 2023 alone. Yet, many of these have related to smaller infringements (with lower value penalties), often in consumer and retail sectors. Outside of the tech sector, this is likely to be reflected in antitrust agencies' major priorities for 2025.

As for the impact of political change, the US enforcement environment may see a shift in priorities next year, with an expected return to more traditional antitrust theories under the Trump administration. While tech is likely to remain a focus, we could see new pushback on ESG practices and censorship considerations. In parallel, we may see a continued ramp-up among state enforcers and private plaintiffs to fill any perceived enforcement void.

> "While some areas of enforcement will remain consistent this year, a combination of new leadership and new antitrust tools (particularly in digital markets) will mean companies will need to stay sharp, keeping close to the latest changes."
>
> **Antonia Sherman**, US Head of Antitrust & Foreign Investment

Total cartel fines in selected jurisdictions (2021-2023)



€500m < fines > €3bn

€100m < fines > €500m

Fines < €100m

Increase in total fines compared with 2018-2020

Decrease in total fines compared with 2018-2020

Total fines in 2021-2023 relating to cartels and other anticompetitive agreements

*Excludes various additional costs, including charitable donations and partial penalties

Spotlight: A stocktake on sustainability

Sustainability guidelines are now established in the EU (and many Member States, including France and the Netherlands), UK, Japan, Hong Kong, New Zealand, Canada and South Korea. Even in Brazil, CADE members have suggested that sustainability may feature in upcoming guidelines on competitor cooperation. In the EU, Ribera has promised to enable pro-competitive cooperation between businesses, which may mean new guidance and templates for competitor collaboration, and potentially a simplified process for R&D collaboration.

However, across the Atlantic, the incoming Trump administration is likely to exacerbate divergence on such collaborations, previously framed as "climate cartels and other ill-advised ESG schemes". We expect to see Republican-led agencies enforcing antitrust laws in respect of ESG agreements.

A continued focus on consumer sectors

Consumer enforcement is set to boom in 2025. The sector has seen increased focus globally in 2024, across food, fuel and other consumer goods, as authorities have honed in on essential markets and those that impact consumer prices. Going into 2025, with persistent inflation still a challenge, expect a rise in consumer fines as investigations continue through the pipeline. The US, and EU member states (including France, Italy and Poland) have seen a ramping up of enforcement.

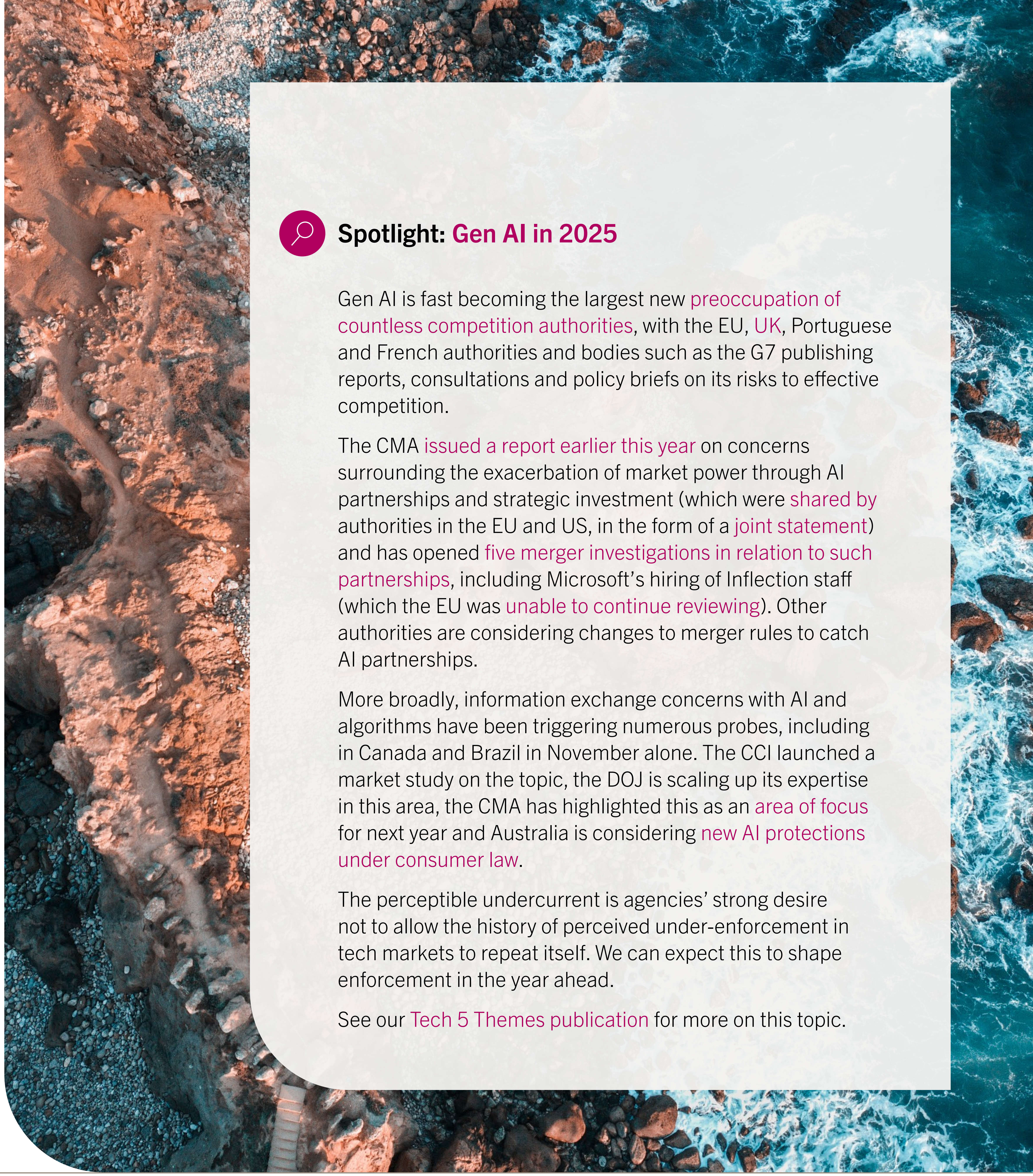
Areas such as misleading "green claims" or "greenwashing" will continue to be a key focus in numerous jurisdictions, following increasing enforcement this year (particularly in the fashion industry). And the UK's CMA will acquire broader powers next year, with "teeth" (up to 10% of global turnover in fines) to challenge behaviour such as subscription contracts, fake reviews and online pricing under both consumer protection and antitrust fronts.

Consumer law is also poised to reach the gaps in issues surrounding digital markets and AI. Critically, unlike regulations such as the DMA or the digital regulations under the DMCC Act, consumer protection rules can apply to businesses of all sizes.

What conduct will be under the microscope?

Restrictive HR practices will remain a heavily scrutinised area in 2025 – particularly the use of no-poach and wage fixing agreements – which numerous authorities have recently taken steps to investigate or issue further guidance on (the French authority's first HR investigation will see a decision at the start of next year). The DOJ (under new leadership) is likely to remain committed to bringing further criminal investigations, despite its recent losses. The CMA has recently outlined its commitment to take action against labour market cartels (while "not chilling beneficial outcomes") and the EC has been following through with its recent pledge to pursue HR restrictions with "the same level of priority as other forms of cartels", with the construction sector among the first to see dawn raids in relation to possible no-poach agreements.

Cartel conduct with impact on public funds will continue to draw attention, particularly in the current economic climate, given the clear downsides for consumers. This includes bid-rigging (or collusive tendering) cases – which have remained one of the biggest target areas for authorities – and are likely to remain so. Expect increasing sophistication as authorities (including the Belgian BCA and the Spanish CNMC) have been investing in technology to help detect such practices more easily.



Spotlight: Gen AI in 2025

Gen AI is fast becoming the largest new preoccupation of countless competition authorities, with the EU, UK, Portuguese and French authorities and bodies such as the G7 publishing reports, consultations and policy briefs on its risks to effective competition.

The CMA issued a report earlier this year on concerns surrounding the exacerbation of market power through AI partnerships and strategic investment (which were shared by authorities in the EU and US, in the form of a joint statement) and has opened five merger investigations in relation to such partnerships, including Microsoft's hiring of Inflection staff (which the EU was unable to continue reviewing). Other authorities are considering changes to merger rules to catch AI partnerships.

More broadly, information exchange concerns with AI and algorithms have been triggering numerous probes, including in Canada and Brazil in November alone. The CCI launched a market study on the topic, the DOJ is scaling up its expertise in this area, the CMA has highlighted this as an area of focus for next year and Australia is considering new AI protections under consumer law.

The perceptible undercurrent is agencies' strong desire not to allow the history of perceived under-enforcement in tech markets to repeat itself. We can expect this to shape enforcement in the year ahead.

See our Tech 5 Themes publication for more on this topic.

Detection tools get an upgrade

Indeed, forensic tools are being increasingly used by antitrust authorities in investigations – including in detecting the deletion or manipulation of electronic information. The risk to companies of obstruction in this area is palpable, given some recent notable penalties. Recently updated FTC guidance covers ephemeral messaging in the workplace and how this should be reflected in compliant document retention practices – backed by the threat of civil sanctions or criminal prosecution. The UK will also introduce new penalties in 2025 for failures to preserve documents that could be relevant to an investigation.

See our GEI 2024 publication for more information on these topics.

Tech regulation – the complex web grows

2024 has seen numerous high-profile investigations in digital markets under traditional antitrust and dominance rules – including a US landmark finding that Google holds an online search monopoly, with extensive remedies under consideration.

2025 will see an acceleration of cases outside of this structure, as authorities continue to refine new tools to tackle perceived problems in the tech sector. Enforcement under the DMA is fast underway, with investigations opened against numerous gatekeepers and others in the pipeline. (The Draghi report has additionally proposed a tool allowing enforcers to open up entrenched markets – even in the absence of antitrust infringements – using market studies and market investigations – whether this will gain support and ultimately be applied to digital markets, among others, remains to be seen). And proposals for ex ante regulation are in the works globally, including in Japan, India, Brazil, Australia and South Korea. The UK's new digital regime will kick in in January, with the designation of firms taking place over the coming months.

Additionally, tech companies are increasingly being targeted by private litigants bringing collective redress actions. The DMCC and growth of *ex ante* regulation will increase this private enforcement risk.

Private enforcement

2025 looks set to continue the current uptick in private enforcement. The growth of opt-out collective action regimes has globalised mass-scale litigation risk for companies beyond the US, where such actions are well-established. In the UK, the Competition Appeal Tribunal's opt-out regime for competition law claims has become a popular tool to bring actions on behalf of large classes which might otherwise materialise as consumer law or even data privacy claims. In the EU, the implementation of the Representative Action Directive means that group actions are more widely available – consumer law seems like a prime target for those actions.

Importantly, claims across the globe are increasingly being brought in parallel to, or even before, regulatory action. Claimant firms and funders are seeking to maximise their footprint by bringing 'copy-cat' claims in numerous jurisdictions (the US, the UK, the Netherlands, Portugal and Israel being top candidates).

Calls to action

- **Watch out for consumer sectors** – anticompetitive conduct which impacts on these will be strongly enforced, with potential for higher fines
- **Check compliance policies** – particularly on the use of instant messages and personal devices and ensure digital retention policies are up to date
- **Keep an eye on sustainability agreements** – political developments in the US may exacerbate the current patchwork approach by regulators to these

Contacts

Bernd Meyring
Global Head of Antitrust & Foreign Investment Group, Brussels
Tel: +32 2 505 03 32
bernd.meyring@linklaters.com

Antonia Sherman
US Head of Antitrust & Foreign Investment, Washington, D.C.
Tel: +1 202 654 9268
antonia.sherman@linklaters.com

Fay Zhou
China Head of Antitrust & Foreign Investment, Beijing
Tel: +86 10 6535 0686
fay.zhou@linklaters.com

Natura Gràcia
UK Head of Antitrust & Foreign Investment, London
Tel: +44 20 7456 4941
natura.gracia@linklaters.com

Anne Wachsmann
Antitrust & Foreign Investment Partner, Paris
Tel: +33 1 56 43 57 00
anne.wachsmann@linklaters.com

Marcus Pollard
Antitrust & Foreign Investment Partner, Hong Kong SAR
Tel: +852 2901 5121
marcus.pollard@linklaters.com

Christoph Barth
Antitrust & Foreign Investment Partner, Düsseldorf
Tel: +49 211 22977 306
christoph.barth@linklaters.com

John Eichlin
Antitrust & Foreign Investment Partner, New York
Tel: +1 212 903 9231
john.eichlin@linklaters.com

Lucio D'Amario
Antitrust & Foreign Investment Partner, Milan
Tel: +39 02 88 393 5352
lucio.damario@linklaters.com

Fredrik Löwhagen
Antitrust & Foreign Investment Counsel, Madrid
Tel: +34 91 399 6135
fredrik.lowhagen@linklaters.com

Malgorzata Szwaj
Antitrust & Foreign Investment Partner, Warsaw
Tel: +48 22 526 5178
malgorzata.szwaj@linklaters.com

Carlos Pinto Correira
Antitrust & Foreign Investment Partner, Lisbon
Tel: +351 21 864 00 15
carlos.correia@linklaters.com

Sarina Williams
Litigation, Arbitration & Investigations Partner, London
Tel: +44 20 7456 4420
sarina.williams@linklaters.com

Robert Walker (Allens)
Partner, Melbourne
Tel: +61 3 9613 8879
robert.walker@allens.com.au

Burton Phillips (Webber Wentzel)
Partner, Johannesburg
Tel: +27 11 530 5086
burton.phillips@webberwentzel.com

Milena Mundim (Lefosse)
Competition and Antitrust Partner, São Paolo
Tel: +55 11 3263 1573
milena.mundim@lefosse.com

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