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Stormy skies for tech deals as antitrust scrutiny intensifies



PART OF OUR REPORT

Global trends in merger control enforcement

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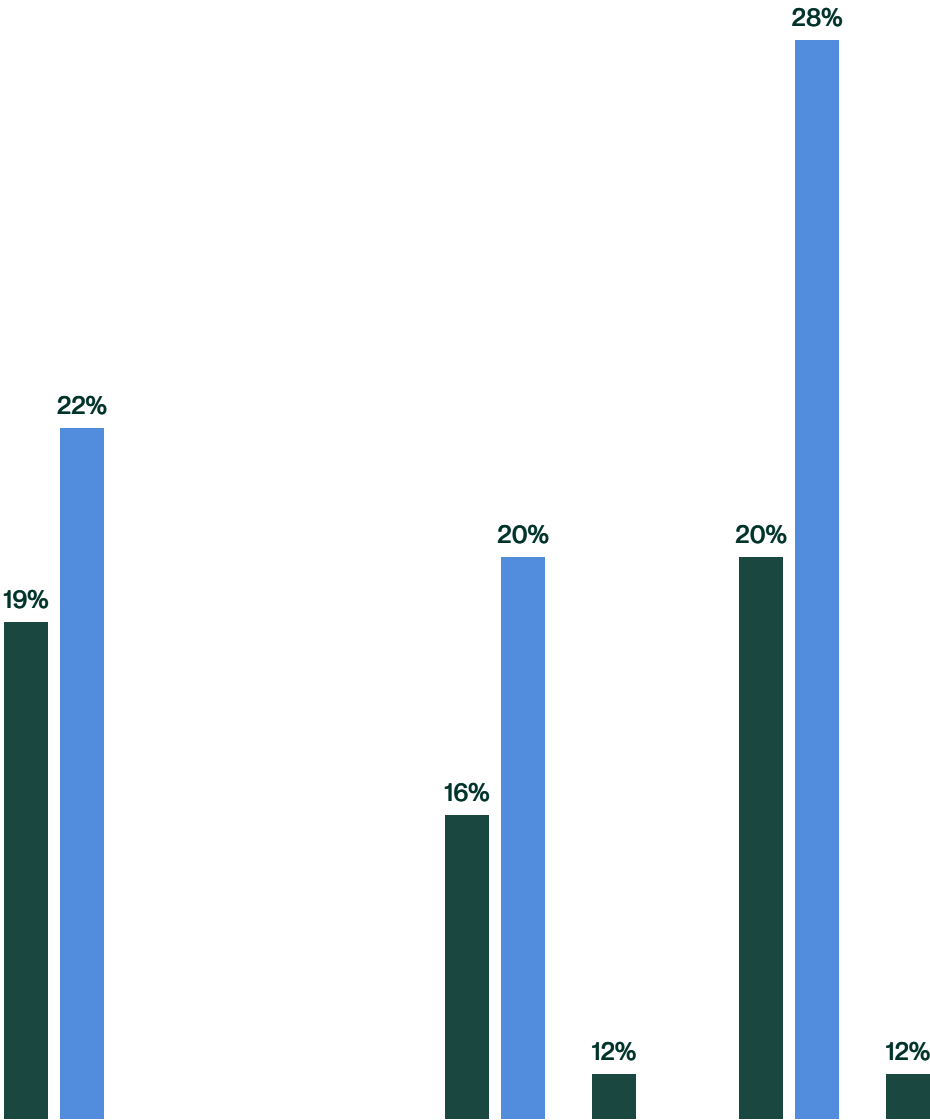
Tech sector deals are seeing rising mortality rates. AI partnerships are moving up the authorities’ agenda for scrutiny and enforcement. Overall, however, antitrust intervention in 2024 once again focused on transport, energy and life sciences M&A, as well as telecoms consolidation.

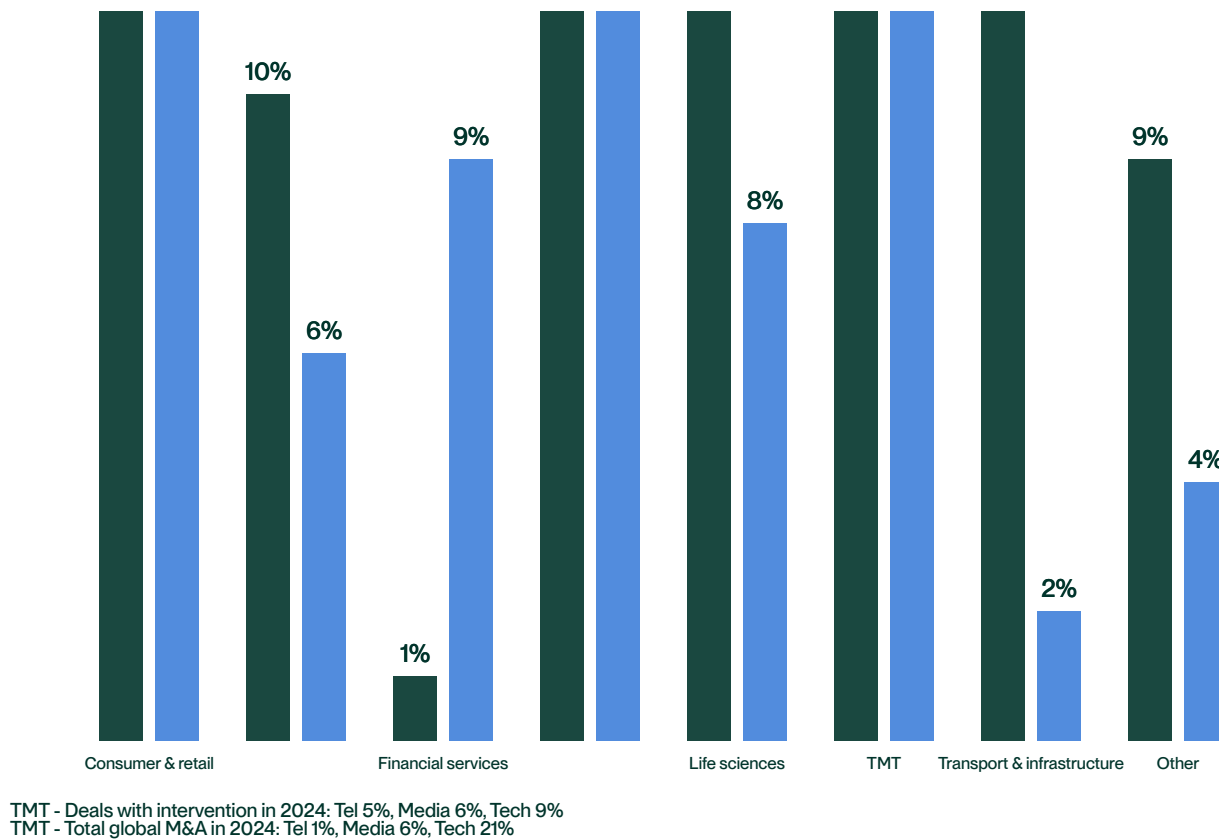
Total antitrust intervention by sector

by volume

Deals with intervention in 2024

Total global M&A in 2024





More digital/tech deals frustrated

The level of antitrust intervention in tech M&A (9%) last year remained comparatively lower than the proportion of global M&A accounted for by tech deals (21%).

But tech and digital deals continued to face acute antitrust scrutiny. Looking only at mergers frustrated (i.e., prohibited or abandoned) due to antitrust concerns, over a fifth were tech sector transactions, up from 16% in 2023.

In a number of cases, the threat of antitrust intervention caused the parties to walk away.

High profile examples included Amazon/iRobot, abandoned after the European Commission (EC) looked poised to block the deal. Qualcomm terminated its purchase of Autotalks due to headwinds in the U.S., EU and U.K.

In some jurisdictions, amendments to filing thresholds will bring more digital deals under review. In the U.K., a new test now bites when only one party meets turnover and share of supply thresholds and the other has a nexus to

the U.K. The Competition and Markets Authority (CMA) has tech acquisitions—particularly small target purchases or vertical tie-ups—in its sights. India introduced a new deal value threshold in September 2024.

Elsewhere, antitrust authorities are using powers to review non-notifiable tech M&A, particularly in the semiconductor sector. Qualcomm/Autotalks was one of these, although ultimately the EC's review would have fallen away after a court ruling overturned the EC's ability to accept referrals in such cases (see our article [Rising review risk for deals not meeting merger control thresholds](#)). In China, the State Administration for Market Regulation (SAMR) has used its below-threshold call-in powers to request the notification of Synopsys/Ansys. We expect to see similar cases in future.

Deals involving AI activities are also grabbing attention, although intervention levels so far have been low. Part of the challenge for antitrust authorities, as we discuss below, is whether certain AI arrangements even fall within the scope of the merger control rules.

Finally, new digital market regimes emerge and bed down with some (e.g., the EU and the U.K.) imposing additional notification obligations on in-scope firms. This adds an extra layer of disclosure for tech dealmakers.

Looking ahead, the U.S., EU and U.K. agencies (among others) have mandates to crack down on the market power of Big Tech. Scrutiny of digital deals may further intensify.

AI partnerships in the merger control net?

Partnerships between Big Tech firms and AI providers are fast becoming an antitrust target. These often include IP licenses, distribution arrangements, provision of computing infrastructure and sometimes control, consultation rights, board representation or exclusivity rights. They also encompass “acqui-hires” of talent.

However, authorities are grappling with whether these non-traditional deal structures amount to “mergers” within the scope of their rules.

The U.K. CMA is a frontrunner here and is building a body of precedent that will help participants assess merger control risk. Minor (e.g., less than 1%) voting rights are unlikely to be enough to trigger CMA jurisdiction. Nor are non-exclusive arrangements. But the CMA has looked at the hiring of core employees teamed with IP licenses (Microsoft/Inflection). It has also indicated that exclusive supply/distribution agreements or situations where the acquirer has consultation rights or particular expertise may fall in its purview. So far, however, the CMA has had no cause to intervene.

The CMA is well-known for its long jurisdictional reach. Other authorities might not be able to take a similarly wide approach, at least under existing rules. But they may well give it a go:

- In a policy brief, the EC said it is on the watch for acquisition strategies aimed at eliminating nascent competitors or absorbing key employees and critical know how. It concluded that Microsoft/Inflection was a “concentration” under the EU Merger Regulation, although the turnover thresholds were not met. In contrast, it found that Microsoft’s partnership with OpenAI was not a concentration on the basis that Microsoft had not acquired control on a lasting basis.
- In Germany, too, the Federal Cartel Office (FCO) concluded that Microsoft/Inflection was a merger for the purposes of the German rules but could not take jurisdiction due to a lack of local nexus. The FCO head wants to enable AI partnership scrutiny by lowering the country’s deal value filing threshold and expanding it to include possible or future (and not just actual) activities.
- The U.S. Federal Trade Commission (FTC) has released a report on the potential antitrust implications of partnerships between the largest cloud service providers and AI developers. It says they could impact access to inputs, increase switching costs for AI developers and give cloud service providers access to sensitive business information.
- Brazil’s antitrust agency is investigating several instances of failures to notify AI partnerships.

- The Korean antitrust authority has pledged to strengthen oversight of the AI sector and will review the need to update merger control rules to address new forms of business partnership.

More turbulence for airline mergers

Antitrust intervention in transport M&A (12%) was six times higher than the proportion of global M&A in 2024. Airline transactions made up most this enforcement activity.

In the U.S., JetBlue's acquisition of Spirit was blocked. Alaskan/Hawaiian was allowed to proceed with commitments to a sister federal agency, the Department of Transportation.

At EU level, IAG and Air Europa's tie up was abandoned after the EC rejected the parties' remedy offer. The EC did, however, accept remedy packages in Korean Air/Asiana and Lufthansa/MEF/ITA. Each combined divestments with behavioral commitments.

Further consolidation in the sector is expected to attract close scrutiny.

Life sciences M&A throws up widespread concerns

Life sciences M&A remained a focus for antitrust authorities. Their proportion of antitrust intervention reached 12%, compared to the 8% of global M&A accounted for by deals in this sector.

The U.S. agencies were particularly active, intervening in hospital tie-ups and other healthcare mergers. Deals were also frustrated in Australia, Brazil and Germany.

Former Department of Justice Antitrust Division (DOJ) Head Jonathan Kanter called for a fundamental redefinition of antitrust policy in the healthcare sector, raising concerns over "platformization." A DOJ task force was formed to investigate widespread concerns including serial acquisitions.

Energy deals under fire

Energy transactions accounted for 10% of antitrust intervention in 2024, compared to the 6% of global M&A made up of deals in this sector. As in previous years, conditional clearances accounted for almost all the total, spanning several jurisdictions.

The only two remedy cases in the U.S. last year were both in this sector. The FTC has said it will continue to investigate oil and gas M&A.

Telecoms consolidation sparks differing approaches

The proportion of antitrust intervention in telecoms deals (5%) was five times higher than the sector's share of global M&A.

Several cases were cleared with conditions, but we saw a marked difference in the approach to those remedies. The EC accepted a structural fix (spectrum divestment) in Orange/MásMóvil. The U.K. was satisfied with unprecedented behavioral remedies in Vodafone/Three (including pricecaps). Italy, too, accepted behavioral commitments when clearing Swisscom/Vodafone (see our article [Antitrust authorities' skepticism of merger remedies causes headwinds for dealmakers](#) for more on these cases and remedy trends more generally).

Whether these diverging positions will continue remains to be seen. In the meantime, EU-based telecoms firms are pushing for more lenient merger control treatment of their deals. Their calls echo a report on European competitiveness by Mario Draghi, which recommends facilitating investment through cross-border integration and the creation of EU-wide players.

Direction of travel unlikely to change

There is every sign that transport, healthcare, energy and telecoms deals will continue to be a target for merger control intervention in 2025. Transactions in

these sectors usually have a direct impact on consumers, making close scrutiny a priority for many antitrust authorities.

We also predict rising enforcement action against tech M&A, as authorities iron out their approaches to assessing transactions involving digital activities.

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