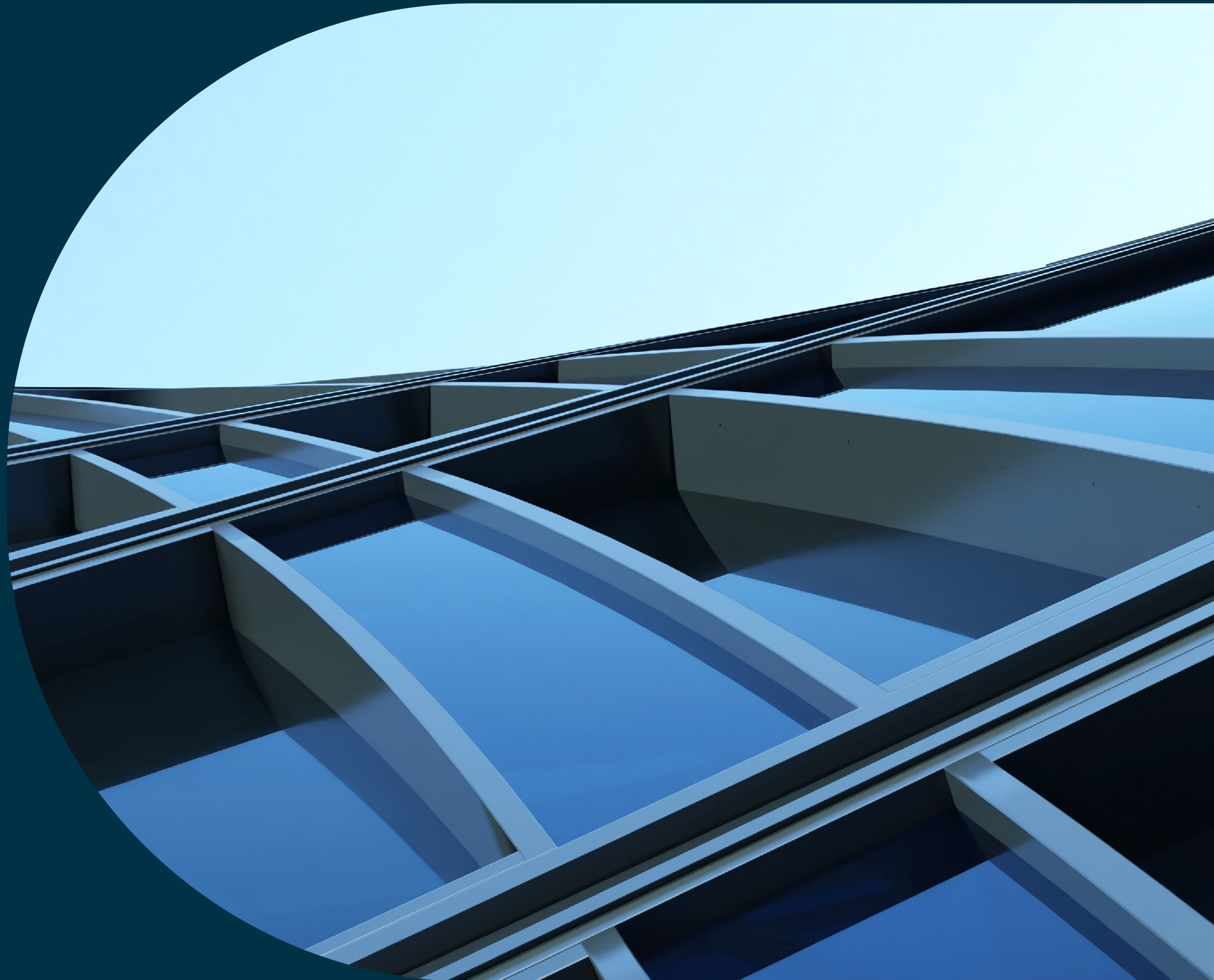


Competition timeline

September 2026



Competition timeline - September 2026

The UK and EU competition law landscape is set to continue evolving significantly through the end of 2026 and into 2027/2028.

Changes are being driven in particular by new rules for large digital platforms, changes to merger control and a more active approach to subsidies and sector-specific market studies. These changes will affect how businesses contract, invest and compete – especially where they rely on powerful digital platforms or participate in public procurement.

Four themes stand out.

First, the new breed of digital rules is continuing to bite. In the UK, the Digital Markets, Competition and Consumers Act (DMCCA) is reshaping how large digital firms designated with Strategic Market Status must behave, with knock-on effects for businesses that interact with their ecosystems. Similar rules are already enacted or in the pipeline in a number of other jurisdictions. The DMCCA also gives the CMA increased powers to enforce both competition and consumer law.

Second, merger control is changing, with updated tests and evolving guidance on remedies supporting the CMA's stated focus on pace, predictability, proportionality and process, all of which matter for transaction planning. Other changes are also likely to include amendments to how national security considerations must be taken into account in business transactions.

Third, the subsidy control regime and public sector-focused work (such as the CMA's civil engineering study and broader scrutiny of public procurement) will influence how public support is granted and how markets operate in practice.

Finally, competition law enforcement in the UK, EU and worldwide is developing significantly alongside continuing upheaval in the competition litigation landscape.

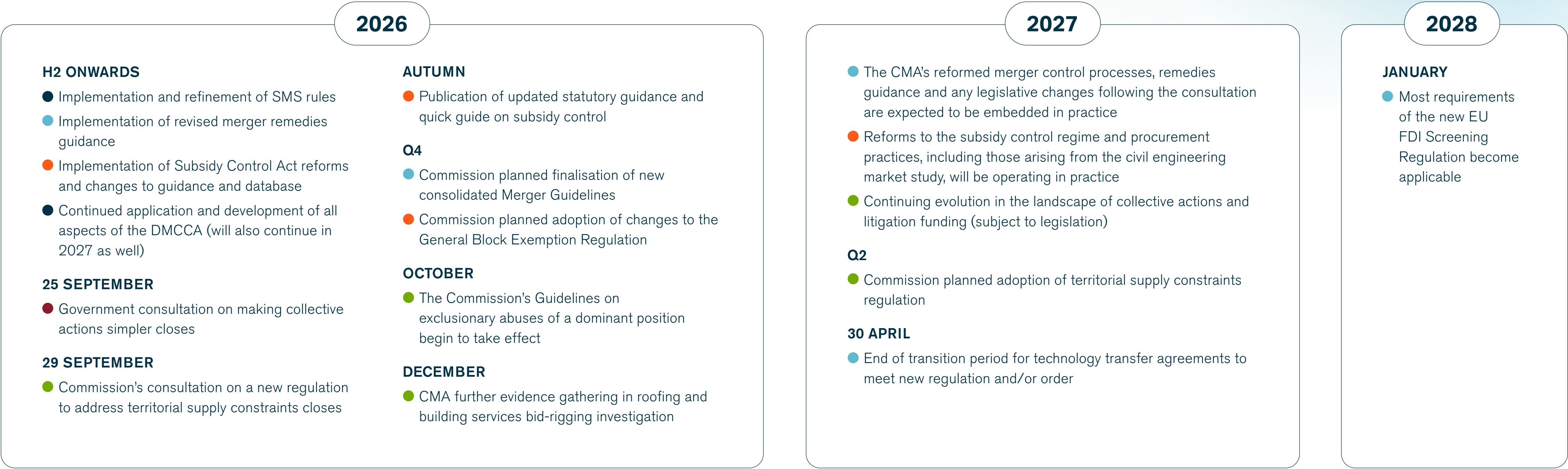
In this evolving environment, businesses should: make sure they understand the impact of digital regulation on their businesses, including key arrangements and partnerships with large digital platforms; factor the changing merger and funding landscape into their deal planning; and monitor consultations and CMA/ government guidance in areas that affect their sector, procurement activity or use of subsidies. We are working closely with clients to identify risks and opportunities early and to help them engage constructively with regulators and policymakers.



Key milestones

Theme tags

- Digital platforms, data & customer interfaces
- M&A, transactions & commercial collaborations
- Public funding, subsidies & procurement
- Enforcement
- Litigation risk



Digital platforms, data and customer interfaces

H2 2026 onwards – Implementation and refinement of CRs and PCIs

From the second half of 2026 and into 2027, the focus in digital markets is expected to shift progressively from design of voluntary commitments and compulsory conduct requirements (CRs) to implementation and refinement of these remedies and potentially “pro-competition interventions” (PCIs) for firms with “strategic market status” (SMS). For more detail on the CMA’s powers in individual markets please see our [summary article](#).

As more commitments and CRs come into force, the CMA will be able to test how effectively these remedies have addressed identified harms and, where necessary, refine their scope or adopt further measures.

The DMCCA gives the CMA powers to observe and test the operation of designated firms’ systems, including algorithms and AI driven services, to understand their effects on competition and consumers. Over time this is likely to result in concrete changes to ranking algorithms, default settings, interoperability arrangements and data access policies. For non SMS firms and business users, the practical impact will be felt through updated platform terms, altered user interfaces and potentially greater ability to switch or multi home across platforms. Firms should expect an iterative process in which rules and expectations evolve as the CMA builds experience under the new regime.

2027 – Continued development of the DMCCA digital markets regime

By 2027, the DMCCA digital markets regime will be moving from its initial implementation phase into a more mature stage, with multiple commitments and CRs in force and early enforcement or legal challenges beginning to shape the interpretation of the regime. Some commitments, CRs and possibly PCIs will have been tested in practice, and the CMA will have accumulated experience of supervising compliance, monitoring algorithms and handling disputes over interpretation.

For in house counsel, this will mean that the regulatory environment around key digital gateways – such as mobile ecosystems, search and potentially cloud or other services – will be more defined. Businesses will need to ensure that their contracting, product design and data strategies remain aligned with evolving requirements, and that they are prepared for the possibility of private and public enforcement actions in the digital space informed by the early years of DMCCA practice.



M&A, transactions and commercial collaborations

Merger changes

The UK and EU are both considering changes to their respective merger control regimes.

On the UK side, there are two changes to consider. Firstly, the UK government has confirmed its intention to pass the Competition Reform Bill, primarily to give effect to changes in merger control arising from its “Refining our Competition Regime” consultation, and secondly the CMA continues to embed changes to the merger control regime by implementing its 4Ps framework (pace, predictability, proportionality and process).

The CMA's work can be seen through its amendment of several of its procedural, jurisdictional and substantive guidance documents. Whilst many of these changes have already taken place, it will take time for them to become embedded in practice. Furthermore, the CMA held a consultation on its approach to rivalry enhancing efficiencies, the results of which have not yet been implemented. The proposed changes (the “Merger Efficiencies Review”) would update the CMA's existing guidance on this topic. The review forms part of the CMA's broader ‘4Ps’ framework (pace, predictability, proportionality and process) and involved extensive evidence gathering, obtaining 23 written responses to a call for evidence. We expect these changes to be implemented before the end of 2026.

When two companies merge, the deal can sometimes result in something more than the sum of their parts – for example, by lowering overall production costs or giving the combined entity greater ability to develop new products. These are known as “rivalry-enhancing efficiencies.” The CMA proposes to retain its established four requirements: the efficiencies must (i) genuinely strengthen competition, (ii) be achieved quickly enough and sufficient to prevent a substantial lessening of competition (SLC), (iii) only be achievable through the merger (not by other means), and (iv) benefit UK customers.

- On timeliness, the CMA accepts that some benefits – such as improved research and development – may take several years to materialise, and will take into account the norms of the industry in question.
- On likelihood, the CMA may impose conditions on the merger to ensure that promised efficiencies are actually delivered.
- On sufficiency, the CMA recognises that a merger might cause short-term harm to competition even if it delivers longer-term benefits.
- On merger specificity, the CMA will look at whether the same benefits could realistically be achieved another way.

In terms of evidence, the CMA will hold efficiency claims to the same standard as its assessment of potential harms. Claims will only be accepted where they are backed by concrete evidence. The CMA will give more weight to contemporaneous documents created in the normal course of business (such as board papers or internal strategy documents), although companies can also submit additional analysis where needed. Companies considering an efficiency argument are encouraged to raise it with the CMA as early as possible; doing so does not mean they are accepting that the merger would otherwise harm competition.

The Commission has consulted on its horizontal and non-horizontal merger guidelines with the aim of consolidating them into a single document which takes account of the changes to the legal, economic and geopolitical landscape over the last 20 years. In doing so it makes some notable updates to its assessment of mergers.

The Commission intends to finalise the new Merger Guidelines in Q4 2026, following continued stakeholder engagement. The review signals a significant modernisation of the EU's approach to merger control.

What does this mean for mergers in the EU?

The Commission has published a [summary of the key technical novelties](#). Three key themes are:

- **Dynamic effects** - The Commission will place greater weight on how mergers affect firms’ incentives to invest and innovate in the medium to long term. Parties should be prepared to address these forward-looking considerations, including potential innovation harms and investment effects, as a routine part of merger filings, supported by verifiable evidence rather than generalised assertions.
- **Efficiencies** - These form one of the seven topics of the in-depth consultation. The Commission notes that the draft guidelines “significantly expand” the analytical framework for efficiency claims, referred to as “theories of benefits”. Merging parties should consider preparing robust, evidence-based efficiency arguments at an early stage, drawing on internal business documents and, where necessary, supplementing these with bespoke economic analysis. The Commission will engage with efficiencies in the same way as it examines theories of harm, evaluating both symmetrically before concluding a merger can lead to a significant impediment of effective competition.
- **Early engagement** - Given the breadth of reform and the introduction of new analytical considerations across digital, dynamic efficiencies and sustainability-related issues, amongst others, early pre-notification engagement with the Commission will be increasingly important. Engaging proactively allows parties to understand the Commission's evolving approach, identify potential concerns at an early stage, put forward substantive evidence of efficiencies, and ensure sufficient time for meaningful dialogue before formal proceedings commence.



Investment screening

The national security regulation of business transactions is expected to undergo significant change in the UK and the EU in the coming months.

National Security and Investment Act

In March 2026 the UK government announced that it intends to make several targeted changes to the Notifiable Acquisitions Regulations (NARs). This will require secondary legislation which is intended to be laid “in due course”.

The government intends to:

- Create new Semiconductors and Critical Materials schedules by carving the relevant parts from the Advanced Materials schedule. This includes putting the existing Computing Hardware schedule within the Semiconductors schedule.
- Make further drafting changes to the following updated schedules to reduce capturing low-risk notifications where possible: Critical Minerals, Semiconductors, Artificial Intelligence and Communications;
- Make further minor amendments to the following updated schedules to clarify scope and definitions: Critical Suppliers to Government, Data Infrastructure, Energy and Suppliers to the Emergency Services;
- Create a new Water schedule;
- Keep the updated Advanced Materials and Synthetic Biology schedules broadly as they are, to ensure that emerging technologies and the diverse uses of these are captured; and
- Provide updated and more detailed guidance for the majority of the schedules consulted on, alongside the Defence schedule, to address topics frequently raised in feedback.

The intention behind these reforms is to ensure that the NARs continue to capture emerging national security risks proportionately while getting out of the way of secure investment, unlocking economic growth across the UK. As the response was published under the Starmer government there is uncertainty about the detail and timing of these NAR reforms and, in practice, will depend on secondary legislation and any updated government guidance. In-house counsel involved in UK investments in the affected sectors should track the legislative process and plan to revisit notification thresholds and sector coverage once the changes have been finalised.

Foreign Subsidies Regulation

In July 2026 the Commission published its first review of the Foreign Subsidies Regulation (FSR). The review of the first three years of FSR enforcement found that the instrument is working well in practice.

- The procedures for reviewing concentrations and foreign financial contributions in public procurement procedures are important components of the FSR framework, enabling the Commission to identify and address potentially distortive foreign subsidies before a merger is concluded or a high-value public contract is awarded.
- The Commission's 'ex officio' powers provide an effective complementary framework to investigate and address potential distortive foreign subsidies in the internal market.
- Pre-notification in relation to concentration cases showed an improvement in clarity and efficiency in the notification process.

On the other hand, a number of concerns were raised about complexity and administrative burden especially with regard to tracking foreign financial contributions. These adjustments are likely to include:

- increasing the turnover notification threshold for concentrations;

- changes to the reporting requirements for foreign financial contributions; and
- the introduction of exemptions for certain foreign financial contributions.

The Commission has therefore committed to make targeted adjustments in the course of 2027.

Foreign Direct Investment

The European Union has adopted a new regulation on FDI screening, aiming to revise and strengthen the framework under the existing FDI Screening Regulation. The new regulation entered into force on 16 July 2026 but most requirements won't apply until January 2028.

The new FDI Screening Regulation seeks to harmonise the procedures applicable to national screening mechanisms and the Commission will have the power to intervene on its own initiative. This will include situations where there were disagreements between member states regarding security or public order risks from a specific foreign investment. Additionally, the coverage will be expanded by the new regulation to include certain investments made through EU-based subsidiaries controlled by non-EU investors and making screening mandatory for investments in certain sectors. Non-controlling stakes that give an investor effective participation in a target's management or control are also covered.

A significant change is the introduction of mandatory screening in certain sectors, similar to the UK's National Security and Investment Act. This includes dual use items, defence-related products/technology, advanced technologies relating to semiconductors, quantum technology and AI, critical transport, energy and digital infrastructures, critical raw materials, financial market infrastructure and electoral operations management.

Under the new Regulation, notifiable transactions where prior authorisation was required but not sought can be reviewed for a minimum period of 24 months post completion.



Technology licensing

The landscape for technology licensing in the EU and UK changed on 1 May 2026. The previous EU Technology Transfer Block Exemption Regulation, which had been assimilated into UK law, expired on 30 April 2026 and was replaced by an equivalent Technology Transfer Block Exemption Regulation in the EU (TTBER) and Technology Transfer Block Exemption Order (TTBEO). Both the European Commission and Competition and Markets Authority (CMA) have published accompanying guidance.

Businesses should move promptly to audit existing agreements, conduct the new technology market threshold analysis, and prepare for the CMA’s final guidance, which will provide further clarity on some of the drafting ambiguities in the consultation draft. The 30 April 2027 deadline for agreements to meet the new regulations is firm.

Scope: What Is Covered And What Is Not?

The TTBER/TTBEO applies to technology transfer agreements: agreements between two undertakings under which one or both parties license (or assign, subject to the exploitation risk condition) “technology rights” for the production of contract products. The concept of “technology rights” is broadly mirrored between regimes. The explicit inclusion of database rights in this definition is one of the TTBEO’s most significant departures from the EU framework.

Technology Pools and Licensing Negotiation Groups

The TTBEO/TTBER do not contain express safe harbours for technology pools or licensing negotiation groups (“LNGs”) as they are inherently multiparty agreements. Unlike the EU Technology Transfer Guidelines (“TTGL”), which devotes dedicated sections to both topics, the UK draft guidance addresses technology pools (see paragraphs 11.98–11.129 of the draft guidance) but is currently silent on LNGs. This is a gap that the CMA may address in its final guidance, but its draft guidance considers that it is “more appropriate” to assess LNGs on a case-by-case basis. However, businesses operating in that area should proceed with caution and seek specific advice. At the time of writing, CMA guidance on technology pools is still in draft form and does not yet address LNGs in detail. This section will be updated once the CMA publishes its final technology transfer guidance to reflect any specific safe harbours or enforcement priorities for pools and LNGs, and any clarifications to the TTBEO’s practical application.

The Safe Harbour: Market Share Thresholds

The parties to an agreement must satisfy certain market share thresholds in order to benefit from the exemption. For competing undertakings, the combined market share of the parties must not exceed 20% on any relevant market for the contract products and technology; for non-competing undertakings, the market share of each party individually must not exceed 30%. The TTBEO introduces a novel two-limb technology market condition that has no equivalent in the EU TTBER. To benefit from the safe harbour, the product market threshold must be satisfied and either:

- (i) the parties’ combined (competing) or individual (non-competing) share on the relevant technology rights market also does not exceed 20%/30%; or if
- (ii) there are three or more independent competing technology rights (“ITRs”) in the relevant technology market.

The ITR alternative in practice

The ITR limb is likely to be a significant practical tool. In many technology markets — particularly nascent digital markets or highly specialised technical fields — reliable market share data is difficult to obtain. Where a licensor can demonstrate that three or more independent sets of technology rights exist that are genuinely interchangeable or substitutable with the licensed technology (from the perspective of a licensee), the safe harbour is available regardless of whether precise market share data can be established.

The draft guidance confirms that “independent” requires the absence of ownership or control links between the ITR holder and either party. Because ITRs must be owned or controlled by a third party, neither the licensor’s own technology rights nor the licensee’s technology rights count towards the three-or-more ITR threshold.

Grace period

Where the threshold is initially met but subsequently exceeded, the safe harbour continues for three consecutive calendar years following the calendar year of first breach. This is an extension from the two-year period that applied under the assimilated TTBER. This provides greater flexibility for parties whose market positions shift incrementally over time, and the draft guidance recommends annual market share reviews as a matter of best practice.

Cross-Border Licensing: Where UK and EU Diverge

For businesses with licensing arrangements covering both UK and EU territories, the simultaneous introduction of both new regimes creates a new layer of complexity. Because both the TTBER and TTBEO are new regimes, and several interpretative points will only be clarified through enforcement practice and future guidance, cross-border licensing strategies should be kept under review as the Commission and CMA build up case experience and refine their approaches.



Potential competitor definition

This is the most practically significant structural divergence. The TTBER retains the SSNIP test (small but significant non-transitory increase in price). The TTBER removed the SSNIP-based qualifier from the definition of potential competitor, widening the concept of potential competition. As a result, a party who is a potential competitor in the EU may not be a potential competitor in the UK. This may result in differential treatment of the same agreement.

Database rights

Database rights are expressly covered by the TTBER but are not within the scope of the TTBER. A data licensing arrangement involving a UK database right may benefit from the safe harbour in the UK whilst requiring individual assessment in the EU. For pan-European data licensing, this asymmetry should be addressed in the risk assessment at deal inception.

Technology pools and LNGs

The EU TTGL contains detailed guidance on both technology pools and LNGs. The UK draft guidance addresses technology pools but does not contain equivalent guidance on LNGs. Businesses participating in UK-facing LNGs should note this gap and consider seeking individual legal advice in the absence of CMA guidance. The EU guidelines may be persuasive before UK courts and the CMA as a matter of principle, but they are not binding.

Utility models

As previously, utility models are expressly included within the definition of “technology rights” under the TTBER. A licence of utility model rights therefore falls within the EU block exemption safe harbour in the same way as a patent licence. Utility models are not included in the TTBER. This omission reflects the fact that the United Kingdom does not recognise utility models as a domestic intellectual property right.

The practical consequence for pan-European licensing is significant. Where a licence covers utility model rights (for example in Germany, China or Japan), the EU element of the arrangement will benefit from the TTBER safe harbour in respect of those rights. The UK element of the same arrangement will not benefit from the TTBER safe harbour on the basis of the utility model. Whether the UK element falls within the TTBER will depend on whether the agreement also covers other qualifying technology rights that are sufficient to bring the agreement within the TTBER’s scope. Where the utility model is the only or primary right being licensed, parties should conduct an individual assessment of the UK leg of the arrangement. It remains possible that such an agreement would not infringe competition law despite falling outside of the TTBER.



Public funding, subsidies and procurement

Government to respond to the CMA's final market study report on civil engineering

In May, [the CMA published its final market study report on civil engineering for public road and railway infrastructure](#). The report includes recommendations to government and on:

- reforms to procurement processes,
- pipeline visibility, adjustments to risk allocation between public bodies and contractors, and
- steps to streamline regulatory barriers to entry and expansion.

The report contains 19 recommendations, seven of which are designated critical. The recommendations cover four broad themes: establishing strategic ownership of the market at government level; providing longer-term and more certain funding pipelines; reforming procurement practice to mandate best practice and reduce complexity; and streamlining regulatory requirements across road and rail.

These potential reforms remain recommendations. Responses to the CMA's interim report from contractors, specialist subcontractors and industry bodies were broadly supportive of the reform. The CMA has been explicit that the recommendations are mutually reinforcing and that the package must be implemented in full to achieve its potential. The report acknowledges that some of the recommendations, particularly those requiring mandatory compliance by procuring authorities, involve short-term adjustment costs as well as potentially reduced budgetary flexibility for the government. It is now down to the government to decide whether it will adopt any of the CMA's recommendations.

A similar investigation into the supply of roofing and other building services to schools is widening beyond the initial scope of the investigation which was only projects supported by the Condition Improvement Fund (CIF). The CMA is now investigating suspected anti-competitive conduct in the form of bid-rigging in relation to other public and private sector bodies as well as schools (whether or not the works were funded by the CIF). The investigation is currently ongoing, with further evidence gathering taking place until December 2026.

Subsidy Control Act reforms

Following the end of the initial review period on 31 March 2026, the Subsidy Advice Unit (SAU) published its first monitoring report on the effectiveness of the Subsidy Control Act on 25 June 2026. This report recommended:

- **More guidance and support for public authorities** through the development of further guidance material this includes case studies, clarification on issues such as defining a subsidy and insights from judgements.
- **New and improved streamlined routes** as existing ones were found as not being used by public authorities to the extent intended, with the SAU calling for a review of the operation of the streamlined routes and looking at whether additional routes across different sectors may be worthwhile.
- **Increased transparency** through prioritising improving issues with the subsidy database such as via allowing sectors or businesses to be monitored without repeated searches, expanding the information available on the database, as well as its accuracy and consistency.

The government must now address these recommendations, possibly considering them alongside other changes to the subsidy control regime.

During 2026, the government has implemented [reforms to the subsidy control regime](#) in light of the DBT consultation and the SAU's monitoring activities. The changes included increasing the nonsensitive mandatory referral threshold from £10 million to £25 million, although a refreshed list of sensitive sectors that may warrant greater scrutiny seems to be off the table for now. These reforms are intended to respond to concerns that the current regime is overly complex and that inflation has brought more projects than expected within the mandatory referral net, while still safeguarding competition by targeting more intensive scrutiny at subsidies that pose a greater risk of distortion.

Additionally the Department for Business, Innovation, Science and Trade (BIST) has published its response to the consultation, addressing each of the three themes identified in the SAU report and discussed above.

Guidance and support – BIST plans to publish an updated version of the statutory guidance and quick guide in autumn 2026.

Streamlined routes – feedback has helped identify areas in which the original streamlined routes can be improved, BIST expects a new version of the research, development and innovation route to be laid before Parliament in the autumn. Furthermore it has stated an intention to revise the energy usage and local growth routes in “due course”.

Increased transparency – BIST has undertaken a programme of enhancements to the subsidy database to make the information contained within it more accurate and searchable. These enhancements are prioritised and aimed at improving visibility and scrutiny of subsidies recorded on the database, to ensure proper transparency within the UK subsidy control regime. After introducing additional fields that have improved the quality of entries, BIST is now focussed on improving the search function, with its rollout aimed for “later in the summer”.



Once the updated statutory guidance, revised streamlined routes and enhanced subsidy database are in place, public authorities and beneficiaries will have greater clarity on how to structure and report subsidies. For in-house counsel advising on projects with public funding, it will be crucial to track these regulatory changes and adjust internal processes and deal structures to comply with the new referral thresholds, changes to the subsidy database and updated streamlined route criteria.

Planned adoption of changes to EU subsidy control

The Commission plans to [adopt changes to the General Block Exemption Regulation \(GBER\) in Q4 2026](#). The GBER exempts state aid measures from prior notification and Commission approval if the measure meets certain conditions. This initiative aims to simplify the rules by:

- removing overly complicated conditions; and
- including additional types of subsidies based on cases handled by the Commission over several years.

The Commission received 202 responses to the consultation on the functioning of the GBER via its website. Over three quarters of these were from public authorities, business associations and businesses themselves. The responses reveal broad stakeholder consensus that whilst the GBER provides a useful framework, significant gaps exist in supporting the EU's green, digital, and just transitions.

Key change drivers include:

- raising aid intensities and thresholds, particularly for decarbonisation, digitalisation, and high-risk innovation;
- expanding scope to cover new technologies, sectors, and multi-objective projects;
- simplifying procedural requirements (counterfactual scenarios, funding gaps, competitive bidding) especially for SMEs and smaller projects;
- better harmonisation with definitions in EU funding rules and policy instruments;
- enhanced flexibility for financial instruments, start-ups/scale-ups, and non-bank intermediaries; and
- stronger alignment with cohesion policy and territorial specificities.

The revision is expected to address these gaps whilst maintaining safeguards against market distortion. All businesses considering receiving state aid in the future should monitor these changes and be prepared for opportunities that may arise as a result.

From 1 April 2026 to 31 March 2029 – Second SCA monitoring review period and 2027 outlook

From 1 April 2026, the Subsidy Advice Unit began its second monitoring review period for the Subsidy Control Act, which runs until 31 March 2029, with subsequent reviews planned every five years. This structured monitoring framework is designed to ensure that the regime remains responsive to economic and policy developments over time. By 2027, the reforms introduced in 2026 to thresholds, streamlined routes and sensitive sectors, together with any changes in response to the civil engineering market study and other sectoral work, should be operating in practice. Public bodies and beneficiaries will therefore be working within a more settled but still evolving regime, in which the SAU continues to gather evidence on the effects of subsidies and the government retains the ability to refine the framework as necessary. Businesses and government authorities of all levels will need to remain alert to the interplay between subsidy control, procurement law and competition enforcement, especially where projects are large, cross border or strategically important.

Litigation and enforcement

Litigation

By 2027, the legal and regulatory landscape governing litigation funding and collective proceedings is likely to have evolved further in response to a variety of factors including the [CJC report on third party litigation funding](#), the [government's consultation on making collective actions simpler](#) and further case law in the Competition Appeal Tribunal, Court of Appeal and Supreme Court. The consultation may lead to changes in certification standards, funding rules and settlement approval processes. It closes on 25 September 2026. Regarding litigation funding, the previous attempt to legislate on funding agreements did not survive the pre election period in 2024. However, under the previous government, the [Ministry of Justice has signalled an intention](#) to propose legislation to clarify that litigation funding agreements are not damages based agreements “when Parliamentary time allows”.

If implemented, this legislation is expected to clarify that properly structured third party litigation funding agreements will not be treated as damages based agreements, potentially allowing funders' returns to be linked to the level of damages awarded without bringing those agreements within the stricter regulatory regime for damages based arrangements. As these developments crystallise, they will affect both the availability and cost of funding for competition collective claims and the exposure of defendant businesses to large scale litigation. In house counsel should therefore monitor legislative and procedural changes closely, review litigation risk assessments and consider how best to manage and resolve potential collective claims in an environment where funding models and procedural rules may be more clearly defined and could support a greater volume of well resourced actions.

Territorial Supply Constraints

The Commission is [consulting on its approach to address territorial supply constraints \(TSCs\)](#). This consultation is open until 29 September and the Commission plans to adopt its chosen way forward by Q2 2027, after developing the tools by the end of 2026. Currently the Commission is considering four different ways of addressing TSCs: self-regulation, guidelines on prohibited practices, legislation based on the concept of economic dependence and legislating against certain “prohibited practices”. This represents the Commission's view that there is a legal gap as the current competition law framework only covers TSCs when they are imposed by a dominant firm or form part of restrictive agreements.

The exact nature of the impact will depend on which policy is chosen in the end. There is a large difference between the impacts of the most and least interventionist measures. Although creating a list of prohibited practices may seem to be the simplest response, the Commission's experience of applying the Digital Markets Act, setting out a list of prohibited practices for large technology firms, demonstrates the difficulty inherent in this. On the other hand, there are concerns that lighter-touch interventions such as self-regulation or guidelines may be ineffective.

Exclusionary Abuses

On 3 September, the European Commission adopted new Guidelines on exclusionary abuses of dominance, replacing its 2008 enforcement priorities guidance and coming into force in early October. The Guidelines explain the legal and economic framework used to assess whether a dominant firm's conduct departs from competition on the merits and has, at least potentially, exclusionary effects, while also identifying situations where these elements may not need to be shown separately, including:

- where conduct meets EU court criteria,
- the conduct could exclude an equally efficient competitor,
- or is by its nature harmful to competition.

Notably, the final text appears to move away from broad presumptions of competitive harm following consultation feedback. The Guidelines also codify EU case law on key forms of exclusionary conduct, including predatory pricing, margin squeeze, conditional rebates, exclusive dealing, tying and bundling, access restrictions, refusal to supply and self-preferencing in digital markets. A particularly welcome feature is the fuller treatment of the business justification defence, under which conduct may avoid prohibition where it is objectively necessary or produces efficiencies that outweigh negative effects on competition. Dominant businesses should therefore document consumer benefits, efficiency gains and legitimate commercial objectives from the outset, as these factors are likely to be increasingly important in future investigations.



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