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PARTNERING FOR INNOVATION

KEY COMPETITION LAW CONSIDERATIONS FOR TECH SECTOR PARTNERSHIPS IN EUROPE

Collaboration in the technology sector is essential and widespread: from data sharing for AI development to platform and API access and co-developing new products. However, heightened regulatory scrutiny by competition authorities across Europe, at both European Commission ("**Commission**") and national competition authority ("**NCA**") level, means partnership arrangements require careful competition consideration from the outset and as they evolve.

During 2025, competition authorities devoted significant time and resources to examining how to analyse partnerships under merger control rules. They also opened investigations focusing on arrangements between major tech players and smaller innovators. 2026 has already brought new proceedings under the EU Digital Markets Act ("**DMA**") focused on interoperability and data sharing, with similar actions in the UK under the Digital Markets Competition and Consumer Act ("**DMCCA**") concerning fair use of data, data portability and interoperability.

Competition authorities recognise that partnerships foster innovation and provide smaller developers with access to important inputs, distribution networks, and routes to customers. However, they insist that partnerships must be structured fairly and must not foreclose competition or entrench existing market power, with interoperability seen as key to opening markets and stimulating innovation. The Commission, NCAs and UK Competition and Markets Authority ("**CMA**") have all shown themselves willing to put their various tools – whether those be transactional, behavioural or newer regulatory tools – to use to this end. This two-pager summarizes key competition law considerations to watch out for when planning or updating a partnership in the tech sector.

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KEY COMPETITION LAW CONSIDERATIONS

1. MERGER AND FOREIGN DIRECT INVESTMENT ("FDI") CONTROL

Partnerships might be viewed as reportable transactions subject to merger control scrutiny, even where outright ownership is not being acquired. Under the DMA, designated gatekeepers have increased reporting obligations, giving the Commission visibility on a much wider range of transactions than those caught by traditional merger rules.

Regulators are especially concerned with so-called "killer acquisitions" where a big player takes control of a smaller innovator, including "acquihires" to obtain talent, rather than products or assets. These deals may fall below traditional revenue-based merger review thresholds, despite having high value. Regulators are also focused on how control of key inputs such as chips, hardware, cloud computing, data or talent could extend market power or foreclose competitors. Most recently, in Google's acquisition of cloud security startup Wiz, which was cleared unconditionally, the Commission noted that it had identified neither concerns regarding bundling or foreclosure, finding that "customers will continue to have credible alternatives and the ability to switch providers," nor concerns regarding sensitive data access.

Where a partnership involves acquiring influence over an AI-focused business, FDI and/or national security screening may apply alongside merger control rules. With the upcoming revision of the EU FDI Regulation, in a proposal released on 10 February 2026 AI has now been recognised as a "critical technology" with "strategic importance" requiring mandatory screening across all EU Member States (not only a sector where an investment's potential effects should be taken into account as under the existing EU FDI framework).

KEY TAKEAWAY

Companies should conduct thorough merger and FDI control assessments early, noting that jurisdictional thresholds have expanded significantly with transaction value-based thresholds, call-in powers, and new DMA reporting obligations. In France, the Competition Authority is prioritising a formal "call-in" mechanism to address killer acquisitions in digital and tech sectors. The DMCCA specifically amended the UK merger control regime to target killer acquisitions, introducing a new jurisdictional threshold applicable to such deals.

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2. ACCESS TO PLATFORMS AND INFRASTRUCTURE

Partnerships involving dominant platforms face heightened scrutiny, with risk of enforcement actions based on self-preferencing, tying/bundling, and unjustified refusal to provide access. The Commission will examine infrastructure scenarios from either exclusionary (foreclosure) or exploitative (unfair terms) abuse perspectives, and use either a traditional abuse of dominance legal basis or the new DMA.

A key factor in exclusionary abuse analyses is whether the dominant company competes with the party seeking access in a downstream market, as reinforced by the Court of Justice of the EU ("**CJEU**") in the Android Auto case. However, the French Competition Authority practice shows that refusal of access to a non-competitor is not immune from enforcement, potentially departing from the CJEU's case law. Given that potential competitors are also relevant in this kind of analysis, particular care must be taken to ensure competition compliance.

- Closed-design infrastructure is tightly controlled by a single business, restricting interoperability to systems within its own ecosystem. Allowing access to others is normally only required in line with a strict essential facilities doctrine (as per Bronner case law). Where required, this may result in progressive opening and create expectations to grant access to additional partners. The infrastructure may also become "indispensable" for trading partners, triggering a duty to justify any restrictions on access. Perceived dominant tech companies may justify restrictions on objective grounds including protection against unfair competition, technical justifications, and substantial costs, with the Commission's draft Guidelines on Article 102 TFEU recognising both the "objective necessity" and "efficiency" defences.
- Open-design infrastructure uses transparent standards allowing for modification, collaboration, and interoperability with third parties. Refusal to grant access is significantly more difficult to justify in this context, with authorities adopting a more nuanced effects-based analysis. Conditions of access must be FRAND: Fair, Reasonable, and Non-Discriminatory, including with respect to pricing, commercial terms, and technical requirements. Companies should exercise particular caution when designing access frameworks for open-design infrastructure, especially where network effects are present and where businesses requesting access are also competitors.

In practice, many tech infrastructures are hybrid: an infrastructure may launch as closed but gradually open to third parties, or a platform created as open can progressively close once it reaches a certain level of maturity in terms of users. For these hybrid platforms, the law is still unclear. Under the CJEU case law, it appears that if a platform was created as closed and only opens to a handful of users overtime, access can be restricted for legitimate reasons.

Given that in the Android Auto case, the CJEU held that refusal to provide access or interoperability may constitute abuse even where access is not strictly "indispensable" under Bronner if the platform is largely open to third parties, great care must be taken before refusing access requests. Moreover, technical changes that exclude, obstruct, or delay competing products may attract scrutiny. Partners should receive reasonable notice of material changes with appropriate transition periods.

KEY TAKEAWAY

The applicable legal framework depends on whether infrastructure is characterised as "closed" (strict essential facilities doctrine under Bronner) or "open/hybrid" (more nuanced effects-based analysis per Android Auto case law). Companies should document the purpose and design of their infrastructure from the outset and keep updating this with competition considerations in mind when assessing access for others. Read more about this from our recent event: Access, Innovation, and Competition in the Digital Age.

3. IP RIGHTS AND DATA ACCESS

In some circumstances, competition law may require a dominant firm to grant competitors access to infrastructure protected by intellectual property rights on the basis of the essential facilities doctrine.

AI model development requires large volumes of high-quality data, making collaborations with data sources and content creators increasingly necessary. Authorities are seeking to ensure data access is not monopolised by perceived incumbents whilst recognising that partnerships must balance intellectual property rights with innovation. Pricing should be fair and non-discriminatory, but licensing arrangements are not always commercially pragmatic. The recent investigation opened by the Commission into whether Google breached EU competition rules—by using web publisher and YouTube content for AI purposes—is likely to shed light on how the Commission balances IP protection with tech innovation.

In addition, tech partnerships concerning:

- standard essential patent licensing arrangements must honour FRAND commitments, as competition authorities have intervened where SEP holders sought injunctions or imposed unreasonable royalties; and
- joint IP ownership structures must be designed carefully to avoid foreclosing third-party access to resulting innovations.

In all partnerships, information-sharing arrangements that could facilitate coordination must be avoided.

PRACTICAL TIPS FOR TECH PARTNERSHIPS

RECOMMENDATION	RATIONALE
Clearly articulate purpose and scope.	Set out the arrangement's purpose, nature of access, and conditions for modification or termination. Information sharing provisions must be tightly drafted.
Establish objective and transparent criteria for open infrastructures.	Eligibility and restriction criteria should be objective, consistently applied, and transparently communicated.
Ensure proportionate restrictions.	Restrictions should be proportionate to legitimate objectives such as security or technical integrity.
Offer fair and non-discriminatory terms.	Terms including pricing and technical requirements should not discriminate or unduly favour the platform's own service.
Include amendment and transition provisions.	Agreements should address how changes will be communicated with reasonable notice periods.
Build in review mechanisms.	Include mechanisms for periodic review to adapt terms as technology and regulation evolve.
Assess FDI and merger filing requirements early.	Where changes of control might be perceived or the partnership involves investment in tech capabilities, parties should map notification obligations before signing.

CONCLUSION

Competition authorities across Europe are poised to maintain close oversight of partnerships in technology markets. Regulators have demonstrated willingness to intervene swiftly in fast-moving markets, adapting established case law where necessary and using both traditional tools and newer instruments such as broadened FDI frameworks and the DMA.

Please contact us to discuss the design, structuring, and management of partnership arrangements, or any competition law issues that may arise.