



**Baker
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Wrap Up Session

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Annual Compliance Conference

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Anti-Bribery and Corruption

Key Takeaways (Anti-Bribery and Corruption)



US and UK Enforcement Trends and Developments

- High-profile DPAs entered into by US and UK authorities
- Increasing international cooperation between enforcement authorities
- Continued focus on third party relationships, and high-risk sectors and regions



M&A: Compliance Risks in Emerging Markets

- M&A continues to be a key factor in enforcement cases
- Importance of holistic ESG risk mitigation in the M&A process
- Economies in Africa, APAC, and Russia and the CIS all present specific risks



Managing External Stakeholders During Investigations

- Growing complexity of dealing with multiple stakeholders in investigatory context
- Auditors playing a key role in driving investigations and accountability
- Market-facing obligations, and obligations towards lenders / insurers (including 'stakeholder capitalism')



Challenges in Managing Global Compliance Programmes

- Importance of adapting compliance programmes to new ways of working
- Key roles of local-level compliance 'champions' / ambassadors within the business
- Focus on data and effective implementation

Key Legal Developments

- See our article on '10 Reflections from 10 Years of the UK Bribery Act' (available [here](#))
- **January 2021** – Deutsche Bank AG resolution with DOJ and SEC
- **June 2021** – Anticorruption Task Force – Latin and Central America
- **June 2021** – Amec Foster Wheeler DPA



Antitrust Compliance

Key Takeaways (Antitrust Compliance)

Infringement

- Be on the lookout for infringements of the competition rules and prepare as much as possible in advance by thinking about data privacy and employment issues now!

Merger control

- Increased scrutiny means parties might come under more pressure to offer remedies as the price to pay for getting their deal through. In potentially sensitive sectors, this means much more work upfront to define both long stop dates and walk away provisions.

Distribution

- No "one size fits all" approach to antitrust compliance in supply chain (unless you opt for the most restrictive approach and apply it globally!)
- When it comes to high risk conduct, focus your training not just on legal principles, but sales/marketing teams' broader behaviour, culture and approach to communication
- Constantly assess your position in different markets, take into account recent/planned reforms and adapt business practices and behaviour accordingly

Unilateral conduct

- Be mindful that unilateral behaviour may get you into 'hot water' in certain jurisdictions even if your company is not dominant (especially relevant if you are terminating distributors)

Key Legal Developments

- **New US antitrust era under Biden:** increased scrutiny/enforcement in identified key industries
- **Merger control:** tougher scrutiny for deals in certain sectors (especially tech and pharma) and in markets that are relatively concentrated. Some jurisdictions are particularly interventionist (UK/US)
- **Continued focus on digital sector** around the world. Not just an EU issue anymore
- **Distribution:** Enforcement continues to be a priority. Spotlight on RPM, territorial/customer restrictions, online sales/digital markets and dual distribution
- Increase of national laws on **"abuse of economic dependency"**. Not exclusively an EU issue anymore



Customs, FTAs and Brexit

Key Takeaways (Customs, FTAs and Brexit)



Geopolitical impact of Biden administration, Brexit and WTO on customs

- Utilise practical strategies available for complying with and mitigating the impact of ongoing trade remedies
- Engagement with trade remedies investigations can help steer trade policy in both ways: either to protect domestic share or promote greater trade
- Be on the lookout for tariff reliefs stemming from geopolitical developments / settlements



Navigating Free Trade Agreements

- Weigh the benefits of using an FTA against the compliance burden – pay careful attention to keep copies of all origin documentation and records of transactions for auditing purposes
- Coordinate with internal departments when deciding whether to use an FTA, decisions made by logistics and purchasing teams may impact ability to meet certain rules of origin
- Consider using alternative customs procedures and other reliefs available in adapting your post-Brexit supply chain



Understanding global customs valuation issues

- Increased scrutiny of customs valuation methods means companies should be mindful of how certain assists and royalties may become part of the customs value
- Communicating with teams across the supply chain (incl. legal, accounting and finance) is key to structuring the appropriate valuation methodology
- Become familiar with the customs requirements for your importing jurisdictions and be mindful of how they may differ with respect to certain policies incl. transfer-pricing adjustments (TPAs)

Key Legal Developments

- **Brexit:** Emergence of a new "Global Britain" trade policy following the end of the Brexit transition period (incl. the TCA and other new FTAs)
- **US tariffs:** US de-escalation of trade disputes under the Biden Administration, but continued protectionist positions
- **FTAs:** Growth of regional trade agreements including CPTPP, AfCTCA and USMCA
- **CBAM:** Proposal for a Carbon Border Adjustment Mechanism (CBAM)
- **Customs Valuation:** Continued scrutiny / vigilance from customs authorities in stress testing valuation methodologies



**Supply Chain, Product and ESG
Compliance and Liability**

Key Takeaways (Supply Chain, Product and ESG Compliance and Liability)



Importance of ESG Supply Chain Compliance

- Environmental and social impact of supply chains under heightened scrutiny from regulators, competitors and stakeholders
- Governments imposing more regulations to hold companies accountable for actions of third-party suppliers and partners



ESG Supply Chain Compliance Best Practices

- ESG DD not dissimilar to other DD exercises. However, while Corporate DD focusses on risks to the business, ESG DD focusses on risks to others
- ESG DD should be fully comprehensive, including involvement up to board level
- Cannot be a 'one-size-fits-all' approach: depends on size of company, sector and industry, supply chain, and particular project
- Supply chain DD is a continuous process; it requires regular audits and reviews



Getting Sustainability Claims Right

- Stakeholders and consumers care about the statements and claims companies make
- Incorrect statements and claims expose companies to reputational and financial harm and litigation
- Budding ESG-related disclosure requirements in the US, EU and UK will make it even more important for companies to make accurate ESG statements and claims

Key Legal Developments

- **Q4 2021** – EU legislation on mandatory human rights and environmental supply chain due diligence
- **Q4 2021** – EU Commission proposal on substantiating green claims
- **September 2021** – CMA guidance for businesses making environmental claims in the UK
- **March 2021** – SEC announces Task Force focussed on ESG and climate disclosures
- **2015** – UK Modern Slavery Act
- **2014** – EU Non-Financial Reporting Directive
- **2010** – EU Timber Regulation



Export Controls, Trade Sanctions and Foreign Investment

Key Takeaways (Export Controls, Trade Sanctions and Foreign Investment)



Sanctions are a much more commonly deployed tool

- Sanctions no longer only used by US and EU
- Need to stay on top of fast moving rules and risk of conflicts between them
- Baker McKenzie's [sanctions blog](#) will help you keep up to speed with developments



Brexit not yet done

- Complexity of dual-use export controls rules (incl. position for NI)
- UK's progressive divergence from EU sanctions (e.g., approach to Belarus and thematic sanctions)



Effective screening needed

- Historical reliance on country sanctions, but shift to thematic (e.g., cyber)
- Enhanced importance of screening effectively
- Recent example of Belarus sanctions – only able to trace UBOs through screening



Importance of M&A Due Diligence

- Continue to see breaches identified in recently acquired targets = successor liability
- Sanctions and export controls compliance in targets often inadequate



Foreign Investment Review

- Growth of foreign investment laws (new UK NSIA) = profound impact on M&A
- Global proliferation of rules, necessitating need for multi-jurisdictional FIR review

Key Legal Developments

- End of Brexit transition period
- UK establishes and deploys its [Global Human Rights sanctions regulations](#)
- UK introduces its [Global Anti-Corruption sanctions regulations](#)
- National Security and Investment Act receives [Royal Assent](#)
- EU imposes [broad sector based sanctions](#) on Belarus, followed by US and UK
- [New EU Dual-Use Regulation takes effect](#)
- United States [removes special treatment](#) of Hong Kong from export controls perspective
- China [imposes](#) counter-sanctions and blocking measures



Resources



Brexit Blog

<https://brexit.bakermckenzie.com/>



Distribution Antitrust Risk Tool

<https://resourcehub.bakermckenzie.com/en/resources/dart>



Foreign Investment and National Security Blog

<https://foreigninvestment.bakermckenzie.com/>



Global Compliance News

<https://www.globalcompliance-news.com/>



Import and Trade Remedies Blog

<https://www.internationaltrade-complianceupdate.com/>



Litigation Intelligence Tool

<https://litigationinteltool.bakermckenzie.com/>



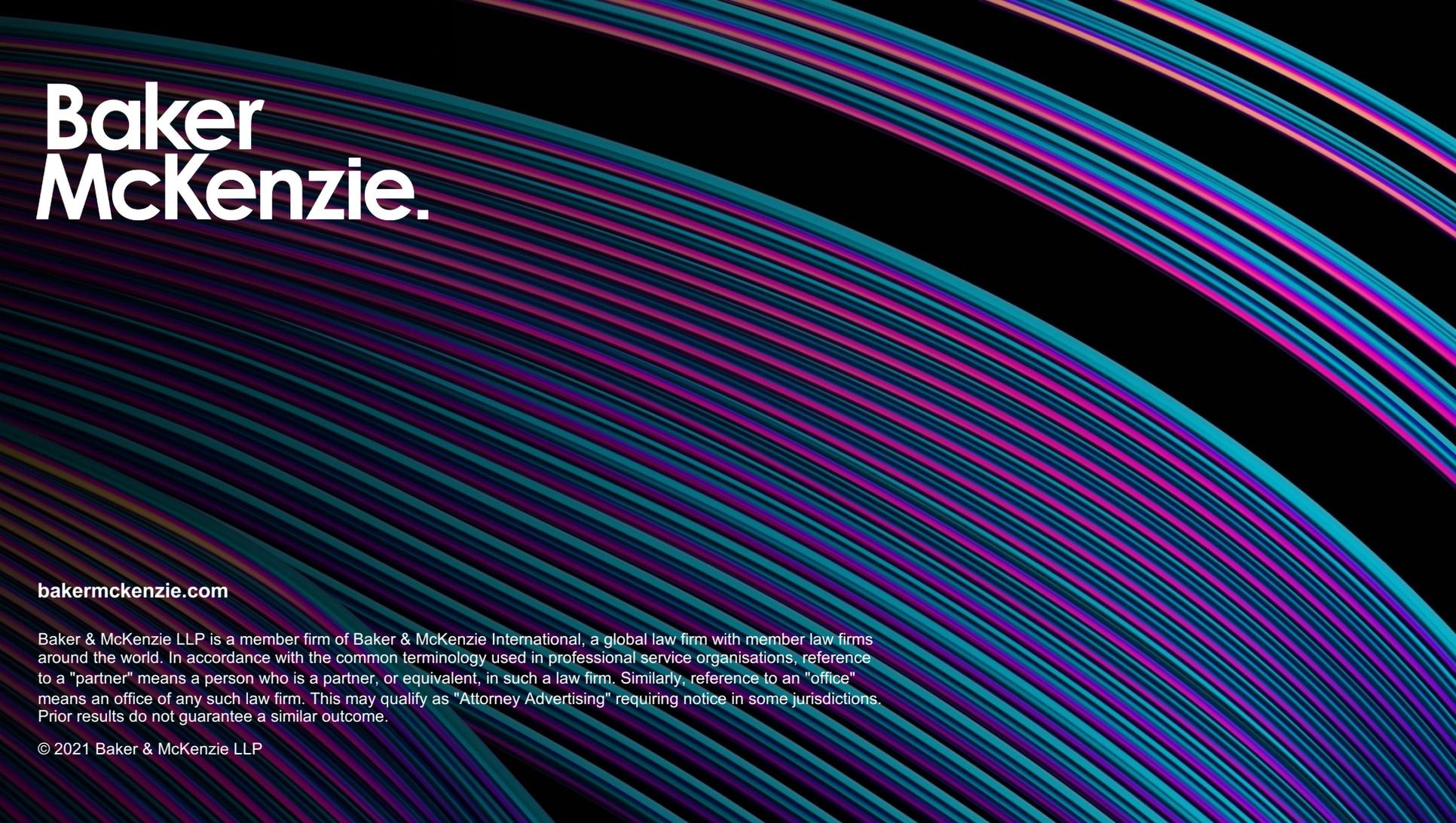
Sanctions and Export Controls Blog

<https://sanctionsnews.bakermckenzie.com/>



Supply Chain Compliance Blog

<https://supplychaincompliance.bakermckenzie.com/>

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