EVERSHEDS SUTHERLAND

ACC Association of Corporate Counsel
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Meeting your targets

The M&A market: predictions and trends for 2025 and beyond

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Speakers

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Agenda

1. Increasing regulation – key takeaways from our 2024 M&A Report

2. The view from Washington on the current regulatory climate

3. Practical implications on deal terms and mitigating regulatory risk in practice

4. General M&A trends and predictions for the market

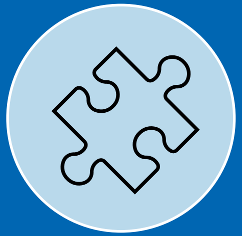
1. Eversheds Sutherland’s M&A Report

Key Findings and Analysis

M&A Report Key Findings and Analysis – Increasing Regulation

Key findings

1. Regulatory regimes are capturing a broader set of M&A deals
2. Most deals are cleared without remedies
3. More regulatory process means deals are taking longer
4. Larger deals face more scrutiny but smaller deals are still caught
5. Regulatory divergence



2. The View from Washington: Regulatory Climate for Mergers and Acquisitions

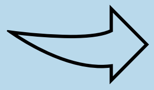
Beyond Selective Decoupling (Derisking) from China: Should (and will) we Go Further?

1

Similar Approach to CFIUS Reviews over Administrations

Most Cases Historically Cleared; Growing Number (Mostly China Related) Mitigated or Prohibited

Year	Notifications	Investigations	Withdrawals*	Presidential Decisions	Mitigation Agreements
	Obama Administration				
2014	147	52	12	0	9
2015	143	66	3	0	11
2016	172	79	3	1	17
	Trump Administration 1.0				
2017	237	172	24	1	29
2018	229	158	18	1	29
2019	231	113	8	1	28
2020	187	88	7	1	16
	Biden Administration				
2021	272	130	9	0	26
2022	286	162	12	0	41
2023	233	128	9	0	36

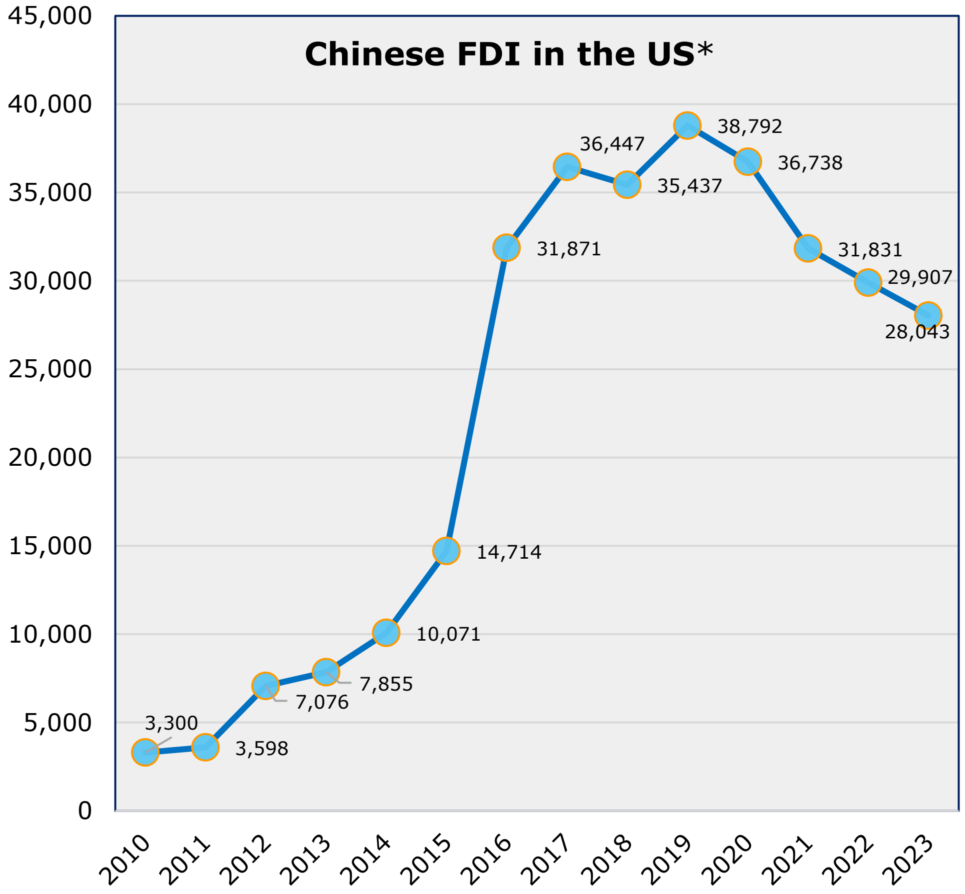


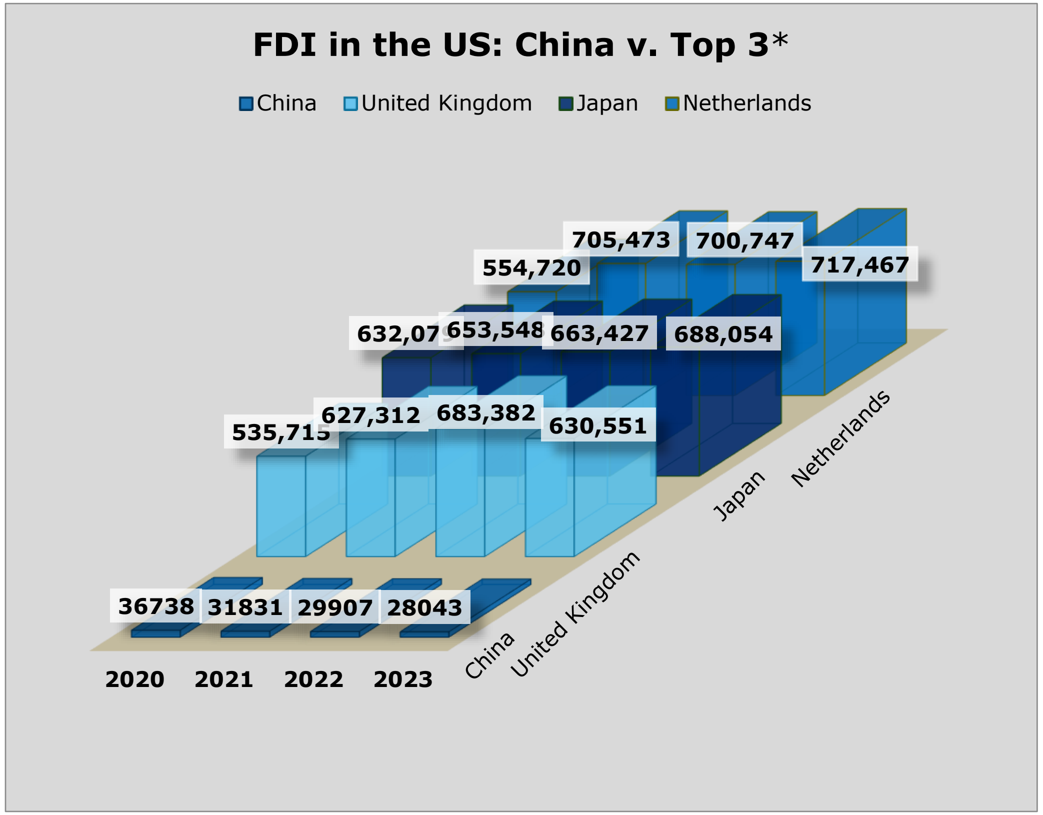
- Number of Cases Reviewed Increased Significantly Since Obama Years and Were Consistent Over Trump 1.0 and Biden (With 10% More Investigated under Trump 1.0)
- CFIUS Stepped Up Review of Non-Notified Transactions and Prior Agreements

How Different Will Trump 2.0 Be – Will Nippon Steel be the Norm?

* *Number of cases where the parties withdrew their notices and abandoned the transaction after either CFIUS (i) informed the parties that it was unable to identify mitigation measures that would resolve its national security concerns or (ii) proposed mitigation measures that the parties chose not to accept.*

Continuing US Focus on "Predatory" Investment Risks Despite Declining Chinese FDI in the US





*data reflected in millions

Will Trump 2.0 Adopt a Presumption of Denial for Chinese FDI Cases?

New Trump 2.0 "America First Investment Policy" Memo Directs US Depts. and Agencies to Make Changes in FDI Policy

Facilitates Investments by Allies and Partners

- Fast Track Process – apparently beyond existing 30 Day declaration process
- Expedited environmental review of investments over $1 Billion
- Streamlined use of Mitigation Agreements
- Passive investments by all foreign persons encouraged

Expands Restrictions on Inbound and Outbound Investments Involving China and Other "Adversaries"

- Additional restrictions on Chinese investments in certain sectors (US technology, critical infrastructure, healthcare, agriculture, energy, raw materials and other sectors)
- Expansion of CFIUS authority over greenfield investments, access to US talent, and "emerging and foundational" technologies
- Additional restrictions on US outbound investments in China
  - Expansion to different sectors (biotech, hypersonics, aerospace, advanced manufacturing and directed energy)
  - New limitation on US investments in Chinese military sector

Trump 2.0 Memorandum Does Not Appear to Change Fundamental Approach to FDI Review, But Does Declare that "Economic Security is National Security"

Policy question
Do We Move toward Total Decoupling or "Let's Make a Deal"?

- **Broader Forms of Disengagement Underway and Under Consideration**
  - **Across the Board 20% Tariffs:** Trump Administration yesterday raised duties to 20% after initially setting rate at 10; likely result is higher prices
    - ITC found that Trump tariffs on steel and aluminum increased average US prices of these products and had "largely negative" effects on downstream industries
    - China retaliated in a limited way and stronger retaliation now can be expected
  - **Broader Export Controls and Sanctions:**
    - House China Select Committee's 150 recommendations include: mandatory sanctions on more Chinese firms with military ties; expanded export controls and trade restrictions to reduce Chinese competitiveness; and broader CFIUS authority over agricultural land
  - **Reduced US Input Dependence:** on Chinese microelectronics parts & components
- **Trump Administration 1.0 as a Benchmark – Transactional Approach**
  - Combination of limited tariffs (301 and 232) and opportunistic trade agreement – not across the board disengagement

Trump 2.0 Needs to Weigh Merits of Broader Disengagement vs. Trump 1.0 Deal-Making – Calculus of Geopolitical, Security and Economic Benefits, Costs and Risks

US Tariff and Trade Policy Beyond China: Tariffs or Negotiations?

2

Trump 2.0 Tariff Actions (Other Than China)

- **Announced Tariffs on Canada and Mexico, Initially Paused, *Expected to Go Into Effect Today***
  - 25% tariffs on goods from Canada and Mexico except Canadian energy/energy resources (10%)
  - ***President Trump just announced new 232 investigation into softwood lumber imports***
- **Expanded Section 232 Tariffs on Steel and Aluminum**
  - March 2018: Trump 1.0 imposed 25% tariff on steel and 10% tariff on aluminum
    - Exemptions provided to countries under both Trump 1.0 and Biden Administration
  - March 12, 2025: Trump 2.0 to : (1) reinstate 25% steel tariffs from previously exempt countries; and (2) reinstate aluminum tariffs from exempt countries (previously at 10%) at higher 25% rate

- **"Fair and Reciprocal [Trade] Plan"**
  - USTR, in consultation with other agencies, to investigate US harm from any non-reciprocal tariffs or other non-tariff trade barriers and report proposed remedies to the President
  - Action unlikely until after agency reports due in April 2025 but President could act at any time
    - No legal trade authority cited in the Plan; could include a range of trade actions (Section 301, Section 201, etc.)
  - Formal investigations initiated under trade remedy laws (e.g., Section 301) could take months
  - President has suggested possibility of tariffs on EU and 25%+ tariffs on auto, semiconductors, and pharma imports

Trump 2.0– What is the End Game – Negotiated Agreements or Tariffs?

Mergers and Acquisitions: The Future Antitrust Enforcement Environment and the Role of M&A

3

Merger reviews

Some Biden Enforcement Uptick in Large High Tech and Pharma Deals, But Mostly Continuity Across Administrations

	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023
	Trump Administration (First Term)				Biden Administration		
Notified Transactions	**2,052**	**2,111**	**2,089**	**1,637**	**3, 520**	**3,152**	**1,805**
Second Requests Issued (Totals)	**51 (2.5%)**	**45 (2.1%)**	**61 (2.9%)**	**48 (2.9%)**	**65 (1.8%)**	**47 (1.5%)**	**37 (2%)**
– FTC (Number/%)	33 (1.7%)	26 (1.3%)	30 (1.5%)	23 (1.5%)	42 (1.2%)	25 (0.8%)	26 (1.4%)
– Justice (Number/%)	18 (0.9%)	19 (0.9%)	31 (1.5%)	25 (1.6%)	23 (0.7%)	22 (0.7%)	11 (0.6%)
Transactions Challenged (Totals)	**41 (2%)**	**39 (1.8%)**	**38 (1.8%)**	**43 (2.6%)**	**32 (0.9%)**	**50 (1.6%)**	**28 (1.6%)**
– FTC	23	22	21	28	18	24	16
– Justice	18	17	17	15	14	26	12
Resolution by Consent Decree (Primarily Divestitures)	**24**	**20**	**18**	**17**	**14**	**16**	**3**

Small Percentages of Transactions Investigated or Challenged Across Recent Administrations

Most Challenged Transactions → Consent Decrees or Abandonments; Smaller Number Litigated

Antitrust Agencies Accepted Fewer Divestitures in 2022-2023

Most Second Requests/Challenges for Deals >$1 Billion in Value – Most Smaller Deals Got Through

New FTC Chairman Announces That Biden-Era Merger Guidelines Will Remain in Force and Effect

Data Source: Hart-Scott-Rodino Annual Reports (2017-2023); available at: https://www.ftc.gov/policy/reports/annual-competition-reports

Trump 2.0 Antitrust Policy
Continuity With Some Change

- Republican Administrations Generally Somewhat More Permissive on Merger Policy and De-Regulation than Democratic Administrations But …
- President Trump and Vice President Vance Have Indicated Vigorous Antitrust Enforcement, Especially Against Big Tech, Likely to Continue But …
  - President Trump recently expressed that he doesn't think Amazon should face forced divestitures
- FTC/Justice Department Allowed New and More Robust Hart-Scott-Rodino Form to Go into Force and Effect
- President Trump's Nominees to Lead the Antitrust Agencies Suggest That Antitrust Enforcement is Here to Stay – Their Views Generally Within Areas of Bipartisan Consensus
  - Expected to continue the strong scrutiny of dominance from the biggest tech companies (Google, Meta, Amazon, etc.)
  - But new FTC Chairman Andrew Ferguson very vocal in his opposition to the non-compete ban and issued a lengthy dissent; states he will end Lina Khan's "war on mergers" despite J.D. Vance's praise for her policies
- Focus on Labor Markets May Continue But with Some Change
  - FTC could rescind no-poach ban now under judicial review (which was approved along party lines)
  - January 2025 Guidelines on Business Activities Affecting Workers could be changed or withdrawn

Bottom Line

Continued Robust Merger Policy, Especially in High Tech and Consolidated Markets

More Openness to Using Remedies to Resolve Hard Cases - Divestitures and Behavioral Rules

3. Practical Implications of Regulation on Deal Making & Navigating Regulatory Risk Practically

Practical Implications of Regulation on Deal Making
Regulatory protections in deal documents

Buyer’s Regulatory Efforts and Termination Fees

- Under Biden, US antitrust authorities were reluctant to accept remedies-meaning that ‘hell or high water’ clauses alone sometimes did not work for a deal with a US antitrust process
- More use of a regulatory termination fee
- Parties should conduct a detailed analysis of potential remedies and agree who bears the risk if the transaction is not approved
- Under Trump, likely less need for regulatory termination fees

Practical Implications of Regulation on Deal Making

Regulatory protections in deal documents

“Outside dates” are getting longer – 1 year or even 18 months

- Duration is based on the relevant regulatory conditions, cost of keeping financing available for the duration of the transaction and bargaining power of the parties
- Significant scrutiny on clauses governing conduct of business with buyers wanting more control/ comfort that no material decisions are made during that period; tension with necessity for businesses to continue operating separately – risk of gun-jumping

Greater use of representation and warranty insurance

- A longer gap period can create additional complexity and cost for extended coverage

Navigating Regulatory Hurdles and Mitigating Risk

Practical tips

Go/no go

Consider regulatory issues from the very outset of a deal

Assess the impact on the overall process and cost

Work with advisers who have experience with regulators

Having a team with plenty of experience can provide invaluable insights and save time

Ensure accurate deal documentation

Ensure wider team members/ departments understand what may be expected for the regulatory process and documents accurately present the deal

4. Predictions and general trends

Emerging Deal Trends from 2024

1. Valuation gaps, with a perception that companies in the tech and healthcare industries are being over valued

2. More bilateral deals as competitive processes struggled

3. More regulatory process meaning deals took longer

4. Focus on carve outs

5. Active continuation fund market to plug gaps for private equity

6. Stabilization of interest rates – start of the return of the debt market

2025 Predictions

Commentary suggested stronger 2025 for M&A, given:

- improving conditions for financing
- PE dry powder and need to return monies to funds
- strategic / trade buyers returning

However is this proving to be the case 2 months in?

- US view
- European view
- Asia view

Predictions
Tech/AI

Tech/AI

- The global drive for digital transformation and AI adoption will continue to drive M&A by both tech and non tech businesses
- Disjointed global system of AI policy and regulation with divergence likely between various geographies
- Valuation multiples still high and higher in US, compared to Europe

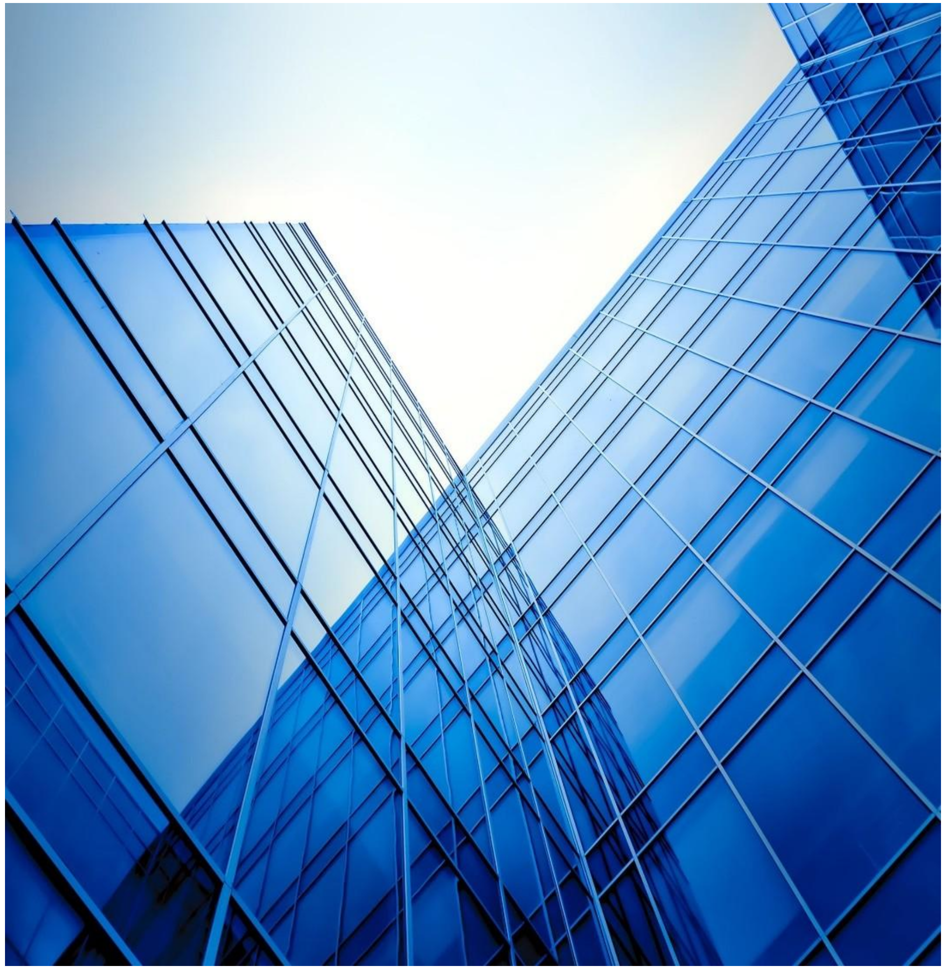
- The overall negotiating power that sets the terms, although in VC deals difference between AI ventures that are raising on very attractive terms vs those who are not viewed as AI related.
- On VC deals we are seeing focussed DD on AI and specific reps, but expect this to change for M&A
- Privacy and cybersecurity DD becoming increasingly important

- AI as a tool for LDD more broadly is increasingly prevalent but not seeing mass adoption yet

Predictions

Carve outs and spin outs increasing

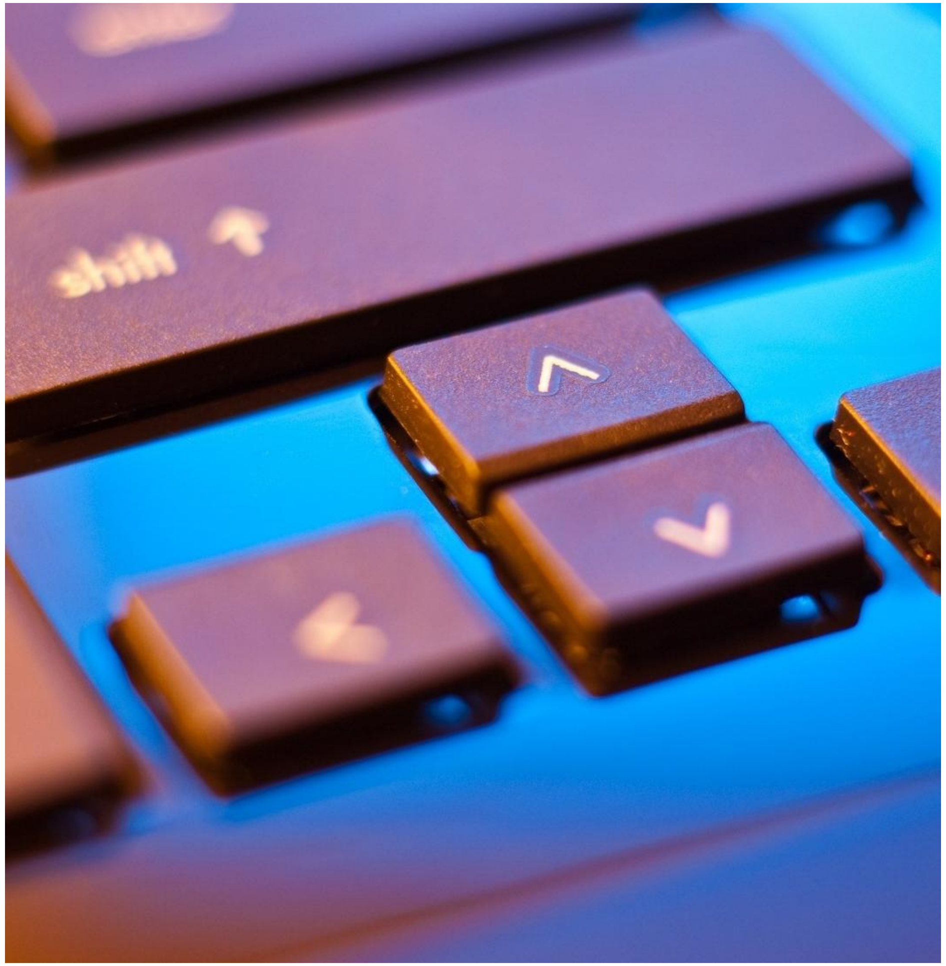
- A number of large spin-offs took place in 2024 as companies sought to simplify and streamline their portfolios, and sharpen geographical focus
- This is expected to continue into 2025, and brings additional complexity to transactions from an operational and business separation perspective
- Carve-outs similarly expected to remain a feature of the M&A landscape in 2025



RWI Trends and Predictions

RWI Market Update

- **Pricing and appetite** - pricing reached historic lows at the start of 2024, but stabilised through the second half of the year
- **Synthetic reps** – increasing use as a tool to get deals across the line in UK/Europe
- **Tech** – IP warranties potentially covered on fundamental basis
- **Carve outs** - certain risks may be excluded from policies, e.g. some China specific risks
- **Outlook** - the 2025 outlook for global M&A insurance is positive with a continuing soft market and increased capacity (new entrants) – insurers are eager to win deals and provide fulsome coverage



Questions?

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