

EU Publishes New Draft Merger Guidelines: Key Takeaways for Business

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As part of a broader push to strengthen European competitiveness, the European Commission has published its long-awaited [draft guidelines on the assessment of mergers](#) under the EU merger regulations (the “Draft Guidelines”) for public consultation.

The Commission has sharpened its toolkit to assess the potential impacts of a merger against pro-competitive benefits, reflecting developments in innovation and global competition. Simultaneously, it has articulated an expansive set of anticompetitive harms to encompass broader, forward-looking effects.

We discuss the key changes and their practical implications for parties below.

What will the Draft Guidelines change?

Mergers with an EU dimension are currently covered by the [2004 Horizontal Merger Guidelines](#) (applicable to competitors in the same market) and the [2008 Non-Horizontal Merger Guidelines](#) (applicable to vertical or conglomerate mergers) (the “current guidelines”). These will be replaced by a unified framework under the Draft Guidelines upon their implementation. They are therefore both modernising and backward-looking, in that they codify the last 20 years of Commission practice.

The Draft Guidelines are open for feedback until 26 June 2026. The Commission will finalise its review process in the last quarter of this year.

Reframing merger assessment - focus on growth, innovation and resilience

Work on competition policy reform in the EU has been ongoing for some time. The Draft Guidelines follow the recommendations of the [Draghi report on EU](#)

[competitiveness](#) published in 2024 and the Commission's [public consultation](#) on merger regulations in 2025.

The Draft Guidelines acknowledge the changing trade and global geo-political landscape. As such, they reflect an unease at the highest levels about an existential challenge facing the competitiveness of EU companies. Driving technological advancement, achieving the necessary scale to compete globally, and securing critical inputs and defence infrastructure for the EU have become key considerations for the Commission. This provides parties with useful direction, allowing an opportunity to present deal framing that may not previously have received attention.

Meanwhile, various commentators have expressed scepticism as to how effective a tool merger control is for furthering the EU's industrial policy ambitions. In particular that the Commission's historic enforcement has meaningfully prevented the emergence of European champions, especially given more fundamental structural obstacles to growth.

Demonstrating merger efficiencies

One of the most critical changes in the Draft Guidelines is the structured framework for parties to articulate transaction efficiencies, which would form a key part of the merger assessment. In assessing harm, the Commission still bears the burden of demonstrating that a merger results in a significant impediment to effective competition ("SIEC"). However, the parties are now encouraged to substantiate how the efficiencies brought about by the merger may counteract any anticompetitive effects. Efficiencies may be direct (cost savings or quality improvements from integration) or dynamic (increased innovation and product improvement). Practically, this allows the opportunity to articulate arguments around benefits that may be unique to the transaction. Parties should think carefully about such arguments at the outset, particularly as they will have to demonstrate that the claimed efficiencies are (i) verifiable; (ii) merger-specific; and (iii) beneficial to consumers.

Market power: key changes

The Draft Guidelines outline a multi-factorial approach to assessing market power, with no one factor being conclusive. Moving beyond merely price-related metrics alone, the Commission will also consider impacts on quality, choice, capacity, output, investment, innovation, privacy, sustainability and resilience. In assessing structural market power, the Draft Guidelines introduce five bands of market shares: from under 10% (low) to

50% or more (very high), instead of the single thresholds provided in the current guidelines.

Dynamic competitive potential—A new concept for innovation intensive industries

The Draft Guidelines introduce the concept of “dynamic competitive potential” for assessing firms where a static assessment of the market would be less informative. This means that factors that are innovation- or investment-related would also be considered in assessing market power. These could include (i) high R&D spend, synergies between intangible assets or even a high valuation of the target by the acquirer; or (ii) the firm’s business model, product portfolios and incentives to invest and expand. Resultantly, a firm which does not currently hold significant market shares may also be considered an important competitive force, particularly in innovation-centric sectors.

Assessment of anti-competitive effects

The Draft Guidelines articulate new theories of harm and expand on themes already emerging in decisional practice, beyond a simple loss of direct head-to-head competition (such as a loss of innovation, entrenchment, access to sensitive information and portfolio effects).

“Indicative” safe harbours; market-specific effects relevant in assessing mergers

Under the 2008 Non-Horizontal Merger Guidelines, the Commission applied a general safe harbour of a 30% market share and HHI. The Draft Guidelines do not retain a separate non-horizontal threshold, and parties must be mindful that the Commission has instead identified four market structures that may indicate that a merger between competitors does not give rise to an SIEC.

The market share assessment forms part of a broader set of factors for mergers where the parties operate in the same relevant market, including closeness of competition and specific market aspects. Therefore, parties must analyse the effects of the merger holistically.

For example, in purchasing markets, the Commission has notably mentioned effects on the labour market where a merger creates or strengthens monopsony or oligopsony power. An impact on effective competition in labour markets may lead to lower wages

or worse working conditions. This is especially relevant to industries where worker mobility is limited by the available options.

Innovation in focus: Loss of innovation competition has been articulated as a distinct theory of harm. The Commission's assessment focuses on whether the merger significantly impedes the *process* of innovation rivalry or alters competition and not whether specific products are withdrawn or degraded. It thereby codifies the "killer acquisition" theory. Parties in sectors such as technology, pharma or digital products can expect a forward-looking scrutiny of their transactions.

Innovation Safe Harbour: Simultaneously, the Draft Guidelines introduce a new concept, the "innovation shield," for acquisitions of small innovative companies, start-ups or R&D projects, under which the Commission in principle would not find a SIEC where certain conditions are met.

Entrenchment of a dominant position: The Commission has set out the ways in which concerns could arise from a dominant firm making even nominal added acquisitions, such that entry barriers are created or strengthened. This has particular impact on acquirers that hold a portfolio of interconnected or related products, as the assessment extends to closely related or interconnected markets, described as an "ecosystem." It is one of the more contentious areas given it moves away from the traditional harm-based evidential framework in that dominance can be reinforced without exclusionary conduct.

Coordination through AI and algorithms; minority shareholdings: In considering coordination between firms, the Draft Guidelines expressly mention that reliance on big data, AI and advanced algorithms may facilitate coordination. These tools can be used to monitor or forecast firms' prices or strategies, enhancing market observability. Parties should be mindful of the ways in which they use AI and even gather information through external providers. Further, minority acquisitions of interests or associations that lead to exchange of information have also been described as relationships which reduce the incentives of firms to compete.

Importance of internal documents: The Draft Guidelines place increased weight on the evidential importance of the parties' internal documents. Anything showing that the merging firms have historically closely monitored each other's actions or taken strategic decisions in response to them may provide particularly strong evidence of closeness of competition. In tandem, parties will need to ensure they have a consistent narrative around deal making, both inside their organisation and externally, setting out the positive impacts of any merger.

Key Takeaways

While the new guidelines are significant, they do not amount to a sea change or a relaxation of the rules; rather, they encourage the Commission to take wider considerations into account when reviewing deals. The legal flexibility for that already existed, but the guidance sends a stronger policy signal encouraging a more pro-innovation interpretation of the rules, especially regarding efficiencies, and gives parties broader options to demonstrate that a transaction is unobjectionable.

These developments signal a Commission that should be receptive to well-evidenced arguments that a merger promotes innovation, resilience and European competitiveness. The ability of the Commission to investigate dynamic factors means that parties should think about transaction rationale from the beginning of the negotiation process, and in some cases, be prepared to be assessed through that wider lens.

At the same time, the Draft Guidelines are not prescriptive and the text is open to different interpretations—so much will depend on the emphasis placed on it by the case teams. The increase in the Commission’s discretion and flexibility to intervene in non-horizontal deals and to apply scrutiny asymmetrically, may unfortunately actually reduce legal certainty.

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Please do not hesitate to contact us with any questions.



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