

# New EU Merger Guidelines: A Blueprint for European Champions?

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On 30 April 2026, the European Commission (the "**EC**" or the "**Commission**") published its draft guidelines on the assessment of mergers under the EU Merger Regulation (the "**Draft Guidelines**")<sup>1</sup> due to replace, by the end of the year, the existing 2004 Horizontal Merger Guidelines<sup>2</sup> and the 2008 Non-Horizontal Merger Guidelines<sup>3</sup> in a single, consolidated instrument covering horizontal, vertical and conglomerate merger effects within one analytical framework.

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<sup>1</sup> Commission opens consultation on draft of new Merger Guidelines, [here](#).

<sup>2</sup> Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, (2004/C 31/03).

<sup>3</sup> Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, (2008/C 265/07).

The Draft Guidelines build on the Draghi Report's recommendation for a more forward-looking merger control regime,<sup>4</sup> and allow for a more holistic competition assessment that considers firms' future capabilities and incentives alongside an expanded set of non-price parameters, including innovation, privacy, sustainability, and resilience, reflecting the evolving geopolitical and trade landscapes.

However, the Draft Guidelines do not represent a radical departure from the Commission's established practice. The core legal standard remains unchanged: the analysis continues to be centered on whether a transaction gives rise to a significant impediment to effective competition ("**SIEC**") in the European market, assessed by reference to the market power of the merging parties. This was largely anticipated, considering that the EC received a mandate only to update its guidelines and not to overhaul the EU Merger Regulation (the "**EUMR**"), which sets the SIEC-based test as the centrepiece of the assessment.

### **What's New: A More Comprehensive and Nuanced Assessment**

Within this consolidated framework, several substantive innovations stand out. The Draft Guidelines expand both the categories of competitive harm that the Commission may identify and the efficiencies it is prepared to recognize, reflecting a more forward-looking assessment. Non-price parameters are expressly recognized to encompass output, quality, choice, capacity, investment, innovation, privacy, sustainability and resilience, reflecting how the balancing of merger effects is examined.

The EC has made sure that this greater detail is well balanced throughout the competitive assessment. Innovation illustrates this dual dimension particularly well, featuring in the Draft Guidelines as either a possible source of competitive concerns or of procompetitive effects. On the harm side, a merger may result in a SIEC if it significantly impedes innovation competition by eliminating rivalry between the merging firms or altering future product market competition. On the benefit side, dynamic efficiencies that confer the ability or increase incentives to invest or innovate are expressly recognized, with scale and innovation identified as critical to EU competitiveness.

This more nuanced approach to competitive effects is reflected in the Draft Guidelines' restructured categories of anticompetitive harm. Departing from the prior framework, the Draft Guidelines now identify eight categories of anticompetitive effects, each applying across all merger types (horizontal, vertical or conglomerate): (1) loss of head-to-head competition, (2) loss of investment and expansion competition, (3) loss of innovation competition, (4) loss of potential competition, (5) foreclosure, (6) entrenchment of a dominant position, (7) coordination, and (8) other effects. Nevertheless, the Commission still has sufficient flexibility for its future practice and has clarified that the categories of anticompetitive effects and relevant factors are illustrative and do not establish an exhaustive list of concerns that a transaction may give rise to.

Beyond this restructured categorization, the Commission also significantly expands its guidance on the relevant factors that characterize a SIEC. For example, when assessing the loss of head-to-head competition, the Draft

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<sup>4</sup> The Draghi report on EU competitiveness, 9 September 2024, [here](#).

Guidelines now develop detailed guidance on portfolio effects (where combining products from different relevant markets that are sold to the same customers increases the merged firm's market power), minority shareholdings (where a non-controlling stake in a competitor may reduce competitive pressure), and the impact of mergers on labour markets (where merger-related impacts on workers may contribute to a loss of competition).

Among these categories, the Commission introduces a new analytical framework with the novel theory of harm of "entrenchment of a dominant position". Building on its recent practice in the digital sector, the Commission indicates that, where a company holds a dominant position on a core market, the acquisition of assets related to this core market may structurally create or reinforce barriers to entry and expansion, reducing contestability and resulting in a SIEC.

If the Draft Guidelines expand the Commission's toolkit for identifying competitive harm, they also significantly strengthen the role of efficiencies as a counterweight in the assessment. The Commission signals that, if sufficiently evidenced, efficiencies will play a key role in its assessments going forward. This is part of the more forward-looking approach the Draft Guidelines promote, with a promise of adjusted time periods for efficiencies to materialize depending on market characteristics. The Draft Guidelines explicitly state that efficiencies include non-price and long-term benefits such as increasing resilience or sustainability. Claims of efficiencies may also refer to market-disrupting innovations or scale effects that reduce unit costs or facilitate investment.

### **On the Ground: Practical Implications for Deal Teams**

For deal teams, the most significant practical takeaway is the Draft Guidelines' explicit endorsement of mergers that enable European firms to gain procompetitive scale. The Commission expressly states that the growth and scaling-up of firms in the internal market so as to reach the necessary size to compete in global markets can be procompetitive, particularly in markets where global firms exert significant competitive pressure. Scale-enhancing mergers that combine complementary activities from different Member States without generating significant overlaps are regarded positively, provided that they do not form an obstacle to competition.

The Draft Guidelines further identify specific scenarios where scale may contribute to EU competitiveness: mergers enabling R&D synergies of a magnitude not otherwise feasible, mergers through which companies gain scale to face pressure from few global incumbents, and mergers securing access to critical inputs that increase the resilience of the internal market.

However, important limits remain: procompetitive scale must be distinguished from increasing market power in a manner that would harm the competitiveness or resilience of EU businesses and consumers, and any alleged efficiencies from scaling up must still satisfy the three cumulative conditions of verifiability, merger-specificity and consumer benefit.

This more receptive posture toward scale-enhancing mergers is mirrored by a notable safe harbor for another category of transactions that has attracted increasing scrutiny in recent years: start-up acquisitions. Where a

transaction involves a small innovative company or start-up, the Commission indicates that, in principle, it will not identify a SIEC, subject to conditions that vary across five scenarios depending on the nature of the overlap on R&D projects and capabilities. This provides a meaningful contrast with the concept of "killer acquisitions" at the heart of a long-standing debate around the use of Article 22 EUMR referrals and national call-in powers.

That said, for most transactions, particularly those reviewed under the simplified or super-simplified procedures, the practical impact of the Draft Guidelines will be limited. The Commission swiftly approves most unproblematic mergers unconditionally and regards positively mergers that increase procompetitive scale while maintaining effective competition. The practical experience for most merging parties should thus be unchanged.

In more complex, higher-profile cases, the Draft Guidelines cut both ways. Parties should expect more sophisticated theories of harm, heavily data-driven merger reviews, and economic analyses drawing on the Commission's expanded toolkit and decisional practice. In return, however, parties should also be able to engage with the Commission on a correspondingly deeper level on efficiency defenses and non-price parameters of the market competition: consumer benefit is interpreted more broadly to encompass qualitative benefits, including sustainability and resilience, as well as out-of-market and collective benefits. Merging parties are encouraged to engage early on efficiencies, including during pre-notification, to foster timely discussion of claims and evidence.

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Several questions remain open as the consultation process unfolds. The application of the balancing test between competitive harm and procompetitive benefits could still benefit from further clarification, as could the concrete elements required to justify benefits in relation to resilience or sustainability.

In addition, the Draft Guidelines now devote a dedicated section to the measures referred to in Article 21(4) EUMR, which allows EU Member States to take measures to protect legitimate interests, such as public security, that may override an otherwise authorized concentration. However, the circumstances that could allow Member States' measures to prevail over the Commission's assessment, and how the standard of proportionality will be applied in contentious cases, remain unclear.

Stakeholders have until 26 June 2026 to submit written comments on the draft text. In parallel, a third interactive technical stakeholder workshop with antitrust practitioners will be organized, and an economic study on the dynamic effects of mergers will be published. The Willkie European Antitrust & Competition team has actively participated in previous workshops and EC consultations and will continue to follow these discussions and developments closely in the coming months.

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