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Memorandum

The Draft Revised EU Merger Control Guidelines: Evolution, Not Revolution, for European Competitiveness

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The European Commission published on 30 April 2026 the draft revised EU Merger Control Guidelines (the "**Guidelines**"), seeking feedback by 26 June 2026 on the most significant reset of EU merger policy in two decades.

Boosting European competitiveness has been one of the core topics of the Guidelines' revision since the Draghi Report's call for merger control to facilitate European firms reaching global competitive scale. President von der Leyen's Mission Letter to Executive Vice-President Teresa Ribera explicitly linked the Guidelines to the competitiveness of certain strategic sectors in Europe. This was widely understood as a nod to telecoms, defence, and critical technologies where European fragmentation has long been blamed for underperformance.

Ambition for the Guidelines has been high: European competitiveness, resilience, and scale, take centre stage. In a marked change of tone, the Guidelines note that transactions that bring about "increased scale and consolidation" *can* be viewed positively (particularly for companies facing global competition) and mergers increasing the competitiveness of European industry "are welcomed". However, the Commission also notes that scale-enhancing mergers are positive where they do not generate significant overlaps, and that their contribution must be to consumers' advantage and not forming an obstacle to competition. The tension between the desire to enable European competitiveness while not undercutting the consumer welfare standard is encapsulated in those guiding principles, and the guardrails included underline that these Guidelines will represent significant development but not a revolutionary change in the Commission's approach to merger control.

The Guidelines, while driven by the EU's competitiveness agenda, are also a **practical necessity**: they act as a single consolidated instrument superseding both the 2004 Horizontal and 2008 Non-Horizontal Merger Guidelines. Since the publication of these existing guidelines, markets and the economy have transformed, and the Guidelines seek to account for the realities of digitalisation, geopolitical shifts and innovation-driven competition within its assessment framework.

I. What Is Changing—and What Isn't

The policy shift operates through the Commission's soft-law assessment framework rather than the core legal standard itself: the SIEC test, used by the Commission to assess whether a transaction would significantly impede effective competition in the internal market remains unchanged.

The Guidelines reaffirm that merger control's primary mission remains preserving a competitive market within the EU but with a new orientation: the assessment should "give adequate weight to scale, innovation, investment, and resilience as procompetitive factors". They also recognise that mergers may enhance competitiveness and growth by enabling firms to enter new markets, combine complementary capabilities, or drive innovation.

At the heart of the competitiveness agenda, the Commission has placed **innovation** on a more prominent footing. The Guidelines establish three mechanisms through which mergers may harm innovation competition: (i) impeding innovation between the merging firms; (ii) impeding overall innovation capabilities in the industry; and (iii) altering parameters of competition in future product markets. Parties cannot defeat an innovation theory of harm simply by committing to continue all R&D projects post-merger, and the Commission will also assess whether reduced pricing incentives across overlapping products constitute harm. The Commission explicitly links this to European competitiveness: **scale-enhancing mergers** that combine **complementary capabilities**, enable R&D synergies of a magnitude not otherwise feasible, or accelerate access to scarce talent "may contribute to European competitiveness".

Start-ups and scale-ups are a vital part of a competitive economy, and the new "**Innovation Shield**" supports this. The Commission will in principle not find a SIEC where a transaction involves a small innovative company or an R&D project with dynamic competitive potential, provided certain conditions are met. These include market share thresholds (40% for product overlaps, 25% for R&D capability overlaps) and at least three independent competitors with comparable R&D potential.

Consistent with the overall new approach the issue of efficiencies takes centre stage in the proposed Guidelines. The Guidelines elevate efficiencies to a structured approach to a new "**theory of benefit**" to counter the traditional notion of theory of harm. Whilst the latter is for the Commission to prove, the burden of proving the former rests with the parties.

Where merging parties consider that a transaction generates efficiencies, they must articulate a theory of benefit setting out how specific merger efficiencies maintain or enhance effective competition, to the benefit of consumers. Such claims should be raised early with the Commission noting that engagement on efficiencies during pre-notification is "welcome".

The Guidelines distinguish between **direct efficiencies** (integration of assets and businesses leading to lower prices or improved products) and **dynamic efficiencies** (ability or incentives to invest or innovate). Both must satisfy three traditional cumulative conditions: verifiability, merger-specificity, and benefit to consumers. This

develops existing concepts but is more structured and includes concepts such as resilience and defence readiness. It also opens the door to the possibility of balancing harm and benefits across different consumer groups and markets, a difficult exercise generally and in particular in relation to mergers. A similar approach was rejected by the CMA when proposed by the Furman Report back in 2019.

Other considerations now enter the Guidelines both as parameters of competition and as potential sources of efficiencies. **Scale**, **resilience**, and **sustainability** may in some situations lead to verifiable, merger-specific consumer benefits. For transactions in defence, critical minerals, energy infrastructure, and other strategic sectors, resilience and security including **defence readiness** offer a structured basis for efficiency claims with no clear home under the prior Guidelines.

II. Key Takeaways: What This Means for Your Transaction

Two structural updates matter most for deal planning. First, the efficiency framework is made more usable, particularly for innovation-related claims, with greater legal certainty on what claims can be made and how to substantiate them. Second, the innovation theory-of-harm toolbox is spelled out with greater precision. Non-orthodox concepts such as resilience, defence readiness and labour-market effects are now part of the merger control vocabulary. The Commission has made it clear that it is committed to a rigorous framework anchored in the EU Merger Regulation and that EU competition law will remain grounded in ensuring competitiveness of the EU internal market as a whole.

The Guidelines represent the most significant reform of the Commission's merger assessment approach since the EU Merger Regulation entered into force in 2004. The broader principles suggest that the Commission will not relax merger control, but modernise it, creating a more granular framework that rewards evidential rigour and clear pro-competitiveness claims. For strategic planning, innovation, investment and resilience arguments can, in theory, move from the periphery of merger submissions to the centre of a claim provided the evidence is precise, merger-specific and consumer-oriented. Particularly for the new concepts and theory of benefit, which rely on efficiencies, internal document will remain critical and the Commission expresses scepticism about analyses that were prepared in contemplation of the merger.

While the Guidelines charter into territories that competition law was previously hesitant to enter, their practical impact is much more likely to represent a gradual evolution as opposed to the sea change as sought by some stakeholders. Achieving European competitiveness is not a task for competition law alone, but the Commission is keen to show that it is willing to play its part to achieve that goal.

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