

# REVIEW MERGER GUIDELINES

Fields marked with \* are mandatory.

## Introduction

---

### I. Introduction

#### 1.1 Background and aim of the questionnaire

In line with the objectives of the EU Treaties, EU competition rules aim to enable a dynamic and well-functioning internal market, by making sure all businesses are able to compete effectively, and to prevent market distortions that can harm consumers – and ultimately damage productivity and economic growth. While companies combining forces through mergers can generate efficiencies and bring benefits to the EU economy, some mergers may reduce competition.

Article 2 of the EU Merger Regulation requires the Commission to assess whether a merger would “significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position”. Where the Commission finds no such impediment the merger is to be approved; if, alternatively, the Commission concludes that the merger would lead to such an impediment, and unless adequate measures remedying this impediment are put forward by merging parties the merger is to be declared incompatible with the internal market.

Mergers can involve companies that are actual or potential competitors on the same market (“horizontal mergers”) or companies that are active on different levels of the supply chain (e.g. one supplies the other with an input) or in neighbouring markets (“non-horizontal mergers”). To provide guidance on how it assesses these different types of mergers, the Commission has issued guidelines: the Horizontal Merger Guidelines (published in 2004) and the Non-Horizontal Merger Guidelines (published in 2008) (the “Guidelines”).

Like all competition tools, EU merger control needs to remain fit for purpose, as market realities change around it. The objective of merger control, in accordance with the EU Merger Regulation, remains valid and unchanged – ensuring mergers do not distort competition in the internal market. However, in the respectively twenty-one and sixteen years since the adoption of the Guidelines there have been significant market trends and developments that have changed the dynamics of competition. The Commission’s assessment of mergers

under the Merger Regulation has equally evolved, to capture those new realities and protect competition within them. In all these years, there has also been relevant case law of the Court of Justice, which has informed the Commission's interpretation of the Merger Regulation and its Guidelines.

In light of these factors, which apply equally to both the Horizontal and Non-Horizontal Merger Guidelines, the Commission is proposing to revise both sets of guidelines in a holistic exercise. The goal is to ensure the Guidelines are up-to-date in order to allow the Commission to continue to protect competition under the Merger Regulation in evolving market realities, while not intervening in transactions that do not harm competition. In addition, the revised merger guidelines should provide increased transparency and predictability to the business community as to how the Commission assesses mergers today. The Commission will conduct concurrently both an Evaluation and an Impact Assessment to support the review of the Guidelines.

We welcome your input on how the Commission should assess mergers within the framework of the EU Merger Regulation and the principles that should underpin its revised Guidelines.

This questionnaire aims at collecting facts, views and evidence from the public and other stakeholders that will help the Commission determine how to adequately update its Guidelines. It represents one of the methods of information gathering in the context of the revision of the Guidelines.

The Commission will summarise the results of this consultation in a report, which will be published on the Commission's "Have Your Say" platform.

Nothing in this questionnaire should be interpreted as stating an official position of the European Commission.

## **1.2 Submission of your contribution**

Please reply to this public consultation by responding to the questionnaire online. You may include documents and URLs for relevant online content in your replies.

You are not obliged to complete the questionnaire all at once; you have the option of saving your responses as a "draft" and finalising them later. To do this you should click on "Save as Draft" and save the new link that you will receive from the EUSurvey tool on your computer. Please note that without this new link you will not be able to access your questionnaire again to continue working on your response.

If you have any questions, you can contact us via the following functional mailbox: [COMP MG REVIEW](#). In case of technical problems, please contact the Commission's [CENTRAL HELPDESK](#).

## **1.3 Duration of the consultation**

The consultation on this questionnaire will be open for 16 weeks.

## About you

---

\* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

\* First name

Hannah Franziska

\* Surname

Sowa

\* Email (this won't be published)

hannah.franziska.sowa@deutsche-boerse.com

\* Country of origin

Please add your country of origin, or that of your organisation.

*This list does not represent the official position of the European institutions with regard to the legal status or policy of the entities mentioned. It is a harmonisation of often divergent lists and practices.*

- |   |  |  |  |
|---|--|--|--|
| <input type="radio"/> Afghanistan         | <input type="radio"/> Djibouti           | <input type="radio"/> Libya            | <input type="radio"/> Saint Martin                     |
| <input type="radio"/> Åland Islands       | <input type="radio"/> Dominica           | <input type="radio"/> Liechtenstein    | <input type="radio"/> Saint Pierre and Miquelon        |
| <input type="radio"/> Albania             | <input type="radio"/> Dominican Republic | <input type="radio"/> Lithuania        | <input type="radio"/> Saint Vincent and the Grenadines |
| <input type="radio"/> Algeria             | <input type="radio"/> Ecuador            | <input type="radio"/> Luxembourg       | <input type="radio"/> Samoa                            |
| <input type="radio"/> American Samoa      | <input type="radio"/> Egypt              | <input type="radio"/> Macau            | <input type="radio"/> San Marino                       |
| <input type="radio"/> Andorra             | <input type="radio"/> El Salvador        | <input type="radio"/> Madagascar       | <input type="radio"/> São Tomé and Príncipe            |
| <input type="radio"/> Angola              | <input type="radio"/> Equatorial Guinea  | <input type="radio"/> Malawi           | <input type="radio"/> Saudi Arabia                     |
| <input type="radio"/> Anguilla            | <input type="radio"/> Eritrea            | <input type="radio"/> Malaysia         | <input type="radio"/> Senegal                          |
| <input type="radio"/> Antarctica          | <input type="radio"/> Estonia            | <input type="radio"/> Maldives         | <input type="radio"/> Serbia                           |
| <input type="radio"/> Antigua and Barbuda | <input type="radio"/> Eswatini           | <input type="radio"/> Mali             | <input type="radio"/> Seychelles                       |
| <input type="radio"/> Argentina           | <input type="radio"/> Ethiopia           | <input type="radio"/> Malta            | <input type="radio"/> Sierra Leone                     |
| <input type="radio"/> Armenia             | <input type="radio"/> Falkland Islands   | <input type="radio"/> Marshall Islands | <input type="radio"/> Singapore                        |
| <input type="radio"/> Aruba               | <input type="radio"/> Faroe Islands      | <input type="radio"/> Martinique       | <input type="radio"/> Sint Maarten                     |
| <input type="radio"/> Australia           | <input type="radio"/> Fiji               | <input type="radio"/> Mauritania       | <input type="radio"/> Slovakia                         |
| <input type="radio"/> Austria             | <input type="radio"/> Finland            | <input type="radio"/> Mauritius        | <input type="radio"/> Slovenia                         |
| <input type="radio"/> Azerbaijan          | <input type="radio"/> France             | <input type="radio"/> Mayotte          | <input type="radio"/> Solomon Islands                  |
| <input type="radio"/> Bahamas             | <input type="radio"/> French Guiana      | <input type="radio"/> Mexico           | <input type="radio"/> Somalia                          |
| <input type="radio"/> Bahrain             | <input type="radio"/> French Polynesia   | <input type="radio"/> Micronesia       | <input type="radio"/> South Africa                     |

- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago

- Cameroon
- Canada
- Cape Verde
- Cayman Islands
  
- Central African Republic
- Chad
- Chile
- China
  
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
  
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
  
- Curaçao
- Cyprus
- Czechia
  
- Iceland
- India
- Indonesia
- Iran
  
- Iraq
- Ireland
- Isle of Man
- Israel
  
- Italy
- Jamaica
- Japan
  
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
  
- Laos
- Latvia
- Lebanon
  
- North Macedonia
- Norway
- Oman
- Pakistan
  
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
  
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
  
- Rwanda
- Saint Barthélemy
- Saint Helena  
Ascension and  
Tristan da Cunha
  
- Tunisia
- Türkiye
- Turkmenistan
- Turks and  
Caicos Islands
- Tuvalu
  
- Uganda
- Ukraine
- United Arab  
Emirates
- United Kingdom
- United States
- United States  
Minor Outlying  
Islands
  
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and  
Futuna
  
- Western Sahara
- Yemen
- Zambia

- Democratic Republic of the Congo
- Denmark
- Lesotho
- Liberia
- Saint Kitts and Nevis
- Saint Lucia
- Zimbabwe

\* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

\* If you are giving your contribution for the company / organisation for which you work, or on behalf of a client, please specify the main function / activity of the company / organisation or client:

*Text of 1 to 600 characters will be accepted*

Financial Market Infrastructure

\* If you are giving your contribution for the company / organisation for which you work, or on behalf of a client, please indicate in which sector it is active (multiple options possible). More details on digital, deep tech innovation, clean and resource efficient technologies, biotechnologies are available in the Commission Guidance Note concerning certain provisions of [Regulation \(EU\) 2024/795](#) establishing the Strategic Technologies for Europe Platform (STEP):

*between 1 and 16 choices*

MULTIPLE OPTIONS POSSIBLE

- Agriculture / agri-food
- Automotive

- Biotechnologies
- Clean and resource efficient technologies
- Construction
- Consumer goods
- Deep tech innovation
- Defense
- Digital
- Energy
- Finance and banking
- Medias
- Other
- Other basic industries (i.e., supplying raw materials to industries which manufacture other goods)
- Pharmaceuticals
- Space
- Telecommunications
- Transport

Please mark the countries where your main business is based.

- |                                   |   |  |   |
|-----------------------------------|---|--|---|
| <input type="checkbox"/> Austria  | <input type="checkbox"/> Finland            | <input type="checkbox"/> Lithuania             | <input type="checkbox"/> Slovenia         |
| <input type="checkbox"/> Belgium  | <input type="checkbox"/> France             | <input checked="" type="checkbox"/> Luxembourg | <input type="checkbox"/> Spain            |
| <input type="checkbox"/> Bulgaria | <input checked="" type="checkbox"/> Germany | <input type="checkbox"/> Malta                 | <input type="checkbox"/> Sweden           |
| <input type="checkbox"/> Croatia  | <input type="checkbox"/> Greece             | <input type="checkbox"/> The Netherlands       | <input type="checkbox"/> Others in Europe |
| <input type="checkbox"/> Cyprus   | <input type="checkbox"/> Hungary            | <input type="checkbox"/> Poland                | <input type="checkbox"/> Other            |
| <input type="checkbox"/> Czechia  | <input type="checkbox"/> Ireland            | <input type="checkbox"/> Portugal              |   |
| <input type="checkbox"/> Denmark  | <input type="checkbox"/> Italy              | <input type="checkbox"/> Romania               |   |
| <input type="checkbox"/> Estonia  | <input type="checkbox"/> Latvia             | <input type="checkbox"/> Slovakia              |   |

\* Organisation name

*255 character(s) maximum*

Deutsche Börse Group

## \* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

## Transparency register number

Check if your organisation is on the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making.

20884001341-42

Has your company/business been the addressee of a Commission decision under Article 6 or Article 8 of Council Regulation (EC) No 139/2004, or has it been another involved party (such as the target or seller) in a merger for which an Article 6 or 8 decision was issued, or has your company/business organisation acted as external counsel or economic consultant of an addressee of such decision in the last 10 years?

*between 1 and 7 choices*

- No
- Yes, Article 6.1.(a) decision
- Yes, Article 6.1(b) decision (simplified procedure)
- Yes, Article 6.1(b) decision (normal procedure)
- Yes, Article 6.1(b) in conjunction with Article 6.2 decision
- Yes, Article 8.1 decision
- Yes, Article 8.2 decision
- Yes, Article 8.3 decision

If yes, please list the relevant cases. (If more than 10, please list the 10 most recent ones.)

12 February 2025: Case M.11858 – Deutsche Börse / Lindner / Digital Vault Services 23 August 2023: Case M. 11158 – Deutsche Börse / SimCorp 29 March 2017: Case M. 7995 – Deutsche Börse / London Stock Exchange Group In addition: 18 August 2023: Case M.11241 – EEX / Nasdaq Power (decision by the Commission to examine a concentration on the basis of Article 22)

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association, 'consumer**

**association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

## \* **Contribution publication privacy settings**

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

### **Anonymous**

Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

### **Public**

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

I agree with the [personal data protection provisions](#)

## 2. Evaluation Criteria

---

### **2.1 Effectiveness (Have the objectives been met?)**

#### **2.1.1 In your / your client's experience, have the Horizontal Guidelines allowed the Commission to identify correctly the transactions that significantly impede effective competition in the internal market?**

- Yes
- No, the Commission has often intervened in transactions that do not significantly impede effective competition
- No, the Commission has often cleared transactions that significantly impede effective competition

- I do not know

2.1.1.1 If no, please identify the transactions involving horizontal overlaps in which the Commission did not assess correctly the impact on competition in the internal market and explain why.

*Text of 1 to 3000 characters will be accepted*

There have been several instances where the Commission's intervention in horizontal mergers has prevented the formation of stronger and globally competitive European market infrastructure players, despite the absence of a significant impediment to effective competition. These decisions were based on narrow market definitions and a static view of competition, which failed to account for global competitive dynamics and the EU's strategic interest in building a resilient, scalable capital market. In case M.6166, Deutsche Börse/NYSE Euronext, the Commission blocked the merger on the grounds that it would create a dominant position in European certain exchange-traded derivatives based on European underlyings. The decision hindered creation of a stronger European player capable of competing with larger US and Asian rivals. However, the market definition did not sufficiently consider global competition from US and Asian exchanges and did not adequately understand the substitutability of derivatives traded on exchange vs. OTC. The proposed merger between Deutsche Börse and London Stock Exchange (case M.7995) aimed to create a European player for a truly pan-European marketplace, aligned with the EU's political vision for CMU and the SIU. Despite the potential to reduce fragmentation and enhance cross-border capital flows, the transaction was blocked, citing concerns over horizontal overlaps for clearing of fixed income instruments and repos. This intervention overlooked the broader strategic benefits and the possibility of mitigating competition concerns through targeted remedies. Deutsche Börse's European Energy Exchange gave up acquiring Nasdaq's Nordic power trading and clearing business (Case M.11241), which could have contributed to the development of a European energy trading platform - a sector of growing economic, strategic and geopolitical importance in the context of the EU's energy transition and autonomy goals. These cases illustrate a pattern where application of Horizontal Guidelines has not adequately accounted for dynamic competition, innovation potential, or strategic sector development. The decisions have, in effect, limited the EU's ability to build globally competitive financial market infrastructure, while allowing non-EU players to consolidate and expand. As highlighted in the Draghi Report, EU companies increasingly rely on non-European capital markets for growth and exit opportunities. The inability to develop truly European Champions within the financial sector contributes to this trend, leading to the relocation of strategic capabilities and innovation spillovers outside the region. A more dynamic and forward-looking application of the Guidelines is needed to ensure that merger control supports, not hinders, the EU's long-term competitiveness and financial sovereignty. Evaluate not only the Horizontal Merger Guidelines but also assess whether the Commission Notice on Definition of the Relevant Market is fully fit for purpose.

**2.1.2 In your / your client's experience, have the Non-Horizontal Guidelines allowed the Commission to identify correctly the transactions that significantly impede effective competition in the internal market?**

- Yes
- No, the Commission has often intervened in transactions that do not significantly impede effective competition
- No, the Commission has often cleared transactions that significantly impede effective competition

- I do not know

**2.1.3 In your / your client's experience, have the Horizontal Guidelines positively/negatively contributed to promoting competition in the internal market over the last 10 years?**

- Yes, they have positively contributed
- They have been neutral
- No, they have negatively contributed
- I do not know

2.1.3.1 Please explain, and, if relevant, identify any differences in this respect between different sectors or types of technologies (clean and resource efficient technologies, biotechnologies, energy, basic industries, telecoms, pharmaceuticals, etc).

*Text of 1 to 3000 characters will be accepted*

**2.1.4 In your / your client's experience, have the Non-Horizontal Guidelines positively/negatively contributed to promoting competition in the internal market over the last 10 years?**

- Yes, they have positively contributed
- They have been neutral
- No, they have negatively contributed
- I do not know

2.1.4.1 Please explain, and, if relevant, identify any differences in this respect between different sectors or types of technologies (clean and resource efficient technologies, biotechnologies, energy, basic industries, telecoms, pharmaceuticals, etc)

*3000 character(s) maximum*

**2.1.5 In your / your client's experience, do the Guidelines continue to provide correct, clear and comprehensive guidance on merger assessment?**

- Yes, for both the Horizontal and Non-Horizontal Guidelines
- Only the Horizontal Guidelines, but not the Non-Horizontal Guidelines
- Only the Non-Horizontal Guidelines, but not the Horizontal Guidelines
- No
- I do not know

**2.1.6 Have the Guidelines proven effective in providing legal certainty and transparency to all stakeholders when it comes to assessing horizontal and non-horizontal mergers?**

- Yes, for both the Horizontal and Non-Horizontal Guidelines
- Only the Horizontal Guidelines, but not the Non-Horizontal Guidelines
- Only the Non-Horizontal Guidelines, but not the Horizontal Guidelines
- No
- I do not know

2.1.6.1 If no, please explain which parts of the Horizontal and Non-horizontal Guidelines are not correct, clear or comprehensive. Please explain, and, if relevant, identify any differences in this respect between different sectors (energy, basic industries, telecoms, pharmaceuticals, etc).

*Text of 1 to 3000 characters will be accepted*

We have concerns around the current notification thresholds and the call-in mechanisms (notably under Article 22 of the Merger Regulation). While the clarification of the conditions of Article 22 by the European Court of Justice (ECJ) in its judgment in Case C-611/22 P (Illumina / Grail) was a welcome step towards more legal certainty, we are now observing a new trend where national legislators / local regulators are introducing new rules or minimum thresholds that might effectively result in more frequent referrals to the Commission, even in cases where the original thresholds were not met. This creates regulatory uncertainty and a disproportionate burden, particularly for transactions that would not traditionally raise competition concerns. We suggest: A more transparent and harmonized approach to call-in rights and notifications thresholds across Member States. Ensuring that new national thresholds do not replicate the same uncertainty that the ECJ in its Article 22 judgment was intended intending to resolve Providing clearer guidance to businesses on when and why a transaction may be refereed, to avoid deterring pro-competitive deals.” The lack of clear guidance on how the Commission will assess market definition in the context of globalized financial markets creates significant legal uncertainty. This uncertainty can deter investment and consolidation, ultimately weakening the competitiveness of the EU financial sector.

**2.1.7 Is the distinction between effects of horizontal and non-horizontal mergers still relevant?**

- Yes, and it is useful to have separate merger guidelines on horizontal and non-horizontal mergers
- Yes, but a single document with guidelines addressing horizontal and non-horizontal mergers would be preferable to ensure consistency
- No, the distinction is artificial as many mergers present horizontal and non-horizontal effects
- Other

**2.2 Efficiency (Were the costs involved proportionate to the benefits?)**

**2.2.1 Please indicate how any costs associated with the Guidelines (e.g. by providing incorrect, incomplete, misleading or too strict or flexible guidance on certain aspects) compare to any benefits the Guidelines have brought to you / your client (e.g. by providing helpful guidance for assessing mergers). Please exclude any costs related to the notification of mergers that are unrelated to the Guidelines:**

- There are no costs related to the Guidelines (i.e. they include only helpful guidance)
- Any costs have been small compared to the benefits of the Guidelines
- Costs have been equal to the benefits of the Guidelines
- Costs have exceeded the benefits of the Guidelines
- Irrespective of the costs, the Guidelines have no benefits
- I do not know

**2.2.2 In your / your client's experience, is there scope for further simplification and cost reduction when it comes to the Guidelines?**

- Yes
- No
- I do not know

**2.3 Relevance (Is EU action still necessary?)**

**2.3.1 Do you consider the objectives of the Guidelines to still be relevant today?**

	Objective still relevant	Objective no longer relevant	I do not know
Provide guidance as to how the Commission assesses concentrations when the undertakings concerned are actual competitors in the same relevant markets	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Provide guidance as to how the Commission assesses concentrations when the undertakings concerned are potential competitors in the same relevant markets	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Provide guidance as to how the Commission assesses concentrations where the undertakings concerned are active on different relevant markets, at different steps of in the value chain or neighbouring markets	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Provide legal certainty, predictability and transparency	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**2.3.2 Please describe any other objectives that the Guidelines have not sufficiently pursued, explaining their relevance for preserving effective competition in the internal market.**

*Text of 1 to 2000 characters will be accepted*

**2.4 Coherence (Does the policy complement other actions or are there contradictions?)**

**2.4.1 In your experience or that of your client, are there any inconsistencies or contradictions between any of the individual paragraphs or sections of the Guidelines? (for example, instances where one paragraph/section of the Horizontal Merger Guidelines is inconsistent with another paragraph/section of the Non-Horizontal Merger Guidelines)**

- Yes
- No
- Do not know

**2.4.2 In your experience or that of your client, are there any inconsistencies or contradictions between the Guidelines and the judgments of the EU Courts?**

- Yes

- No
- Do not know

**2.4.3 In your experience or that of your client, are there any inconsistencies or contradictions between the Guidelines and any other legal texts within the EU merger control framework (e.g. Notice on the definition of the relevant market, Implementing Regulation, Notice on Simplified treatment etc)?**

- Yes
- No
- Do not know

2.4.3.1 If “yes”, please identify the texts at issue, specify the paragraph(s) or section (s) of the Guidelines giving rise to the inconsistency or contradiction and explain the reasons for your assessment

*Text of 1 to 3000 characters will be accepted*

We would like to highlight that, in our view, the European Commission should not only evaluate the Horizontal Merger Guidelines but also assess whether the Commission Notice on the Definition of the Relevant Market is fully fit for purpose in today's globalized and rapidly evolving economic environment. We believe that the European Commission's current approach to market definition is too narrow, both in terms of geographic scope and product market delineation. This has led to outcomes in past merger assessments that, in our view, did not accurately reflect the competitive realities of the markets in question.

1. Geographic market definition: Need for a global perspective The Commission's framework continues to rely heavily on the concept of the "hypothetical monopolist test" and demand-side substitutability within the EU or EEA. However, in sectors such as financial services, competition is inherently global. Market participants, including trading venues, clearing houses, and data providers, compete across borders, and users routinely access services from non-EU providers. A proper market definition needs to account for the competitive pressure exerted by large US and Asian players within the financial sector.

2. Product market definition: Need for greater flexibility Similarly, the Commission's approach to product market definition often fails to reflect the convergence of services and technologies in modern financial markets. For example, the separation of trading, clearing, and data services into distinct product markets does not always capture the interdependencies and synergies that exist in practice, particularly in integrated platforms that offer bundled or interoperable services. In both the NYSE and LSEG cases, Deutsche Börse Group's ability to demonstrate the efficiency and innovation potential of integrated market infrastructure was constrained by a rigid product market framework that did not reflect how users consume these services or how competition unfolds across the value chain. This narrow approach to market definition has broader implications for the EU's strategic objectives. As noted in the Draghi Report, the EU faces significant challenges in retaining innovative firms, attracting investment, and building globally competitive capital markets. Over 60% of EU companies are acquired by non-European buyers, and many IPOs take place outside the EU. These trends are exacerbated when EU-based consolidation is blocked based on outdated or overly narrow market definitions. The EU needs a strong capital market to meet growing funding needs for the green and digital transition - and European businesses need access to capital to fund investments and innovation. The EU risks falling further behind unless its competition framework evolves to reflect global market dynamics, technological convergence, and strategic policy goals including those of the Savings and Investments Union.

**2.4.4 To the best of your or your client's knowledge, are there any inconsistencies or contradictions between the Guidelines and other Commission instruments in the area of competition policy and enforcement?**

- Yes
- No
- Do not know

**2.4.5 To the best of your / your client's knowledge, are there any inconsistencies between the Guidelines and EU rules or policies in areas other than competition?**

- Yes
- No
- Do not know

**2.4.6 How should the Guidelines take into account existing ex-ante regulation in certain sectors (e.g. telecommunications, energy) in its competitive assessment?**

- Not at all
- To the extent it is binding and effective
- Should be taken into account but not replace the assessment of market structures
- I do not know

2.4.6.1 What, if anything, should be changed?

**2.4.7 In your experience or that of your client, do the Guidelines offer sufficient flexibility to take into consideration specific features (e.g. longer investment cycles, innovation intensity, etc)?**

- Yes, fully
- Yes to some extent
- No, to an insufficient extent
- Not at all
- I do not know

**2.5 EU added value (Does action at EU level provide clear added value?)**

**2.5.1 In your experience or that of your client, have the Guidelines at EU level contributed to a consistent approach to merger assessment by the Commission and the EU national competition authorities?**

- Yes
- No
- I do not know

**2.5.2 Please elaborate on any added value stemming from the fact that the Guidelines are adopted at EU level.**

*Text of 1 to 2000 characters will be accepted*

## 3 Competitiveness

---

### 3.1 In your/your client's view, do the current Guidelines provide clear, correct and comprehensive guidance on how merger control reflects the objective of having a productive and competitive economy?

- Yes, fully
- Yes, to some extent
- No, to an insufficient extent
- Not at all
- I do not know

#### 3.1.1 Please explain and mention in particular which provisions of the Guidelines (if any) are not clear or outdated, or what you consider is missing from the Guidelines.

*Text of 1 to 5000 characters will be accepted*

The EU's pursuit of open strategic autonomy, economic security, competitiveness and a robust Savings and Investments Union faces headwinds. Geopolitical shifts, inflationary pressures, a comparatively weak banking sector, and the immense funding needs of the digital and green transitions underscore the urgency for dynamic and globally competitive EU capital markets. Such markets require equally robust and competitive financial market infrastructures. However, current indicators reveal a significant underperformance of EU capital markets compared to global benchmarks – over the last 10 years and today. This is evident in metrics like market capitalization, persistent fragmentation across asset classes, and a declining number of IPOs. Capital outflows and the trend of EU-listed companies moving offshore further highlight the challenges in attracting global investment. Considering the European Commission's emphasis on strengthening EU capital markets, it's crucial to examine how the Merger Guidelines inadvertently hinder the EU's overarching goals. The current Guidelines, while well-intentioned, fall short in addressing the dynamic realities of the globalized economy, particularly within the financial services sector. Globalization has increased the competitive pressure on European firms, necessitating a regulatory framework that fosters scale and innovation to compete effectively on the world stage. The existing Guidelines' focus on static market definition and traditional measures of market power often fail to capture the dynamic efficiencies and pro-competitive benefits that mergers can bring, especially in rapidly evolving digital and data-driven markets. We have consistently observed that the market definition applied has often been too narrow, which in turn has led to overly limited market scopes that do not reflect the actual dynamics of competition. A more nuanced and flexible approach to market definition would help better capture potential competitive concerns, particularly in the dynamic and innovation-driven financial sector: Take a more flexible approach when defining relevant product and geographic markets, especially in fast-evolving and innovation-driven sectors. Consider broader market realities beyond traditional static categorizations. Avoid mechanically replicating narrow precedents that may no longer reflect current or future market conditions. Take a more holistic view on market of certain financial products, taking into account the interconnectedness of financial markets on a global scale but also looking at regulated vs. non-regulated markets.

#### 3.2 What are the benefits that merged companies' increased scale might bring to competitiveness:

**3.2.1 In a scenario where the increased scale does not create market power or a dominant position (e.g. a merger between complementary players in terms of products or geography)? Please select the benefits that you / your client believe(s) are relevant for increased competitiveness of the merged entity. For each selected benefit, please provide concrete examples and underlying data. Please also specify which metrics can be used to measure these elements.**

- a. Decreasing average cost curve
- b. Network effects (i.e., whereby a product or service gains additional value as more people use it)
- c. Intangible capital (assets lacking physical substance, e.g. patents, copyrights, goodwill, know-how)
- d. Access to equity investment
- e. Ability and incentive to invest (e.g. in network infrastructure)
- f. Ability and incentives to innovate (i.e. R&D, including high-risk innovation)
- g. Ability and incentives to derive value from aggregation of data
- h. Improves access to market (i.e. ability to reach new customers or geographies in the internal market or outside the internal market)
- i. Ability to procure products more competitively from large suppliers?
- j. Ability to compete in global markets outside the EU
- k. Other factors

**3.2.2 In a scenario where the increased scale creates or strengthens market power or a dominant position, please indicate which of the benefits identified above are still relevant for increased competitiveness of the merged entity, and comment on whether it may damage the competitiveness of other companies or the economy. For each selected benefit, please provide concrete examples and underlying data. Please also specify which metrics can be used to measure these elements.**

*Minimum 1 selection(s)*

- a. Decreasing average cost curve
- b. Network effects (i.e., whereby a product or service gains additional value as more people use it)

- c. Intangible capital (assets lacking physical substance, e.g. patents, copyrights, goodwill, know-how)
- d. Access to equity investment
- e. Ability and incentive to invest (e.g. in network infrastructure)
- f. Ability and incentives to innovate (i.e. R&D, including high-risk innovation)
- g. Ability and incentives to derive value from aggregation of data
- h. Improves access to market (i.e. ability to reach new customers or geographies in the internal market or outside the internal market)
- i. Ability to procure products more competitively from large suppliers?
- j. Ability to compete in global markets outside the EU
- k. Other factors

**3.3 How should the Commission assess the benefits of companies' gaining scale through mergers when they create market power or a dominant position? Please explain in particular under which conditions such benefits could be sufficient to outweigh competitive harm and under which circumstances such benefits would be passed on to business customers /consumers. Please illustrate with the specific benefits you considered relevant.**

*Text of 1 to 3000 characters will be accepted*

**3.4 From your/your client's perspective, how can the merger guidelines contribute to i.) the security of supply, and ii.) resilience of the EU economy against outside shocks and dependency on third country input?**

*Text of 1 to 3000 characters will be accepted*

3.4.1 Please explain how merger control can take into account the effects of a merger on i.) security of supply and ii.) resilience (both negative and positive impacts)

*3000 character(s) maximum*

3.4.2 Please also specify in which sectors security of supply and resilience are particularly important (e.g. for essential or strategically significant goods)

*3000 character(s) maximum*

**3.5 From your/your client’s perspective, how can the revised merger guidelines contribute to increased innovation? Please explain what innovation effects (both negative and positive) of a merger the revised merger guidelines can take into account and how**

*Text of 1 to 3000 characters will be accepted*

Mergers can create larger firms with more resources to invest in research and development. Guidelines can encourage this by explicitly recognizing the potential for mergers to increase R&D spending and by providing a framework for evaluating the likely impact of a merger on innovation. For example, guidelines could consider whether a merger combines complementary R&D capabilities or creates a stronger platform for future innovation. Mergers can create economies of scope in R&D by combining complementary research programs or technologies. Guidelines can recognize these benefits by considering the potential for a merger to accelerate the development of new products or services. Mergers can provide the resources and scale necessary to bring new technologies to market more quickly. Guidelines can facilitate this by considering the potential for a merger to accelerate the commercialization of existing innovations. Guidelines should provide clear guidance on the types of evidence that will be considered in assessing the impact of a merger on innovation, such as R&D spending, patents, and the track record of the merging firms. Guidelines should recognize that some degree of market power may be necessary to incentivize innovation and that mergers can sometimes enhance innovation even if they result in increased concentration. When competition concerns arise, guidelines should prioritize remedies that preserve innovation, such as behavioral commitments to continue investing in R&D.

3.5.1 Please also specify in what sectors innovation is particularly important for competition

*3000 character(s) maximum*

**3.6 From your / your client's perspective, how can the merger guidelines contribute to increased investment? Please explain what investment effects (both negative and positive) of a merger the merger guidelines can take into account and how**

*3000 character(s) maximum*

In fragmented industries, mergers can create stronger, (internationally) more competitive firms. Guidelines that recognize the benefits of consolidation can encourage investment in mergers that enhance overall market competitiveness, even if they result in some short-term market power. This is particularly relevant in sectors undergoing rapid technological change, where consolidation can be necessary to drive innovation and investment in new technologies or to achieve the necessary scale to be competitive with other jurisdictions

outside the EU. The Guidelines should explicitly recognize the importance of further policy objectives, such as promoting innovation, investment, global competitiveness but also financial stability, providing liquidity and needed funding for the real economy. This can encourage investment in mergers that contribute to these broader objectives, even if they raise some competition concerns, as long as these objectives can be considered an efficiency. Structural remedies, such as divestitures, can reduce the value of a merger and discourage investment. Guidelines should prioritize behavioral remedies where possible and ensure that any structural remedies are narrowly tailored to address specific competition concerns. Another opportunity would be to focus remedies on commitments to invest as also proposed in the Draghi report (in his report with reference to the telecommunications sector). Protracted merger reviews can create significant costs and delays, discouraging investment. Guidelines should promote efficient and timely reviews to minimize these burdens.

### 3.6.1 Please also specify in what sectors investment is particularly important

*3000 character(s) maximum*

### **3.7. In your / your client's view, what would constitute pro-competitive consolidations in global strategic sectors, digital and deep technology innovation, clean and resource efficient technologies and biotechnologies (e.g., IoT, cloud, quantum, telecom, data, advanced connectivity, cybersecurity, and/or AI), that would benefit competition in the Single Market? Please explain why in particular in terms of harm and benefits to competition.**

*Text of 1 to 3000 characters will be accepted*

We consider the financial services sector to be a global strategic sector that is essential to the EU's economic resilience, competitiveness, and sovereignty. Pro-competitive consolidations in this sector, especially those involving FinTech, data-driven finance, and capital markets infrastructure, can deliver significant benefits to the Single Market, provided they are assessed through a dynamic and forward-looking lens. Such consolidations can enhance the EU's ability to retain and scale innovative firms, reduce reliance on non-European capital markets, and strengthen the region's capacity to support homegrown innovation and investment. As highlighted in the Draghi Report, over 60% of EU companies are acquired by non-European buyers, and many IPOs take place outside the EU. This trend risks depriving the EU of the innovation spillovers and strategic control associated with breakthrough technologies and financial services. Consolidations that do not create or reinforce market dominance can be pro-competitive when they: Enable scale and integration necessary for long-term investment in infrastructure, cybersecurity, and digital innovation. Improve capital market access and efficiency for SMEs and institutional investors across the EU. Reduce fragmentation and enhance cross-border capital flows. Strengthen financial stability as a prerequisite for sustained innovation and investment. Even in cases where market power increases, mergers may still be justified if they result in verifiable, merger-specific efficiencies, that in our understanding include for example improved resilience, reduced systemic risk, enhanced access to capital, providing liquidity, increased financial stability or enhanced innovation capacity, that are ultimately passed on to users and the broader economy.

## 4. Assessing market power using structural and other market features

---

**4.1 In your / your client's view, do the current Guidelines:**

4.1.1 Provide clear, correct, and comprehensive guidance with regards to structural indicators to assess market power or dominance, including market shares and concentration level?

- Yes, fully
- Yes, to some extent
- No, to an insufficient extent
- Not at all
- I do not know

4.1.2 Provide clear, correct, and comprehensive guidance with regards to the frameworks to assess the risks of coordination post-merger?

- Yes, fully
- Yes, to some extent
- No, to an insufficient extent
- Not at all
- I do not know

4.1.3 Provide clear, correct, and comprehensive guidance with regards to the frameworks to assess the risks of foreclosure post-merger?

- Yes, fully
- Yes, to some extent
- No, to an insufficient extent
- Not at all
- I do not know

**4.2 From your perspective, on which structural indicators the Commission should rely on to assess whether a merger is likely to significantly impede effective competition?**

4.2.a. Are market shares, concentration levels, barriers to entry or expansion, and diversion ratios still relevant for this assessment?

*Text of 1 to 3000 characters will be accepted*

4.2.b. Are there other metrics that you / your client believe(s) are relevant to assess the existence of market power post-merger?

*Text of 1 to 3000 characters will be accepted*

**4.3 How can the Commission establish that a merger will lead to the creation or strengthening of a dominant position? Please describe the evidence and metrics that the Commission should rely on.**

*Text of 1 to 3000 characters will be accepted*

**4.4 How can the Commission establish that a merger will lead to a significant impediment of effective competition in cases where the merged entity will not have a dominant position? Please describe the situations and circumstances under which this could occur (e.g., oligopolistic structure, mergers between close competitors), as well as the evidence and metrics that the Commission should rely on in its assessment.**

*Text of 1 to 3000 characters will be accepted*

**4.5 How can the Commission establish that non-horizontal mergers (i.e., between companies that are active at different stages of the value chain or in closely related markets) will lead to competitors being — fully or partially — foreclosed from the market, ultimately harming consumers? Please describe the situations where such foreclosure is likely, identifying the evidence and metrics that the Commission should rely on for its assessment.**

*Text of 1 to 3000 characters will be accepted*

**4.6 How can the Commission establish that a merger will increase the risks of companies' coordinating their market behaviour or render coordination**

**more stable or effective? Please describe the circumstances that could facilitate this, identifying the evidence and metrics the Commission should rely on in its assessment.**

*Text of 1 to 3000 characters will be accepted*

## 5. Innovation and other Dynamic Elements in Merger Control

---

**5.1 In your/your client's view, do the current Guidelines provide adequately clear, correct and comprehensive guidance on how the Commission considers innovation and other dynamic criteria in its assessment of the impact of mergers on competition (dynamic merger effects are linked to firms' forward-looking behaviours, particularly their ability and incentive to invest and innovate, as well as to enter or exit a market in the mid-to-long term. Dynamic merger effects can be either positive, leading to efficiencies, or negative, leading to harm)?**

- Yes, fully
- Yes, to some extent
- No, to an insufficient extent
- Not at all
- I do not know

**5.2 In what circumstances can mergers negatively impact the ability and incentives of the merged company to innovate (e.g. a merger between strong innovators, acquisition of an innovator, acquisition of an input critical for other companies to innovate)? Based on which evidence and metrics can the Commission conclude that a merger will likely harm innovation?**

*Text of 1 to 3000 characters will be accepted*

5.2.1 In what circumstances can the elimination of a (small but particularly) innovative player with a large competitive potential (e.g., in the case of nascent and emerging

market or rapidly developing sectors) harm competition? Based on which evidence and metrics can the Commission conclude that the elimination of a (small but particularly) innovative player with a large competitive potential harms competition?

*3000 character(s) maximum*

**5.3 In what circumstances can mergers positively impact the ability and incentives of the merged company to innovate? Based on which evidence and metrics can the Commission conclude that a merger advances innovation? Please distinguish between mergers creating market power or a dominant position, and those that do not, as relevant.**

*Text of 1 to 3000 characters will be accepted*

Mergers can enhance innovation when they bring together firms with complementary capabilities, such as different technologies, data sets, or expertise, that, when combined, enable the development of new or improved products and services. This is especially true in financial infrastructure, where innovation often requires integration across trading, clearing, and data businesses. Positive innovational effects also arise when mergers create scale and scope efficiencies that allow the merged entity to invest more in R&D. Innovations often require significant upfront investment and coordination, which may only be feasible through merger-driven consolidation. Larger firms are likely better positioned to fund long-term innovation projects, attract top talent, and deploy new technologies across a wider user base. To determine whether a merger is likely to advance innovation, the Commission should consider post-merger innovation plans, historical evidence from similar transactions, and synergy analyses that demonstrate increased R&D capacity.

5.3.1. What elements, evidence and metrics can the Commission consider when balancing the potential positive benefits and spillovers of enhanced R&D capabilities against the potentially anticompetitive effects of a merger?

**5.4 In what circumstances can mergers negatively impact the ability and incentives of the merged company to invest? Based on which evidence and metrics can the Commission conclude that a merger will likely harm investment? Please distinguish between mergers creating market power or a dominant position, and those that do not, as relevant**

*Text of 1 to 3000 characters will be accepted*

**5.5 In what circumstances can mergers positively impact the ability and incentives of the merged company to invest? Based on which evidence and metrics can the Commission conclude that a merger advances investment? Please distinguish between mergers creating market power or a dominant position, and those that do not, as relevant**

*Text of 1 to 3000 characters will be accepted*

Mergers can positively influence investment incentives when they enable companies to achieve the scale necessary for capital-intensive projects, requiring substantial resources and long-term commitment. In fragmented markets, mergers can reduce duplication, freeing up capital for strategic investments. To assess whether a merger advances investment, the Commission should examine investment roadmaps, capital expenditure plans, and cost-benefit analyses showing improved return on investment. Historical benchmarks from similar integrations and commitments made to regulators or stakeholders can also serve as reliable indicators.

**5.6. In what circumstances can the elimination of a potential competitor (that is likely to enter the market in a near future or already exert competitive constraints even if not in the market) harm competition? Based on which evidence and metrics can the Commission conclude that the elimination of a potential competitor harms competition?**

*3000 character(s) maximum*

**5.7 How far in the future should and can the Commission look at when assessing the impact of a merger on competition (e.g., whether companies will invest or innovate post-merger, or whether prices will increase because of the merger)? How and under what circumstances should the Commission's assessment consider long investment cycles in a given industry? Based on what evidence should the Commission assess uncertainties linked to the future?**

*3000 character(s) maximum*

**6. Sustainability and clean and resource-efficient technologies**

---

**6.1 In your/your client's view, do the current Guidelines provide clear, correct, updated, and comprehensive guidance on how merger control**

**reflects the transition to a sustainable and climate-neutral economy with clean and resource-efficient technologies solutions?**

- Yes, fully
- Yes, to some extent
- No, to an insufficient extent
- Not at all
- I do not know

**6.2 From your/your client’s perspective, what are the new competitive dynamics that are linked to the transition to a sustainable and climate-neutral economy with clean tech solutions?**

*Text of 1 to 3000 characters will be accepted*

**6.3 In your/your client’s view, should the Guidelines better reflect how the clean transition and sustainability goals may be considered by the Commission in its merger control analysis (e.g., as important characteristics of products and services, on which companies compete, or as driving companies’ incentives to invest and develop innovative and clean (tech) solutions)?**

*Text of 1 to 3000 characters will be accepted*

**6.4 Please explain in which circumstances mergers may reduce competition by affecting any of the following aspects: (i) investment in, development, and supply of sustainable and decarbonised products and clean tech solutions, (ii) maximum extension of the lifespan of resources (‘circular economy’), and (iii) access to affordable and decarbonised energy (e.g., merger between two competing businesses or the acquisition of a critical input). In addition, please explain which evidence and metrics the Commission should rely on.**

*Text of 1 to 3000 characters will be accepted*

**6.5 What competitive benefits can mergers bring, in terms of (i) investment in, development, and supply of sustainable and decarbonised products and clean tech solutions, (ii) maximum extension of the lifespan of resources ('circular economy'), or (iii) access to affordable and decarbonised energy? Please provide examples of such benefits (e.g. better access to critical inputs, increased ability to invest and innovate, or increased buyer power), describing the circumstances under which these would likely benefit, not only the merging companies, but the overall EU industry and consumers.**

*Text of 1 to 3000 characters will be accepted*

**6.6 Under which conditions the merger benefits relating to the EU's clean transition and sustainability/clean tech could be sufficient to outweigh the merger competitive harm, and under which conditions such benefits would be passed on to business customers and consumers? Please illustrate with the specific benefits you considered relevant.**

*Text of 1 to 3000 characters will be accepted*

## 7 Digitalisation

---

**7.1 In your/your client's view, do the current Guidelines adequately reflect the evolutions linked to the digitalisation of the economy?**

- Yes, fully
- Yes, to some extent
- No, to an insufficient extent
- Not at all
- I do not know

**7.2 From your/your client's perspective, what are the new competitive dynamics that are linked to the digitalisation of the economy that should be reflected in the merger guidelines?**

*Text of 1 to 3000 characters will be accepted*

The financial services sector is undergoing rapid evolution; several new competitive dynamics linked to the digitalization of the economy should be reflected in the merger guidelines: Rapid innovation and short product lifecycles: Digital markets are characterized by rapid innovation and short product lifecycles. Traditional market definition approaches may struggle to capture the dynamic nature of competition in these markets. The guidelines should adopt a more forward-looking approach, considering the potential for future competition and the impact of innovation on market boundaries. Recognize the global competitive landscape: A company's ability to invest in and deploy cutting-edge technologies depends on achieving sufficient scale to compete with global giants. Focus on dynamic efficiencies: The guidelines should give greater weight to the potential for mergers to generate dynamic efficiencies, such as increased innovation, faster product development, and improved quality of services. These efficiencies can outweigh potential static harms, particularly in fast-moving digital markets. DBG, as a driver of innovation in financial markets, believes that mergers can be crucial for accelerating the development and adoption of new technologies. Embrace a forward-looking approach to market definition: Digital markets are constantly evolving. The guidelines and the Commission Notice on the definition of the relevant market should adopt a more dynamic approach to market definition, considering the potential for future competition from new entrants and disruptive technologies. Sticking to rigid, traditional market definitions can stifle innovation and prevent European companies from achieving the scale necessary to compete globally.

**7.3 How can mergers between companies active in different markets shaped by digitalisation harm competition? Please explain whether due to the specific competitive dynamics in those markets, non-horizontal mergers might harm competition in non-traditional ways, that is not necessarily because the merged entity will adopt a foreclosure conduct but because of e. g. increased barriers to entry or elimination of potential competition linked to digital ecosystems, data accumulation, interoperability degradation, targeted foreclosure. Please explain why and how this could harm competition and which evidence and metrics the Commission can rely on.**

*Text of 1 to 3000 characters will be accepted*

**7.4 In markets driven by technological changes, what would be an appropriate timeframe for the Commission to adequately assess the impact of mergers on competition? Should there be a distinction between markets before and after “tipping” to a leading company?**

*Text of 1 to 3000 characters will be accepted*

## 8 Efficiencies

---

## 8.1 In your/your client's view, do the current Guidelines provide clear, correct and comprehensive guidance on how the Commission assesses merger efficiencies?

- Yes, fully
- Yes, to some extent
- No, to an insufficient extent
- Not at all
- I do not know

8.1.1 Please explain and mention in particular which provisions of the Guidelines (if any) are not clear or outdated, or what would be missing for the Guidelines.

*Text of 1 to 3000 characters will be accepted*

The Guidelines were adopted in 2004, prior to some major developments and in the context of a very different geopolitical reality as well as EU policy priorities. As such, the current Guidelines are outdated and do not reflect the strategic role of certain economic sectors that are essential to EU competitiveness and sovereignty. A review of the Commission's operating practices is needed to make the current Merger Regulation fit for purpose. The Guidelines as such, looking at the approach to efficiencies, are conceptually clear, however they lack practical guidance. The Guidelines' efficiency principles of verifiability, merger-specificity and consumer benefit are sound, but there is only limited practical detail on how these criteria are applied in real-world assessments (limited guidance on acceptable forms of evidence or how to properly quantify efficiencies to assess their likelihood and timing. Furthermore, the Guidelines focus primarily on price effects, with limited attention to non-price efficiencies. The Draghi report calls for the Guidelines to explain what evidence merging parties need to present to allow for an innovation efficiency defence. Criteria must be specific enough, while still giving companies the opportunity to justify their merger. "An 'innovation defence' would be justified by the need in certain sectors to pool resources to cover large, fixed costs and achieve the scale needed to compete at the global level". We support Draghi's proposal of the innovation defence, considering also the financial services sector as being a sector where pooling resources is necessary to compete at the global level. We would like to highlight that the Commission's efficiency understanding is in some respect to be considered sector-specific. In strategic sectors such as financial services sector, mergers can enhance financial stability and systemic resilience by consolidating risk management systems, improving operational continuity, and reducing fragmentation as well as contribute to improved access to capital and funding for the real economy. These outcomes directly benefit market participants and the broader economy and should be considered under the efficiency assessment framework. The Guidelines stress that efficiencies must be merger-specific, however, there is only limited guidance on how to assess the feasibility of alternatives like joint ventures or cooperative cooperations / alliances or how to weigh regulatory or operational constraints that would make such an alternative impractical, which is especially relevant for highly regulated sectors like financial services.

## 8.2 Are there any efficiencies that are specific to certain types of mergers?

8.2.a Are there efficiencies specific to mergers between firms offering complementary products, offers or services?

- Yes

No

8.2.b Are there efficiencies that are specific to vertical mergers, i.e. between firms active at different levels of the supply chain?

Yes

No

8.2.c Are there efficiencies specific to horizontal mergers, i.e. between firms that are actual or potential competitors in the same market to offer products or services competing directly?

Yes

No

8.2.c Please explain your reply.

*Text of 1 to 3000 characters will be accepted*

Horizontal mergers can generate specific efficiencies that are not as readily achievable through other (looser) forms of corporate cooperation. Looking at the financial services sector and financial market infrastructure, these include: Network and liquidity effects: Consolidation can deepen liquidity pools, reduce bid-ask spreads, and enhance price discovery. Operational synergies: Integration of trading, clearing, and settlement systems can reduce latency, improve resilience, and lower costs. Innovation acceleration and enhanced innovation capacity: Combining R&D and data capabilities can lead to faster deployment of (digital) services and tools, for example on risk management or data analytics. Beyond cost savings and innovation, mergers in the financial services sector can deliver systemic efficiencies by reducing operational risk, enhancing cyber resilience, and ensuring continuity of critical services – thus contributing to overall financial stability.

**8.3. Under which circumstances can a merger that reduces effective competition generate efficiencies that outweigh the harm to consumers brought by the merger?**

8.3.a Under which circumstances can efficiencies outweigh harm when it comes to cost savings passed on to consumers? Please explain your reply and give examples

In financial market infrastructure, efficiencies can outweigh harm when it comes to cost savings passed on to consumers when operational scale and synergies directly enable better-quality financial products, improve client services, and lead to a stronger, more innovative infrastructure. These efficiency gains are tied to measurable enhancements in product offerings, market access, and technology-based service quality. Some examples include: Trading clients can benefit from significant savings available through common IT infrastructure, simplified clearing processes, capital efficiencies, and the formation of a more liquid, pan-European, pan-Euro regulated market. Shareholders can benefit from a more attractive revenue mix, accelerated earnings growth, and from substantial cost savings. A merger can lead to substantial efficiency increases and cost savings, e.g. in the area of IT, and some of these can be passed through in the form of lower fees, thus benefiting securities trades. Issuers can benefit from reduced cost of capital when having a more liquid secondary market.

8.3.b Under which circumstances can efficiencies outweigh harm when it comes to improved quality of product and services valued by consumers, e.g. through increased investment or innovation? Please explain your reply and give examples

8.3.c Under which circumstances can efficiencies outweigh harm when it comes to products and services in strategic sectors whose supply would be reduced in the EU without the merger or whose supply would be increased in the EU as a result of the merger? Please explain your reply and give examples

8.3.d Are there other relevant circumstances in which efficiencies can outweigh harm?

- Yes
- No

**8.4 If efficiencies (contrary to competitive harm) will not materialise right after the merger, what is a reasonable and acceptable timeframe to consider that merger efficiencies are likely enough and substantial enough to compensate consumers harm? Under what circumstances should this timeframe be longer or shorter? Please explain.**

*Text of 1 to 3000 characters will be accepted*

**8.5 How can the Commission assess whether the merger efficiencies claimed by the merging parties are substantial and likely to materialize? Please explain in particular what the most reliable evidence or metrics would be to verify efficiencies.**

*Text of 1 to 3000 characters will be accepted*

**8.6 In you/your client's views, how should the Commission assess whether the merger efficiencies could be achieved by less anti-competitive means, such as a cooperation agreement or a different merger? Please explain in particular how realistic those alternatives have to be.**

*Text of 1 to 3000 characters will be accepted*

9. Public policy, defence and security as well as labour market considerations

---

**9.1 In your / your client's view, do the Guidelines provide clear, correct, and comprehensive guidance regarding (i) labour markets, (ii) media plurality or (iii) strategic sectors and other public policy considerations?**

- Yes, fully
- Yes, to some extent
- No, to an insufficient extent
- Not at all
- I do not know

**9.2 Do you consider that new or additional guidance regarding (i) labour markets, (ii) media plurality, (iii) infrastructures critical for the EU economy (e.g., telecommunications networks, electricity distribution network, etc.), (iv) strategic sectors (v) other public policy considerations should be included in the revised merger guidelines?**

- Yes
- No
- I do not know

**9.3 Please explain and specify in which circumstances you / your client believe(s) that a merger can result in harm in labour markets and to workers, and how this may also impact consumers.**

*Text of 1 to 3000 characters will be accepted*

**9.4 Please explain and specify in which circumstances you / your client believe(s) that a merger can have positive effects in labour markets and to workers, and how this may also impact consumers.**

*Text of 1 to 3000 characters will be accepted*

**9.5 Do you consider that mergers can benefit or harm diversity and media plurality?**

- Yes
- No
- I do not know

**9.6 In your / your client's view, do the Guidelines provide clear, correct, and comprehensive guidance regarding defence and security considerations?**

- Yes, fully
- Yes, to some extent
- No, to an insufficient extent
- Not at all
- I do not know

**9.7 Do you consider that new or additional guidance regarding defence and security considerations should be included in the revised merger guidelines?**

- Yes
- No

**9.8 Do you consider that mergers can positively or negatively impact defence and security and defense capabilities?**

- Yes
- No
- I do not know

**9.9 Do you consider that mergers can positively or negatively impact strategic sectors (other than clean tech, deep tech, digital and security and defence sectors) capabilities?**

- Yes
- No
- I do not know

9.9.1 Please explain in which circumstances mergers could improve or harm strategic sectors (other than clean tech, deep tech, digital and security and defence sectors) capabilities. Please specify the strategic sector(s) and distinguish between mergers creating market power or a dominant position, and those that do not, as relevant

*3000 character(s) maximum*

We consider the financial services sector as being a strategic sector globally and for the European Union – being strategic for the EU’s economic resilience, monetary sovereignty, and capital markets integration. Pro-competitive consolidations in the financial services market, especially concerning FinTech, data-driven finance, and market infrastructure, should be assessed based on their potential to enhance the EU’s global competitiveness and drive innovation. A dynamic view of competition is crucial, considering both short-term and long-term effects. Mergers in the EU’s financial services sector can significantly improve strategic sector capabilities: Strengthening EU financial autonomy by reducing reliance on third-country infrastructure. Greater investment in advanced technologies (e.g. blockchain, AI) and shared R&D resources to innovate faster and more efficiently. Customer benefits: Included features like cross-margining between listed and OTC derivatives clearing (pending regulatory approval), leading to lower capital requirements for clients. Stronger international positioning: Reduce foreign dependency by creating robust domestic infrastructure: “European champions” would better position Europe’s capital markets to compete with major US and global players, supporting European-wide objectives like the EU’s Savings and Investments Union. Growth acceleration: Combining complementary strategies, products, services, and footprints promised enhanced growth opportunities. Support the objectives of the Savings and Investments Union by reducing fragmentation and increasing scale.

## 10. Final comments and document upload

---

### 10.1 Do you wish to make any additional comments that may be relevant for the revision of the Guidelines?

*Text of 1 to 1000 characters will be accepted*

### 10.2 Please attach any documents in your possession that support your replies to the questions above, and that may assist the Commission in its assessment of those replies, clearly identifying the question to which they refer. Please make sure than any such documents are as concise as possible.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

### 10.3 Please indicate whether the Commission services may contact you for further details on the information submitted, if required.

- Yes
- No

End of the questionnaire. Thank you for your contribution.

## **Contact**

COMP-MG-REVIEW@ec.europa.eu