

Public consultation – Draft Merger Guidelines

Fields marked with * are mandatory.

Background and aim of the consultation on the draft text of the EU Merger Guidelines

In line with the objectives of the EU Treaties, the **EU merger rules aim to enable a dynamic and functioning internal market**; by making sure all businesses are able to compete effectively, and to **prevent market distortions that can harm European businesses and consumers** – and ultimately damage productivity and economic growth. While companies combining forces through mergers can generate efficiencies, create pro-competitive scale and bring benefits to the EU economy, some mergers may significantly impede effective competition. This is why the EU has had a **system for reviewing mergers** of an EU dimension since 1990 (with Regulation 4064/89) to check their compatibility with a properly functioning internal market, known as the “[EU Merger Regulation](#)” – a regulation that was updated in 2004 (Regulation 139/2004) and remains in force today.

Mergers “*are to be welcomed to the extent that they are in line with the requirements of dynamic competition and capable of increasing the competitiveness of European industry, improving the conditions of growth and raising the standard of living in the Community*”[1]. Article 2 of the EU Merger Regulation requires the European Commission to assess whether a merger would, or would not, “*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, unless the merging parties submit measures remedying this impediment, the merger is to be declared incompatible with the internal market.

EU merger control needs to remain sharp and up-to-date, 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, over the 20 years and more, since the updated 2004 EU Merger Regulation and its accompanying guidelines, there have been significant **market trends and geopolitical developments** that have led to transformational shifts in many markets, leading the Commission’s assessment of mergers under the Merger Regulation to evolve to capture those new realities and protect competition within them. There has also been case law of the Court of Justice which has informed the Commission’s interpretation of the Merger Regulation and its Guidelines.

The draft Merger Guidelines will replace the Horizontal Merger Guidelines^[2] (“**HMG**”) (published in 2004) and the Non-Horizontal Merger Guidelines^[3] (“**NHMG**”) (published in 2008) (jointly the “**Guidelines**”). The goal is to ensure that the revised Guidelines are up-to-date and flexible enough to allow the Commission to protect competition under the Merger Regulation in evolving modern market realities, while always respecting the overarching legal framework and contribute to the competitiveness and resilience on the Internal Market. In addition, the revised Guidelines should provide increased transparency and predictability to the business community as to how the Commission assesses mergers.

[1] Recital 4 of the EU Merger Regulation.

[2] Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 05.02.2004.

[3] Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 265, 18.10.2008.

The present consultation relates to the draft text of the revised Merger Guidelines. The consultation has divided the entire text in various sections, on each of which we appreciate your feedback. At the end, there is a possibility to make overarching comments, and include attachments to your contribution.

We very much welcome your contribution on this draft Merger Guidelines text.

Documents accompanying the consultation

The consultation relates to the **draft text of the new Merger Guidelines**, which can be consulted [here](#).

Submission of your contribution

Please reply to this consultation by responding to the questionnaire **here online**. **Note that spontaneous submissions outside of this tool will not be considered for the purpose of this consultation.** You may include documents and URLs for relevant online content in your replies.

When providing feedback, please ensure that comments on each specific section are included directly under that section, rather than in an attachment. It is unnecessary to reiterate or summarise the same arguments in an attachment. Instead, attachments should be used to supply supplementary information, relevant documents, or supporting reports that add value to the feedback.

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.

Questions?

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](#).

* Contribution publication privacy settings

The Commission will publish online the entire content of your EU Survey reply, including any annexes. Accordingly, please refrain from including business secrets and other confidential information in your submissions.

You can choose whether you agree to have your name published or if you wish to remain anonymous, choosing one of the following two privacy settings. Please note that the name and other details of the organisation on behalf of which you are participating (if applicable) will be published regardless of the privacy setting you choose.

- 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](#).

Introductory questions

* 1. 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

* 2. First name of respondent

Hannah

* 3. Surname of respondent

Schneider

* 4. Email (this will not be published)

hannah.schneider@deutsche-boerse.com

* 5. I am giving my contribution as

- Academic (association)
- Consumer (association)
- Large business (association)
- SME (association)
- Lawyer/economic consultant (association)
- NCA
- Individual citizen
- Other

* 5.a. If you are giving your contribution on behalf of an entity for which you work, please specify for this entity:

5.a.i. Name:

Deutsche Börse Group

* 5.a.ii. Size

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

* 5.b. If you are giving your contribution on behalf of an association, please specify the number of members of your association:

- 1 to 9 members
- 10 to 49 members
- 50 to 249 members

250 members

6. Transparency register number:

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

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7. If you are giving your contribution for the entity for which you work, please indicate in which sector the entity is active [Multiple options possible]. If your entity covers several sectors, please indicate either the main one or 'Other'.

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):

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

7.a. Please further specify the sector if needed, as well as the main function/activity of your entity.

Financial Market Infrastructure

* 8. Please indicate the geographic scope of your (entity's) activities:

- International
- Regional
- National
- Local

*9. Please indicate the countries where your main business is based:

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czechia
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- The Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden
- Other in Europe
- Other outside of Europe

10. 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?

- No
- Yes, Article 6.1(b) 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

10.a. 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)

Draft Merger Guidelines text (per section)

Please indicate to which sections/sub-sections you would wish to comment.

PART I. – INTRODUCTION AND GUIDING PRINCIPLES

This section includes the introduction of Part I, i.e. paragraphs 1-6

Part I.A – THE ROLE OF EU MERGER CONTROL

This section includes sub-sections 1. The importance of EU merger control for the internal market and competitiveness, and 2. Benefits from scale versus market power, i.e. paragraphs 7-18.

Part I.B – GUIDING PRINCIPLES

This section includes sub-sections 1. Parameters of competition, 2. Burden of proof, theories of harm and benefit, 3. Evidence, 4. Overall assessment of mergers' impact, including their benefits, and 5. Causality between the merger and the competitive effects again with sub-sections for 5.1 Relevant counterfactual and 5.2 Failing firm, i.e. paragraphs 19-51.

Part II. – COMPETITIVE ASSESSMENT

This section includes the introduction of Part II, as well as the introduction of Part II.A – MARKET POWER, i.e. paragraphs 52-59.

Part II.A.1 – Structural indicators of market power

This section includes an introduction and sub-sections 1.1 Large market shares, and 1.2 High market concentration, i.e. paragraphs 60-67.

Part II.A.2 – Other indicators of market power

This section includes sub-sections 2.1 Low sensitivity to price, 2.2 High profit margins, and 2.3 High barriers to competition, i.e. paragraphs 68-79

Part II.A.3 – Dynamic competitive potential

This section includes paragraphs 80-83.

Part II.A.4 – Countervailing factors

This section includes an introduction and sub-sections 4.1 Dynamic entry or expansion of competitors, 4.2 Out-of-market constraints, and 4.3 Countervailing buyer power, i.e. paragraphs 84-110

Part II.A.5 – Dominance and other types of market power

This section includes paragraphs 111-113.

Part II.B.1 – ANTICOMPETITIVE EFFECTS – Introduction: direct and dynamic effects

This section includes paragraphs 114-118.

Part II.B.2 – Loss of head-to-head competition

This section includes an introduction and sub-sections 2.1 Structural market features, 2.2. Closeness of competition, 2.3. Important competitive force, and 2.4. Specific market aspects, i.e. paragraphs 119-168.

Part.II.B.3 – Loss of investment and expansion competition

This section includes paragraphs 169-174.

Part.II.B.4 – Loss of innovation competition

This section includes an introduction and sub-sections 4.1. Loss of specific innovation competition, 4.2. Loss of general innovation competition, and 4.3. Innovation shield, i.e. paragraphs 175-192.

Part.II.B.5 – Loss of potential competition

This section includes paragraphs 193-207

Part.II.B.6 – Foreclosure

This section includes an introduction and sub-sections 6.1. Ability to foreclose, 6.2. Incentive to foreclose, and 6.3. Effect on competition, i.e. paragraphs 208-251.

Part.II.B.7 – Entrenchment of a dominant position

This section includes paragraphs 252-259.

Part.II.B.8 – Coordination

This section includes an introduction and sub-sections 8.1. Reaching terms of coordination: market conditions that are conducive to coordination, 8.2. Deviation from coordination: monitoring and deterrence, and 8.3. Disruption of coordination, i.e. paragraphs 260-281.

Part.II.B.9 – Other anticompetitive effects

This section includes an introduction and sub-sections 9.1. Access to commercially sensitive information, and 9.2 Portfolio effects, i.e. paragraphs 282-290.

Part II.C – BENEFITS FROM MERGERS (EFFICIENCIES)

This section includes the introduction of Part II.C., i.e. paragraphs 291-301.

Part.II.C.1 – Assessment of direct efficiencies

This section includes sub-sections 1.1 Taxonomy of direct synergies, 1.2. Verifiability, 1.3. Merger specificity, and 1.4. Benefit to consumers, i.e. paragraphs 302-323.

Part.II.C.2 – Assessment of dynamic efficiencies

This section includes sub-sections 2.1 Taxonomy of direct synergies, 2.2. Verifiability, 2.3. Merger specificity, and 2.4. Benefit to consumers, i.e. paragraphs 324-338.

Part.II.C.3 – Balancing benefit and harm

This section includes an introduction and sub-sections 3.1. Balancing between symmetric benefit and harm, 3.2. Balancing between asymmetric benefit and harm, and 3.3. Balancing across different consumer groups /markets, i.e. paragraphs 339-357.

Part III – MEASURES TO PROTECT LEGITIMATE INTERESTS

This section includes paragraphs 358-362.

Part III.A – SUBSTANTIVE ASSESSMENT

This section includes sub-sections 1. Types of measures covered, 2. Notion of legitimate interests, again with sub-sections for 2.1 Recognised interests, and 2.2 Other public interests, 3. Compatibility with the general principles of EU law, again with sub-sections for 3.1. Proportionality, 3.2. Non-discrimination, and 3.3. Other principles of EU law, and 4. Compatibility with other provisions of EU law, i.e. paragraphs 363-389.

Part III.B – PROCEDURAL FRAMEWORK

This section includes sub-sections 1. The notification and standstill obligation, 2. Possible Commission decisions, and 3. Interaction with other EU law proceedings, i.e. paragraphs 390-399.

Part I.B – GUIDING PRINCIPLES

This section includes sub-sections 1. Parameters of competition, 2. Burden of proof, theories of harm and benefit, 3. Evidence, 4. Overall assessment of mergers' impact, including their benefits, and 5. Causality between the merger and the competitive effects again with sub-sections for 5.1 Relevant counterfactual and 5.2 Failing firm, i.e. paragraphs 19-51.

Please provide your feedback on the above section/sub-section. If your comment or suggestion refers to a specific paragraph, please identify it clearly.

1. Key positive developments in the draft Guidelines

We are encouraged by the draft Guidelines' more dynamic and forward-looking approach to merger assessment. We would like to commend the Commission on the following points in particular:

- A more favorable view on scale and global competitiveness: We strongly support the draft's recognition that the assessment of mergers should give adequate weight to "scale, innovation, investment and resilience as pro-competitive factors". Acknowledging that mergers can help European companies achieve the necessary scale to compete with global incumbents and invest in innovation and critical infrastructure which is crucial for the competitiveness of the EU economy.
- Acknowledgment of the global market dimension: We appreciate the acknowledgment that the competitive assessment can and should consider the "broader competitive landscape" and "evolutions on a broader geographic scale." While the specific methodology for market definition resides in a separate notice, this inclusion in the Merger Guidelines reinforces the need to analyze transactions within their proper global context.
- An expanded role for efficiencies and a "Theory of Benefit": The move beyond a simple "efficiency defense" to a proactive "theory of benefit" is a major step forward. By distinguishing between direct and dynamic efficiencies and explicitly recognizing benefits from combining complementary assets, the Guidelines provide a more robust and realistic framework for assessing the pro-competitive aspects of a merger. However, the assessment and practical proof of efficiencies need further refinement.
- Acknowledgement of dynamic realities and long-term effects: The emphasis on a dynamic assessment and the consideration of the long-term impact of mergers will allow for a more holistic and realistic evaluation of transactions in fast-evolving sectors.

2. Recommendations for improvement

Building on this positive foundation, we believe the following areas require further consideration to improve the effectiveness and efficiency of the EU merger control regime.

2.1 Clarification of the time frame for prospective analyses

Concern: While the draft Guidelines emphasize that the assessment is based on a prospective analysis of the merger's effects, notably by comparing the situation with and without the merger (the counterfactual, paragraphs 37 to 44), a precise definition of the relevant time horizons is not indicated ("expected future market situation", "future competition").

Recommendation: We propose that the draft Guidelines provide further clarification of the relevant time horizons for the types of effects (direct, dynamic, innovation) to enhance the predictability and consistency of decisions.

2.2 Elevating the standard of proof for competitive harm

Concern: The current draft does not set a sufficiently high bar for the Commission to prove that a merger will result in a "Significant Impediment to Effective Competition" (SIEC). A lower standard of proof can lead to lengthy investigations based on speculative theories of harm, which can be costly and create uncertainty for strategic projects. The Commission bears the burden of demonstrating any anticompetitive effects, but only needs to show a merger is "capable of harming consumers" (paragraph 22). This standard of proof stands in stark, asymmetric contrast to the high evidentiary standard required for efficiencies, which must be "verifiable" and quantified (paragraphs 304, 316). This asymmetry risks creating a biased framework where speculative

harm could outweigh tangible, pro-competitive benefits.

Recommendation: We propose language that requires the Commission to base its findings on a high probability of harm, rather than a mere possibility. This would filter out speculative concerns and focus the review on tangible competitive risks. A finding of a SIEC must be based on cogent and compelling evidence demonstrating a high probability of substantial and lasting harm to competition. The Commission's analysis should not be based on theoretical or speculative risks, but on a demonstrable causal link between the transaction and the likely adverse effects on the market. A fair, non-discriminatory assessment requires that both potential harm and claimed efficiencies be evaluated under a consistent, realistic, and symmetrical evidentiary standard.

Part II. – COMPETITIVE ASSESSMENT

This section includes the introduction of Part II, as well as the introduction of Part II.A – MARKET POWER, i.e. paragraphs 52-59.

Please provide your feedback on the above section/sub-section. If your comment or suggestion refers to a specific paragraph, please identify it clearly

1. Market definition: A preference for real-world dynamics

The draft Guidelines rightly incorporate dynamic potential and out-of-market constraints. However, the framework could be bolder in its approach to market definition.

Concern: The default approach of assessing "each relevant market" separately can lead to an artificially narrow analysis that overlooks the cross-market competition prevalent in global industries and digital ecosystems. Particularly in globally integrated, technology-driven sectors, a rigid, bottom-up market definition process can be highly inefficient and fail to capture true competitive dynamics. While paragraph 54 allows for consideration of the "broader competitive landscape," this is not framed as the default or preferred approach.

Recommendation: We recommend incorporating a holistic screening approach, especially for globally integrated and technology-driven sectors, where a rigid, bottom-up market definition process can miss the bigger picture. Under this approach, the Commission's initial assessment should always include a screening of the broader competitive landscape, including global competitors and out-of-market constraints, to identify where the true potential for a Significant Impediment to Effective Competition (SIEC) lies. It is important to acknowledge that while individual specialized products/services may possess distinct technical or functional characteristics, they can be subject to strong, dynamic out-of-market constraints from the broader environment. The assessment of narrower markets should only be undertaken if the initial holistic screening analysis indicates a credible potential for a SIEC that warrants more detailed investigation. This approach ensures that the analysis reflects commercial realities and prevents an overly granular assessment that could misinterpret competitive dynamics. Furthermore, regarding the analysis of portfolio effects, the draft Guidelines indicate that mergers involving products that are not substitutable but are sold to the same customer base could increase market power (paragraphs 287 and 288). We would like to clarify that the mere existence of a multi-product ecosystem should not create a presumption of increased market power. The Guidelines should ensure that the pro-competitive efficiencies of offering integrated, complementary services to a shared customer base are not mischaracterized as anticompetitive foreclosure.

2. Notification thresholds: Addressing regulatory burden

We note that the draft Guidelines do not propose changes to the jurisdictional revenue thresholds under the EUMR. We believe this is a missed opportunity for significant practical improvement.

Concern: The current EUMR revenue thresholds, which have not been adjusted for inflation or economic growth, are capturing an increasing number of smaller and less impactful transactions for mandatory EU-level

review. When each merging party generates €250 million in EU revenue, the transaction is subject to review. Relative to the EU's combined GDP of approximately €18 trillion, this threshold can capture deals representing as little as 0.003% of the economy, imposing significant administrative and financial burdens for transactions that are highly unlikely to pose a genuine risk to competition. Additionally, the current framework lacks a true target-side de minimis threshold. Even when the target entity or asset has negligible or zero EU-wide turnover, a transaction can still trigger a mandatory filing. While such transactions may qualify for a "simplified procedure," this remains a formal, resource-intensive, and costly notification process rather than a true exemption.

Recommendation: While we understand that amending the EUMR is a separate legislative process, we strongly urge the Commission to initiate a formal review of the notification-thresholds. We recommend that thresholds be adjusted to reflect long-term economic realities: A reasonable increase, to be defined through market analysis and consultation, alongside the introduction of a true target-side de minimis turnover threshold would be a welcome and substantial reduction in burden. This would allow both businesses and the Commission to focus resources on transactions that genuinely warrant detailed scrutiny.

Part.II.B.1 – ANTICOMPETITIVE EFFECTS – Introduction: direct and dynamic effects

This section includes paragraphs 114-118.

Please provide your feedback on the above section/sub-section. If your comment or suggestion refers to a specific paragraph, please identify it clearly.

Proportionality in applying theories of harm

Concern: The draft Guidelines outline eight distinct theories of harm (listed in paragraphs 116(a) to 116(h)). While these are important considerations, their universal application to all transactions – regardless of whether the merging parties are direct competitors, vertically related, or in separate markets – creates an excessive analytical burden. This forces parties to preemptively rebut a wide array of theoretical harms, even in non-horizontal or conglomerate mergers which are less likely to raise traditional competition concerns. This approach front-loads the analytical burden, requiring parties to prepare for multiple complex theories of harm from the outset.

Recommendation: The Guidelines should introduce a principle of proportionality in the application of theories of harm. We propose adding language to clarify that the Commission will focus its analysis on the most relevant theories of harm that are directly associated with the transaction's structure. For horizontal mergers, the primary focus will be the loss of head-to-head competition (Section II.B.2). For non-horizontal mergers, the focus will be on foreclosure risks (Section II.B.6). Other theories of harm, such as loss of innovation or potential competition, will only be investigated where the Commission presents prima facie evidence that such specific risks are credibly present, particularly in transactions not involving direct competitors.

Part.II.B.2 – Loss of head-to-head competition

This section includes an introduction and sub-sections 2.1 Structural market features, 2.2. Closeness of competition, 2.3. Important competitive force, and 2.4. Specific market aspects, i.e. paragraphs 119-168.

Please provide your feedback on the above section/sub-section. If your comment or suggestion refers to a specific paragraph, please identify it clearly.

Competitive impact - The need for clear presumptions and predictability

The introduction of indicative thresholds and the "innovation shield" (paragraph 192) are positive steps toward creating legal certainty. However, the Guidelines would benefit from a more general principle for low-impact transactions.

Concern: The draft Guidelines lack a clear, overarching de minimis safe harbor rule for market share increases. While a combined market share below 25% is noted as an indicator that a merger may not create a Significant Impediment to Effective Competition (SIEC) (paragraph 129(a)), there is no guidance on what level of market share increase is considered presumptively unproblematic. Concurrently, the Guidelines suggest a reduced reliance on traditional safe harbors, stating that the Commission may rely on qualitative evidence even where market shares are modest. This combination creates significant uncertainty, forcing parties to prepare for in-depth reviews even for transactions that appear safe based on traditional metrics.

Recommendation: We propose the introduction of a clear de minimis presumption of no competitive harm to restore a degree of predictability. Specifically, we suggest that the Guidelines state that where a transactions results only in a small combined market share increase (e.g., a combined market share increment of less than 10%), there should be a formal presumption that the transaction does not lead to a SIEC. Establishing such a presumption would provide a clear basis for both the Commission and market participants to distinguish low-impact transactions from those that merit deeper investigation, ensuring that in-depth reviews are initiated only where the Commission's findings include cogent and specific evidence pointing towards a credible theory of harm. This would not prevent the Commission from investigating deals with specific and substantiated concerns but would provide crucial legal certainty for the vast majority of low-impact transactions, reduce the burden on merging parties in low-impact scenarios and allow the Commission to focus its resources more effectively.

Part.II.B.4 – Loss of innovation competition

This section includes an introduction and sub-sections 4.1. Loss of specific innovation competition, 4.2. Loss of general innovation competition, and 4.3. Innovation shield, i.e. paragraphs 175-192.

Please provide your feedback on the above section/sub-section. If your comment or suggestion refers to a specific paragraph, please identify it clearly.

Certain aspects of competition, particularly non-price factors (quality, innovation, resilience, sustainability), are difficult to quantify (e.g., reference in paragraphs 190 and 191). We propose introducing more concrete methods or criteria for assessing these qualitative effects, in order to improve the transparency, rigor of the analysis and therein legal certainty.

Part.II.C.3 – Balancing benefit and harm

This section includes an introduction and sub-sections 3.1. Balancing between symmetric benefit and harm, 3.2. Balancing between asymmetric benefit and harm, and 3.3. Balancing across different consumer groups/markets, i.e. paragraphs 339-357.

Please provide your feedback on the above section/sub-section. If your comment or suggestion refers to a specific paragraph, please identify it clearly.

A balanced and realistic assessment of efficiencies

Concern: While the Guidelines acknowledge that efficiencies can be a pro-competitive benefit of a merger, the conditions for accepting them are often too strict and difficult to meet in practice. While paragraph 356 recognizes “collective benefits”, paragraph 357 emphasizes that efficiencies must benefit substantially the same customers that would be impacted by anticompetitive harm which is particularly restrictive, as it fails to account for broader societal or environmental benefits that may accrue to a wider group. This can lead to the Commission dismissing real, tangible benefits that a merger could bring to the market and to consumers. Furthermore, we caution against automatism that efficiencies are “highly unlikely” to outweigh competitive harm in markets approaching high concentration (paragraph 35). While we support the Commission's caution in highly concentrated markets, a blanket negative presumption fails to account for the unique economics of network industries and infrastructure-heavy sectors. In these capital-intensive sectors, mergers can be a structural driver of substantial efficiencies, such as the pooling of liquidity, centralization of risk management, and reduction of collateral requirements, which directly lower systemic risk and transaction costs for a broad range of customers.

Recommendation: We propose a more balanced and realistic approach to assessing efficiencies, where the long-term benefits are given more weight. The assessment of efficiencies should therefore be forward-looking and pragmatic, recognizing that not all benefits can be quantified with absolute certainty at the time of the review. The Commission should give due weight to qualitative efficiencies, such as improved service quality, accelerated innovation, and the development of new products or streamlining of product offerings for clients, particularly relevant in dynamic and technology-driven markets. Furthermore, while the burden of proof for efficiencies remains with the merging parties, it should be on the Commission to demonstrate that any potential competitive harm would outweigh these substantiated efficiencies with a high probability. In addition, the Guidelines should further clarify the standards of proof and the types of proof that are acceptable, particularly for qualitative gains, to ensure a sound and fair assessment.

Final comments and document upload

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

Deutsche Börse Group welcomes the opportunity to provide feedback on the European Commission's new draft Merger Guidelines. We commend the Commission for its work in modernizing the merger control framework to better address the complexities of today's economy. As a key player in the European financial landscape, we are deeply committed to fostering a competitive, resilient, and integrated internal market.

The draft Guidelines introduce several positive and necessary updates, particularly regarding the recognition of scale, innovation, and efficiency benefits. We support this direction. However, to fully realize the goal of a modern and effective merger control regime, we believe further refinements are essential to enhance legal certainty, reduce unnecessary administrative burdens, and ensure the framework fully reflects the realities of global competition.

While the draft Guidelines represent a significant step in the right direction, we see a need for improvement in critical areas to ensure the Guidelines are fit for purpose and provide the legal certainty necessary for businesses to invest and innovate confidently.

Please attach any documents in your possession that support your replies, and that may assist the Commission in its assessment of those replies, clearly identifying the question/section to which they refer if

relevant. Please make sure than any such documents are as concise as possible. It is unnecessary to reiterate or summarise the same arguments made previously in an attachment. Attachments should be used to supply supplementary information, relevant documents, or supporting reports that add value to the feedback.

End of the questionnaire. Thank you for your contribution.

Contact

[Contact Form](#)