



BUNDESRECHTSANWALTSKAMMER

Position Paper No. 41/2025

September 2025

EU Transparency Register Number: 25412265365-88

Contribution to the 2025 EU Consultation on the Review of the Merger Guidelines

Members of the Competition Law Committee

Rechtsanwältin Dr. Ellen Braun, LL.M.

Rechtsanwalt Dr. Matthias Karl, LL.M.

Rechtsanwalt Prof. Dr. Moritz Wilhelm Lorenz

Rechtsanwältin Dr. Dominique Wagener, LL.M.

Rechtsanwältin Dr. Daisy Walzel, LL.M.

Rechtsanwalt Dr. Markus Wirtz, LL.M. (Chair) (Rapporteur)

Rechtsanwalt Dr. Christian Lemke, Vice President, The German Federal Bar

Ass. jur. Frederic Boog, LL.M., The German Federal Bar

Distribution list: Bundesministerium der Justiz
Bundesministerium für Wirtschaft und Energie
Rechtsausschuss des Deutschen Bundestages
Unterausschuss Europarecht des Deutschen Bundestages
Innenausschuss des Deutschen Bundestages
Arbeitskreise Recht der Bundestagsfraktion
Landesjustizminister / Justizsenatoren der Länder
Rechtsanwaltskammern
Deutscher Richterbund
Deutscher Notarverein
Bundesnotarkammer
Deutscher Anwaltverein
Deutscher Juristinnenbund
Neue Richtervereinigung e.V.
Deutscher Steuerberaterverband
Bundessteuerberaterkammer
Patentanwaltskammer
Wirtschaftsprüferkammer

Bundesrechtsanwaltskammer

The German Federal Bar
Barreau Fédéral Allemand
www.brak.de

Büro Berlin – Hans Litten Haus

Littenstraße 9 Tel. +49.30.28 49 39 - 0
10179 Berlin Fax +49.30.28 49 39 - 11
Deutschland Mail zentrale@brak.de

Büro Brüssel

Avenue des Nerviens 85/9 Tel. +32.2.743 86 46
1040 Brüssel Fax +32.2.743 86 56
Belgien Mail brak.bxl@brak.eu

Deutscher Industrie- und Handelskammertag
Bundesverband der Freien Berufe
Bundesverband der Deutschen Industrie
Bundesingenieurkammer
Monopolkommission

NZKart
WuW

The German Federal Bar (Bundesrechtsanwaltskammer, BRAK) is the umbrella organisation of the self-regulatory bodies of the German Rechtsanwälte. It represents the interests of the 28 German Bars and thus of the entire legal profession in the Federal Republic of Germany, which currently consists of approximately 166,000 lawyers, vis-à-vis authorities, courts, and organisations at national, European, and international level.

Position Paper

REVIEW MERGER GUIDELINES

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

*** Question**

Language of my contribution

EN

*** Question**

First name

Bundesrechtsanwaltskammer

*** Question**

Surname

Brüssel

*** Question**

Email (this won't be published)

brak.bxl@brak.eu

*** Question**

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.

DE

*** Question**

I am giving my contribution as

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

*** Question**

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

The German Federal Bar (Bundesrechtsanwaltskammer, BRAK) is the umbrella organization of the 28 German regional Bars and as such represents the interests of approximately 166,000 German lawyers (Rechtsanwälte) at national, European and international level.

The answers provided in this position paper build on the individual experience and expertise of members of the BRAK competition law committee, gained from their respective legal practice in law firms and companies. This is notably the case regarding the question 1.10 (i.e. not the BRAK was addressee of a Commission decision but rather the clients represented by the members of the BRAK competition law committee), but also in the subsequent questions, e. g. when the question refers to the perspective or experience of the BRAK (which means that the answers are given based on the experience of the members of the BRAK competition law committee).

*** Question**

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): Additional help available

MULTIPLE OPTIONS POSSIBLE

Between 1 and 16 selections

- Agriculture / agri-food
- Automotive
- Biotechnologies
- Clean and resource efficient technologies
- Construction
- Consumer goods
- Deep tech innovation
- Defense
- Digital

- Energy
- Finance and banking
- Medias
- Other basic industries (i.e., supplying raw materials to industries which manufacture other goods)
- Other
- Pharmaceuticals
- Space
- Telecommunications
- Transport

Question

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 type="checkbox"/> Luxembourg | <input type="checkbox"/> Spain |
| <input type="checkbox"/> Bulgaria | <input 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 | |

Question

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 selections

- 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

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

*** Question**

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

2. Evaluation Criteria

2.1 Effectiveness (Have the objectives been met?)

Question 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?

- X 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

Question 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
- X No, the Commission has often cleared transactions that significantly impede effective competition
- I do not know

Question 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
- X They have been neutral**
- No, they have negatively contributed
- I do not know

Question 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

COM was too late to fully appreciate the competition effects of acquisitions in technology sectors, and too quick in suggesting new theories of harm in innovation markets.

Question 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
- X They have been neutral**
- No, they have negatively contributed
- I do not know

Question 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

COM was too late to fully appreciate the competition effects of acquisitions in technology sectors, and regularly neglects competition effects of concentrations on maintenance and spare part downstream markets.

Question 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
- X No**
- I do not know

Question 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
- X No**
- I do not know

Question 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
- X 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?)**Question 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)
- X 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

Question 2.2.2

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

- X Yes
- No
- I do not know

2.3 Relevance (Is EU action still necessary?)

Question 2.3.1

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

	Objec- tive 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"/> x	<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"/> x	<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"/> x	<input type="radio"/>	<input type="radio"/>
Provide legal certainty, predictability and transparency	<input type="radio"/> x	<input type="radio"/>	<input type="radio"/>

Question 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

Guidelines fall short of informing the COM's case teams and consequently the parties on the selection process to identify suitable hypothetical markets to be addressed and discussed in Form CO. This places too much weight on the pre-notification process, rendering it less efficient and lengthier than it could and should be.

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

Question 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

Question 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

Question 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

Question 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

Question 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?

- X Yes
- No
- Do not know

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

Question 2.4.6.1

What, if anything, should be changed?

COM struggles to identify the relevant substantive standard in merger control, e.g. is the creation of a dominant position always and SIEC, when does the strengthening of a dominant position result in an SIEC, are non-coordinated effects only an issue in oligopolistic markets in the absence of a dominant position, etc.?

Question 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
- X 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?)

Question 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

Question 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

Guidelines on the EU level are important as they offer an opportunity for the COM to set out its current approach to merger control in a coherent and consistent manner, allowing parties, their advisors and NCAs to draw from them.

3 Competitiveness

Question 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

Question 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

Section IV fails to offer a conceptually sound overall scheme to promote competitiveness in markets that are subject to disruptive developments and international policy and trade effects that pose threats to the resilience of the EU economy in a global perspective. Section IV para 22 is outdated and conceptually opaque. It does not clearly establish the relevant substantive standard in merger control, e.g. is the creation of a dominant position always and SIEC, when does the strengthening of a dominant position result in an SIEC, are non-coordinated effects only an issue in oligopolistic markets in the absence of a dominant position, etc.?

Section IV para 37-38 is outdated to reflect developments in the assessment of so-called killer acquisitions and competition effects on innovation.

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

Question 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. X Decreasing average cost curve
- b. X Network effects (i.e., whereby a product or service gains additional value as more people use it)
- c. X Intangible capital (assets lacking physical substance, e.g. patents, copyrights, goodwill, know-how)
- d. X Access to equity investment
- e. X Ability and incentive to invest (e.g. in network infrastructure)
- f. X Ability and incentives to innovate (i.e. R&D, including high-risk innovation)
- g. X Ability and incentives to derive value from aggregation of data

- h. X Improves access to market (i.e. ability to reach new customers or geographies in the internal market or outside the internal market)
- i. X Ability to procure products more competitively from large suppliers?
- j. X Ability to compete in global markets outside the EU
- k. Other factors

Question 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. X 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. X Ability to compete in global markets outside the EU
- k. Other factors

Question 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

Question 3.3 directly addresses the issue of efficiencies and their link to the potential creation of market power.

Going forward, a clear distinction should be made between firm-level (private) and societal (aggregate) efficiencies. While firm-level efficiency refers to the productivity of the merging firms, societal efficiency relates to the broader economic performance and welfare.

The primary aim of merging parties is to improve firm-level efficiency—through economies of scale or scope, rationalisation, or specialisation. These efficiencies are recognised in Art. 2(1)(b) of the Merger Regulation as contributions to technical and economic progress and primarily inform the merging parties' internal decisions.

However, the current framework largely confines the relevance of efficiencies to this firm-level perspective. Societal efficiencies are only indirectly acknowledged through the narrow lens of the efficiency defence, which requires that claimed efficiencies be merger-specific, verifiable, and benefit consumers in a timely manner. This strict interpretation excludes broader, long-term strategic considerations—such as enhancing the global competitiveness of European companies.

Yet, this limitation is increasingly problematic. As global competition intensifies—particularly from jurisdictions with industrial-policy-oriented merger regimes—the traditional separation between competition law and industrial strategy becomes harder to uphold. A growing academic and policy debate suggests that mergers boosting European firms' global competitiveness can positively impact societal welfare, even in the absence of immediate consumer benefits.

To bridge this gap, the introduction of a new assessment tool—complementing the SIEC test—should be considered. This test would focus on evaluating societal or macro-economic efficiencies, particularly in borderline cases. Relevant factors could include:

- enhanced strategic autonomy of European industry,

- increased global innovation capacity,
- long-term effects on employment and investment within the EU,
- and improved resilience of critical supply chains.

Crucially, this societal efficiency test would not replace the SIEC but rather supplement it, allowing a more holistic evaluation of mergers with substantial macro-economic implications. At the same time, strict criteria, transparency, and procedural safeguards would be necessary to prevent politicisation and maintain the credibility of merger control.

Question 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

Please see answer to Question 3.3.

Question 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

Please see answer to Question 3.3.

Question 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

The sectors security of supply and resilience are most important for the manufacturing processes over a broad range of industries.

Question 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

Innovation is a source for dynamic competition and can lead to the finding that a concentration is pro-competitive, avoiding the finding of a SIEC. Just like a workable efficiency defence, innovation should not be viewed as a counterbalance to the negative effects of a concentration but should be considered as part of the assessment of the overall effects of a concentration.

Question 3.5.1

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

3000 character(s) maximum

In every sector.

Question 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

The Merger Guidelines can contribute to a smooth investment process.

Question 3.6.1

Please also specify in what sectors investment is particularly important

3000 character(s) maximum

In every sector.

Question 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

Intentionally left open.

4. Assessing market power using structural and other market features

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

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

Question 4.1.2

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

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

Question 4.1.3

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

- Yes, fully
- X 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?

Question 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

Yes.

Question 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

The Merger Guidelines should be clearer on the use of UPP and similar concepts by the COM.

Question 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

The criteria mentioned in Art. 2(1) of the Merger Regulation allow the COM to identify market structures that are critical and that pose a risk to effective competition. Where a durable dominant position is found to exist or emerge as a result of a concentration, such critical market characteristics prevail and impede effective competition.

Question 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

As the CJEU has formidably explained in ThyssenKrupp (C-581/22 P, at para 201 and 204), ‘significant impediment to effective competition’ within the meaning of Article 2(2) and (3) of the regulation must be interpreted as extending, beyond the concept of dominance, only to the anticompetitive effects of a concentration resulting from the non-coordinated behaviour of undertakings in an oligopolistic market which would not have a dominant position on the market concerned.

Question 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

Conceptually, the COM should apply the same legal test, i.e. whether the effects of a concentration will lead to the creation or strengthening of a dominant position, or non-coordinated effects in an oligopolistic market, albeit by using different tools for the assessment in the context of non-horizontal concentrations. This can be through foreclosure, but should not be limited to that concept.

Question 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

Intentionally left open.

5. Innovation and other Dynamic Elements in Merger Control

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

Question 5.1.1

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 3000 characters will be accepted

Innovation is a source for dynamic competition and can lead to the finding that a concentration is pro-competitive, avoiding the finding of a SIEC. Just like a workable efficiency defence, innovation should not be viewed as a counterbalance to the negative effects of a concentration but should be considered as part of the assessment of the overall effects of a concentration.

Question 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

In its decisions in Dow/DuPont and Bayer/Monsanto, the COM broke new ground in its assessment of merger impacts on innovation competition. The focus on "innovation

spaces” and industry-wide innovation effects marked a departure from previous case practice, which traditionally concentrated on static price effects and clearly defined product markets.

While the increased consideration of dynamic competition is, in principle, a welcome development, it also introduces considerable complexity. Assessing long-term, uncertain innovation efforts is inherently more challenging than analysing short-term price effects. A closer look at these decisions reveals a number of unresolved issues.

The concept of innovation spaces, although intuitively plausible, remains underdeveloped. The COM has yet to provide a workable framework for how these spaces should be defined in practice.

Identifying relevant innovators proves difficult. Unlike market activity, research and development—especially in early stages—takes place largely within firms and is not directly observable from the outside.

Theories of harm put forward by the COM in these cases lack clarity regarding their precise object and conditions. The extent to which potential innovation losses must be proven—or merely presumed—remains unclear.

The pre-notification phase has evolved into a de facto extension of statutory review periods. However, such a procedural expansion lacks any express legal basis in the EU Merger Regulation (Regulation (EC) No. 139/2004).

In light of these concerns, there is a strong case for the COM to codify its analytical framework on innovation competition in the revised Merger Guidelines. These should clarify open questions, define key concepts such as innovation spaces and innovation-relevant markets, and provide guidance on evidentiary thresholds for innovation-related theories of harm.

Most importantly, such guidance would promote legal certainty. It is the COM's responsibility to enable companies to anticipate the legal risks of their strategic decisions—including complex mergers involving R&D-heavy sectors. A clear, transparent and predictable approach to innovation competition is essential for fostering investment and maintaining confidence in the EU merger control regime.

Question 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

Intentionally left blank.

Question 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

There appear to be two main pre-requisites, actual competitive pressure or low barriers to market entry.

Question 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?

Innovation is a source for dynamic competition and can lead to the finding that a concentration is pro-competitive, avoiding the finding of a SIEC. Just like a workable efficiency defence, innovation should not be viewed as a counterbalance to the negative effects of a concentration but should be considered as part of the assessment of the overall effects of a concentration.

Question 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

Intentionally left blank.

Question 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

Intentionally left blank.

Question 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

Conceptually, the COM should assess whether the effects of a concentration will lead to the creation or strengthening of a dominant position, or non-coordinated effects in an oligopolistic market, through 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). Not every reduction of competition is harmful under Art. 2(3).

Question 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

The current practice of the COM appears appropriate in that regard.

6. Sustainability and clean and resource-efficient technologies

Question 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
- X No, to an insufficient extent**
- Not at all
- I do not know

Question 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

Companies will need to deploy significant capital while at the same time closing down or transitioning existing production facilities. The challenge for merger enforcement will be to allow large and capital heavy businesses to transform without doing damage to innovative start-up companies.

Question 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

Yes.

Question 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

Intentionally left blank.

Question 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

Concentrations can help businesses to adapt and to reshape their operations. They should be seen as a natural part of the evolving industrial landscape.

Question 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

Question 6.6 in our view does not ask the right question. Just like a workable efficiency defence, benefits of a concentration for a clean transition should not be viewed as a counterbalance to the negative effects of a concentration but should be considered as part of the assessment of the overall effects of a concentration.

7 Digitalisation

Question 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
- X No, to an insufficient extent**
- Not at all
- I do not know

Question 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 Merger Guidelines should embrace the learnings from COM's enforcement practice under Art. 102 and the DMA.

Question 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

Intentionally left blank.

Question 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 “tip-ping” to a leading company?

Text of 1 to 3000 characters will be accepted

The generally applicable time horizon seems appropriate also for tech mergers, while a longer time horizon may be required in markets following "tipping".

8 Efficiencies

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

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

Question 8.2.a

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

- X Yes
- No

Question 8.2.b

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

- X Yes
- No

Question 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?

- X Yes**
 No

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

Question 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

Efficiencies can lead to the finding that a concentration is pro-competitive, avoiding the finding of a SIEC. Efficiencies should not be viewed as a counterbalance to the negative effects of a concentration but should be considered as part of the assessment of the overall effects of a concentration.

Question 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

Question 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

Going forward, a clear distinction should be made between firm-level (private) and societal (aggregate) efficiencies. While firm-level efficiency refers to the productivity of the merging firms, societal efficiency relates to the broader economic performance and welfare.

The primary aim of merging parties is to improve firm-level efficiency—through economies of scale or scope, rationalisation, or specialisation. These efficiencies are recognised in Art. 2(1)(b) of the Merger Regulation as contributions to technical and economic progress and primarily inform the merging parties' internal decisions.

However, the current framework largely confines the relevance of efficiencies to this firm-level perspective. Societal efficiencies are only indirectly acknowledged through the narrow lens of the efficiency defence, which requires that claimed efficiencies be merger-specific, verifiable, and benefit consumers in a timely manner. This strict interpretation excludes broader, long-term strategic considerations—such as enhancing the global competitiveness of European companies.

To bridge this gap, the introduction of a new assessment tool—complementing the SIEC test—should be considered. This test would focus on evaluating societal or macro-economic efficiencies, particularly in borderline cases. Relevant factors could include:

- enhanced strategic autonomy of European industry,
- increased global innovation capacity,
- long-term effects on employment and investment within the EU,
- and improved resilience of critical supply chains.

Crucially, this societal efficiency test would not replace the SIEC but rather supplement it, allowing a more holistic evaluation of mergers with substantial macro-economic implications. At the same time, strict criteria, transparency, and procedural safeguards would be necessary to prevent politicisation and maintain the credibility of merger control.

Question 8.3.d

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

- Yes
- No

Question 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

The timeframe should be the same as for the assessment of a SIEC.

Question 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

The primary aim of merging parties is to improve firm-level efficiency—through economies of scale or scope, rationalisation, or specialisation. These efficiencies are recognised in Art. 2(1)(b) of the Merger Regulation as contributions to technical and economic progress and primarily inform the merging parties' internal decisions. The assessment should therefore focus on identifying the pro-competitive effects of the claimed efficiencies to make sure no SIEC would arise.

Question 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

That is a decision that is up to the merging parties and the COM's assessment should not second guess whether behavioural forms of collaboration might be similarly effective as the change in market structure brought about by the concentration.

9. Public policy, defence and security as well as labour market considerations**Question 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
- X No, to an insufficient extent
- Not at all
- I do not know

Question 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?

- X Yes**
 No
 I do not know

Question 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

Intentionally left blank.

Question 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

That seems pretty obvious to us.

Question 9.5

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

- X Yes**
 No
 I do not know

Question 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
- X No, to an insufficient extent**
- Not at all
- I do not know

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

- X Yes**
- No

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

- X Yes**
- No
- I do not know

Question 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?

- X Yes**
- No
- I do not know

Question 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

Green mobility.

10. Final comments and document upload**Question 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

Question 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

Question 10.3

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

- X Yes**
- No

End of the questionnaire. Thank you for your contribution.