

New Draft EU Merger Guidelines: What Businesses Need to Know

The Draft Guidelines emphasise how mergers can increase EU firms' scale, competitiveness, and resilience, but also expand the Commission's toolkit for challenging mergers.

Key Points:

- The Draft Guidelines consolidate horizontal and non-horizontal merger analysis into a single instrument.
- The Draft Guidelines give more emphasis to the positive impact of mergers that create scale, take a broader view on efficiencies, and introduce an “innovation shield” for deals involving small innovative targets or R&D projects with dynamic competitive potential.
- The Commission will host an interactive stakeholder workshop on 10 June 2026, and the public consultation is open for comments until 26 June 2026.

On 30 April 2026, the European Commission (Commission) published draft merger guidelines¹ (the Draft Guidelines) for public consultation.² When finalised, the guidelines will supersede both the 2004 Guidelines on the assessment of horizontal mergers and the 2008 Guidelines on the assessment of non-horizontal mergers. They consolidate horizontal and non-horizontal merger analysis — previously addressed in two separate sets of guidelines — into a single instrument.

The Draft Guidelines are organised in three parts: Part I (Introduction and Guiding Principles), Part II (Competitive Assessment, with subsections on Market Power, Anticompetitive Effects, and Benefits/Efficiencies), and Part III (Measures to Protect Legitimate Interests). The key structural change is that the competitive assessment is now organised around types of anticompetitive effects — such as loss of head-to-head competition, loss of innovation competition, foreclosure, entrenchment, and coordination — rather than around merger type.

Below we outline the 10 key changes and their potential implications for business.

1. Global Economic and Geopolitical Background

What's in the Draft Guidelines?

Launching the Draft Guidelines, Commission President Ursula von der Leyen stated they should “better support companies to thrive, scale and innovate” to meet “the realities of the fiercely competitive global economy”. The Draft Guidelines reflect this shift, acknowledging that “the global geo-political and trade context has changed” and that “industrial scale and global competitiveness have become increasingly important” (para. 10).

What does this mean for deals?

Scale-building mergers — especially cross-border EU combinations, deals strengthening European global competitiveness, or transactions securing critical inputs for European players — may be viewed more favourably, provided post-merger competition remains robust. Parties should develop and publicise the merger rationale early, emphasising scale benefits for investment and innovation. The Commission is likely to show a greater openness to broader geographic markets where there is evidence of a global competitor presence and rising trade flows.

2. Building Scale and Competitiveness in the Internal Market

What's in the Draft Guidelines?

The Draft Guidelines emphasise how mergers can increase EU firms' scale, competitiveness, and resilience — hinting at a greater willingness by the Commission to clear scale-enhancing deals that were previously viewed more sceptically (paras. 11–18). “[T]ransactions that bring about increased scale and consolidation can thus be viewed positively” (para. 7). However, the Commission needs to understand the rationale of the merger and the business model or strategies that will be implemented following the merger (para. 14). Non-horizontal mergers — assuming that they do not involve companies with significant market power — have particularly strong potential to yield substantive benefits for scale and competitiveness in the internal market (para. 17).

What does this mean for deals?

Parties should articulate the merger rationale and post-merger business strategy clearly and early. Non-horizontal mergers stand to benefit most from this favorable framing, provided the parties do not hold significant market power.

3. Dynamic Competition

What's in the Draft Guidelines?

The Draft Guidelines consider “dynamic competition” (related to investment and innovation) in several instances: “Dynamic competitive potential” becomes a metric of competitive significance beyond market shares, assessed through, for example, R&D spend, patents, pipeline assets, and access to critical data

and technology (paras. 80–83). New theories of harm focus on loss of dynamic competition, including investment and innovation competition restriction (paras. 169–179) and foreclosure (paras. 239 ff.). Efficiencies beyond cost savings called “dynamic efficiencies” are now acceptable (e.g., disruptive innovation and sustainability benefits) (para. 296). A balancing test of those efficiencies with theories of harm is available (para. 347).

What does this mean for deals?

Parties should expect deeper scrutiny of future competitive trajectories and wider Commission discretion to build theories of harm on hypothetical rival incentives (but see “Innovation Shield” below). In addition, the Commission must now balance efficiencies defences against harm, even where those defences cannot be directly quantified or are not perfectly aligned in timing or affected consumers. As such, parties will likely have more room to run direct and dynamic efficiencies defences.

4. A More Holistic Framework

What’s in the Draft Guidelines?

In addition to price parameters, the Draft Guidelines introduce non-price parameters and commit to assess the impact (positive or negative) of the merger on those parameters, which include capacity (including pivotality), investment, privacy, sustainability, resilience, and security of supply. The non-price parameters give the Commission wider room to weigh considerations that were rarely central before (paras. 20–21, 114–116).

What does this mean for deals?

Scrutiny now extends well beyond price and output effects. Parties should assess and prepare arguments on how the transaction impacts non-price parameters such as sustainability, resilience, and privacy.

5. Theories of Benefit: Towards an Overall Balancing

What’s in the Draft Guidelines?

Efficiencies are now a fundamental part of the Commission’s merger assessment. According to the Draft Guidelines, “Demonstrated efficiencies will play a key role in the assessment of mergers going forward” (para. 291). The Draft Guidelines retain the familiar efficiencies test — claims must be verifiable and merger-specific, and benefit consumers — but sharpen it within a structured “theory of benefit” framework.

The new approach broadens what counts as relevant efficiencies: Beyond the traditional “direct” efficiencies (near-term cost savings and quality gains), the Commission identifies “dynamic” efficiencies (greater ability or incentive to innovate or invest over time) (paras. 294–296). The merging parties carry the burden of proof for theories of benefit (paras. 25, 27) and are advised to present them early on (para. 36). The Draft Guidelines explicitly enable the Commission to accept efficiencies that cannot be quantified (paras. 308, 329), and even open the door to accepting “out-of-market efficiencies” to a certain extent (paras. 355, 356).

What does this mean for deals?

Running credible efficiency cases should become easier. Parties should prepare robust, quantified submissions early — covering both direct and dynamic efficiencies — and consider early engagement with the Commission. Notably, the Commission maintains that competitive constraints remain key for efficiencies to materialise (para. 346), leaving open how objective the balancing will be in practice.

6. 9+2 Theories of Harm**What's in the Draft Guidelines?**

The Draft Guidelines include traditional theories of harm (loss of direct competition, foreclosure, coordinated effects), but also crystallise relatively novel ones: loss of investment/expansion competition (paras. 169–174), loss of innovation competition (paras. 175–191), and entrenchment of dominance (paras. 252–259). The Draft Guidelines also introduce explicit treatment of labour-market monopsony effects (paras. 158–162). Non-controlling minority shareholdings potentially as low as 5% are treated as a potential stand-alone concern, and common institutional ownership may be a contributing factor for horizontal theories of harm (paras. 163–166). Finally, the Draft Guidelines develop potential harm from access to commercially sensitive information of rivals (paras. 283–286), and portfolio effects are recognised as a stand-alone concern for the first time (paras. 287–290).

What does this mean for deals?

Parties should map all theories of harm early, going beyond horizontal overlaps to cover investment rivalry, innovation pipelines, portfolio leverage, labour markets, and minority stakes. Internal documents on each of these will be critical evidence.

7. Broader Foreclosure Framework**What's in the Draft Guidelines?**

A single framework now covers input, customer, and conglomerate foreclosure under one analytical template (paras. 208–213). No market-share safe harbour is provided for “a degree of market power” sufficient to confer ability to foreclose — the former 30% threshold is gone (para. 219). The Draft Guidelines introduce dynamic foreclosure incentives: a merged entity may have strategic reasons to degrade rivals’ access over time, even where short-term profitability analysis would not support foreclosure (paras. 239–241). Diagonal mergers are also called out (para. 251): i.e., where one party controls a product or customer base accessed primarily by the other’s rivals, foreclosure scrutiny applies even absent a vertical supply relationship.

What does this mean for deals?

Parties should expect broader foreclosure scrutiny. Profitability analysis alone will not exclude foreclosure incentives. As such, parties should assess rivals’ incentives to invest and innovate. The 30% safe harbour

is gone (though it survives in the Simplified Procedure Notice). Parties should map not only vertical links between the parties, but also supply relationships with each other's rivals.

8. Innovation Shield

What's in the Draft Guidelines?

The Draft Guidelines introduce an “innovation shield” for deals involving small innovative targets (including startups) or R&D projects with dynamic competitive potential (para. 192). These deals are generally not problematic if:

- a) no overlap arises;
- b) overlap between products/R&D projects arises and at least one party is already active in the market, but individual or combined share is $\leq 40\%$ and ≤ 3 players with comparable R&D projects remain;
- c) overlap between R&D projects arises and ≤ 3 players with comparable R&D projects remain (no market-share threshold);
- d) overlap between R&D capabilities arises and combined share is $\leq 25\%$ in the relevant innovation space or $\leq 25\%$ of R&D activities at industry level; or
- e) overlap/link arises between one party's R&D project and the other's activities in an upstream, downstream, or closely related market — provided the parties' individual share is $\leq 40\%$ in that related market.

For scenarios b) and e), even where thresholds are exceeded, the innovation shield applies if the acquirer is neither the largest firm in the relevant market nor designated under the Digital Markets Act (para. 192(b), (e)).

What does this mean for deals?

The innovation shield provides a genuine new safe harbour. Both acquirers and targets should map their transactions against scenarios a) through e).

9. Revisiting Market Power

What's in the Draft Guidelines?

The Draft Guidelines formalise new indicators and countervailing factors for market power. For example, high profit margins are introduced as a new indicator of market power (paras. 70–74), and out-of-market constraints are introduced as a countervailing factor (paras. 101–103). Imports are specifically identified as a possible source of entry or expansion, creating a clearer link between EU trade policy and merger control practice (paras. 91–92).

What does this mean for deals?

Market power analysis now goes beyond shares and bidding data — profitability benchmarking in internal documents will be key evidence. Parties should proactively flag out-of-market constraints and import competition under the Commission's newly systematised approach.

10. Member States' "Legitimate Interests" in Intervening

What's in the Draft Guidelines?

The Draft Guidelines explain when and how Member States may exercise their prerogatives under Article 21 EUMR to protect national interests in mergers reviewed by the Commission (paras. 358–394). Only recognised legitimate interests (such as public security, media plurality, and prudential rules) or another public interest apply here, and the Member State intervention must be proportionate and non-discriminatory.

What does this mean for deals?

This change provides greater predictability for cross-border transactions, particularly those involving European companies.

Next Steps

The public consultation will be open for comments until **26 June 2026**. All interested stakeholders can submit their views. The Commission will analyse the responses to the public consultation and publish the contributions along with a summary of main input trends.

In addition to the public consultation, the Commission will continue engaging with citizens and businesses, as well as other relevant stakeholders, in other formats before finalising its review process. This will include an interactive stakeholder workshop on **10 June 2026**.

The Commission aims to adopt the final guidelines in the **last quarter of 2027**. Members of the European Parliament are pushing for a faster timeline, so an earlier adoption is possible.

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Endnotes

¹ The draft can be accessed here: https://competition-policy.ec.europa.eu/document/download/46dde10f-85c1-4590-a3f4-2b71f85685ef_en?filename=Merger%20Guidelines%20-%20final%20for%20public%20consultation.pdf.

² For the public consultation, see here: <https://ec.europa.eu/eusurvey/runner/7320e903-26bc-5a3d-c2fe-db7d19f20f05>.