Van Bael & Bellis

30 April 2026

European Commission issues new draft merger control guidelines, launches public consultation

On 30 April 2026, the European Commission ("Commission") released its highly anticipated draft updated merger control guidelines (see link). Interested parties are invited to submit comments on this draft until 26 June 2026. The Commission also plans an "interactive stakeholder workshop" on 10 June 2026. Once adopted, the new guidelines would replace the Commission's current Horizontal and Non-Horizontal Merger Guidelines.

At 98 pages, the new draft is the first major rewrite of the Commission's Merger Guidelines in approximately two decades and comes at a time when the Commission has been facing enormous political pressure to reform its application of the EU merger control rules to reflect today's geopolitical climate, *inter alia*, by allowing European companies to reach the scale necessary to compete effectively on the global stage.

Among the notable features of the draft guidelines:

1. The draft guidelines recognise the potential positive effects mergers may have on non-price parameters such as innovation, sustainability, investment and economic resilience, and invite merging parties to argue such procompetitive effects up front as "theories of benefit" when filing mergers for EU approval, including during the pre-notification stage. The draft indicates that "*[t]he Commission exercises its margin of discretion according to the same principles as regards the assessment of evidence underlying both a theory of harm and a theory of benefit*."
2. The draft guidelines suggest that deals that drive technological progress, allow parties to invest in and develop critical infrastructure and access key inputs, and/or increase the EU's defence readiness may have an easier time obtaining Commission approval than in the past. This is especially true when these deals help European industries compete in global markets. This said, the draft makes clear that any benefits raised by merging parties will need to outweigh the potential competitive harm resulting from a deal.
3. Significant space is dedicated to analysing a merger's impact on innovation, both positive and negative. The draft guidelines recognise that mergers can lead to greater innovation and create pathways for such mergers to be approved. The draft introduces an "innovation shield" for transactions involving small, innovative companies, including start-ups, for which the Commission will in principle not find competition concerns provided certain criteria are met. This should give greater comfort to such companies and lead to smoother reviews of their deals. At the same time, the draft guidelines maintain the Commission's long held concern that mergers can also reduce or eliminate innovation, such as in the case of so-called "killer acquisitions", where a company acquires a (usually smaller) innovative rival in order to discontinue overlapping research and development, thereby eliminating it as a future competitive threat.

4. The draft guidelines suggest a greater openness on the part of the Commission to arguments of procompetitive efficiencies, including not only "direct efficiencies" (e.g., cost savings leading to lower prices), but also a new category of "dynamic efficiencies", which "*confer the ability or increase the [merging parties'] incentives to invest or innovate into new or improved products or services, improved distribution or production or other procompetitive parameters of competition.*"

5. Reflecting what Commissioner Teresa Ribera has described as a more "dynamic" approach to deal assessment, the draft guidelines suggest a willingness of the Commission to look beyond short-term effects of mergers on price and output, to consider longer-term effects and business incentives more broadly. The draft guidelines indicate that the Commission will consider factors such as dynamic competitive potential where a static assessment of market power (e.g., based on market shares) does not fully capture a firm's competitive strengths and weaknesses; dynamic entry/expansion of competitors, including market specific time frames when assessing the timeliness of entry/expansion; and dynamic effects of mergers, such as their impact on merging firms and rivals' ability and incentives to invest and innovate.

6. Not surprisingly, the draft guidelines devote space to digital markets, multi-sided platforms, ecosystems of related services, gatekeepers, and other topics that are not discussed at all in the current Horizontal and Non-Horizontal Merger Guidelines, which were published at a time when "Big Data" was not yet a common term, let alone a common concern of regulators.

7. Another topic in the draft guidelines that is not addressed in the current Horizontal and Non-Horizontal Merger Guidelines is the impact of mergers on labour. The draft guidelines note that, in certain circumstances, mergers can lead to lower wages and worse conditions for workers, which in turn may harm downstream customers, for example through higher prices or lower quality or choice. According to the draft, this is especially the case where workers are specialised and the merger leads to there being few alternative employers on the market. On the flip side, the draft guidelines note that collective bargaining agreements and relevant social and labour regulations that may limit employers' market power on labour markets should also be taken into consideration.

While there are reasons for merging entities to welcome the draft guidelines, it is important to view them in the proper context**.**

First, this is just a draft. Although the final guidelines can be expected to broadly resemble the draft, key changes could still be made following the Commission's consultation period.

It is also important to emphasise that the EU Merger Regulation is not under review, and so the legal test for assessing mergers will remain unchanged. A merger that significantly impedes effective competition in the common market or a substantial part of it shall be declared incompatible with the common market and prohibited. It is not immediately clear how the Commission can legally approve a transaction that significantly impedes effective competition simply because it furthers other important industrial policy goals, such as the long-term viability and global competitiveness of European industry. The draft guidelines' answer to this seems to be to take a broad view of what constitutes an efficiency. Whether this would withstand judicial scrutiny remains to be seen.

Finally, although much attention has been paid to the need to modernise EU merger control in a way that promotes innovative European industries that can compete on the global stage, the reality is that the overwhelming majority of mergers are already approved by the European Commission, in most cases unconditionally. Given this, the new guidelines, once adopted, will not change the outcome of most reviews. However, they could make approval easier to obtain, especially as the Commission is committing to considering procompetitive arguments at an earlier stage of the review process. Moreover, for the minority of deals that in the past would have either been blocked or would have required substantial remedies to be approved, the impact could be significant. This will, of course, depend on how the Commission interprets its own guidelines in deciding cases.

A detailed analysis of the Commission's draft merger guidelines will be included in the next edition of VBB on Competition Law. If you are not already a subscriber to this newsletter, you can sign up here.

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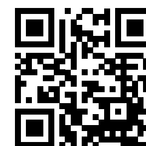

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