

GW Competition & Innovation Lab

Policy Note on Revising the Horizontal Merger Guidelines: Balancing Consumer Welfare, Innovation, and Market Competitiveness

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Introduction

The notion of concentration in competition law covers all operations that result in a lasting change in the control of the undertakings involved and thus lead to a change in the structure of a market. This notion includes a variety of operations that are quite different from one another, according to different variables.²

Their uniform treatment under competition policy is justified by the fact that, from an economic perspective, these different forms of concentration share a common substantive effect: a lasting change in the structure of the market. Unlike 'organic' growth resulting from consumer preference, driven by lower prices,

¹ Submission to the EU Commission's public consultation on the revision of the merger guidelines

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² Concentrations may take different legal forms, including full mergers, acquisitions of sole or joint control, and the establishment of full-function joint ventures. From a competitive assessment perspective, they are typically classified based on the relationship between the undertakings involved: as horizontal (between competitors), vertical (between firms operating at different levels of the supply chain), or conglomerate (between non-competing and non-vertically related firms). The assessment further depends on the characteristics of the relevant market(s), which may vary significantly in terms of economic structure, competitive dynamics, and the applicable regulatory framework.

superior quality, or earlier innovation, these structural changes arise from the external combination or reallocation of corporate control.

This has a twofold consequence.

On the one hand, merger control is substantively distinct from other provisions of EU competition law—namely Articles 101 and 102 TFEU—which address specific anticompetitive conduct by one or more undertakings. Once a given market behaviour is identified (e.g., collusion or abuse), its antitrust treatment tends to be more uniformly applicable across markets. By contrast, concentrations do not involve a specific unlawful conduct but rather a structural change in market conditions, whose competitive effects are highly context-dependent and market-specific.

On the other hand, while the creation of a dominant position through organic market processes is not prohibited under Article 102 TFEU, the creation or strengthening of dominance through a concentration is treated as a socially undesirable outcome under the EU merger control framework.³ This policy judgment is so embedded in the Merger Regulation so that the law has evolved to address not only cases of individual or collective dominance, but also broader concerns over unilateral effects in non-collusive oligopolistic markets.⁴ This evolution is reflected in the adoption of the Significant Impediment to Effective Competition (SIEC) test, which expanded the legal standard beyond the narrower dominance-based threshold.

While the concept of a dominant position and its interpretation under EU case law was well-established under EU law,⁵ the expansion of this concept has not been accompanied by

³ Regulation (EC) No 139/2004 on the control of concentrations between undertakings

⁴ Limiting the control of concentrations to only those transactions that create or strengthen a dominant position led to a so-called "enforcement gap". This gap was filled by the 2004 Merger Regulation through and its recital 25 clarifies that the notion of a SIEC extends beyond the concept of dominance, specifically to cover anti-competitive effects arising from non-coordinated behaviours in oligopolistic markets. The perception of a potential gap in the scope of the EU Merger Regulation emerged notably in the aftermath of the Commission's decision in *Airtours/First Choice* (Case M.1524, Decision of 22 September 1999). The Commission prohibited the merger on the grounds that it would create a collective dominant position. However, the reasoning it adopted appeared to conflate coordinated and unilateral effects, suggesting that the remaining firms would be able to exercise market power independently, without the need for explicit coordination. On appeal, the General Court annulled the decision (Case T-342/99, *Airtours plc v Commission*), holding that collective dominance must be linked to coordinated effects. As a result, it became clear that the dominance-based test did not fully capture all forms of unilateral effects in oligopolistic markets—thereby revealing a substantive enforcement gap.

⁵ CGUE 14 February 1978, *United Brands Company & United Brands Continentaal BV*, C-27/76, 65

interpretive guidance on how the SIEC concept should be applied in practice or its relationship with the concept of dominance is not clear.

The Horizontal Merger Guidelines (HMG)⁶ published in 2004, right after the latest merger regulation, were meant to provide guidance on the Commission's practice when assessing the impact of mergers on competition within the legal framework of the EU Merger Regulation.

While the 2004 HMG offered a structured framework for assessing potential harm to competition, they failed to offer sufficient elaboration into those two fundamental aspects of merger control previously described: (i) the declination of rules according to market and sectors specificities (similar to what in place for state aids) and (ii) the clear definition and operationalization of the foundational legal concepts underpinning EU merger control, such as that of "effective competition"⁷ and its relationship with dominance concept, as well as the concept of "significant impediment"⁸

In addition to these "original sins", currently the HGL no longer fit for purpose in today's economic and policy environment. Over the past two decades, the structure and competitive dynamics in European markets have evolved significantly due to crucial transformation such as digitalization and globalization. Moreover, in a geopolitical and economic environment marked by growing trade frictions, tariff impositions, and strategic decoupling, the role of competitiveness, via its connection yet also via its differentiation from competition, has become critical. The Guidelines obviously do not adequately reflect the recent EU's radical shifting of some strategic priorities, including those articulated in:

(i) *The Future of EU Competitiveness*⁹ (*Draghi Report*) which calls for decisive action to close Europe's widening innovation gap, accelerate digital transformation, and develop strategic

⁶ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2004/C 31/03)

⁷ In the HGL, there is no meaningful elaboration on how effective competition is to be defined, identified, or measured, particularly in markets that lack a dominant player. This is problematic, as the determination of whether competition has been significantly impeded depends on a clear benchmark for what constitutes an effective competitive process

⁸ While factors are enumerated as relevant to the assessment (i.e., market share, closeness of competition, etc...), the Guidelines do not specify what distinguishes a "significant" impediment from a minor or negligible one, leaving a wide margin of discretion in enforcement.

⁹ Draghi M. (2024) The future of European competitiveness: Part A | A competitiveness strategy for Europe, Part B | In-depth analysis and recommendations

capacities in key technological and infrastructural domains, to enhance EU innovation-driven competitiveness.

(ii) *The Future of the Single Market*¹⁰ (Letta Report), which advocates for a harmonised and fully integrated Digital Single Market, embedding research and innovation drivers at its core, and allowing seamless cross-border digital services and provides as structural foundation for European tech companies to emerge and scale.

(iii) The *Competitiveness Compass*,¹¹ which set a guiding framework for the future EU industrial policymaking to address the EU's persistent decline in productivity growth and its erosion of technological leadership in comparison with major global competitors.

Taken together, these policy acts call, directly or indirectly, for a fundamental update of the HMG to ensure that merger control remains aligned with the realities of modern markets and the broader policy objectives of the Union. Indeed, given its status as secondary law within the EU legal hierarchy, merger control 's function must be interpreted and applied in alignment with the broader EU policy framework, not in isolation from it – as it may be somehow the case for competition law provisions enshrined in the EU treaties.

This is pivotal today, especially for those sectors that are key for competitiveness and strategic autonomy¹², as well provide essential service and facilitate the fulfilment of fundamental rights to EU citizens.

Merger control and sector-specific regulation

The application of merger control in regulated sectors is extremely relevant, because both their strategic, economic and social relevance, which necessitates efficient infrastructure deployment, long-term investment, and sustained technological progress. Moreover, these sectors often operate within market structures and competition conditions shaped by policy choices aimed at achieving broader regulatory or public interest objectives.

These circumstances require merger control to be declined

¹⁰ Letta E. (2024) Much more than a market

¹¹ EU Commission (2025) A Competitiveness Compass for the EU - COM(2025) 30 final

¹² Reducing dependency on foreign infrastructure or technology suppliers, especially those under extraterritorial influence, is directly aligned with the EU's objective to gain technological sovereignty and protect critical infrastructure under the EU's Critical Entities Resilience Directive (CER) and NIS2 Directive

according to each sector's specificities. However, the current merger guidelines apply a uniform analytical framework that does not adequately reflect the significant the distinct competitive dynamics and regulatory environments of such sectors. As a result, stakeholders face considerable uncertainty as to how the Guidelines will be applied in practice, and whether key sector-specific factors will be meaningfully taken into account in the Commission's assessment.

This disconnect arises primarily from the fact that the Guidelines treat merger control in isolation from the broader regulatory and policy context in which markets operate

In addition, the absence of sector-specific sections in the Guidelines increases the risk of inconsistencies between horizontal merger control and various EU regulatory frameworks, particularly in sectors subject to ex ante pro-competitive regulation, such as electronic communications, energy, and transport.

In particular, the lack of a clear definition of the concept of a 'significant impediment to effective competition' is particularly problematic in sectors where regulatory frameworks may, explicitly or implicitly, adopt their own definition of "effective competition".

For instance, in the electronic communications sector, the European Electronic Communications Code (EECC)¹³ defines "effective competition" as an objective of the regulatory framework, to be reached by the imposition of ex ante obligations on undertakings with significant market power (SMP) – a concept broadly aligned with a dominant position.

By contrast, the HGLs, instead, neither clarify how the concept of SIEC relates to the concept of dominance, nor, more critically, explain how merger control should interact with sector-specific regulatory frameworks, particularly where these, implicitly or explicitly, define what constitutes an "effective competition".

To enhance legal certainty, transparency and predictability in the enforcement, the Commission should retain the overall horizontal structure of the Guidelines but introduce sector-specific annexes or subsections. These additions would serve to:

(i) Identify common regulatory constraints that are relevant to the competitive assessment in regulated sectors.

¹³ Directive (EU) 2018/1972 establishing the European Electronic Communications Code.

(ii) Adjust the analytical framework to reflect sector-specific parameters of competition, including demand characteristics, investment cycles, and market structure.

(iii) Clarify how and when core analytical tools—such as market definition, closeness of competition, countervailing buyer power, and efficiencies—should be tailored in light of sector-specific features and applicable regulatory frameworks.

In sum, the Guidelines should provide a structured framework for how regulatory regimes, where relevant, inform the Commission’s understanding of market dynamics, competitive constraints, and the definition of effective competition.

Indeed, it is important to consider the implications of existing or anticipated sector-specific pro-competitive obligations imposed on an undertaking involved in a merger. The assessment should focus on the realistic ability of the merging parties to exercise market power in a context where their conduct is, actually or potentially, constrained by regulatory measures.

In such cases, the merger assessment must inherently differ from the assessment conducted in abuse of dominance cases. Indeed, as for abuse of dominance cases, regulatory frameworks limit the range of lawful behaviours for dominant firms, however, these constraints may sometimes be suboptimal and competition law enforcement may need to intervene, ex-post, in order to address those anti-competitive conducts, not inhibited by regulation.

In such cases, the merger assessment must inherently differ from the approach applied in abuse of dominance proceedings. In dominance cases under Article 102 TFEU, ex post competition law enforcement may be required where regulatory constraints, although present, prove insufficient to prevent anti-competitive conduct. In those situations, the law recognises that regulation may be sub-optimally constraining undertakings behaviours and that additional legal intervention may be justified.¹⁴

However, the interaction between regulation and merger control is fundamentally different. First, as noted, merger control is based on secondary EU law, placing it at the same hierarchical level as sector-specific regulatory frameworks.¹⁵ Secondly,

¹⁴ See Case Deutsche Telekom C-280/08P, 2010: «... competition rules laid down by the Ec Treaty supplement in that regard, by an ex-post review, the legislative framework adopted by the Union legislature for ex ante regulation of the telecommunications markets». See also Manganelli A., Nicita A, (2020) The governance of Telecom Markets. Palgrave Macmillan.

¹⁵ This point is relevant not only from a policy perspective, as outlined above, but also from a legal standpoint. The commonly cited “primacy” of competition law over sector-specific regulation is grounded in the fact that Articles 101 and 102 TFEU form part of the EU’s primary law. As such, their direct application cannot be excluded or overridden by secondary legislation, including sector-specific regulatory frameworks.

merger assessment is a forward-looking analysis, not a backward-looking response to identified misconduct. Consequently, it cannot be based on a presumption of regulatory inadequacy, since no anti-competitive behaviours have (yet) occurred.

On the contrary, it must be assumed that the existing regulatory framework adequately addresses prospective competition concerns. This means that the existence of market power in regulated sectors should not be automatically equated with a lack of effective competition under merger control. Regulatory measures such as price controls, access obligations, interoperability requirements, and non-discrimination rules can significantly constrain the actual exercise of market power. The Guidelines should therefore explicitly recognise that regulatory oversight can mitigate or neutralise the competitive harm typically associated with structural market power.¹⁶

Furthermore, most regulated sectors are investment-intensive. Therefore, competition dynamics are also strongly influenced by investment incentives and infrastructure deployment, both of which contribute shaping the very notion of “effective competition”.

For example, under the EECC, “effective competition” is associated with the presence of infrastructure-based competition, provided that such competition is both efficient and sustainable. This imply that infrastructure duplication should support a fair return on investment over time.¹⁷

In such a framework, effective competition is clearly not defined solely by the parameters concerning short-term rivalry, but rather by the competition based on long-term sustainability of innovative investments. Consequently, under sector-specific regulation, achieving efficient and sustainable competitive outcomes may require allowing the market to adjust the degree of infrastructure-based competition, either increasing or reducing it, depending on prevailing economic conditions and policy goals.¹⁸

¹⁶ Where a sectoral regulatory framework is designed to be transitional, aimed at fostering the development of effective competition so that ex ante regulation can eventually be withdrawn (e.g., the EECC), it is possible that a concentration might prolong the need for regulatory intervention. However, this does not in itself warrant blocking the merger. Rather, it reflects a strategic trade-off made by the merging parties.

¹⁷ Recital 27 EECC

¹⁸ There may be several reasons why a market evolves into a state of non-sustainable competition. In particular, in sectors where regulation actively facilitates entry and incentivises investment, markets can, under certain conditions, become characterised “over-competition.” Such dynamics may lead to inefficient duplication of infrastructure, erosion of returns on investment, and ultimately underinvestment in quality or

However, the current Horizontal Merger Guidelines (HGLs) do not reflect this multidimensional understanding of competition. They adopt a static, comparative lens, assessing whether a transaction reduces competition relative to a pre-merger counterfactual, without defining what constitutes a "significant impediment" and without acknowledging potential trade-offs between the different competitive parameters, i.e., price, quality, innovation, and investment.

Such an approach may hinder markets from evolving toward more efficient and sustainable structures (for example, by preventing a shift from price-based to quality-based competition). In doing so, it may run counter to the objectives of sectoral regulation and ultimately fail to promote long-term efficiency and consumer welfare.

Dynamic competition, investments, and innovation

As clearly stated in Recital 4 of the EU Merger Regulation, 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 Union.”* However, both dynamic competition and, described in the following section, competitiveness are largely absent from the current HGL.

Based on the current HGL, the Commission has traditionally applied a narrow and largely static interpretation of the consumer welfare standard in merger assessments, with a strong emphasis on short-run price effects.¹⁹

While this approach offers consistency and administrative simplicity, this approach does not fully reflect the many ways in which mergers can have a positive impact on consumers, particularly in innovation-driven or infrastructure-intensive sectors, where merger effects often extend far beyond short-term price changes. A price-centric focus overlooks the reality that consumer preferences are multi-dimensional, and they frequently value non-price aspects as much as, or even more than, price.

innovation.

¹⁹ This static view is reflected in multiple provisions of the current HGL, for instance, paragraphs 24, 27, 28, 31, 32, 36, 39, and 40 are all heavily focused on prices, pricing incentives, and the likelihood of post-merger price increases, without adequate consideration of non-price competition factors such as innovation or technological advancement

In recent years, the Commission has established a four-tier framework for evaluating the competitive impact of horizontal mergers on innovation.²⁰ This framework considers the potential effects of a merger across the entire innovation lifecycle, including risks such as: (a) overlaps between existing products, (b) overlaps involving late-stage pipeline products, (c) the discontinuation, delay, or redirection of early-stage research and development efforts, and (d) a structural decline in overall innovation due to reduced innovation competition

Although the HGL acknowledge innovation as one of several non-price parameters of competition,²¹ alongside others such as quality, choice, and sustainability, these factors are currently given insufficient weight in merger assessments.

This is primarily because: (i) non-price parameters are often subordinated to short-term price effects in the actual practice; (ii) they are typically considered only in cases where they can reaffirm a negative impact resulting from the merger; (iii) there is an implicit assumption that all relevant competitive parameters move in the same direction at the same time, which overlooks the trade-offs that characterize many sectors, particularly those that are innovation-driven, capital-intensive, or highly regulated; (iv) there is no explanation of how to assess these variables when they move in opposite directions (e.g., an increase in price accompanied by an increase in quality or innovation).

In other words, there is a bias embedded in the current HGLs, specifically, a tendency to over-rely on static structural indicators such as market shares and concentration levels, while giving insufficient weight to dynamic effects, including innovation incentives, quality improvements, long-term investment signals, and forward-looking efficiency considerations.

This bias is particularly problematic in technology-intensive and capital-intensive sectors, such as telecommunications, digital infrastructure, and pharmaceuticals, where dynamic parameters are often central both to the strategic rationale for the merger and to its actual competitive impact

Merger analysis is inherently forward-looking and predictive,

²⁰ See e.g., cases M.7932 – Dow / Dupont, M.9461 – Abbvie / Allergan, M.9554 – Elanco Animal Health / Bayer Animal Health Division, and M.11177 – Pfizer / Seagen.

²¹ Para 38 HGL affirms that “In markets where innovation is an important competitive force, a merger may increase the firms’ ability and incentive to bring new innovations to the market and, thereby, the competitive pressure on rivals to innovate in that market. Alternatively, effective competition may be significantly impeded by a merger between two important innovators, for instance between two companies with ‘pipeline’ products related to a specific product market”.

often involving significant uncertainty, especially when dynamic market factors are involved. The challenge of anticipating market developments increases with the time horizon of the assessment. However, disregarding these dynamic effects and focusing solely on short-term price outcomes creates a real risk of producing unbalanced and inefficient results, for example, by:

- Undervaluing long-term consumer welfare gains from innovation, investment, and quality improvements.
- Misinterpreting market power indicators, since price-cost margins may overstate dominance even in the presence of intense competition for quality and/or innovation – which requires adequate margin to be developed.
- Overlooking dynamic efficiency gains, which accumulate gradually and may outweigh short-term static efficiencies.
- Weakening incentives for quality competition, while tacitly accepting post-merger price rises.
- Failing to recognise that post-merger price increases may reflect quality enhancements (e.g. improved features, durability, reliability).
- Ignoring possible inefficiencies due to pre-merger overcapacity, where excess fragmentation prevents firms from realising efficient scale and scope economies.
- Ignoring innovation spillovers that benefit consumers and the wider economy (out of market efficiencies)

Therefore, it is essential to strike a careful balance between the uncertainties of a forward-looking assessment and the inefficiencies that arise from an overly narrow focus on short-term impacts.

The time horizon of merger assessment should be aligned with the investment and innovation cycles of the sector concerned. In industries with long payback periods and capital-intensive commitments, such as telecoms, energy, or pharmaceuticals, a longer timeframe is necessary to properly assess both risks and benefits.

At the same time, longer horizons naturally involve greater uncertainty, and this must be addressed through clearer guidance in HGL. Specifically, the Guidelines should provide sector-

specific parameters to frame the assessment, ensuring that forward-looking analysis is predictable, transparent, and evidence-based.

A more dynamic approach to merger control does not require to abandon a consumer welfare standard. Instead, the standard should be simply enhanced by embedding a methodology capable of capturing forward-looking effects on investment, innovation, quality, and consumer choice. This would involve conducting a comprehensive analysis of how companies compete in price, but also in quality, and in innovation.

The following positive effects should be considered as having a positive impact on the ability and incentives to invest:

- i. Economies of scale and scope: mergers can reduce unit costs, improve capital efficiency, and free up resources for further R&D and infrastructure upgrades. Crucially, efficiencies relating to fixed costs (e.g., network deployment, spectrum acquisition, regulatory compliance) must be given proper weight, not limiting the consideration to variable cost efficiencies as in the current short-term, price-focused approach.²²
- ii. Minimum efficient scale to sustain investment: in sectors such as mobile telecommunications, investment viability is determined by both supply-side constraints (e.g., spectrum licences coverage obligations) and demand-side scale (the ability to recoup costs in a fragmented market). Where too many competitors prevent sufficient returns on large-scale projects, consolidation may be necessary to ensure that firms can reach the minimum scale required to sustain ongoing investment.
- iii. Rationalisation of non-sustainable investments: consolidation can eliminate inefficient and unsustainable duplication of infrastructure, particularly in regulated or capital-intensive industries. This allows resources to be redirected toward higher-quality, future-oriented investment (e.g., advanced 5G networks, fibre-to-the-home).
- iv. Investment rationalisation and quality improvements: aggregate market investment levels are not always a good indicator of consumer welfare. In some cases, markets have been characterised by excess or misdirected investment. Here, mergers can rationalise investment,

²² Capacity to be passed-on to consumer. Also fixed costs efficiency could be passed on in terms of better quality deriving from increased investments

reduce duplication while still enable higher-quality infrastructure and services. Even if total investment decreases, the quality-adjusted level of investment may rise, incentivising competitors to compete on quality rather than solely on price.

- v. General-purpose technologies (GPTs) and spillovers: in certain sectors, investment extends beyond capital expansion and enables the diffusion of General-Purpose Technologies (GPTs)—such as broadband, cloud computing, or AI infrastructure—which serve as platforms for innovation across the wider economy. These positive spillovers (out-of-market efficiencies) should be explicitly recognised in the Commission’s assessment.

Moreover, in certain markets, incremental investments can be directed toward R&D and innovation, thus the revised Merger Guidelines can contribute to increased innovation by explicitly integrating dynamic efficiency considerations alongside traditional price-based analysis.

They should consider the following positive effects:

- i. Integration of complementary R&D capabilities: mergers can combine diverse research portfolios, technical know-how, or IP, leading to faster product development and higher probability of breakthrough innovations.
- ii. Scaling to access risky innovation: larger entities may be better positioned to fund high-risk, long-horizon innovation (e.g., quantum computing, biotech) by bearing the sunk costs of frontier innovation.
- iii. Innovation spillovers across value chains: mergers that enable open innovation platforms or industry standards may spread benefits to SMEs and downstream industries.

Competitiveness, innovation and scale

The current static price-focused approach seems to be ill-suited also to pursue long-term competitiveness objectives. While price competition remains important, a complete concept of competitiveness does include two distinct dimensions:

- (i) short-term price competitiveness, driven by unit production cost reductions or depreciation in the real exchange rate, and
- (ii) long-term technological competitiveness, which arises from innovation, investment, and the ability to compete globally

through quality, productivity, and scale.

While short-term price-based competitiveness is very often not sustainable in the long-run, long-term competitiveness may be associated with higher product prices, reflecting better quality and value, and with a stronger currency, as innovation drives global demand. This form of competitiveness requires an innovation-driven assessment framework, not one primarily focused on static price effects.

Indeed, as clearly underlined by Mr. Draghi, when international trade relations become more adversarial, countries with strong innovation ecosystems are better positioned to exert bargaining power, shape standards, and sustain market relevance despite barriers.

Innovation not only enables firms to climb global value chains but also creates a credible deterrent in geopolitical negotiations, by signalling that a country or region can maintain competitiveness, attract investment, and even shape global demand in spite of restricted access. Thus, in a world where the rules of trade are increasingly shaped by power and strategic dynamics, long-term innovation capacity becomes both an economic asset and a geopolitical lever.

On the contrary, in such a setting, price-based advantages are easily eroded by sudden tariff shocks or retaliatory measures, and access to foreign markets can no longer be taken for granted. This elevates the strategic value of non-price competitiveness, particularly that one rooted in technological leadership, product differentiation, and intangible capabilities.

Coherently, merger control should adopt a forward-looking, dynamic perspective that accounts for broader economic and policy objectives of the EU.

All this has been clearly underlined by recent Competitiveness Compass, which emphasizes that: *“in the global race to develop deep technologies and breakthrough innovations, competition policy must keep pace with evolving markets and tech innovation. This needs a fresh approach, better geared to common goals and allowing companies to scale up in global markets - while always ensuring a level playing field in the Single Market.”*

Thus, competitiveness encompasses innovation and productivity, as also driven by a larger companies' scale. Economic realities have evolved significantly, requiring a paradigm shift in how mergers are assessed. In sectors characterized by high fixed costs and long innovation cycles,

scale is essential for maintaining productivity, competitiveness, and sustainable investment. For EU companies to remain globally competitive, they must reach a scale that ensures adequate returns on investment, enabling continuous innovation and long-term resilience.

By contrast, the current Guidelines appear to treat scaling up through mergers as inherently problematic. While the Commission formally focuses on market power (not scale as such) the actual assessment relies on assumptions that relevant (geographic and product) markets with more players are inherently more competitive and efficient, and that price competition is the primary measure of consumer welfare, rather than assessing innovation, investment capacity, with innovation spillovers that benefit consumers and the wider economy. Assessing such benefits is fully consistent with a broader forward-looking consumer welfare standard, that integrates dynamic efficiency and accounts for the role of out-of-market efficiencies in supporting competitiveness.

In addition, in today's geo-economic context, resilience, security of supply, and strategic autonomy from non-EU dependencies are also increasingly critical dimensions of competitiveness. Indeed, the revised Guidelines should explicitly recognize that, under appropriate conditions, mergers can enhance both security of supply and contribute to the resilience of the EU economy against external shocks and dependencies. This is particularly true in sectors critical to strategic autonomy. e.g., energy, semiconductors, defence, and key raw materials as well as in ICT and digital infrastructures.

As far as EU economic resilience and security of supply are concerned, mergers can improve EU's capacity to absorb and adapt to external shocks as well as help secure and stabilize access to critical infrastructure by:

- i. Diversification of supply sources: post-merger entities often have broader geographic reach or alternative sourcing strategies. This can reduce reliance on single points of failure in third countries.
- ii. Securing access to critical infrastructure: Mergers can improve access to or control over strategic infrastructure (e.g., port terminals, telecom networks, energy grids), reducing exposure to hostile takeovers or foreign control.
- iii. Enhanced strategic autonomy and risk mitigation via scale-enhancement: Greater scale can make EU firms more competitive globally and reduce exposure to

geopolitical supply disruptions.

Conclusions

The Horizontal Merger Guidelines (HGLs) are at a decisive inflection point. Built for a different era, their current structure reflects a largely static conception of competition, focused on market shares, short-term price effects, and structural presumptions. This narrow framework is increasingly unfit for purpose in markets shaped by innovation cycles, infrastructure deployment, and geopolitical confrontations.

Such a static lens risks systematically undervaluing the actual parameters of competition in today's economy, innovation, investment, quality, resilience, and long-term productivity, which are also at the core of the EU competitiveness gap. This not only distorts competitive assessment in sectors that matter most for Europe's economic future but also creates tensions with sector-specific regulation and the Union's broader strategic goals.

To address this, the revision of the HGLs should bring three structural improvements:

1. From static to dynamic competition: embedding long-term investment, innovation, and non-price competition into the core assessment.
2. From formal neutrality to functional and sectoral coherence: acknowledging how merger control interacts with economic features, regulatory frameworks and policy objectives in key sectors such as telecommunications, energy, and digital infrastructure.
3. From narrow short-run price-based competitiveness to innovation-driven competitiveness: recognising that, under appropriate safeguards, certain mergers can enhance the EU's ability to innovate, invest, and remain globally competitive.

Central to operationalising this shift is a modernised and rebalanced approach to efficiencies. Efficiencies are not a marginal defence to be invoked after harm is presumed; they are the legal and analytical mechanism through which dynamic competition is translated into measurable effects on consumer welfare.

A revised approach must:

- Treat efficiencies as part of the core competitive analysis, not a defensive add-on.
- Apply symmetrical evidentiary standards for harms and benefits.
- Expand the scope to include dynamic, non-price, sector-specific, and out-of-market efficiencies.
- Adapt assessment timeframes to investment cycles, allowing for longer horizons in telecoms, energy, and R&D-driven sectors.
- Operationalise efficiencies through commitments, such as binding investment or R&D targets, tied to concrete KPIs and timelines.

At the same time, there is a delicate line to be respected. Expanding merger control to embrace dynamic competition and sector-specific realities is justified, but it must not be perceived to define its own industrial policy. It is important to reaffirm that merger control is a policy-neutral instrument, which should pursue competition policy without obstructing the implementation of industrial policy goals established through other EU legal instruments.

If this balance is struck within the forthcoming Horizontal Merger Guidelines, EU merger control will remain a credible and effective instrument: one that continues to protect consumers in the short run while also contributing to the Union's long-term goals and its citizens long-term interests.