

Draft Merger Guidelines Out

What to expect from the revised merger guidelines

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“Europe needs bold, innovative companies that can compete on the global stage. We have the talent. Now we must build the environment for Europe’s next champions.”, Commission President von der Leyen said yesterday when the draft Merger Guidelines were published.

For the first time in 20 years, the EU Merger Guidelines are undergoing a substantial overhaul. Long discussed, particularly following the publication of the [Draghi report](#) on EU competitiveness and the [mission letter](#) by President von der Leyen in 2024, the update aims to address transformational shifts that have occurred since the current framework’s inception. These range from digitalisation to decarbonisation, with added urgency stemming from an increasingly complex geopolitical and geoeconomic environment. The publication follows a Call for Evidence that included an initial public consultation launched in May 2025 and a series of stakeholder events held by the Commission. Submissions received from stakeholders over the course of the review process have informed the preparation of the text that was now published.

In a series of upcoming briefings, we will deep dive into the revised framework and its implications for industry stakeholders.

Proposed key changes at a glance

While the core objective – preventing a Significant Impediment to Effective Competition (*SIEC*) – remains unchanged, the [draft Guidelines](#) introduce some substantial shifts:

- **Consolidation of former Horizontal and Non-Horizontal Merger Guidelines** The most significant structural change is the merger of the former Horizontal and Non-Horizontal Guidelines into a single document, applying a common analytical framework while maintaining differentiated assessment for horizontal, vertical and conglomerate effects.
- **Analytical Focus on Market Power** The draft places market power at the centre of the competitive assessment and de-emphasizes rigid reliance on formal categorizations. Market power is assessed holistically on the basis of actual competitive effects, using structural indicators such as market shares alongside other criteria such as profit margins and price sensitivity and the possible factors which can offset it.
- **Codification of the Standard of Proof** To enhance legal certainty and predictability, the Guidelines formally codify the “more likely than not” (balance of probabilities) standard for establishing a SIEC. This aligns the Commission’s administrative practice with recent Union Court case law, emphasizing that the Commission carries the burden of proving harm based on a “sufficiently cogent and consistent body of evidence”.

- **The "Innovation Shield" & Dynamic Potential** In innovation-heavy sectors, the draft moves beyond static market shares to evaluate "dynamic competitive potential". A key novelty is the "Innovation Shield," which sets out specific criteria where mergers involving start-ups or small innovators are, in principle, unlikely to give rise to concerns, where sufficient independent R&D efforts with comparable competitive potential remain and the transaction does not materially reduce future innovation constraints.
- **Explicit Recognition of Pro-competitive Scale** For the first time, the Guidelines provide guidance on pro-competitive scaling-up: Mergers facilitating R&D projects of otherwise unfeasible magnitude, securing access to critical inputs, or increasing the internal market's resilience (incl. defense readiness) are viewed through a more constructive lens.
- **"Theory of Harm" vs. "Theory of Benefit"** The draft introduces the formal concept of a "theory of benefit". While the Commission must substantiate a theory of harm describing how a merger might negatively influence price or non-price parameters, the merging parties bear the burden of articulating a theory of benefit. This structured approach requires parties to demonstrate how efficiencies - such as increased resilience or sustainability - will offset potential harm on a lasting basis.
- **Modernized Theories for Platforms and Ecosystems** Reflecting digital market realities, the draft formalizes entrenchment as a theory of harm, i.e. the acquisition of an asset structurally reinforces a dominant firm's barriers to entry. It also expands on dynamic foreclosure, where firms might degrade rivals' access to future innovation or critical data.
- **Labour Markets and Buyer Power** The Guidelines explicitly clarify that monopsony (buyer power) theories of harm apply to labour markets. A merger that reduces employment options for a specialized workforce, potentially leading to lower wages or worse working conditions, may now constitute a SIEC.

What's next?

The draft Guidelines are now subject to [public consultation](#), stakeholders may submit written comments until 26 June 2026. The Commission will analyse the responses and continue to engage with businesses and citizens before finalising its review process. The revision is also expected to prompt debate among Member States, some of which have expressed concerns about any perceived loosening of merger control standards. The final version of the Guidelines is expected in the fourth quarter of 2026.

BLOMSTEIN will closely monitor further developments and keep you informed. If you have any questions on EU and national merger control, [Anna Blume Huttenlauch](#), [Elisa Hauch](#), [Marie-Luise Heuer](#) and the entire team is ready to assist you.

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