
15 May 2025

The European Commission Launches Public Consultation on Review of EU Merger Guidelines

The Commission is considering how its scrutiny of M&A transactions should take into account a merger's wider social impacts and the EU's broader strategic objectives.

Overview

On 8 May 2025, the European Commission (the "Commission") [launched a public consultation](#) on the EU Merger Guidelines (the "Guidelines") that set out the analytical framework applied when assessing horizontal and non-horizontal mergers. This is an initial step in the Commission's review of the Guidelines (the "Review") prompted by the Draghi report, the focus on European decarbonisation, competitiveness and strategic autonomy. This Review comprises two parts: a general consultation questionnaire and a specific consultation on seven focused papers with an in-depth questionnaire (together, the "Consultation"). The deadline to respond is 3 September 2025.

Consultation covers wide range of areas

Beyond the traditional factors in merger control analysis, the Consultation seeks feedback on whether and how the assessment of mergers should take account of their wider impact for society and new market realities. These include:

- **Competitiveness and supply chain resilience**, such as reducing non-EU supply chain dependencies and pro-competitive consolidation in global strategic sectors;
- **Market power**, considering recent CJEU's judgments like *CK Telecoms* and reflecting on criteria for the assessment of the significant impediment to effective competition test;
- **Innovation and other dynamic elements in merger control**, looking at the impact of mergers on incentives to innovate and invest, including how to take account of long investment cycles;
- **Sustainability and clean technologies**, taking account of the positive impact on investment in clean tech, the circular economy or renewable energy;
- **Digitalisation**, codifying and clarifying the approach in recent merger decisions on issues such as digital ecosystems, data and interoperability;

- **Efficiencies**, to clarify when customer benefits can outweigh competitive harm in terms of cost savings, improved quality, investment, innovation and security of supply; and
- **Wider policy issues**, such as whether the assessment of a merger should take account of public policy considerations such as defence, national security, media plurality, strategic sectors, critical EU infrastructure and labour markets.

Key Takeaways

The Consultation is broad and detailed, covering a wide range of issues across horizontal and vertical mergers:

- **The wide scope of the Consultation reflects a broader European strategic agenda.** The aim to consolidate and clarify recent jurisprudence and case practice is welcome. But the Review goes much wider. This may be a deliberate choice from Commissioner Ribera to keep her options open on contentious issues, in particular how to take account of resilience, sustainability and investment when assessing a merger. As there is no clear legal framework on these issues, feedback on these elements of the Consultation will be important. The inclusion of the non-horizontal merger guidelines in the Review could be seen as part of the same strategy but may also serve the objective of codifying recent decisions on digital ecosystem/entrenchment theories of harm.
- **The Review will likely focus on innovation, sustainability and resilience.** The Commission is likely to focus on sustainability and innovation given the interest of Commissioner Ribera in the decarbonisation of European industry and the urgent call in the Draghi report for policy action to increase European innovation. And recent geopolitical tensions and experience with Covid would speak in favour of defining a framework on how to take into account any positive impacts a merger could have on EU resilience and supply chains.
- **DG Competition's ultimate ambition may be modest.** It is too early to determine the full scope of the Review. Yet public remarks by DG Competition officials already suggest a desire to avoid opening a "Pandora's box" that would radically reshape merger control in Europe. Recent public statements by key figures have sought to manage expectations, emphasizing that *"this is an evolution rather than a revolution"*. For example, the Consultation already suggests a cautious approach to the beneficial impact of mergers on investment. And it bears mention that the Consultation does not extend to reviewing the remedies toolbox (in contrast to the greater flexibility being shown by the UK's Competition and Markets Authority).

Next Steps

The Commission is expected to finalise its Review at a measured pace; the updated draft Guidelines should be [published towards the end of 2027](#). The Commission also launched in parallel a call for tender for an economic study on the dynamic effects of mergers, with a deadline to submit proposals on 20 May 2025. EVP Ribera [stated](#) that this Review is pivotal for Europe in accounting for disruptive changes and ensuring that *"innovation, resilience, and the investment intensity of competition are given adequate weight in light of the European economy's acute needs"*. This comprehensive and ambitious Review signifies the beginning of an evolving European merger control policy in the years to come. Responses to the Consultation will provide an important first step in framing that debate.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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