ANALYSIS GROUP

Response to the European Commission's Consultation on the Draft Merger Guidelines

Analysis Group

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I. More Comprehensive, Balanced and Modern Framework for Merger Assessment

Analysis Group ("we", "our") welcomes the opportunity to respond to the European Commission's (the "Commission's") call for input on the Draft Merger Guidelines ("Draft Guidelines"), published on 30 April 2026.[1] This submission sets out our observations and recommendations on several aspects that, in our view, would benefit from further clarification or refinement.

The Draft Guidelines represent a substantial step forward in the Commission's approach to merger assessment. In particular, we appreciate the consolidation of the horizontal and non-horizontal merger guidelines[2] into a single document, the stronger emphasis on non-price and dynamic parameters of competition and the broadened incorporation of efficiencies through the introduction of a structured "theory of benefit" framework. The introduction of a theory of benefit suggests a shift in the Commission's treatment of efficiencies from a "*defence*" against potential anticompetitive harm and towards a more balanced consideration of potential benefits and harms in a consolidated assessment. This proposed revised approach shows promise for fulfilling the mandate set out in Executive Vice-President Teresa Ribera's Mission Letter to "*modernise the EU's competition policy [… to support innovation and] wider objectives on competitiveness and sustainability, social fairness and security*".[3] Beyond the incorporation of a more balanced framework for the assessment of efficiencies, the Draft Guidelines also provide welcome updates to the Commission's guidance on other areas of merger control, including the assessment of market power and anticompetitive effects.

Despite these constructive developments, we consider that the Commission could go further in supporting the practical application of its proposed balanced assessment in relation to the theory of benefit framework. Furthermore, while most of the Draft Guidelines' updated elements of merger control represent incremental improvements or consolidate the lessons learned since the publication of the Current Guidelines, this submission

[1] The authors wish to thank Elena Nota, Cecilia Caliandro, Zsolt Udvari, Lola Segura Varo, Maria Chiara Paoli, Nuno Can, Christian Teschemacher and Irina Hawkins for their invaluable assistance with research, drafting and editing of this response. The authors also wish to thank Aaron Yeater, Dov Rothman, Aditi Mehta, Emily Cotton, Samuel Weglein, Markus von Wartburg, and David Toniatti for their helpful review and comments. The views expressed herein are the views of the authors and any errors remain the authors' alone.

[2] European Commission, "Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2004/C 31/03)," *Official Journal of the European Union*, C31, February 2004; European Commission, "Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/07)," *Official Journal of the European Union, C265, October* 2008 (together, the "Current Guidelines").

[3] Ursula von der Leyen, "Mission Letter to Teresa Ribera Rodriguez," December 2024, available at https://commission.europa.eu/document/download/33d74e86-3a17-472c-ba93-59d1606bbc20_en?filename=mission-letter-ribera_0.pdf, p. 6.

identifies aspects of those elements that we consider should be revised to improve their concrete application or expanded to better reflect the current challenges in merger control across different types of markets.

Our response to the Commission's consultation is structured as follows.

- In **Section II**, we discuss a number of overarching aspects of the new theory of benefit framework, including issues relating to the scope and definition of efficiencies, the Commission's balancing of benefits and harms and the applicable evidentiary standards.
- In **Section III**, we provide specific recommendations on the competitive assessment framework, including market power, revisions to the assessment of loss of head-to-head competition and the greater emphasis on forward-looking theories of harm and dynamic effects.

Our observations are intended to support the Commission's efforts to develop a more comprehensive, balanced and modern framework for merger assessment, while identifying specific areas in which revisions or additional clarity would promote a more transparent and predictable merger review process.

II. New "Theory of Benefit"

The Draft Guidelines introduce the concept of a theory of benefit to underpin the assessment of efficiencies in merger reviews.[4] In this respect, the Commission states that "*efficiencies will play a key role in the assessment of mergers going forward*".[5] The introduction of a structured framework for the assessment of efficiencies is a positive development and reflects the increasing importance of non-price dimensions of competition and a balanced assessment in merger analysis.

The Draft Guidelines' theory of benefit distinguishes between two categories of efficiencies: (i) direct efficiencies, arising "*directly from the integration or combination of merging firms' assets", and (ii) "dynamic efficiencies", relating to the merging firms' "ability or increase[d] […] incentives to invest or innovate*".[6] This distinction appropriately recognises that mergers may generate benefits through various mechanisms over different time horizons, including through enhanced innovation incentives, investment, choice or quality improvements and other long-term competitive effects.[7]

We commend the Commission's increased focus on efficiencies in the Draft Guidelines and, in particular, the introduction of the more structured theory of benefit framework. The Commission's recognition of categories of synergies and consumer benefits, including efficiencies related to resilience, sustainability, innovation and scale, as well as its express recognition of dynamic efficiencies, are welcome additions that reflect the Commission's

[4] Draft Merger Guidelines, para. 25.

[5] Draft Merger Guidelines, para. 291.

[6] Draft Merger Guidelines, paras. 294-296.

[7] Draft Merger Guidelines, para. 25.

recent policy emphasis on fostering innovation.[8] Finally, we particularly appreciate the increased specificity in the Draft Guidelines regarding the types of consumer benefits that may be taken into account, including quality-related and other non-price benefits valued by consumers. Specifically, the Draft Guidelines distinguish between "use value benefits", "non-use value benefits" and "collective benefits" (i.e., benefits that accrue to a wider section of society through the reduction of consumption externalities).[9] This approach is in line with the Commission's 2023 Guidelines on Horizontal Cooperation Agreements ("HGL") and is a positive development that allows practitioners to rely on a broader range of economic tools and evidence to assess and quantify merger-related benefits.[10,11]

Notwithstanding the above, several aspects of the Draft Guidelines would benefit from additional clarity and specificity as to how they will be implemented in practice. The sections below address a number of these areas, including issues relating to the scope and definition of efficiencies (**Section II.A**) and the Commission's balancing exercise and the applicable evidentiary standards (**Section II.B**). They also provide recommendations aimed at improving predictability and consistency in the Commission's assessment of efficiencies.

A. Scope and Definition Challenges

1. Challenge 1: Type, nature and welfare impact of benefits

The Draft Guidelines represent a substantial and positive development in the Commission's treatment of efficiencies. However, in our view, several aspects of the proposed framework would benefit from additional clarity. In particular, the Draft Guidelines raise several questions regarding (i) how different categories of efficiencies will be assessed and weighed and (ii) whether different types of efficiencies will be subject to different evidentiary standards or balancing considerations. Greater guidance on these issues would improve predictability for merging parties and facilitate a more transparent and economically grounded assessment of merger-related benefits.

First, the Draft Guidelines expressly acknowledge that "[s]*cale, resilience and sustainability may in some situations lead to* […] *benefits to consumers*" and that "*efficiencies may* […] *further the objectives of EU policies recognized in EU Treaties*".[12] At the same time, while the Draft Guidelines discuss a merged entity's ability to "*innovate and invest*", they do not clarify whether, and if so, how, the Commission intends to differentiate among efficiencies of different nature in its assessment. In particular, the Draft Guidelines do not address whether certain categories of efficiencies, such as those advancing EU policy objectives including decarbonisation or supply chain resilience, will receive differentiated treatment with respect to (i) the evidentiary standard required to substantiate them, (ii) the

[8] Draft Merger Guidelines, paras. 34, 293, 297, 299.

[9] Draft Merger Guidelines, paras. 321, 322, 337.

[10] European Commission, "Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements," OJ C259/1, 2023, paras. 571-591.

[11] For a summary of economic tools available to assess use value, non-use value and collective benefits that relate to sustainability objectives, please see Jay Modrall, Maria Chiara Paoli and Joshua White, "Sustainability considerations in EU merger control," *Journal of Antitrust Enforcement*, November 2025, available at https://doi.org/10.1093/jaenfo/jnaf028, pp. 23-25.

[12] Draft Merger Guidelines, paras. 298-300.

weight assigned to them in the balancing exercise, or (iii) the assessment of their impact on consumer welfare. This appears difficult to reconcile with the broader emphasis in the Draft Guidelines on giving adequate weight to "*resilience, efficiency and innovation.*"[13,14]

We therefore encourage the Commission to provide additional guidance on how it intends to assess and, when relevant, weigh these considerations, particularly given that certain policy objectives, such as resilience, remain broadly defined, with unclear operational benchmarks.[15] Clarification would also be helpful as to whether, and if so how, resilience considerations may incorporate a geographic or "domestic versus foreign" dimension in merger assessment. For example, it is unclear whether mergers involving EU firms could, in some circumstances, be treated differently from mergers involving non-EU firms, or how the Commission would assess mergers in which partnerships with non-EU firms may enhance resilience by broadening access to inputs, technologies or supply chains. We support the Commission's engagement in the consideration of a wide array of potential costs and benefits; however, we consider that further guidance on the Commission's approach to these is required to enhance legal certainty for parties.

Furthermore, by consolidating the previous horizontal and non-horizontal merger guidelines into a single framework, the Draft Guidelines group efficiencies traditionally associated with non-horizontal mergers, such as cost synergies and the elimination of double marginalisation ("EDM"), with efficiencies more commonly associated with horizontal mergers, such as innovation-related efficiencies. Currently, it is unclear whether, and if so how, the Commission intends to differentiate between these categories of efficiencies in practice. This is particularly relevant because efficiencies associated with non-horizontal mergers have historically been more readily accepted, and more directly linked to measurable consumer benefits, than efficiencies arising from horizontal mergers. We therefore encourage the Commission to provide further clarification on the possibility that different categories of efficiencies may be subject to different evidentiary standards, degrees of substantiation or weighting in its balancing exercise.

2. Challenge 2: Time horizon for benefits and harm

The Draft Guidelines state that direct efficiencies are timely when they "*occur without delay*", while recognising that the "*time horizon may be longer*" depending on "*the characteristics of the market*".[16] The Draft Guidelines further

[13] Ursula von der Leyen, "Mission Letter to Teresa Ribera Rodriguez," December 2024, available at https://commission.europa.eu/document/download/33d74e86-3a17-472c-ba93-59d1606bbc20_en?filename=mission-letter-ribera_0.pdf, p. 6.

[14] The merging parties might relocate sources of supply to avoid jointly relying too much on any location. However, in doing so, they might decrease their presence in locations where other EU firms are not present and/or increase reliance on sources that are already used extensively by other EU companies.

[15] For example, the Draft Guidelines explain resilience as "*the readiness and ability of the internal market or part of it to continue servicing customers and to anticipate, withstand and recover from serious shocks*" and discuss factors such as "*the security and diversity of supply chains, the security and cyber security of physical and digital critical infrastructure, defence readiness and the ability and incentives of companies to invest in critical technologies*" as relevant to resilience. *See,* Draft Merger Guidelines, footnote 18.

[16] Draft Merger Guidelines, para. 306.

note that, in prior cases, time horizons of three to four years have been accepted in certain sectors.[17] With respect to dynamic efficiencies, the Draft Guidelines state that investment or innovation should materialise "*shortly after closing*", while the benefits to consumers from such innovations or investments "*may materialise in a longer time horizon*".[18]

The Draft Guidelines currently provide limited guidance on how these temporal requirements should be interpreted in practice. Such guidance is particularly important in sectors characterised by long investment or innovation cycles, in which efficiencies may take several years to materialise despite being economically significant and closely aligned with broader EU policy objectives. For example, in the pharmaceutical sector, the research and development ("R&D") process for new medicines can take several years, and often more than a decade, reflecting the lengthy research, testing and regulatory approval processes involved.[19] Similarly, the European Union Agency for the Cooperation of Energy Regulators ("ACER") has recognised that achieving the scale of investment required to support the energy transition may require "*upscaling and pooling of resources and professional skills*", which may not be available in a fragmented landscape of European distribution system operators.[20] The scale of such efforts requires a long time horizon for benefits to materialise. As a result, in sectors in which efficiencies are associated with increased R&D capabilities, pooled expertise or investment capacity, such efficiencies may take considerably longer than three to four years to materialise and deliver measurable benefits to consumers.

We therefore encourage the Commission to provide further guidance on the application of the timeliness requirement, including examples of sectors and circumstances in which longer implementation horizons may be appropriate.[21] Such guidance would help ensure that efficiencies linked to long-term investment and innovation are assessed in a manner that reflects the economic realities of the industries concerned.

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[17] Draft Merger Guidelines, footnote 380.

[18] Draft Merger Guidelines, para. 328.

[19] For example, according to a publication by the International Federation of Pharmaceutical Manufacturers and Associations ("IFPMA"), the R&D process for the development of new medicines and vaccines can take from 10 to 15 years. *See,* "The Pharmaceutical Industry and Global Health, Facts and Figures," International Federation of Pharmaceutical Manufacturers and Associations, 2022, available at https://www.ifpma.org/wp-content/uploads/2023/01/i2023_IFPMA-Facts-And-Figures-2022.pdf, p. 20 ("*On average, researchers identify one promising compound among 5,000–10,000 screened. Researchers then extensively test the compound to ensure its efficacy and safety, a process that can take 10 to 15 years for both a medicine and a vaccine*"). Similarly, the process of new drug development, from the point of the first-in-human study to the time at which marketing authorisation is granted can last several years, with a median duration across 81 projects being 7.3 years. *See*, Jörg J. Möhrle, "How long does it take to develop a new drug?", The Lancet Regional Health – Europe, 2024; 43, available at https://www.thelancet.com/journals/lanepe/article/PIIS2666-7762%2824%2900165-0/fulltext, p. 1 ("*The process of developing new drugs, from the first-inhuman study to marketing authorization, typically spans over several years.* […] *This study examined 81 projects and found that the median development time from first-in-human study initiation to obtaining marketing authorisation was 7.3 years*").

[20] European Union Agency for the Cooperation of Energy Regulators, "Electricity infrastructure development to support a competitive and sustainable energy system, 2024 Monitoring Report," December 2024, available at https://www.acer.europa.eu/sites/default/files/documents/Publications/ACER_2024_Monitoring_Electricity_Infrastructure.pdf, para. 96.

[21] For example, climate assessments typically evaluate physical climate impacts over near, medium and long-term horizons that span decades. The IPCC's Sixth Assessment Report (AR6) provides global modelled climate mitigation pathways to 2100, with greenhouse gas reduction targets for 2030, 2035, 2040 and 2050. *See,* IPCC, "Climate Change 2023 Synthesis Report, Summary for Policymakers," 2023, available at https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf, Table SPM.1 and Figure SPM.5.

3. Challenge 3: Interaction between efficiencies and remedies

The Draft Guidelines encourage parties to engage with the Commission at an early stage to substantiate claims that a merger will generate dynamic efficiencies, including increased incentives to innovate.[22] In our view, early engagement may facilitate a more informed and evidence-based assessment of efficiencies during the merger review process, and we therefore welcome the Commission's guidance. At the same time, we note that the Draft Guidelines currently provide limited guidance on whether, and if so how, efficiency claims may be supported by commitments or remedies proposed by the parties.

We therefore encourage the Commission to clarify whether parties may complement efficiency arguments with targeted commitments designed to increase the credibility, verifiability or timely implementation of claimed efficiencies. We note that such a consideration may also need to be reflected in any future revision of the Remedies Notice.[23] Such clarification would be particularly relevant in cases of dynamic competition, in which efficiencies often pertain to future innovation and investment outcomes that are inherently more difficult to verify ex ante.[24] In such cases, parties may be able to provide a sufficiently concrete framework describing the nature of claimed efficiencies, the mechanism through which the merger would enable them and the expected timing and beneficiaries of those efficiencies, together with commitments to support their implementation.[25] Clarification on the extent to which the Commission would take such commitments into account would improve predictability for merging parties and increase efficiency in the merger assessment process.

Further guidance would also be beneficial regarding the evidentiary treatment of remedy-supported efficiencies. To that end, we encourage the Commission to clarify whether efficiencies supported by binding commitments would be assessed differently from efficiencies advanced without accompanying commitments, including with respect to the applicable evidentiary standard, the weight assigned to such efficiencies in the balancing exercise and the Commission's assessment of their credibility, verifiability and timing. As with binding commitments, guidance on

[22] Draft Merger Guidelines, para. 36.

[23] The current Remedies Notice does not discuss the potential interaction between remedies and efficiencies. *See*, European Commission, "Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (2008/C 267/01)*," Official Journal of the European Union,* C267, October 2008 ("Remedies Notice").

[24] European Commission, "Review of the Merger Guidelines," available at https://competition-policy.ec.europa.eu/mergers/review-merger-guidelines_en, accessed on 22 June 2026 ("*Dynamic merger effects are linked to the forward-looking assessment of firms' future behaviour, particularly their ability and incentive to invest and innovate, as well as to enter or exit a market in the mid-to-long term.*").

[25] Indeed, recent merger cases illustrate how authorities may rely on legally binding rollout commitments to reinforce claimed dynamic efficiencies. The Vodafone / Three merger provides a useful illustration of this dynamic. In that case, claimed network investment and quality improvements were not assessed solely as abstract efficiencies arguments, but were reinforced through binding commitments relating to network deployment and investment. *See,* Competition & Markets Authority, "Anticipated Joint Venture Between Vodafone Group PLC and CK Hutchison Holdings Limited Concerning Vodafone Limited and Hutchison 3G UK Limited," December 2024, available at https://assets.publishing.service.gov.uk/media/6756f990f96f5424a4b877b7/Final_report_9_December_2024.pdf ("*We found that a legally binding commitment to undertake the network investment programme proposed by the Parties over the next 8 years across the UK (the Network Commitment) would ensure that they would follow through fully on the programme.*"), p. 7.

this issue may be particularly important in innovation-driven markets, in which efficiencies materialise over longer time horizons and may be more difficult to substantiate ex ante.

Relatedly, we encourage the Commission to clarify whether, and under what circumstances, commitments themselves may be considered when they are designed to enable, reinforce or accelerate merger-specific efficiencies. For example, in certain cases, the parties may propose investment, innovation or access commitments that are intrinsically linked to the merger and intended to ensure the realisation of efficiencies that might not otherwise materialise to the same extent, or within the same timeframe, absent the commitments. Clarification would therefore be beneficial regarding whether, and if so how, the Commission would assess efficiencies that are conditional on, or supported by, such commitments as part of the overall balancing exercise.

B. Balancing and Evidentiary Challenges

The Draft Guidelines require that static and dynamic efficiencies be verifiable, i.e., supported by a "*sufficiently cogent and consistent body of evidence, to the same evidentiary standard as the anticompetitive effects*".[26] The Draft Guidelines further require that efficiencies be substantial enough to counteract the merger's potential harm to competition.[27]

While we support the Commission's efforts to establish a more structured framework for the assessment of efficiencies, several aspects of the proposed balancing exercise and evidentiary framework would, in our view, benefit from further clarification.

1. Challenge 1: Relative weighing of longer-term efficiencies

The Draft Guidelines acknowledge that there are certain industries "*characterised by long investment and innovation cycles*"; however, they provide limited guidance on how the Commission intends to assess efficiencies arising over the longer-term or weigh them against other efficiencies and harms.[28]

We encourage the Commission to provide further guidance on whether it intends to apply different evidentiary standards to efficiencies arising over the longer-term and, if so, the types of evidence that the parties would be expected to submit to substantiate them. This question is particularly relevant for benefits that may materialise only over the longer-term, potentially following short-term costs to consumers, such as temporary price increases associated with significant R&D or investment spending.

The need for such clarification is reinforced by the fact that, in other policymaking contexts, the Commission has explicitly recognised that certain developments may require short-term costs to generate longer-term benefits. In this context, the Commission's Better Regulation Toolbox, which sets out common principles for the preparation of

[26] Draft Merger Guidelines, para. 304.

[27] Draft Merger Guidelines, paras. 307, 329.

[28] Draft Merger Guidelines, para. 341 and footnote 381.

new EU policies, provides analytical frameworks for assessing trade-offs under uncertainty and acknowledges that policy interventions often involve trade-offs between immediate costs and long-term benefits.[29]

Against this backdrop, it would be helpful for the Draft Guidelines to clarify how similar considerations would be reflected in the merger context. While the Draft Guidelines state that "*[t]he greater, more certain and immediate the negative effects on competition, the more substantial and certain the efficiencies must be*",[30] they do not address the converse situation, in which short-term adverse effects may be necessary to generate substantial longer-term consumer benefits. Additional guidance on how the Commission intends to assess and weigh such efficiencies – and long-term efficiencies more broadly – would improve predictability and help ensure that efficiencies associated with innovation, investment, resilience or other long-term objectives are not systematically discounted relative to more immediate effects.

2. Challenge 2: Quantification of harm and benefits

The Draft Guidelines continue to rely on established indicators of competitive harm, including market shares, concentration measures (e.g., Herfindahl-Hirschman Index, or "HHI") and price effects, which are relatively readily quantifiable. At the same time, the Draft Guidelines place greater emphasis on non-price and dynamic dimensions of competition, particularly with respect to efficiencies, including innovation, quality and variety, which are inherently more difficult to quantify.[31]

The Draft Guidelines do not currently explain how the Commission intends to compare price-based or structural indicators of harm with benefits that are not readily quantifiable, or how it will assess "*orders of magnitude*" of harm and benefits when exact quantification is not possible.[32] Notwithstanding the Draft Guidelines' statement that "*[t]here exists no hierarchy between non-technical (or qualitative) and technical (or quantitative) evidence*",[33] the Draft Guidelines would benefit from further clarification as to how the Commission plans to weigh benefits that are supported primarily by qualitative evidence (e.g., resilience or sustainability benefits) against quantifiable harms (e.g., estimated price increases), to avoid the risk that the latter are given greater weight in the balancing exercise.

Relatedly, while the Draft Guidelines require efficiencies to be substantiated and balanced against the merger's potential harm to competition, they do not explicitly require the Commission to quantify the underlying harms.[34] While, historically, the Commission has relied on a range of indicators and qualitative evidence to identify a significant impediment to effective competition ("SIEC"), rather than quantifying the resulting consumer harm

[29] European Commission, "Better Regulation Toolbox," December 2025, available at https://commission.europa.eu/law/law-making-process/better-regulation/better-regulation-guidelines-and-toolbox_en, Tool 64, pp. 564-569, accessed on 8 June 2026.

[30] Draft Merger Guidelines, para. 35.

[31] For example, Draft Merger Guidelines, paras. 319-322.

[32] Draft Merger Guidelines, para. 348.

[33] Draft Merger Guidelines, para. 31.

[34] Draft Merger Guidelines, para. 22.

directly, a balancing exercise between harms and efficiencies will, in practice, require at least some assessment of the magnitude of both effects.

We therefore encourage the Commission to provide further guidance on whether it intends to use a consistent analytical framework to support the balancing exercise, particularly in cases involving dynamic efficiencies, innovation effects, sustainability benefits, long-term resilience considerations or other benefits that are not easily quantifiable. By analogy, the Commission may draw on approaches already reflected in its Better Regulation Toolbox, which recognises the use of cost-benefit analysis, scenario analysis, sensitivity analysis and risk-adjusted assessments when impacts cannot be fully quantified.[35] For example, net present value ("NPV") methodologies may facilitate comparisons of harms and benefits arising over different time horizons,[36] and probability-weighted analyses relying on simulation models may be used to assess uncertain innovation outcomes or expected efficiencies under different market developments.[37] Clarifying the extent to which such methodologies may be relied upon would improve predictability for merging parties and facilitate a more transparent balancing of harms and efficiencies.

3. Challenge 3: Weighing out-of-market benefits in merger review

The Draft Guidelines state that out-of-market and collective benefits may be taken into account only to the extent that they are "*valued by and fully compensate […] all harmed consumers*".[38] While we appreciate the Commission's recognition that out-of-market and collective benefits may, in principle, form part of the balancing exercise, the Draft Guidelines would benefit from further guidance on how this framework will be applied in practice.

First, with respect to the requirement that benefits compensate all harmed consumers, we encourage the Commission to clarify how it intends to assess situations in which benefits accrue outside the affected market or beyond the group of harmed consumers but are nonetheless valued by harmed consumers or consumers within the affected market. For example, resilience-, innovation- or sustainability-related efficiencies may arise in geographically or economically distinct markets while still generating benefits – such as increased security of supply, broader access to inputs or environmental improvements – that are valued by harmed consumers or consumers within the affected market. Additional guidance on how the Commission intends to assess and

[35] European Commission, "Better Regulation Toolbox," December 2025, available at https://commission.europa.eu/law/law-making-process/better-regulation/better-regulation-guidelines-and-toolbox_en, Tool 63, pp. 560-563 and Tool 65, pp. 570-574, accessed on 8 June 2026.

[36] As recognised by the Commission in the "Better Regulation Toolbox," "*[u]sually, costs have to be incurred in the present, so that benefits may be obtained in the future. The process of discounting is used to compare these monetary flows or net social effects at a given point in time, usually when the decisions about future private investments or public policies have to be made.*" *See,* European Commission, Better Regulation Toolbox, December 2025, available at https://commission.europa.eu/document/download/9c8d2189-8abd-4f29-84e9-abc843cc68e0_en?filename=BR+toolbox+-+December+2025.pdf, p. 564.

[37] European Commission, "Better Regulation Toolbox," December 2025, available at https://commission.europa.eu/law/law-making-process/better-regulation/better-regulation-guidelines-and-toolbox_en, Better Regulation Toolbox, Tool 65, pp. 570-574.

[38] Draft Merger Guidelines, para. 357.

substantiate such benefits would improve predictability for merging parties and the efficiency of the merger review process.

In addition, we encourage the Commission to provide further clarification regarding the application of the requirement that collective or out-of-market benefits fully compensate harmed consumers. In practice, it may not be straightforward to determine the share of the overall benefit accruing to consumers specifically affected by the SIEC, particularly for broader sustainability- or resilience-related efficiencies. More fundamentally, a strict interpretation of the "*full compensation*" requirement may risk excluding efficiencies that partially, but meaningfully, offset the harm identified by the Commission. For example, when a merger may result in a short-term price increase but also generate broader out-of-market or collective benefits valued by consumers in the affected market, it is unclear why those benefits should not form part of the overall balancing exercise merely because they do not fully offset the harm on a standalone basis. We therefore encourage the Commission not to apply the "*full compensation*" requirement too narrowly and to allow broader out-of-market or collective benefits that are meaningfully valued by affected consumers to be taken into account as part of the net competitive assessment.

III. Competitive Assessment

Beyond the introduction of the new theory of benefit framework, the Draft Guidelines also provide updated guidance on the Commission's approach to the assessment of market power and potential anticompetitive effects. While most of these elements represent a consolidation of the Commission's approach in cases over the past twenty years and are more incremental in nature, we have nonetheless identified a number of specific areas in which we consider that the Draft Guidelines could be revised or expanded.

A. Market Power

1. Non-price factors

The Draft Guidelines define market power as "*the ability […] to profitably maintain prices above competitive levels*" or the ability "*to reduce quality, choice, capacity, output, investment, innovation, privacy, sustainability or resilience below competitive levels*".[39] However, the Draft Guidelines provide limited guidance on how competitive levels will be determined for non-price parameters of competition.

Specifically, while "competitive levels" can often be identified using economic theory and empirical evidence when assessing prices or other quantifiable metrics, such as capacity and output,[40] the same is not necessarily true for some of the other dimensions of competition identified in the Draft Guidelines. In particular, it is not immediately clear how the Commission will determine "competitive levels" for parameters such as privacy, innovation and resilience, which are often more difficult to measure and assess. We therefore encourage the Commission to

[39] Draft Merger Guidelines, para. 55.

[40] In economic theory, the competitive benchmark is commonly represented by marginal-cost pricing: in a competitive equilibrium, price equals marginal cost, while market power is reflected in a positive price-cost margin, conventionally measured by the Lerner Index $(P - MC)/P$. *See, for example,* Massimo Motta, *Competition policy: theory and practice*, Cambridge University Press, 2004, p. 116.

provide further guidance on how it intends to identify and evaluate competitive levels for such non-price parameters. In addition, to promote a more transparent and efficient merger review process, we encourage the Commission to clarify the types of evidence it considers most relevant in establishing whether a merger is likely to reduce competition below competitive levels with respect to these parameters.

2. Product differentiation

As part of the discussion of indicators of market power, the Draft Guidelines identify product differentiation among the factors that may limit customer switching and therefore enable the exercise of market power.[41] However, the Draft Guidelines do not, in our view, adequately capture certain nuances in the relationship between product differentiation and market power.

Specifically, the degree of product differentiation may not always be informative as to market power, as product differentiation among competitors can often be endogenous and result from market entry and product-positioning decisions, even if firms display very similar profit margins. In addition, while product differentiation means that market participants may pose a weaker competitive constraint on each other, it can, at the same time, be associated with lower diversion ratios, which would tend to mitigate the potential unilateral effects of a merger.

To promote a more transparent merger review process, we encourage the Commission to take these two considerations explicitly into account when discussing product differentiation as a potential indicator of excess market power.

3. Role of entry or expansion plans by rivals

The Draft Guidelines state that the assessment of barriers to entry and expansion may be performed independently from the assessment of specific entry and expansion plans of actual or potential rivals, while such plans are considered in the assessment of potential entry as a countervailing force.[42]

In our view, clear, contemporaneous and verifiable evidence of concrete plans to enter or expand at a relevant scale may, in many cases, be particularly probative of whether barriers to entry or expansion can, in fact, be overcome in the circumstances of a given merger.[43] Such evidence may therefore warrant significant weight in the assessment. At the same time, we recognise that evidence related to planned entry and broader evidence concerning barriers to entry may often be complementary, with evidence concerning broader market characteristics serving as a useful framework within which rivals' plans are evaluated (e.g., with respect to potential scale, likelihood of other potential entrants, etc.).

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[41] Draft Merger Guidelines, para. 76.

[42] Draft Merger Guidelines, para. 86 ("*The Commission considers the entry and expansion plans of rivals, which have to be predicted with an equivalent degree of certainty, just like other forward-looking elements. By contrast, the assessment of barriers to entry and expansion can instead be done irrespective of plans by specific rivals.*").

[43] Evidence on rivals' plans may also indicate that the firms concerned are particularly efficient or otherwise well positioned to overcome any existing barriers and to exert a meaningful competitive constraint post-entry or expansion.

We suggest that the Draft Guidelines include clarification that the assessment of barriers to entry and expansion should take into account all relevant evidence, including documented plans by actual or potential rivals. Furthermore, we encourage the Commission to clarify that, when such plans are clear and substantiated, they should be considered evidence that barriers to entry and expansion are not sufficiently significant to prevent entry or expansion. When such evidence is absent, incomplete or uncertain, broader evidence concerning market characteristics and structural barriers may become more relevant to the assessment.

4. Out-of-market constraints

The Draft Guidelines provide useful guidance on the role of out-of-market constraints in the competitive assessment.[44] However, we identify two modifications that may further strengthen the discussion.

First, the Draft Guidelines currently lack discussion of out-of-market constraints arising from distinct but interconnected markets that form an ecosystem. In particular, a rival ecosystem may in some circumstances exert competitive pressure on a product or service within another ecosystem. For example, an application store may face competitive constraints from a rival ecosystem even where the rival ecosystem's application store is not directly substitutable.[45] We consider that the Draft Guidelines should explicitly recognise such ecosystem-related constraints to further ensure alignment with competitive dynamics observed in digital and interconnected markets.

Furthermore, in our view, the Draft Guidelines' description of the out-of-market constraint arising from "*similar products that are not functionally interchangeable*" is underdeveloped.[46] The only illustration currently provided in the Draft Guidelines is a reference to the Commission's decision in *CMA CGM/OPDR*. However, the cited paragraph concerns alternative transport options (i.e., "*trucks, trains and Ro-Ro vessels*") and potential expansion by rival carriers, suggesting a degree of functional substitutability or direct competitive interaction.[47] As a result, it is not immediately clear how the cited example supports the proposition that non-interchangeable products may constitute out-of-market constraints. We therefore encourage the Commission to expand its discussion of this category of out-of-market constraints, while ensuring that any such discussion is consistent with its decisional practice.

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[44] Draft Merger Guidelines, para. 103.

[45] *See,* EC Decision on Case AT.40099 *Google Android*, para. 242. For the discussion of systems competition in the economic literature, *see* Michael L. Katz and Carl Shapiro, "Systems competition and network effects," *Journal of Economic Perspectives,* 8(2), 1994, available at https://www.aeaweb.org/articles?id=10.1257/jep.8.2.93, pp. 93-115; Paul W. Dobson, "Competing, countervailing, and coalescing forces: the economics of intra-and inter-business system competition," *The Antitrust Bulletin,* 51(1), 2006, available at https://journals.sagepub.com/toc/abxa/51/1 pp. 175-193.

[46] Draft Merger Guidelines, para. 103(ii).

[47] Specifically, according to the decision "[f]*urther, sea shipping could be replaced by land transport on this leg of trade as well, as trucks, trains and Ro-Ro vessels have been identified by customers and competitors as alternative possibilities.* […] *Lastly, no specific barriers to entry were identified on this market during the market investigation. Therefore, carriers could expand their current services or start offering new ones, should demand rise on this market.*" *See,* EC Decision on Case No. COMP/M.7523 - CMA CGM/ OPDR, para. 139.

B. Loss of Head-to-Head Competition

The Draft Guidelines place greater emphasis on quantitative evidence and analytical tools across a range of theories of harm. This is a positive development that has the potential to enhance the robustness and transparency of merger assessments. At the same time, the practical value of these tools depends on clear guidance regarding the circumstances in which they are informative, the evidentiary requirements associated with their use and the weight that the Commission expects to attach to the results of these tools. In the sections below, we identify areas in which additional clarification from the Commission could further enhance predictability and facilitate the effective use of quantitative evidence in merger investigations across product and labour markets.

1. Quantitative analytical tools – product markets

The Draft Guidelines expand the discussion of closeness of competition beyond the consideration of market shares and provide guidance on more traditional loss of head-to-head competition theories of harm through case examples.[48] The Draft Guidelines' expanded discussion of specific analytical tools that can be used to assess closeness of competition, such as pricing pressure metrics, including the Gross Upward Pricing Pressure Index ("GUPPI")[49] and Compensating Marginal Cost Reduction ("CMCR"),[50] is a positive addition.[51]

However, the Draft Guidelines provide limited guidance on how the Commission intends to assess the results of its analyses using these tools. We therefore encourage the Commission to provide further clarification on the circumstances in which such tools are likely to be most informative and the role they will play relative to more traditional structural indicators. Such guidance would promote a more transparent and predictable merger assessment process.

In particular, it would be helpful for the Commission to clarify the factors that would determine the relevance and probative value of these tools across different market settings. For example, measures such as diversion ratios, GUPPI and CMCR are likely to be more informative in markets characterised by differentiated products, bidding processes and bundled or multi-product offerings, while they may be less informative in the context of homogeneous products.[52] Relatedly, additional guidance would be helpful with respect to the type and scope of

[48] Draft Merger Guidelines, paras. 119-142.

[49] The Gross Upward Pricing Pressure Index ("GUPPI") is a measure of the unilateral incentive of a merged firm to increase the price of one product after a merger, based on the proportion of lost sales diverted to the merging partner's product and the profit margin earned on those diverted sales. *See,* Jerry Hausman, Serge Moresi and Mark Rainey, "Unilateral Effects of Mergers with General Linear Demand," *Economics Letters,* May 2011, available at https://doi.org/10.1016/j.econlet.2010.10.015.

[50] The CMCR is the percentage reduction in marginal cost that would be required at both merging firms for the merger to result in no price change. It is based on the idea that cost decreases greater than (less than) the CMCR will result in a price decrease (increase). *See*, Gregory Werden, "A Robust Test for Consumer Welfare Enhancing Mergers among Sellers of Differentiated Products," *The Journal of Industrial Economics*, 44(4), 1996, available at https://doi.org/10.2307/2950522, pp. 409-413.

[51] Draft Merger Guidelines, paras. 135-137.

[52] *See, for example*, Thomas Buettner, Giulio Federico, and Szabolcs Lorincz, "The Use of Quantitative Economic Techniques in EU Merger Control," *Antitrust Magazine*, 31 (1), December 2016, available at https://ssrn.com/abstract=2901367, pp. 68-75. *See, also*,

data most relevant for such analyses, including how to define the appropriate observation period for using "*recent*" ordinary-course switching data covering a full churn or contract-renewal cycle in consumer markets, determine a sufficient number of tenders in bidding markets and align the scope of evidence with regulatory or innovation cycles in pipeline markets.

Additional guidance would also be beneficial in the context of dynamic or innovation-driven markets, in particular on how the novelty or innovative nature of a product or technology may affect the Commission's assessment of the aforementioned metrics. Specifically, given that the inputs to GUPPI and CMCR tools tend to be based on current or recent observations, they may not fully reflect the competitive constraint exerted by novel products over the relevant time horizon. Conversely, uncertain commercialisation may reduce the weight attached to projected diversion. In this context, we encourage the Commission to clarify when it will use current data, forecast data or scenario analysis and how it will discount future effects for timing and uncertainty.

Moreover, we welcome the Draft Guidelines' recognition of merger simulations as a potentially useful tool for assessing the likely competitive effects of a merger.[53] The Draft Guidelines could, however, provide further guidance on the circumstances in which the Commission considers merger simulations to be particularly informative. In particular, it may be helpful to clarify the market characteristics, data requirements and modelling assumptions that the Commission regards as important for producing reliable and probative results. Such guidance would be particularly valuable in ensuring an efficient merger review process, given that such simulations often require significant time, data collection efforts and economic resources from both the parties and the Commission itself.

We also consider that the Draft Guidelines should include a synthesis of the Commission's recent decisional practice in which merger simulations were either submitted by the parties or relied on by the Commission, to provide guidance on the circumstances in which merger simulations have materially informed the competitive assessment, as well as situations in which simulation evidence was considered insufficiently reliable or informative. Such guidance would enhance predictability and assist parties in determining when merger simulation is likely to make a meaningful contribution to the assessment of a merger.

2. Quantitative analytical tools – labour markets

The Draft Guidelines introduce considerations relating to potential competition concerns in labour markets and set out a high-level framework for assessing such concerns. We appreciate the Commission's efforts to provide guidance in this area. However, in our view, the Draft Guidelines would benefit from a more concrete and detailed discussion of how the Commission intends to assess potential labour market theories of harm.

Nathan H. Miller and Gloria Sheu, "Quantitative methods for evaluating the unilateral effects of mergers," *Review of Industrial Organization*, 58 (1), February 2021, available at https://doi.org/10.1007/s11151-020-09805-8, pp. 143-177.

[53] Draft Merger Guidelines, para. 137.

In particular, although the Draft Guidelines briefly touch on the potential relevance of market shares (in the context of monopsony and oligopoly) and collective bargaining agreements,[54] they remain silent on the quantitative tools that will be considered by the Commission in its assessment. This contrasts with the considerably more detailed discussion of the assessment of competitive effects in product markets. For example, we encourage the Commission to articulate more fully how it intends to analyse the degree to which the merging firms compete for labour. Such a discussion may include, for example, guidance on how the Commission might consider evidence relating to employment and skills classification groupings, geography and commuting zones, and evidence on worker mobility and job switches in response to changes in wages, working conditions, or other job characteristics.

In addition, compared to the more detailed guidance on product market definition set out in the Market Definition Notice, the Draft Guidelines provide only limited discussion of how relevant labour markets should be defined. We consider that further clarification on how the Commission intends to undertake such an assessment is necessary.

C. Forward-Looking Theories of Harm and Dynamic Effects

The Draft Guidelines place significant emphasis on future competitive dynamics, including investment competition, innovation competition and the assessment of nascent or emerging competitive constraints. These considerations necessarily require the Commission to assess future developments that may be subject to a significant degree of uncertainty. While internal business documents, third-party assessments and other forward-looking evidence can provide valuable insights, such evidence often reflects expectations, plans and projections regarding inherently uncertain future events.

In this context, we consider that the Commission should provide clearer guidance on how it intends to assess and weigh various forms of evidence, as well as on how it intends to apply different analytical frameworks in innovation- and investment-related theories of harm. Such guidance would be particularly important for ensuring predictability and legal certainty in the merger review process. The points below identify areas in which additional clarification may further assist in achieving those objectives.

1. Evidence concerning investment and innovation competition

Sections II.B.3, II.B.4.1 and II.B.4.2 of the Draft Guidelines set out a broad range of factors that may be relevant to the assessment of investment and innovation competition. Further guidance would be beneficial regarding how these factors will be interpreted and weighed in practice when assessing whether a merger is likely to result in a SIEC. In particular, some factors identified in the Draft Guidelines may, depending on the circumstances, point to different conclusions. For example, overlapping investment or innovation activities may in some cases indicate a loss of competitive rivalry while, in other cases, the combination of such activities may increase the scale, capabilities or resources available to pursue innovation successfully. We therefore consider that the Commission should provide further guidance on how it intends to assess such situations.

Furthermore, we encourage the Commission to clarify further its assessment of closeness in innovation competition. While the Draft Guidelines identify a range of potentially relevant indicators, such as R&D resources

[54] Draft Merger Guidelines, paras. 161-162.

and spending, personnel and innovation capabilities, commercialisation track record, intellectual property assets and access to key inputs,[55] it would also be helpful for the Draft Guidelines to recognise that more direct evidence of innovation proximity may, in some circumstances, be available. Such direct evidence may include measures of the technological proximity of innovation efforts or other data-driven approaches that seek to identify the degree of competitive interaction between firms' innovation activities. For example, recent literature has explored measures of innovation closeness based on project-level overlaps and technological similarity.[56]

2. Dynamic competitive interactions

The Draft Guidelines discuss the specificities of dynamic competitive interactions and state that "*when at least one of the merging firms has strong dynamic competitive potential, even a limited degree of dynamic competitive interaction between the merging firms can lead to a SIEC*".[57] We note that this statement is very broad and, even considered together with the two examples described immediately thereafter,[58] does not provide limiting principles and therefore offers limited guidance. The Commission should therefore provide further clarification on the circumstances in which it would consider a SIEC to arise despite "*limited dynamic competitive interaction between the parties*"; for example, it should clarify whether such circumstances may include the presence of a limited number of competitors with "*R&D projects with similar characteristics, applications and competitive potential, or similar innovation capabilities and R&D resources*".[59]

Moreover, it would be helpful for the Commission to distinguish between situations in which the merging parties' innovation efforts concern the same or closely related products (or innovation projects), and situations in which the innovation primarily affects only one party's activities. In our view, competitive harm is much less likely in the case where the innovation efforts at issue relate to the activities of only one of the parties.

The Draft Guidelines further state that "[a]*lthough anticompetitive price increases may increase the merged entity's expected return on innovation, this is unlikely to offset the harm to consumers.*"[60] We encourage the Commission to clarify the circumstances in which this statement is primarily intended to apply, including whether it is directed principally at cases involving incremental innovation. Such clarification may be particularly valuable when assessing cases in which innovation incentives are influenced by factors other than the price levels resulting from

[55] Draft Merger Guidelines, para. 190.

[56] *See, Jan* Malek, Jo Seldeslachts, and Reinhilde Veugelers, "Are M&As Spurring or Stifling Innovation? Evidence from Antidiabetic Drug Development," *DIW Discussion Paper*, No. 2128, July 2025, available at https://hdl.handle.net/10419/325286, pp. 2-3, arguing that simple or citation-weighted patent count measures omit important information on technological proximity of R&D projects.

[57] Draft Merger Guidelines, para. 177.

[58] Draft Merger Guidelines, para. 177 ("[…] *Indeed, the closer the merging firms' innovation projects and capabilities and the larger the expected market position and margins, the weaker the merged entity's incentive will be to innovate post-merger because doing so would cannibalise the other merging party's profitable sales. Conversely, when at least one of the merging firms has strong dynamic competitive potential, even a limited degree of dynamic competitive interaction between the merging firms can lead to a SIEC.*").

[59] Draft Merger Guidelines, para. 176(c).

[60] Draft Merger Guidelines, para. 177.

the intensity of pre-merger competition. For example, innovation may be discouraged when rapid technology diffusion, imitation risks or weak intellectual property rights protection reduce firms' ability to appropriate the returns from successful innovation. In such circumstances, a merger may affect innovation incentives through mechanisms that are distinct from any increase in expected returns resulting from higher post-merger prices.

3. Innovation shield for start-up acquisitions

The concept of an "innovation shield" aims to provide greater predictability regarding mergers involving innovative firms and start-ups and, in general, we welcome this initiative. However, in our view, certain aspects of the innovation shield framework could benefit from further clarification.

First, the concept of an "innovation space" appears to play an important role in the operation of the innovation shield, including in the assessment of market shares and overlaps. Given the central role assigned to this concept, the Draft Guidelines could usefully provide further guidance on how the Commission intends to identify innovation spaces in practice, what evidence it considers most relevant for this purpose, and how the concept applies to industries beyond those discussed in the Dow/DuPont and Bayer/Monsanto transactions.

Second, while the market share thresholds set out by the Commission appear particularly well suited to industries characterised by structured product development processes and clearly identifiable R&D pipelines,[61] their application may be less straightforward in rapidly evolving industries in which innovation concerns entirely new products or services and the competitive relationship between different innovation projects may be more difficult to characterise.[62] In these cases, adhering to strictly defined market share-based assessments may lead to certain pro-competitive transactions not qualifying for the innovation shield or, conversely, granting shield protection to a target that would have exercised a significant competitive constraint on the acquirer. We therefore encourage the Commission to consider whether the thresholds for the application of the innovation shield should be based on other potential metrics for innovation beyond those previously defined in the Dow/DuPont transaction. Metrics relating to the innovation capabilities of the merging parties might be especially useful in this respect. While setting thresholds for such more complex metrics may be complicated, it would still be useful to explain how such factors could enter into the decision to grant shield status.

4. Dynamic foreclosure

The Draft Guidelines introduce the concept of dynamic incentives to foreclose and posit that a merged entity may engage in conduct designed to strengthen its position over time, even if it is not associated with short-term gains.[63] While the Commission provides a useful description of the theory, it offers relatively limited guidance on how it intends to establish whether a merged entity is likely to possess the required incentives to engage in foreclosure. Indeed, the concept of dynamic foreclosure, as explained in the Draft Guidelines, can be confusing and, at times,

[61] Draft Merger Guidelines, para. 192(b), (d), (e).

[62] For a discussion on targeted (i.e., identifiable) and non-targeted innovation, *see* Pierre Régibeau and Katharine E. Rockett, "Mergers and Innovation," *The Antitrust Bulletin*, 64 (1), February 2019, available at https://doi.org/10.1177/0003603X18822576.

[63] Draft Merger Guidelines, paras. 239-242.

difficult to distinguish from an efficiency offence. For example, a merger that would enable the merged entity or ecosystem to improve in the long term, and that would not prevent any rival from achieving similar benefits (e.g., because there remain suitable acquisition targets to help rivals achieve similar long-term improvements), should not be assessed as anti-competitive. But, as drafted, the current Draft Merger Guidelines may lead to this conclusion.

We therefore encourage the Commission to provide additional guidance on the mechanisms involved in the strengthening, entrenchment or extension of market power over time, as well as on the evidentiary framework applicable to dynamic foreclosure theories. In particular, it would be helpful for the Commission to clarify how it intends to assess factors that are often central to such theories, i.e., the factors underpinning the alleged foreclosure mechanism. This might include the existence of critical scale or tipping dynamics, the significance of first-mover advantages, financial constraints preventing rivals from engaging in similar acquisitions, and the extent to which market characteristics may allow a temporary competitive advantage to translate into durable market power. Clarification regarding the types of evidence that may be relevant to these issues would enhance predictability and facilitate the application of the framework in practice. We note that there is extensive academic literature on these points available to the Commission.

More generally, dynamic foreclosure theories often rely on a sequence of interrelated assumptions regarding future market developments and expected firm behaviour. In such a chain of arguments, the failure of any single link undermines the theory of harm: strong linkages in the chain cannot be traded off against weaker ones. It would therefore be helpful for the Commission to clarify how *each* element of such a theory should be supported by evidence specific to the circumstances of the case. This would provide useful guidance on the evidentiary standard applicable to dynamic foreclosure assessments and help ensure that such theories remain firmly grounded in observable market facts.

5. Coordinated effects: Disruption of coordination

The Draft Guidelines discuss aspects of reaching terms of collusion and deviating from ongoing coordination. However, in our view, the discussion of the disruption of coordination could benefit from further consideration of the circumstances in which the Commission considers potential coordination to be effectively constrained or destabilised.[64] For example, further clarification from the Commission on the role of factors that may undermine firms' ability or incentives to coordinate, such as buyer power and customer switching, would enhance predictability. In addition, we encourage the Commission to include a discussion of additional factors that may disrupt coordination, such as entry by firms considered to be outside the relevant market.[65]

IV. Conclusion

[64] Draft Merger Guidelines, para. 281.

[65] *See, for example,* Simon Loertscher and Leslie M. Marx, "Coordinated effects in merger review," *The Journal of Law and Economics*, 64(4), 2021, available at https://chicagounbound.uchicago.edu/jle/vol64/iss4/3/, pp. 705-744.

Overall, the Draft Guidelines represent a significant and welcome expansion of the Commission's merger assessment framework. We welcome the introduction of a structured theory of benefit framework, as well as the greater emphasis on dynamic competition, innovation, investment incentives and non-price dimensions of competition. These developments reflect the increasingly complex economic realities faced by businesses and competition authorities and have the potential to improve the robustness and relevance of merger assessment across a wide range of industries.

At the same time, the effectiveness of the Commission's revised framework will depend on the extent to which it provides clear and operational guidance to merging parties and their advisers. Throughout this submission, we have identified areas in which modifications or additional clarification could further enhance predictability, transparency and legal certainty, particularly in relation to the assessment of efficiencies, the use of quantitative evidence and the application of forward-looking and dynamic theories of harm. We hope that these observations will assist the Commission in finalising the revised merger guidelines and contribute to the development of a merger control framework that remains economically rigorous and continues to support innovation, investment and competitiveness within the internal market.