Champions, Competition and the New EU Merger Rules

28 SEPTEMBER 2026
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The European Union's merger framework is being rewritten for the first time in over two decades. On 30 April 2026, the European Commission published Draft Merger Guidelines that replace the 2004 Horizontal and 2008 Non-Horizontal Guidelines with a single analytical framework (European Commission, 2026b). The reform responds to the recognition that the existing rules were not built for today's economy and to a growing conviction among member states that EU merger policy has left European firms too weak to compete with American and Chinese rivals (Chang and Howarth, 2025; European Commission, 2026b).

The reform takes place against a background of intensifying geopolitical competition. European industrial decline, set against rapid Chinese growth and expansive US industrial policy, has fuelled concerns that European firms lack the scale to compete globally (Chang and Howarth, 2025). The Draghi Report of September 2024 called for EU competition policy to better accommodate the creation of firms with global reach (Draghi, 2024). In the same month, the mission letter from President von der Leyen to

Commissioner Teresa Ribera explicitly mandated modernising EU competition policy to support global competitiveness and decarbonisation (Von der Leyen, 2024).

According to the Commission, the geopolitical and trade environment has shifted materially, and industrial scale and global competitiveness have become critical drivers of economic performance alongside innovation and investment (European Commission, 2026a; European Commission, 2026b). The revised framework aims to provide a comprehensive, predictable, and lasting analytical basis for evaluating all types of mergers (European Commission, 2026a).

Merging parties and their advisors need to reassess how transactions will be evaluated and whether arguments about competing with non-European rivals now carry more weight, which affects deal planning and risk allocation.

A central theme of this paper is the tension between enabling European champions and preserving competitive markets. The debate intensified after the Commission blocked the Siemens-Alstom merger in 2019, which prompted France and Germany to push for rules allowing consolidation at European scale (Chang and Howarth, 2025). The draft responds by introducing the concept of scale-enhancing mergers and by acknowledging that scale, innovation, and investment can be procompetitive factors. It also sets out circumstances in which mergers that build European scale, foster innovation, or strengthen supply chain resilience may be viewed positively (European Commission, 2026b). It is still questionable whether these changes are sufficient. Dutch policymakers have cautioned that greater collaboration does not necessarily require the creation of artificial champions and critics worry that looser scrutiny could entrench dominant players instead of producing competitive global firms (Chang and Howarth, 2025). The debate also concerns whether competition law is the right instrument for industrial strategy or whether the two objectives risk pulling in opposite directions.

Institutional context

Following the call for evidence in May 2025, the Commission conducted a public consultation and held stakeholder workshops on 4 December 2025, 20 January 2026, and 10 June 2026. DG Competition also held its Shaping the Future of EU Merger Control conference on 5 March 2026. The public consultation on the Draft Guidelines closed on 26 June 2026 (European Commission, 2026a). The final text is expected around Q4 2026, with formal adoption following later (Mavroghenis and Gravano, 2026).

Available commentary suggests refinement rather than redesign. One assessment considers the substantive architecture unlikely to change materially but expects possible adjustments to theories of harm, efficiencies, and evidentiary standards (Mavroghenis and Gravano, 2026). Another expects the text to evolve at the margins and regards the Commission's overall direction as clear (Bushell, 2026). Companies currently in pre-notification or Phase I review should already expect the Commission to raise questions consistent with the draft's analytical approach (Mavroghenis and Gravano, 2026).

From a theory of harm to a theory of benefit

The most significant structural change is the introduction of a theory of benefit, which is intended to work alongside the theory of harm. Efficiencies are therefore no longer presented only as a defence after the Commission has identified possible harm. Instead, benefits and risks of a transaction are to be assessed together from the outset. The Commission must show that the transaction is likely to harm competition, while the parties must explain and support their claim that the merger will maintain or improve effective competition. The same more-likely-than-not standard applies to both parts of the assessment, although companies remain responsible for providing the evidence for their claimed benefits (European Commission, 2026b).

The Commission encourages companies to discuss efficiencies during pre-notification, even where it has not yet reached a preliminary finding of harm. Stakeholders have warned that this could lead companies to prepare efficiency claims in every case and increase the cost and workload of pre-notification (European Commission, 2026b; European Commission, 2026c).

The basic three-part test remains unchanged. Claimed benefits must be verifiable, merger-specific, and passed on to consumers. The draft distinguishes between direct efficiencies, such as cost savings and economies of scale, and dynamic efficiencies, such as stronger incentives to invest or innovate (European Commission, 2026b). The UPS/TNT Express case illustrates the difficulty of meeting this test. The Commission accepted some claimed efficiencies, including certain air-network savings, but rejected most of the parties' arguments and prohibited the merger because the benefits did not outweigh the competitive concerns (OECD, 2025a). The NVIDIA/Arm debate raises a similar issue in technology markets, where benefits of scale and innovation may be strategically important but difficult to measure over longer periods (Theory of Benefit or Theory of Burden, 2026).

The innovation shield

The Innovation Shield applies to acquisitions of a small innovative company, including a start-up, or of an R&D project with dynamic competitive potential. Where the conditions are met, the Commission will in principle not find a significant obstacle of effective competition, entrenchment or foreclosure. The conditions depend on whether the overlap concerns existing products, R&D projects, R&D capabilities or vertically or otherwise closely related markets (European Commission, 2026b).

Where one party's R&D project overlaps with the other party's existing activities, the combined market share must generally remain below 40% and at least three independent firms must have R&D projects with similar competitive potential. Where the overlap concerns R&D capabilities, the combined share must remain below 25% in both the innovation space and the relevant industry. Overlaps in related markets are subject to a 40% threshold. In start-up acquisitions, the shield may still apply where certain thresholds are exceeded, provided that the acquirer is neither the largest firm in the relevant market nor a designated gatekeeper under the Digital Markets Act (European Commission, 2026b).

The shield is particularly relevant for digital, pharmaceutical, and life sciences transactions, in which targets may have little current revenue but significant innovation potential (Czapracka et al., 2026). Deal teams in these sectors should test eligibility early and map existing products, pipelines, capabilities, adjacent markets, and independent innovation projects before approaching the Commission.

Commentators have linked the shield to concerns about killer acquisitions, including the possibility that the Illumina/Grail case and the Commission's use of Article 22 referrals may have discouraged investment in innovative targets (Innovation Shield, 2026; Chang and Howarth, 2025). This rationale is inferred by commentators and has not been stated by the Commission. Dominant firms and DMA gatekeepers are largely excluded from the shield, which reflects the concern that the firms most associated with killer-acquisition risks should not receive the safest route to clearance (Innovation Shield, 2026; European Commission, 2026c). The draft refers separately to a small innovative company and a start-up but does not clearly define the difference between the two (European Commission, 2026b). This ambiguity may become a significant point of contention in practice.

Scale as a pro-competitive factor

The draft allows scale to be presented more clearly as a source of competitive strength. Mergers that combine complementary activities in different Member States without creating significant overlaps are viewed positively, particularly where they help companies enter new markets or compete with a small number of powerful global incumbents. Resilience forms an important part of this argument. Relevant benefits include more secure and diverse supply chains, access to critical inputs, investment in critical infrastructure, stronger defence readiness, and greater capacity to develop important technologies. The business case for a transaction may therefore include investment capacity, supply security, and the maintenance of essential infrastructure in addition to cost savings or market expansion (European Commission, 2026b).

The draft does not create a general exemption for European champions. SIEC (significant impediment to effective competition) remains the core legal standard (Mavroghenis and Gravano, 2026), and scale benefits must be distinguished from increases in market power that could harm competition (European Commission, 2026b). It is therefore unclear how much weight scale arguments will carry where a transaction would otherwise raise serious concerns under the SIEC test. One assessment suggests that many of the mergers described positively in the section on scale would probably also have been approved under the previous framework (A&O Shearman, 2026).

Siemens/Alstom remains the most important reference case. According to Global Competition Review, the former DG Competition official who led the case indicated that the transaction would not necessarily be cleared under the new draft, since the parties would still have needed "better facts and better remedies "(Global Competition Review, 2026). Scale and resilience arguments may now be heard more easily, but problematic mergers still need the same strong evidence to be approved. International comparisons should be treated with caution. EU policymakers frame the scale debate partly with reference to US industrial policy and China's more direct use of state support for national champions (Chang and Howarth, 2025; Baer, 2025). These examples reflect different relationships between competition policy, industrial policy, and state support and do not provide straightforward models for the European Union.

Resilience and sustainability as parameters of competition

The draft expands the parameters of competition beyond price, output, choice, and quality to include innovation, investment, privacy, sustainability, and resilience (European Commission, 2026b). Resilience receives particular attention and is defined as the readiness and ability of the internal market, or part of it, to continue serving customers and to anticipate, withstand, and recover from serious shocks (Czapracka et al., 2026).

Sustainability and resilience benefits can now form part of a theory of benefit. Relevant efficiencies include greater security of supply, diversification away from unreliable sources, investment in critical infrastructure, and innovation in clean or sustainable technologies (European Commission, 2026b). The draft also takes a flexible approach to the time horizon for realising such benefits, which is relevant for sectors undergoing decarbonisation or energy transition with long investment cycles (Mavroghenis and Gravano, 2026).

Stakeholders broadly welcome the recognition of resilience and sustainability but raised concerns about their application. Several participants warned against resilience washing, in which companies invoke resilience or sustainability without clear definitions or robust evidence. Participants also asked for clearer definitions and practical examples and debated whether resilience should be treated as a competition parameter or as a broader market feature (European Commission, 2026c). Companies can use resilience and sustainability arguments to support a transaction, but these arguments need to be backed by specific and verifiable evidence. General claims of strategic importance are unlikely to persuade the Commission and may lead to closer examination if they appear as an attempt to conceal competitive harm. The three-part test of verifiability, merger-specificity, and consumer benefit applies to these benefits as well (European Commission, 2026b).

Member State intervention and the one-stop shop

Most cross-border transactions are reviewed by the Commission alone under the one-stop shop. Article 21 EUMR nonetheless allows Member States to take measures to protect legitimate interests other than competition, such as public security, media plurality, and prudential rules (European Commission, 2026b). Such measures must pursue a genuine legitimate interest and comply with EU law, including the requirements of suitability and proportionality. Part III of the draft sets out these limits in detail. Workshop participants broadly supported this addition because it reinforces the one-stop shop, prevents fragmentation of the internal market, and provides guidance for companies (European Commission, 2026c).

This section of the draft follows several disputes in which national governments intervened in transactions that the Commission had cleared or was reviewing, including VIG/Aegon CEE and UniCredit/BPM (Garrod, Kidane and Anciaux, 2026). The draft addresses such interventions in three ways. First, Member State measures must be proportionate, non-discriminatory, and directed at the stated interest, while purely economic or protectionist aims are excluded (A&O Shearman, 2026). Second, intra-EU acquisitions benefit from a presumption that they do not, as such, threaten a Member State's public security, so that claims against firms from other Member States require proper substantiation (European Commission, 2026b). Third, the Commission sets out its enforcement tools, ranging from interim decisions suspending illegal national measures to infringement proceedings where a Member State refuses to withdraw a measure that has been found incompatible (European Commission, 2026b).

National FDI regimes remain unaffected. However, measures consistent with EU-level FDI screening benefit from a presumption of compatibility, which reduces the room for separate national intervention in areas already covered at EU level (Dionnet et al., 2026). Transactions likely to attract political attention therefore require early coordination of merger strategy with parallel regulatory procedures, including FDI and sectoral approvals (A&O Shearman, 2026). Workshop participants questioned how far guidance alone can constrain a determined Member State and whether the Commission will use its enforcement powers in practice. They also noted that some parameters, such as resilience and media plurality, now appear both as competition parameters and as legitimate interests, and called for a clearer distinction between the two (European Commission, 2026c).

Stakeholder reactions

Stakeholders generally agree that the draft allows a wider range of arguments but reduces certainty about outcomes.

Once adopted, the Commission will have to follow the Guidelines and can only deviate from them with a justification. Courts, national authorities, and companies will also use them as a point of reference when assessing mergers (Noerr, 2026). Companies gain additional instruments, namely theory of benefit, the innovation shield, a more favourable treatment of scale, and new indicative thresholds for market power (Dionnet et al., 2026). Business groups had called for this kind of flexibility, including longer time horizons for dynamic efficiencies and a more holistic assessment in strategic sectors (Business at OECD, 2025).

Critics point to several disadvantages. The abolition of the previous safe harbours means that transactions below certain thresholds can no longer expect clearance without deeper scrutiny. At the same time, high market shares no longer automatically trigger concern, which makes outcomes harder to predict in both directions (Dionnet et al., 2026). One firm considers it unlikely that merger assessment will become more predictable, given the Commission's broad discretion (Macfarlanes, 2026). Another expects more intensive and costly deal preparation, broader information requests, longer pre-notification periods, and stricter risk allocation in negotiations (A&O Shearman, 2026). Workshop participants warned that a more dynamic, forward-looking approach could reduce legal predictability for businesses and their advisors. Some cautioned that the positive guidance on scale could move merger control away from a facts-based, neutral approach and that the introduction gives too little attention to the risks of harmful market power. Participants also noted that the absence of a quantification standard for entrenchment may unintentionally stigmatise ecosystem-based business models that can generate efficiencies (European Commission, 2026c).

Assessment and outlook

Two developments since the close of the consultation are relevant for companies.

First, the Commission's economic study on the dynamic effects of mergers, presented in September 2026, now underpins the analytical direction of the reform. The study was commissioned in March 2025 to provide analytical foundations for the review of the guidelines. It defines dynamic effects broadly as the overall impact of mergers on future competition, including investment, innovation, and entry, and proposes to assess them against an expected consumer welfare standard (European Commission, 2026d). Its framework distinguishes between horizontal dynamic harms and benefits, non – horizontal dynamic foreclosure, and entrenchment effects, which mirrors the structure of the draft Guidelines (European Commission, 2026d). Two findings are particularly relevant for companies. Dynamic effects exist but are difficult to predict and quantify, so the burden remains high for parties relying on innovation or investment claims. The study also ties the innovation defence to consumer welfare, which means that faster innovation only counts if a sufficient share of the benefit reaches consumers (European Commission, 2026d).

Second, the revised OECD Recommendation on Merger Review, updated in June 2025, serves as the international benchmark against which the final EU text will be assessed. It calls for effective, efficient and timely merger review with transparent assessments and sufficient analytical flexibility to account for changing market realities and business models. It also calls for clearer guidance on remedies and encourages ex-post evaluation of merger decisions (OECD, 2026). The joint DG COMP/OECD conference held in Paris on 7 September 2026 placed the draft Guidelines within this international discussion (European Commission, 2026a).

Overall, the reform gives companies more arguments to present but does not make transactions easier to clear. The Draft Guidelines recognise scale, resilience, innovation and investment as spart of the competitive assessment, introduce a structured theory of benefit for efficiencies, and offer protection for certain acquisitions of start-ups and small innovative companies through the Innovation Shield. At the same time, the SIEC test and the three-part efficiency test remain in place, and the parties still carry the burden of proving their claimed benefits. The draft therefore requires more extensive and earlier preparation with stronger documentation, while making clear which arguments the Commission is willing to consider.

For companies, this has several practical consequences. They should already check planned deals against the draft rules, because the Commission may apply its new approach to suitable ongoing cases. The arguments for why a merger benefits competition, and the evidence behind them, should be prepared before the deal is signed and not only once the Commission raises concerns. Internal documents written while the deal was being planned are especially important evidence. Companies should also plan the merger review together with other approvals, such as foreign investment screening and sector-specific procedures, from an early stage. Calling a merger a European champion does not help in legal terms unless the claim is backed by concrete economic evidence specific to that deal. Whether the new approach proves advantageous for merging parties will depend on how the final text, expected around the turn of 2026 and 2027, addresses the open points raised by stakeholders (Hertfelder et al., 2026). Until then, companies that understand the draft as a clear list of what they will need to prove, and not as a sign that mergers will be easier to get approved, will be best prepared.

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