



Notice to Members

PROPOSED EU MERGER GUIDELINES

Commission draft published on 30 April 2026

Introduction

The Chamber of Advocates wishes to draw members' attention to the European Commission's draft Merger Guidelines, published for consultation on 30 April 2026. The draft would replace the existing Horizontal Merger Guidelines of 2004 and Non Horizontal Merger Guidelines of 2008 with a single framework for assessing mergers and acquisitions under Council Regulation (EC) No 139/2004.

The consultation closed on 26 June 2026 and the Commission intends to finalise the review in the fourth quarter of 2026. The draft has not been adopted. Its proposals concern the Commission's substantive assessment of transactions; they do not themselves amend the Merger Regulation, its EU turnover thresholds or the statutory test of a significant impediment to effective competition.

The proposed Guidelines are relevant to transactions examined by the Commission, normally because they meet the EU Merger Regulation's turnover criteria for an EU dimension. The parties need not be established in different Member States. Conversely, a cross-border transaction does not automatically fall under EU merger control. The Regulation's two-thirds rule may exclude a transaction concentrated in one Member State, while transactions below the EU thresholds may be subject to national merger control or, in certain circumstances, referred to the Commission.

1. Scale and the overall assessment

The draft gives express positive guidance on mergers that increase scale while preserving effective competition. It identifies possible benefits from combining complementary capabilities, expanding across Member States, enabling larger research projects, securing critical inputs and competing in global markets. These benefits require a transaction specific assessment: scale alone would not justify a merger that substantially harms competition.

The proposed framework also addresses the burden and standard of proof, the evidence used to assess theories of harm and benefit, and the counterfactual against which the likely effects of a transaction are measured. In duly justified circumstances, that comparison may look further ahead.

2. Market power and competitive effects

Market shares and concentration levels would remain relevant, but the draft sets out a more rounded assessment of market power. It discusses profit margins, sensitivity to price, barriers to entry, countervailing buyer power, potential entry and the competitive potential of firms whose products or innovations have not yet reached the market.

The guidance on direct competition between the parties is expanded to address closeness of competition, bidding markets, capacity constraints and network effects. It also recognises that excessive buying power can harm trading partners and, in particular circumstances, labour markets. The assessment extends beyond price to relevant matters such as quality, choice, privacy, innovation, sustainability and security of supply.

3. Innovation and future competition

The draft provides more detailed guidance on the possible loss of investment, expansion, innovation and potential competition, as well as the entrenchment of an existing dominant position. It proposes an "innovation shield" identifying circumstances in which the acquisition of a small innovator or research project is unlikely to raise innovation concerns. This is an analytical indication, rather than a general exemption for acquisitions of start ups.

4. Foreclosure and coordination

The proposed unified framework for foreclosure examines whether the merged business could and would restrict rivals' access to inputs or customers, and what effect that would have on competition. It also covers conglomerate strategies and the possibility that incentives to foreclose may evolve over time.

The guidance on coordinated effects reflects developments in digital markets. It discusses how algorithmic pricing and artificial intelligence may increase market transparency, and addresses coordination across several markets and situations in which firms need not be symmetrical.

5. Efficiencies and wider benefits

The draft substantially expands the treatment of efficiencies. In addition to economies of scale and scope, it addresses dynamic benefits arising from increased incentives or ability to invest and innovate, and possible resilience and sustainability benefits. Claimed benefits must be supported by evidence, linked to the merger and assessed against any harm to competition, including where their effects occur at different times or in different markets.

6. Member State interventions

New guidance discusses when Member States may take measures to protect legitimate interests under Article 21(4) of the Merger Regulation in a transaction with an EU dimension. The draft addresses public security, media plurality and prudential rules, as well as the relevant procedure and the requirements of EU law.

Practical relevance for members

For transactions that may require EU merger clearance, early advice should consider the parties' present and future competitive positions, the evidence supporting claimed synergies, and effects on innovation, supply chains and customers. The proposed guidance may be particularly relevant where a transaction involves an emerging competitor, significant research programmes, critical inputs or a digital ecosystem. These are proposed assessment factors, not new notification obligations.

Official Commission documents

The full text of the Commission services' published draft is available here: [Draft EU Merger Guidelines](#).

The Commission has also published a [summary of the main technical changes](#). These documents are drafts and the final Guidelines may differ.

Chamber of Advocates

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Publication note

This notice is a general overview of the Commission services' draft as at 26 September 2026. The draft has not been adopted and should be read alongside the Merger Regulation and the currently applicable Guidelines.