Paul, Weiss

Client Memorandum

1 May 2026

EU Consults on Revised Merger Guidelines: A New Framework for Dynamic Competition, Sustainability, Labour Impacts and Efficiencies in Merger Assessment

The essentials

On 30 April 2026, the European Commission published the long-awaited draft EU merger guidelines (the "draft guidelines") for consultation. The Commission is seeking feedback through a public consultation on the draft guidelines, with a deadline for comment of 26 June 2026 and a stakeholder workshop on 10 June 2026. The final guidelines are expected to be published by the end of the year.

The draft attempts to strike a delicate balance between those who advocate for a more permissive framework (and to allow the emergence of "European champions" to compete on a global scale) and those who believe that a predictable and principle-based approach to merger control is the way forward – evolution, not revolution as DG Competition officials have framed it.

While the tone has changed significantly with a more open mind to the possible benefits of consolidation, the balance appears to tilt towards the latter, applying the same fundamental principles the Commission always has. But the real impact on deals will depend on how the Commission exercises its discretion to decide whether the merger "does more harm than good" where the benefits may not be easy to quantify.

The table below provides an "at a glance" summary of the changes.

Theme	Significant changes	Practical implications
Consolidation of two previous guidelines (horizontal from 2004 and non-horizontal from 2008)	■ Draft consolidates and modernises competition assessment of all mergers into one set of guidelines. ■ Fundamentals of assessing competition concerns ("theories of harm") are unchanged but post-merger benefits are integrated into the analysis.	■ The integrated framework aims for predictability and certainty, reflecting recent case law and practice, market realities and geo-political developments. ■ Dealmakers across all sectors can test this approach immediately. Deals raising competition concerns will still face close scrutiny, but benefits / efficiencies flowing from the transaction can now be front and centre of the pro-merger arguments.

© 2026 Paul, Weiss, Rifkind, Wharton & Garrison LLP. In some jurisdictions, this publication may be considered attorney advertising. Past representations are no guarantee of future outcomes.

Assessment approach	■ Recently developed approaches to assessing competitive risk are added or developed upon: access to sensitive customer data, minority shareholdings in a competitor, conglomerate / portfolio effects, entrenchment (where structural changes make it harder for rivals to enter the market or compete). ■ "Dynamic" competition assessment is now woven throughout, taking into account not just current market conditions and competitors , but also forward-looking capabilities, incentives to compete and expected market developments.	■ More clarity for sectors including digital, tech and pharma/life sciences on the expected competition assessment of their products, services and platforms, , digital systems, ecosystems, dominant position entrenchment (drawing heavily from the *Booking / Etraveli* decision), competition over innovation and R&D (enshrining the principles from *Dow/DuPont*) and R&D pipelines. ■ The "dynamic" approach to assessment is significant for all sectors where change is a constant, due to R&D (e.g. some tech and pharma / life sciences) or where market conditions are shifting due to the green transition (e.g., environmental regulatory requirements) or disruption from digitalisation. ■ Early engagement is key, particularly to discuss efficiencies and mergers for scale, as is presenting robust evidence to support these factors. ■ Member States are expected to align with the new approach in the draft guidelines in their national merger reviews.
Labour markets	■ A new ground for competition concerns is explained, based on companies as buyers of labour and workers as sellers. ■ The Commission will assess whether a merger might increase an employer's purchasing power in labour markets, with the result that workers' rights and pay suffer (but will not consider impacts on workers that are unrelated to competition, such as post-merger restructuring).	■ This new theory of harm has ramifications for all sectors, but particularly those with specialised workforces with limited alternative employers that workers could move to.
Efficiencies	■ "Theories of benefit" – reasons why the merger will be pro-competitive or pro-competitiveness – will be assessed alongside "theories of harm", with no difference in the level of required evidence. ■ The greater, more certain and immediate the harm, the more certain and substantial countervailing benefits to consumers must be, accruing to substantially the same group of consumers / businesses suffering harm, for the same or related products and services.	■ Greater scope to argue that competition concerns are outweighed by post-merger efficiencies and do not need to be removed by conditions on clearance (such as divestments). ■ Look out for post-merger benefits from combining assets, creating scale to reduce costs and drive innovation and investment, enabling intra-EU expansion, or improving access to critical or sustainable inputs to boost EU resilience or sustainability. ■ Recognition of sustainability benefits may help green sectors (e.g. electric vehicles, batteries, solar photovoltaic tech, critical minerals) and industries

	■ The Commission has discretion in balancing harms and benefits.	transitioning to clean energy (e.g. steel, aluminium, cement). ■ Capital-intensive sectors (e.g. defence, communications, infrastructure, energy) will welcome longer timelines for demonstrating benefits will happen (no longer limited to two years).
Scale and competitive-ness	■ Acknowledgement that industrial scale and global competitiveness are important and can generate sustainability and supply chain resilience. ■ Not a new concept but the guidelines now offer a clear articulation of the assessment with a list of factors to consider, including the dynamic competitive potential of R&D projects, the degree of dynamic competitive integration between merging parties and the number of remaining competitors that have similar products or R&D projects.	■ The fundamental focus on ensuring effective price competition remains central to the competitive analysis. A merger creating or strengthening market power continues to face a steep climb to clearance. ■ Aim to demonstrate benefits for European competitiveness and resilience, flowing through to consumers. ■ Scale needs a sufficiently large market to be pro-competitive. Where national barriers to operating across EU countries have previously prevented cross-border consolidation (e.g., telecoms, energy), the need for structural removal of barriers (e.g. harmonised regulation and a deeper single market) may remain a blocker. ■ Sectors facing non-EU producer threats (e.g. green tech, batteries, semiconductors) and deals advancing European defence readiness may see more flexibility under the recognition of scale benefits for EU security and resilience.
"Innovation shield"	■ A novel addition to the guidelines which establishes an "in principle" finding that acquisitions of small innovative firms are unlikely to generate competition concerns. ■ Deals must meet stringent conditions based on market shares, size and the presence of sufficient alternatives in the relevant market. However, the Commission retains extensive discretion.	■ Conditions for eligibility are demanding, but may benefit start-ups across digital, tech, pharma / life sciences and other R&D and innovation-intensive sectors. ■ The innovation shield framework may also shape Member States' use of national-level call-in powers – a welcome step for greater deal certainty.
Member State legitimate interests / protectionist action	■ Clarification of limits of Member State powers to intervene in a merger being reviewed under the Commission's "one-stop-shop" to protect national public security, media plurality or prudential rules.	■ Energy, media and financial services (particularly banking) will welcome the robust stance against Member State protectionism. ■ Member State intervention through legitimate use of FDI legislation will not be affected but the borderline

- Aims to reduce Member State intervention fragmenting the EU merger control "one stop shop", creating a presumption that an intra-EU merger is not against a Member State's public security.

between EU merger control and national FDI jurisdiction may be tested.

Implications for dealmakers

The new draft guidelines carry significantly more political interest (and pressure) than the previous guidelines, with calls for merger control to do more to support European growth and competitiveness. The three EU institutions recently included this in their list of core policy priorities and President von der Leyen accelerated the time frame for the project by six months. She welcomed the new guidelines as "*better support*[ing] *companies to thrive, scale and innovate*".

Dealmakers can begin to test this new approach with immediate effect. A deal raising competition concerns will still face close scrutiny, but the door is open to weighing its benefits alongside any adverse impact on competition and consumers.

The Commission is seeking feedback through a public consultation on the draft guidelines, with a deadline for comment of 26 June 2026 and a stakeholder workshop on 10 June 2026. The Paul, Weiss antitrust team is happy to assist clients in providing thoughts to the Commission.

* * *

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

Ross Ferguson
+44-20-7601-8646
rferguson@paulweiss.com

Annie Herdman
+44-20-7601-8602
aherdman@paulweiss.com

Nicole Kar
+44-20-7601-8657
nkar@paulweiss.com

Henrik Morch
+32-2-884-0802
hmorch@paulweiss.com

Lauren O'Brien
+44-20-7601-8648
lobrien@paulweiss.com

James Parkinson
+44-20-7601-8725
jparkinson@paulweiss.com

Rich Pepper
+44-20-7601-8660
rpepper@paulweiss.com

Alexandra Hackney
+44-20-7601-8680
ahackney@paulweiss.com

Senior Knowledge & Innovation Lawyer Catherine Hammon and Associate Andrea Chong contributed to this Client Memorandum.