June 2026

Law Alert

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The associate law firm of EY Greece

The draft of the new EU Merger Guidelines

On 30 April 2026, the European Commission published the draft revised Merger Guidelines (the "Draft") for the assessment of concentrations. This revision constitutes the most extensive reform of the past twenty years, as it consolidates the existing frameworks and incorporates recent developments, such as digitalization, artificial intelligence and geopolitical changes, while expanding the assessment criteria to also encompass issues of privacy, sustainability and resilience. In this context, the most significant changes are reflected in particular in the strengthening of dynamic analysis, the systematic structuring of theories of harm, the broadened approach to market power, a broadened approach to the assessment of market power, and a more structured assessment of efficiencies.

The new framework retains as its core standard the concept of a significant impediment to effective competition (SIEC), while placing greater emphasis on innovation, investments, scale and resilience as factors contributing to competitiveness. Within this framework, the Commission conducts an overall balancing of the effects of each merger, taking into account both the immediate and the long-term consequences for the market.

The Draft has been opened to public consultation until 26 June 2026, while a technical stakeholder workshop took place on 10 June 2026, with a view to gathering comments and shaping the final text. The finalization of the Guidelines, expected by the end of 2026, is anticipated to constitute a key reference point for the evolution of the EU merger control system.

I. Assessment of Competitive Effects

A. Market Power

One of the most significant innovations of the Draft concerns the revised approach to the assessment of market power.

The Commission moves away from a predominantly static and structural analysis, which relies primarily on market shares and concentration indices, and adopts a more dynamic methodology. While market shares remain a key starting point of the analysis, the assessment now extends to factors such as the intensity of competition, barriers to entry, the bargaining power of competitors and customers, and future market developments.

Particular emphasis is placed on the so-called "dynamic competitive potential" of undertakings. The Commission recognizes that, particularly in markets characterized by innovation and technological development, a static assessment of market power is insufficient to capture the actual influence of an undertaking on the competitive process. For this reason, elements such as R&D investments, data, intangible assets and future growth prospects are taken into account, with a view to more effectively capturing transactions that may restrict competition. Finally, the assessment is complemented by the consideration of countervailing factors, such as the potential entry or expansion of competitors and the countervailing bargaining power of customers.

B. Theories of Harm

The Draft introduces a more structured and coherent approach to the so-called "theories of harm", which serve as key analytical tools for assessing the effects of a concentration. In contrast to the current framework, where such theories were developed in a more fragmented and case-specific manner, the Commission now provides an explicit and systematic categorization. In particular, the Commission distinguishes between: (i) Loss of head-to-head competition, (ii) loss of investment and expansion competition, (iii) loss of innovation competition, (iv) loss of potential competition, (v) foreclosure, (vi) entrenchment of a dominant position, (vii) coordination, and (viii) other anticompetitive effects, including portfolio effects, access to commercially sensitive information, and effects on labour markets. Certain of the above categories are of particular interest and are briefly discussed below.

B.1. Loss of head-to-head competition – Specific Market Aspects

B.1.1. Minority Shareholdings

In contrast to the approach followed to date, under which shareholdings were assessed primarily through the lens of the acquisition of control, the Draft broadens the analysis by focusing on the incentives and the effective ability of undertakings to exert influence. The Draft introduces a more systematic approach to the role of minority shareholdings and common ownership in shaping competitive incentives. It is acknowledged that, even without the acquisition of control, such shareholdings may reduce the intensity of competition, and assesses not only the size of the shareholding but also the rights attached to it (e.g. board representation, veto rights or access to information), as well as the actual degree of influence that it entails.
At the same time, particular importance is also attached to common ownership, whereby the same investors hold stakes in competing undertakings. This practice may weaken competitive incentives and lead to an underestimation of the effects of a concentration if only the traditional merger control criteria are taken into account.

B.1.2. Labour Markets

Particular emphasis is also placed on labour markets, which are treated as a specific category of input (supply) markets, where undertakings act as buyers of labour and workers as sellers. In contrast to the approach followed to date, under which the effects on labour markets were examined in a fragmented manner and primarily through the lens of buyer power, the Draft explicitly incorporates them into a more systematic analytical framework. The assessment focuses on how the concentration affects the buyer power of undertakings in these markets. A concentration may give rise to the creation or strengthening of monopsony power, leading to lower wages, less favourable working conditions and reduced labour mobility. Such effects are more likely to arise where workers have limited alternative employment opportunities, particularly in markets reliant on specialised labour. Finally, the Commission takes into account factors that may constrain employer power, such as the countervailing bargaining power of workers (e.g. through collective bargaining) and the applicable labour and social regulatory framework.

B.2. Loss of investment and expansion competition

The Draft highlights competition in investment and expansion as a critical dimension of the competitive process, particularly in capital-intensive or technology-driven sectors. The Commission emphasizes that undertakings compete not only on the basis of prices or existing products, but also through strategic investments that shape the future structure of the market. In this context, a concentration may raise competition concerns where it leads to a reduction, delay or redirection of investment plans, thereby limiting the development of dynamic competitive pressures. Particular importance is given to factors such as access to critical resources, the ability to undertake large-scale investments, and the capacity to expand into new markets. This approach reflects the broader shift towards a more dynamic analysis, with an emphasis on future market developments and competitive conditions, and marks a departure from the existing framework, which did not as clearly recognize the role of investment as a core driver of dynamic competition and market evolution.

B.3. Loss of innovation competition

Furthermore, the importance of competition in innovation is underscored, as it is treated as an autonomous and critical dimension of merger control. The Commission no longer confines its assessment to the immediate effects on prices or existing product markets but focuses on preserving the competitive process itself in relation to innovation. A concentration may be considered problematic even where future outcomes are uncertain, where it reduces the incentives or the ability of undertakings to develop new products, invest in research, or compete on a technological basis.

This approach distinguishes between specific innovation competition, where overlaps between R&D projects or between pipeline and existing products are assessed, and general innovation competition, which concerns undertakings' overall capacity to innovate. Emphasis is placed on the parties' "dynamic competitive potential", the proximity of their innovation activities, and the existence of a sufficient number of alternative innovative competitors. This development reinforces the shift towards a more dynamic and interventionist approach, particularly in high-technology sectors and markets characterized by intense innovation. To date, the assessment of innovation has not been reflected with the same degree of systematic analysis and breadth, as it was primarily considered in specific factual scenarios, such as overlaps in R&D activities, whereas the Draft elevates it to an autonomous and broadened dimension of competition.

B.4. Foreclosure

With regard to the assessment of foreclosure theories, a clearly more dynamic approach is now adopted, which is not limited to the examination of immediate effects, but also takes into account the strategic behavior of undertakings, which may gradually strengthen their market position. At the same time, the concept of 'dynamic foreclosure' is introduced, recognizing that the incentives of an undertaking to foreclose competitors are not necessarily static, but may increase over time. This is particularly relevant in markets where factors such as scale, data accumulation, and network effects create self-reinforcing mechanisms that favour already strong undertakings and disadvantage their competitors. The Commission assesses whether a concentration may, even gradually, weaken the position of competitors, make entry by new players less likely, or discourage investment and expansion by existing undertakings, thereby increasing barriers to entry.

In contrast to the current framework, where foreclosure theories were assessed mainly from a more static perspective and with a focus on effects at a given point in time, the Draft adopts a more dynamic approach, taking into account the evolution of foreclosure strategies over time. In this context, foreclosure is no longer examined in isolation, but in conjunction with the entire value chain and its interaction with other theories of harm, such as the loss of potential or innovation competition, particularly in complex or digital ecosystems where markets are closely interconnected.

B.5. Entrenchment of a Dominant Position

The entrenchment of a dominant position also constitutes an autonomous theory of harm, covering situations where a concentration leads to a structural strengthening of barriers to entry and expansion, thereby reducing the scope for effective competition and discouraging future entry, expansion and innovation. This risk arises in particular where at least one of the merging undertakings already holds a dominant position in a core or closely related market, and its market power is assessed within the broader context of an 'ecosystem', which may reinforce its position in the primary market.

In this regard, particular importance is given to the acquisition of assets that are closely linked to the market and are critical for effective competitive activity, such as data, intellectual property rights, infrastructure, or key channels for access to customers.

Finally, entrenchment may be assessed either independently or cumulatively with other theories of harm, in particular foreclosure, where the same strategy may both restrict competition and further strengthen the undertaking's dominant position. To date, the entrenchment of dominant position has been examined primarily in an indirect and case specific manner, whereas the Draft explicitly incorporates it into a distinct and more structured analytical framework, highlighting the role of ecosystems and the accumulation of assets.

B.6. Other Anticompetitive Effects

The Commission recognizes that access to commercially sensitive information (e.g. pricing data, strategies, customer information, etc.) may constitute an autonomous theory of harm. Such access may reduce incentives for vigorous competition, deter investment or entry by competitors, and facilitate coordination, particularly in highly concentrated markets.

In addition, increased emphasis is placed on portfolio effects, which may arise even where the parties' products are neither substitutes nor complements. The expansion of a portfolio can strengthen an undertaking's bargaining position in relation to customers or business partners, increasing switching costs or enabling negotiations across different products to be linked or bundled. In this context, the Commission assesses factors such as the parties' pre-existing market power in individual markets, the degree of customer overlap, and the ability to leverage the portfolio to enhance overall bargaining power and, more broadly, buyer power.

In contrast to the approach followed to date, where such issues were examined primarily through the lens of coordination or in a limited number of cases involving conglomerate mergers, the Draft now focuses on how a concentration may enable the cross use of information and the linking of negotiations across different markets, thereby strengthening the undertaking's overall market position.

C. The Innovation Shield

One of the most notable innovations of the Draft is the introduction of the 'innovation shield', a mechanism aimed at facilitating investments in and acquisitions of start-ups and other small innovative undertakings. The Commission recognizes that an excessively strict approach to transactions involving start ups and research projects may discourage innovation and limit access to financing. In this context, the Draft provides for a form of 'safe harbor', whereby concentrations involving small innovative undertakings are not, in principle, considered problematic, provided that sufficient competition and innovation activity is preserved in the market. This approach reflects the Commission's broader objective of balancing the effective protection of competition with the promotion of European innovation and competitiveness.

D. Theory of "Benefit" (Efficiencies)

The Draft upgrades the role of efficiencies by integrating them within a more systematic and multi factor balancing of competitive harm and benefits, on the basis of which a concentration may be considered compatible where the substantiated benefits outweigh the harm to consumers. This balancing exercise becomes more structured, taking into account in particular the comparability of effects, their timing and likelihood of materialization, their relative magnitude, and their distribution across different groups of consumers or related markets. At the same time, the parties are expected to actively substantiate both static and dynamic efficiencies, while the established criteria of verifiability, merger-specificity and consumer benefit are preserved, and the assessment is extended to non-price parameters.

II. Final Remarks

The Draft revised Guidelines mark a substantive shift in the European Commission's approach to merger control, adopting a more dynamic assessment methodology. The analysis moves away from purely static or structural criteria and focuses on future developments, firms' strategic behavior, and broader parameters of competition, such as innovation and ecosystems. These developments are expected to influence not only the practice of the European Commission, but also that of national competition authorities, including the Hellenic Competition Commission, which typically align with EU guidelines. As a result, undertakings will need to reassess their approach to the evaluation and notification of concentrations, taking into account the evolving regulatory framework.

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