

## EC Announces Wide-Ranging Reform of Merger Guidelines

### *Principal Changes and Implications*

The European Commission today published a draft of its long-awaited revision of the Merger Guidelines, combining the 2004 Horizontal Merger Guidelines and the 2008 Non-Horizontal Merger Guidelines into a single document that takes account of the Draghi Report's call for more dynamic, forward-looking merger control, acknowledges the benefits of scale, resilience, innovation, and global competitiveness, and suggests a greater readiness to take positive account of efficiencies. The Draft Guidelines represent a significant evolution in the Commission's approach to mergers, although their practical implications may take time to emerge. Announcing the Draft Guidelines, Commission President von der Leyen underlined the need "to better support companies to thrive, scale and innovate ... so we can meet the realities of the fiercely competitive global economy and boost our competitiveness," while Executive Vice-President Ribera emphasized the "unchanged" purpose of "protecting strong, competitive markets without allowing an accumulation of power that can be abused." A final text of the new Merger Guidelines is expected later this year, although the principles set out in the Draft Guidelines will likely shape the Commission's assessment of ongoing cases.

### Principle Changes

- **Scale and competitiveness take center stage.** The Draft Guidelines describe the way in which mergers may strengthen the scale, competitiveness, and resilience of European companies, signaling a possible readiness to approve scale-enhancing mergers that might have been challenged in the past.
- **Efficiencies become a core part of the Commission's assessment.** The Draft Guidelines broaden the types of efficiencies that the Commission may take positive account of, suggesting greater preparedness to approve transactions on the basis of merger-related efficiencies that outweigh anti-competitive effects.
- **Broader theories of harm, especially for innovation and ecosystems.** Transactions that entrench pre-existing dominance or restrict future competition, in particular in sectors characterized by network effects and high entry barriers, may more readily be challenged.
- **A more holistic framework.** The Draft Guidelines integrate a wider array of parameters into the Commission's assessment, including sustainability, resilience, and security of supply, giving the Commission greater latitude to take account of considerations that have not generally been assessed in the past.
- **A more forward-looking assessment.** The Draft Guidelines broadly maintain the existing analytical framework, while emphasizing the importance of dynamic competition, including innovation, and de-emphasizing the probative value of historic market shares in certain markets.

### Key Implications

- The Commission is open to considering evidence demonstrating that scale-enhancing transactions will increase competitiveness, resilience, and innovation.
- The Commission is more open to considering strong affirmative evidence of verifiable, merger-related efficiencies that outweigh anti-competitive effects.
- Geopolitical and industrial considerations may play a more significant role in shaping Commission decision-making.

