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## EVP Ribera's Merger Review Policy Takes Shape

Jay Modrall (Norton Rose Fulbright, Belgium) · Thursday, May 15th, 2025

Executive Vice President (EVP) Ribera is on a “[mission impossible](#)” to develop a “new approach to competition policy” “support[ing] European companies to innovate, compete and lead world-wide and contribut[ing] to our wider objectives on competitiveness and sustainability, social fairness and security.” EVP Ribera was particularly tasked with revising the European Commission’s (Commission’s) decades-old guidelines on the assessment of horizontal mergers (the [HMG](#)). On May 8, the Commission launched a wide-ranging [Consultation](#) not only on the HMG, but also on the Commission’s guidelines on the assessment of non-horizontal mergers (the [NHMG](#) and, together with the HMG, the Merger Guidelines). Although the Consultation is a wide-ranging call for input that will guide the Commission’s future work, the Consultation also provides extensive background shedding light on what the antitrust community can expect during EVP Ribera’s tenure.

EVP Ribera’s [Mission Letter](#) raised questions about how broader European Union (EU) policy objectives could or should be integrated into the Commission’s assessment of transactions under the EU Merger Regulation (EUMR). In comments to the European Parliament, EVP Ribera said that “EU merger control must continue to evolve to capture contemporary needs and dynamics like globalization, digitalization, sustainability, innovation and resilience.” Launching the Consultation, EVP Ribera described it as a “comprehensive and ambitious review . . . to account for disruptive changes in our societies and our economies over the past 20 years, such as digitalisation, and enable us to ensure that innovation, resilience, and the investment intensity of competition are given adequate weight in light of the European economy’s acute needs.” She argued that “only by evolving . . . can [we] ensure that our merger control policy continues to serve people, drive innovation, and strengthen Europe’s resilience and leadership.”

EVP Ribera’s Mission Letter and comments on the Consultation, as well as the text of the Consultation itself, suggest that the future Merger Guidelines will reflect a thorough-going review of the basic principles of EU merger control, not merely a technical update to reflect EU Court judgments and the Commission’s decisional practice in the years since the Merger Guidelines’ adoption.

The Consultation. The Consultation is divided into two parts, a [General Questionnaire](#) and a targeted consultation with an [In-depth Questionnaire](#) covering “topics that are key for the EU economy, namely competitiveness and resilience, market power, innovation, decarbonisation, digitalisation, efficiencies, defence and labour considerations.” Alongside the targeted consultation, the Commission published seven papers that will be the basis for broader engagement

with stakeholders, including through dedicated events and workshops. The Commission will also commission an economic study on the dynamic effects of mergers.

The Consultation refers to the Commission's July 2024 [Political Guidelines](#) and EVP Ribera's mission letter, as well as the January 2025 [Competitiveness Compass](#). The Consultation also draws inspiration from the September 2024 [Draghi Report](#) on European competitiveness, which among other things called for a new approach to EU merger policy allowing European companies to achieve greater scale and the introduction of a new "innovation defence".

The Consultation is open until September 3, 2025. The Commission will then publish the feedback it receives and its own evaluation, followed by a consultation on draft revised Merger Guidelines.

The Commission will also conduct and publish an impact assessment. The Commission aims to adopt the final revised Merger Guidelines in late 2027 but can be expected to begin implementing any policy changes stemming from the Consultation well in advance.

*The General Questionnaire.* The General Questionnaire observes that, "in the respectively twenty-one and sixteen years since the adoption of the [Merger] Guidelines there have been significant market trends and developments that have changed the dynamics of competition. . . . In light of these factors, which apply equally to both the [HMG and NHMG], the Commission is proposing to revise both sets of guidelines in a holistic exercise. The goal is to ensure the Guidelines are up-to-date in order to allow the Commission to continue to protect competition under the [EUMR] in evolving market realities, while not intervening in transactions that do not harm competition. In addition, the revised merger guidelines should provide increased transparency and predictability to the business community as to how the Commission assesses mergers today."

The General Questionnaire accordingly asks broad questions, including whether the Merger Guidelines have "allowed the Commission to identify correctly the transactions that significantly impede effective competition in the internal market;" "contributed to promoting competition;" and provided "correct, clear and comprehensive guidance on merger assessment" and "legal certainty and transparency". The General Questionnaire also asks about the costs and benefits of having Merger Guidelines; the objectives the Merger Guidelines do or should pursue; possible inconsistencies or contradictions; and whether the Merger Guidelines contribute to more consistent enforcement, as well as soliciting suggestions for simplification and cost-reduction.

Although the Commission commonly asks such threshold questions about whether antitrust policy documents should be renewed, in practice there is little or no doubt that the Commission plans to issue revised Merger Guidelines. On the other hand, the General Questionnaire asks several questions that may point to changes in the structure and content of the future guidelines. For example, the General Questionnaire asks whether "the distinction between effects of horizontal and non-horizontal mergers [is] still relevant" and whether it would be preferable to have separate guidelines on horizontal and nonhorizontal mergers or a single document. The General Questionnaire also asks whether and if so how future guidelines should take account of sectoral regulations (e.g. telecommunications, energy) and particular features of certain sectors (e.g., longer investment cycles, innovation intensity).

The General Questionnaire also seeks input on the Merger Guidelines' treatment of factors used to assess market power, such as market shares, concentration level, barriers to entry or expansion, and diversion ratios, whether certain aspects are unclear or outdated and whether other metrics should be included. The Commission further seeks input on the assessment of coordination and

foreclosure risks and anti-competitive effects that may stem from transactions that do not create or strengthen a dominant position.

The General Questionnaire touches on themes addressed more fully in the In-depth Questionnaire. These include “competitiveness” (including the benefits of increased scale, security of supply, resilience of the EU economy and increased innovation and investment). More specifically, the General Questionnaire seeks input on potential harms and benefits of consolidation in global strategic sectors, digital and deep technology innovation, and clean and resource efficient technologies and biotechnologies (e.g., IoT, cloud, quantum, telecom, data, advanced connectivity, cybersecurity, and/or AI). Similarly, the General Questionnaire calls for input on the treatment of innovation and other dynamic elements; sustainability and clean and resource-efficient technologies; digitalization; efficiencies; public policy, defense and security; and labor market considerations.

*The In-depth Questionnaire.* The In-depth Questionnaire “focusses on in depth and technical parameters related to EU merger control” on the following seven topics: competitiveness and resilience; assessing market power using structural features and other market indicators; innovation and other dynamic elements in merger control; sustainability and clean technologies; digitalization; efficiencies; and public policy, security and labor market considerations. These questions apparently represent the Commission’s efforts to collect evidence that can be used to implement the Mission Letter’s broader mandate to modernize EU competition law.

For each topic, the In-depth Questionnaire provides a brief introduction and technical background, followed by specific questions. In relation to competitiveness and resilience ([Topic A](#)), the In-depth Questionnaire calls for reflection on whether EU merger control must be adapted to support start-ups, scale-ups, and medium-sized companies to scale up in global markets, while safeguarding a level playing field. The In-depth Questionnaire identifies four specific topics for further investigation: scaling up; resilience and value chains; enhancing investment and innovation; and globalization.

The In-depth Questionnaire notes that productivity tends to increase scale, and increasing scale through mergers and acquisitions may help firms become more productive. The acquisition of existing businesses may also be a means for a company to expand into other Member States or increase its global outreach to compete with large global rivals. On the other hand, market power resulting from mergers can lead to price increases, diminished quality or innovation, and a reduced number of suitable suppliers, all of which can negatively impact the competitiveness of other businesses.

Mergers may also have a negative or positive impact on the EU’s resilience in the face of global shocks and the need for a diverse, competitive supply base (e.g. for critical raw materials and other inputs required for the green and digital transitions). On the one hand, mergers can secure companies’ access to inputs they need to compete, including through the integration of activities at different levels of the value chain, and integration of competitive EU suppliers may reduce dependencies on external sources. On the other hand, mergers may result in less competitively priced inputs, less innovative or lower quality products or a reduced number of suitable suppliers, with negative effects on companies’ competitiveness and resilience not only in Europe but also in global markets. Having a variety of businesses active in the EU Single Market can support firms’ ability to multi-source and to be dynamic and resilient to shocks. By contrast, less competition risks making an economy “brittle” and thus less resilient.

Scale resulting from M&A transactions can also impact incentives for investment and innovation. Scale might provide companies with benefits such as lower costs, better access to capital markets or R&D&I capabilities that increase their ability to invest and innovate. At the same time, company size does not typically reflect the ability to invest and innovate, as many of the most innovative firms in sectors such as pharma, biotechnology, digital or high-tech are small and medium-sized enterprises. While scaling up companies with disruptive technologies can help disseminate important innovations across the economy, the acquisition of nascent competitors by large established players to protect their market power (so-called “killer acquisitions”) might harm innovation.

The In-depth Questionnaire observes that the degree of globalization affects the geographic scope of competition in relevant antitrust markets. Competition in the EU may be affected by imports into Europe from other parts of the world, but also by subsidies or other competitive advantages received by market participants outside the EU.

In relation to the assessment of market power using structural features and other market indicators (Topic B), the HMG and NHMG both contain structural indicators relating to market shares and concentration levels that mostly provide guidance on where competition concerns are unlikely to arise (so-called “safe harbors”). With the exception of market shares above 50% in a horizontal merger, they do not offer rules of thumb for when a merger can be presumed to be harmful, since there can be situations where a merger will not harm competition, for instance because the parties are not close competitors, competition in the market is intense, or large market shares may turn out to be only temporary.

In the Commission’s view, the revision of the Merger Guidelines offers a chance to adequately reflect the risks resulting from mergers in a situation of rising levels of concentration and profit margins in EU markets. One means to achieve this would be the adoption of stricter indicators (or rebuttable presumptions) to identify more easily mergers that are likely to result in a significant impediment to effective competition. In addition, the Commission may set out a more comprehensive framework relying on alternative approaches to assessing market power, and particularly those that emerged in its case practice. For example, capacity shares are already frequently used structural indicators. Further market features of relevance may include diversion ratios, profit margins, the distribution of spare capacities or a firm’s pivotality. Some of these market features may be especially relevant in cases that do not result in the creation or strengthening of a dominant position, or in cases involving highly differentiated markets.

The revised Merger Guidelines may also reflect criteria for the assessment of cases that do not result in the creation or strengthening of a dominant position. For instance, the revised Merger Guidelines may provide further guidance on when merging firms can be considered close competitors or how to identify mergers that would result in the elimination of an important competitive force. In some cases, even if the combined market shares or concentration levels are not particularly high, a merger may still lead to anticompetitive effects by increasing the risk of coordination. Given developments such as algorithmic pricing, the In-depth Questionnaire calls for reflection on whether the framework for the assessment of coordinated effects is still fit for purpose. Similarly, the In-depth Questionnaire calls for reflection on whether the Merger Guidelines’ “ability-incentive-effects” framework for assessing foreclosure risks in non-horizontal mergers should be amended.

In relation to innovation and other dynamic elements in merger control (Topic C), the In-depth

Questionnaire notes that mergers can impact innovation competition in both directions – they may increase the ability of the merged firm to innovate but also harm innovation competition and thus incentives to invest in R&D. The effects of mergers on innovation are often more difficult to predict than price effects, so the challenge is to further develop a sufficiently accurate yet administrable framework for assessing dynamic merger effects on innovation.

Similarly, the acquisition of a potential competitor with a promising product in development or notable R&D capabilities can accelerate commercialization of improved products or prevent future competition (e.g. if a merger leads to the discontinuation of a promising product or line of research or increases barriers to entry or expansion). The challenge is to identify circumstances in which the acquisition of a potential competitor may increase or stifle competition, not only in horizontal but also in non-horizontal mergers.

Topic D addresses the role of sustainability and clean technologies. The In-depth Questionnaire notes that merger control has a role to play in allowing procompetitive mergers to support the transition to a clean and sustainable economy, while preventing mergers with negative effects on clean innovation and sustainability goals, for example, where an incumbent acquires a disrupting innovator offering a green product to delay or cannibalize it (“green killer acquisitions”) or a merger reduces incentives to invest and innovate in green products or technologies. Non-horizontal mergers may also have a negative impact, for instance by removing or reducing access to less carbon- or energy-intensive products or services (including key green technologies and materials, such as batteries, renewable components, and recycling infrastructure) that generate less waste or require less raw materials.

On the other hand, mergers may support climate and sustainability objectives and the clean transition and have a positive impact on clean innovation, for example on the deployment of cleaner/greener technologies or manufacturing processes. Mergers can provide the leverage needed to invest in decarbonization, cleaner products and technologies and more energy-efficient solutions and infrastructure. Vertical integration may also enhance the circular use of raw or recycled materials and allow companies to adopt more innovative, efficient and clean resource management across larger segments of the supply chain.

Some mergers may also generate sustainability benefits that could offset negative effects on competition (“green efficiencies”). At the same time, careful assessment is required to avoid greenwashing attempts and ensure that claimed benefits materialize post-merger. Mergers should not make clean products or services, for example, related to renewable energy, sustainable waste management and recycling, resource-efficient (digital) solutions, electric vehicles etc., less affordable or inaccessible to businesses and citizens.

The In-depth Questionnaire notes that the growing interplay between competition, innovation and sustainability considerations across industries and related benefits calls for reflection on merger control’s contribution to European sustainability objectives. Key questions in this regard include the methodology and parameters to be included in the competitive assessment to take due account of sustainability considerations, as well as the quantification and verification of green incentives and efficiencies.

Digitalization (Topic E) has of course been a key feature of markets addressed in EUMR reviews for decades. The In-depth Questionnaire notes that an extended forward-looking assessment may be required to properly capture the effects of a transaction in such markets, particularly when the

merger involves the acquisition of a nascent player or a nascent market. In fast-moving markets, killer acquisitions of complements require careful assessment, because in such markets a complementary product or player of today may very quickly become a substitute.

According to the In-depth Questionnaire, leading companies in the digital and tech sectors commonly seek to acquire complementary businesses or key inputs (e.g., data, technology, user traffic, but also talent, compute capacity and others) with the aim of strengthening their position in core markets. Such a strategy may contribute to increases in innovation. On the other hand, developing or expanding an ecosystem of related products and services may entrench an incumbent's position, thus making it harder for rivals to enter, expand, or innovate.

This type of business strategy does not easily fit into the traditional distinction between horizontal and non-horizontal mergers, because fewer transactions are purely horizontal, vertical or conglomerate in nature, and the lines between horizontally or non-horizontally linked product markets become increasingly blurred. For instance, in mergers involving companies with activities across several product markets, products often need to interoperate with each other or are offered as part of an ecosystem of related services.

Digital markets also raise questions about how forward-looking merger assessments should be, what kind of future changes should be taken into account, and what facts and evidence should be considered. This is particularly challenging in nascent and fast-moving markets, where historical market shares may say little about future effects on competition.

Finally, certain digital mergers raise privacy and data protection concerns, for instance when a merger leads to the acquisition of data or the combination of datasets. For example, competition to gain customers based on companies' privacy settings can be considered a non-price parameter of competition, and the acquisition of a target marketing itself as prioritizing customer data protection could reduce consumer choice for privacy-focused services. Privacy concerns can also be relevant to the credibility of (alternative) suppliers, e.g., if customers don't find it feasible to work with suppliers processing data in non-EU servers. The question is whether and if so how privacy and data protection objectives enshrined in EU law should be taken into account as parameters of competition.

In relation to efficiencies (Topic F), the In-depth Questionnaire notes that otherwise harmful mergers may result in "efficiencies" that may counteract potential harms to consumers. Mergers can generate cost savings that are passed-on to consumers in the form of lower prices or lead to improved products or services, for example from increased investment and innovation (as opposed to synergies that only result in higher profits). Compared to horizontal mergers, vertical and conglomerate mergers may provide more scope for efficiencies, e.g. in the form of an elimination of double margins or better coordination of marketing efforts.

Efficiencies should be assessed against the EUMR's legal mandate to protect effective competition and the clarification that any efficiencies should be to the advantage of intermediate and ultimate consumers. The Merger Guidelines specify that cognizable efficiencies must benefit consumers, be merger-specific and be verifiable. The balancing exercise between harm and efficiencies becomes increasingly complex when there is asymmetry between the alleged anticompetitive effects and benefits. Another challenge arises from timing differences, as investments usually materialize over a long period of time, whereas anticompetitive effects may materialize immediately.

The question arises which type of evidence or metrics are appropriate for the assessment of efficiency claims and the required likelihood of materialization to accept efficiencies. For example, the assessment of efficiencies concerning improved quality of products or services is typically linked to consumers' willingness to pay for higher quality, and merging companies may find it difficult to submit reliable and robust evidence in support of the increase in quality.

Finally, efficiencies have to be merger-specific. The Commission must consider whether the same benefits could be achieved in a less harmful way, for example through a cooperation agreement. However, determining the existence and viability of an alternative may not be straightforward. For instance, an alternative option should be realistic, but this may be put into question if an acquirer has already made an unsuccessful attempt at it in the past.

Topic G groups together public policy, security and labor market considerations. Although these topics are very different, each raises a question about how EU policy objectives beyond competition policy can be integrated into EU merger review. Although merger control focuses primarily on ensuring that mergers do not harm consumers, vibrant competition also contributes indirectly to other policy objectives. Where companies become too powerful, they may become too-powerful-to-care. Where companies become so large as to be essential, they can become too-big-to-fail, and therefore increasingly difficult to regulate.

The Political Guidelines call for a new era for European Defence and Security, and there have been calls for further consolidation in the EU defense sector. Neither the HMG nor the NHMG include guidance specific to mergers relating to security or defense. Member States may consider legitimate national security interests to be impacted by a merger – and consequently seek to intervene on public security grounds. However, merger rules may prevent harmful market power in non-European inputs relevant for EU defense. Thus, the In-depth Questionnaire seeks feedback on whether the revised Merger Guidelines should deal with the interaction between Member States' security and defense interests and the Commission's competition assessment. Similarly, the In-depth Questionnaire seeks feedback on how to undertake a potential balancing of interests between defense and competition objectives in cases involving dual-use goods.

Mergers can also impact media plurality. Article 21(4) EUMR allows Member States to “take appropriate measures to protect legitimate interests,” such as “plurality of the media”. On the other hand, the Commission may consider the impact of a loss of competition on media plurality in its assessment of mergers. Mergers and acquisitions in the media industry could reduce consumer choice, resulting in a landscape where a few dominant companies could wield considerable power over democratic processes by influencing public opinion. The Commission will consider this dynamic, alongside traditional factors like price and quality, when evaluating the implications of mergers and acquisitions in the media sector, as well as related sectors such as artificial intelligence.

Mergers can also significantly impede competition in labor markets by shifting the balance of power between employers and workers. Monopsonies in labor markets can lead to lower wages, higher unemployment, and worse working conditions, as well as lowering downstream output and higher prices. While the existing HMG consider the potential effects of mergers on buyer power more generally, EU merger control assessments have not so far considered the effects of mergers specifically on labor markets. The question therefore arises whether the revised Merger Guidelines should provide guidance on when an expected significant loss of competition through the exercise of buyer power in labor markets leads to a significant impediment to competition.

Mergers may also raise concerns about job losses due to restructuring and offshoring. These effects are not the result of a change in market power. Thus, they are not covered by the EUMR and will not be addressed in the revised Merger Guidelines. The In-depth Questionnaire also notes that cost savings resulting from restructuring or offshoring are unlikely to be passed on to consumers and thus should not be accepted as efficiencies.

Conclusion. The Consultation calls for evidence on a wide range of topics. The review process will last over two years before revised Merger Guidelines are finally adopted. However, the Consultation provides useful background on issues the Commission considers important and some strong hints on its direction. Changes emerging from the review process may be seen in practice well before new Merger Guidelines are finalized.

From a structural perspective, it seems likely that the current HMG and NHMG will be replaced by a single set of Merger Guidelines addressing horizontal, vertical and conglomerate mergers. A holistic approach should lead to a more nuanced analysis of transactions that do not fit neatly into a horizontal or non-horizontal box. The revised Merger Guidelines will also likely include more detailed treatment of competitive metrics beyond sales shares and market concentration. The revised Merger Guidelines may also address market features such as investment cycles and innovation intensity, as well as applicable regulatory frameworks, to the assessment of notified transactions.

The Commission also apparently aims to provide more guidance on parameters raising red or yellow flags. Such guidance would help antitrust advisors identify transactions likely to be challenged. On the other hand, efforts to develop presumptions of anti-competitive effects based on market shares or other individual parameters will no doubt be controversial.

The revised Merger Guidelines can also be expected to provide more detailed guidance on hot-button issues such as so-called killer acquisitions, the role of ecosystems in digital and tech transactions, plurality and artificial intelligence in the media sector, privacy as a parameter of competition, the assessment of mergers in the defense sector and buyer power in labor markets.

Perhaps most importantly, the Consultation reflects the Commission's efforts to integrate broader policy considerations set out in EVP Ribera's Mission Letter, the Political Guidelines and the Competitiveness Compass, as well as the Draghi Report, into EU merger policy. The Consultation notes the link between criteria such as innovation, resilience, sustainability, security and other policy goals and the EU competitive landscape. Although many of these issues are addressed in other EU regulatory frameworks, the Commission is considering how EUMR review can be harnessed to promote EU objectives.

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