

Revision of the EU Merger Guidelines

Is there a need to dismantle the hurdles to (globally) competitive financial markets infrastructure?

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The EU's merger control framework is a cornerstone of European competition law. And yet, there are increasing calls to update the framework, as it is no longer considered fit to deal with factors such as digitalisation, sustainability, resilience and global competitiveness. The EU Commission intends to revise the framework in 2026. In this cepStudy we want to discuss whether the framework must be reviewed in order to dismantle potential hurdles to (globally) competitive financial markets infrastructure, and if so, how.

- ▶ We are calling for evolution rather than revolution. Even twenty years after its establishment, the merger framework's core principles remain sound. However, while these principles are still compelling, targeted modernisation is essential to address today's global challenges and dynamics.
- ▶ The current merger control framework does not fully reflect the global nature of technologically interconnected markets. In some sectors, geographic market definition should take more account of global competition and pressure from non-EU rivals. Likewise, product markets are often divided based on formal institutional categories, even when the economic functions are similar. A more flexible, future-oriented approach to market definition should consider cross-border substitutability, technological convergence, and potential market entry.
- ▶ While mergers in the financial market operators sector often raise valid competition concerns, they can also lead to potential efficiency gains. However, the current merger guidelines do not adequately address these gains. The Commission should define them more clearly, broaden their scope – particularly with respect to out-of-market efficiencies – and allow them to be considered even if their realisation is likely to be a long way off. Furthermore, future guidelines should pay more attention to the dynamic nature of competition and innovation efficiencies. The guidelines should also set out clear criteria for considering the strategic dimension. However, they should not give specific sectors special treatment.

Executive Summary

Over the past two decades, EU merger control—one of the main pillars of competition policy—has ensured that corporate consolidation does not distort market dynamics or harm consumers. Yet, given transformational changes in the global economy, growing geopolitical pressures, and, above all, strategic considerations, there is broad consensus that EU merger guidelines must evolve to reflect new realities without undermining the proven benefits of competition.

In response to widespread calls from Member States, experts and policymakers, the European Commission announced in 2025 that it wants to revise the EU merger guidelines, advancing the update to 2026. The reform aims to adapt merger assessments to a rapidly changing environment shaped by digitalisation, global integration, sustainability, and resilience and to strike a new balance between maintaining effective competition and allowing companies to scale globally, innovate, and strengthen Europe's strategic autonomy.

The cepStudy examines two main research questions: (1) whether the criteria for market definition need to be adjusted with a view to strengthening Europe's global competitiveness, and (2) the extent to which efficiency gains induced by mergers can offset any competitive disadvantages and should therefore be given greater consideration in merger control. Both questions are answered with a particular focus on the financial markets infrastructures sector. Ultimately, the study identifies shortcomings of the current merger control framework and makes several recommendations to adjust said framework.

Regarding **market definition**, the study calls for

- a more **forward-looking geographic market assessment** that reflects cross-border integration and global competitive constraints in interconnected and technology-driven sectors,
- greater consideration of **potential competition** and future market entry,
- a more **functional approach to product market definition**, and
- closer integration of **regulatory cost structures** into merger analysis, recognising how sector-specific regulation affects scale, market entry, and long-term contestability.

Concerning **efficiency gains**, the study recommends

- recognizing **long-term and dynamic efficiencies**, not just short-term, static ones,
- **expanding and clarifying the types of efficiencies** that can offset potential anticompetitive effects, including benefits related to innovation, system resilience, and capital market integration,
- **lowering evidentiary barriers for demonstrating such efficiencies** to ensure they have practical relevance, and
- exercising **caution with potential preferential treatment for “strategic sectors”**—to prevent political misuse while acknowledging legitimate resilience and security concerns.

At its core, the cepStudy reaffirms that competition remains a cornerstone of Europe's economic model, driving innovation, productivity, and consumer welfare. The revision of the EU merger control guidelines should, thus, follow the principle of evolution rather than revolution, maintaining their solid foundation while adapting to today's global realities. Those realities call for a more flexible framework that better reflects cross-border competition and recognises long-term efficiency gains. Ultimately, competition must remain the guiding principle, with other policy goals pursued primarily through other dedicated policy instruments.

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1 Introduction

Competition is regarded as the driving force behind efficiency, innovation, growth and improved consumer welfare.¹ There is "clear and consistent evidence that industries which experience greater competition also experience stronger productivity growth" and vice versa.^{2,3} These insights are widely recognised in academia, and policies that promote a dynamic competitive environment are therefore considered essential. In Europe, one of the key pillars for promoting such an environment is competition law, particularly the EU's acquis on merger control, which was established twenty years ago. Yet, after two decades, there are now calls to update the current merger control framework since it is perceived as no longer reflecting the new world order, specifically the green transformation, technological developments, digitalisation, globalisation, resilience as well as geopolitical and strategic considerations. This discussion is widespread and does not stop at the financial markets. Several observers see the current framework as a barrier to creating deeper, more integrated and more liquid capital markets, which is a long-standing objective of the EU Commission. Others also agree, such as Mario Draghi and Enrico Letta who, in their widely recognised reports, showed support for reviewing the EU's merger control laws in order to tackle the still fragmented trading and post-trading markets.⁴

In the summer of 2025, the EU Commission responded to the many demands and announced that – in light of the transformational changes to the economy that are shaping many markets and the new market realities – it wanted to revise the long-standing EU merger guidelines describing the approaches that the Commission "applies when assessing the competitive impact of mergers on markets".^{5,6} And the Commission is pushing ahead with this. Initially planned for 2027, the Commission will now bring publication of the revised merger guidelines forward ("It is time to deliver")⁷ to 2026⁸, because "twenty years later, the world has changed"⁹.

Yet, how can the EU "preserve the benefits of competition while adapting to the changing world"? Is it possible to maintain them, while at the same time giving greater consideration to wider European (industry) policy goals – like sustainability, resilience, global competitiveness and creating global

¹ Calligaris, S. et al. (2025), "Some facts on business dynamism among market leaders", OECD Science, Technology and Industry Working Papers, No. 2025/07, OECD Publishing, Paris.

² European Central Bank (2024), Competition policy in a changing world, Speech by Christine Lagarde, President of the ECB, at an event to mark the 15th anniversary of the Autorité de la concurrence Paris, 5 November 2024.

³ EU Commission (2024), Protecting competition in a changing world: Evidence on the evolution of competition in the EU during the past 25 years, Publications Office of the European Union, 2024.

⁴ EU Commission (2024), The future of European competitiveness, Part B - In-depth analysis and recommendations, Draghi report, September 2024; Letta, E. (2024), Much more than a market, April 2024.

⁵ EU Commission (2025), Commission seeks feedback on the review of EU merger guidelines, Press release, 8 May 2025, available [here](#).

⁶ The announcement was accompanied by the launch of an extensive consultation process, during which stakeholders were able to submit detailed comments between May and September 2025, see [here](#).

⁷ EU Commission (2025), Opening keynote speech by President von der Leyen at the 'One Year After the Draghi Report' Conference, 16 September 2025.

⁸ In its work programme for 2026, the Commission announced it would "finalise our revised guidelines for assessing mergers [in 2026] to give companies clear, up-to-date and positive guidance on when operations can be expected to boost innovation, resilience or investment, while remaining true to the core objectives of our merger rules to protect markets and European consumers" [EU Commission (2025), COM(2025) 870, Communication, Commission work programme 2026 - Europe's Independence Moment, 21 October 2025].

⁹ EU Commission (2025), Closing Remarks at the Lisbon Conference on Competition Law and Economics, Speech by Executive Vice-President Teresa Ribera, 24 October 2025, available [here](#).

champions¹⁰ – without sacrificing competition within the internal market?¹¹ And how should the revised merger framework deal with (global) competition dynamics and innovation processes in (post-)trading markets, the potential efficiency gains originating from mergers and the consolidation in these sectors, as well as potential shifts in relevant market boundaries?

The **cepStudy** starts with a broad overview of the main pillars of the EU merger control framework ([Section 2](#)). Next, we delve into the heated discussions on the review of the merger control guidelines and the reasons for it ([Section 3](#)). We then go on to look at the two main research questions of this paper (Sections 4 and 5). First, we examine how the Commission defines geographic markets in the merger control assessment ([Chapter 4.1](#)). We analyse whether the current approach adequately reflects cross-border substitutability and global competitive pressures, and whether a more flexible, forward-looking approach is needed, to consider more factors. Furthermore, we assess how product markets are defined in sectors where economic activities can take place through different institutional or technological arrangements, using the relationship between exchange-traded and OTC trading as an example. Here, we examine the role of functional substitutability, technological convergence, and cross-venue competition in merger control assessment ([Chapter 4.2](#)). And second, we examine the extent to which efficiency gains induced by mergers in financial market infrastructure can offset any competitive disadvantages and should therefore be given greater consideration in merger control ([Chapter 5](#)). This includes discussing, on the one hand, why financial infrastructure mergers can give rise to competition concerns and, on the other, why they can create efficiency gains. It also includes an analysis of how the EU merger framework treats efficiency gains today and how the EU Commission wants to treat such gains in the future. Ultimately, it discusses several reform options and offers ideas on how the EU Commission should treat potential efficiency gains in the future, with a particular focus on the financial markets infrastructure sector. Based on the results of our deep dive into the two main research questions, we develop recommendations for adjustments to the merger control framework, and particularly the merger guidelines. Here, in addition to cross-industry proposals, we want to present ideas that cover the specific characteristics and needs of the financial sector, and financial market infrastructure ([Chapter 6](#)). Finally, we draw our conclusions ([Chapter 7](#)).

¹⁰ Such demands were already contained in the National Industry Strategy 2030 of the German Federal Ministry for Economic Affairs in 2019. The strategy states, for example, that large internet platforms, plant engineering, international finance and banking, and many other areas "that are successful on the global market require an enormous amount of capital", and "require large and powerful players who are on a par with competitors from the US or China". Furthermore, "mergers that make sense and are necessary from a global market perspective often fail because of the focus in current legislation on national and regional markets". [German Federal Ministry for Economic Affairs (2019), Nationale Industriestrategie 2030, Strategische Leitlinien für eine deutsche und europäische Industriepolitik].

¹¹ European Central Bank (2024).

2 Overview of EU merger control¹²

2.1 Basics

The foundations for European competition policy and European merger control were laid as long ago as 1957. The Treaty of Rome and the creation of the European Economic Area (EEA) established a system aimed at protecting against distortions of competition within the common market (Art. 3 of the Treaty establishing the European Community, TEC).¹³ In Protocol No. 27 to the Treaty on the Functioning of the European Union (TFEU), which addresses the internal market and competition, the EU and the Member States agree that the internal market "shall include a system ensuring that competition is not distorted"¹⁴. This protection appears necessary so that companies can compete in the internal market on the basis of uniform conditions and free from any restrictions on competition, while preserving the functioning of the internal market. Protection is considered particularly necessary with regard to mergers, because – although "most mergers do not give rise to competition problems"¹⁵ – they can have a significant restrictive effect on competition.¹⁶ This is often due to the fact that companies have greater market power following a merger and therefore additional scope to influence the market in their favour and to the detriment of other market players, especially consumers, such as by way of excessive price rises. Other market players (e.g. competitors) are not then in a position to prevent or limit, through their own actions, any anti-competitive behaviour by the dominant company.¹⁷

Merger control has therefore been established as a key instrument of competition policy to prevent mergers that are likely to distort competition in the internal market. The control of mergers serves on the one hand to prevent mergers that restrict competition, but on the other hand to allow those that may be categorised as competition-stimulating.¹⁸ The focus here is on "protecting competition as a functioning process" and not on "protecting individual companies from competition"¹⁹.

EU merger control must be based on the provisions of the European Treaties. Definition of the competition rules required for the functioning of the internal market falls within the exclusive competence of the EU (Art. 3 (1) TFEU).²⁰ The provisions for the protection of competition in the internal market are in turn laid down in Art. 101-109 TFEU. In particular, Art. 101 TFEU (formerly Art. 81 TEC) stipulates that "agreements between undertakings, decisions by associations of undertakings and concerted practices" which "have as their object or effect the prevention, restriction or distortion of competition within the common market" are not compatible with the common market and are prohibited.^{21,22} According to the Treaty on the European Union (TEU), the EU must work towards "a highly competitive social market economy" (Art. 3 (3) TEU).²³

¹² *Hint: Readers who already have prior knowledge of European competition law, and in particular the rules on merger control, may skip this chapter.*

¹³ Art. 3 of the Treaty establishing the European Economic Community (EC Treaty).

¹⁴ Protocol No. 27 to the Treaty on the Functioning of the European Union (TFEU).

¹⁵ Bundeskartellamt (2012), Guidance on substantive merger control, 29 March 2012.

¹⁶ European Parliament (2019), EU Competition Policy - Key to a fair single market, Marcin Szczepański, EPRS - European Parliamentary Research Service, PE 642.209, October 2019.

¹⁷ Bundeskartellamt (2012).

¹⁸ European Parliament (2019).

¹⁹ Bundeskartellamt (2012).

²⁰ Art. 3 (1) TFEU.

²¹ Art. 101 (1) TFEU.

²² European Parliament (2019).

²³ Art. 3 TEU.

In addition to these requirements under the EU treaties, a legal framework for merger control has also been established at EU level, which is based on several pillars. These pillars include, in particular, the EU Regulation on the control of concentrations between undertakings²⁴, the two guidelines on the assessment of mergers (horizontal and vertical mergers)²⁵, and the Notice on the definition of relevant markets²⁶. These individual pillars will be briefly discussed below.

2.2 EU Merger Regulation

The Merger Regulation (EC) No 139/2004 has now been in force at EU level for over 20 years. This is an EU legislative act that essentially applies to all mergers that have a "Community dimension".²⁷ Such a dimension should always be deemed to exist if the total turnover of the companies involved exceeds certain defined thresholds and the companies have substantial operations in the EU.²⁸ If these requirements are met, the EU Commission is responsible for monitoring the mergers. In this role, it can authorise or prohibit mergers.²⁹ All mergers for which the Commission is responsible or for which it acquires responsibility fall "within the exclusive competence" of the EU. The Regulation emphasises that mergers can be a result of structural changes and they are generally considered unproblematic provided that they (a) lead to an increase in the standard of living, (b) improve growth conditions, (c) strengthen the competitiveness of EU industry and (d) meet the requirements of dynamic competition.³⁰

Mergers are only considered problematic if they "may significantly impede effective competition in the [internal market] or in a substantial part of it".³¹ The aim of the Regulation is therefore to ensure that "competition is not distorted" in the internal market – in accordance with the principle of an open market economy with free competition³² and to "maintain and develop" effective competition.³³ This maintenance and development of effective competition is aimed in particular at "the structure of all markets concerned" as well as "actual or potential competition" from companies based either within or outside the EU.³⁴

When assessing mergers, the Regulation requires the Commission to take into account a number of aspects, such as the market position of the undertakings concerned, their financial strength and their economic power.^{35,36} Mergers that create or strengthen a dominant position and thereby significantly impede effective competition in the internal market or in a substantial part of it are deemed

²⁴ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ("EC Merger Regulation").

²⁵ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2004/C 31/03) and Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/07).

²⁶ Commission Notice on the definition of the relevant market for the purposes of Union competition law (C/2024/1645).

²⁷ Art. 1 (1) Regulation (EC) 139/2004.

²⁸ Recitals 9 and 10, and Art. 1 Regulation (EC) 139/2004.

²⁹ Art. 8 Regulation (EC) 139/2004.

³⁰ Recitals 3 and 4 Regulation (EC) 139/2004.

³¹ Recital 5 Regulation (EC) No. 139/2004.

³² Recital 6 Regulation (EC) No. 139/2004.

³³ Recitals 23 and Art. 2 (1) Regulation (EC) 139/2004.

³⁴ Art. 2 (1) (a) Regulation (EC) 139/2004.

³⁵ Art. 2 (1) (b) Regulation (EC) 139/2004.

³⁶ Other aspects are the alternatives available to suppliers and customers, the access of suppliers and customers to procurement and sales markets, legal or actual barriers to market entry, supply and demand trends for the relevant products and services, the interests of intermediate and final consumers, as well as the development of technical and economic progress, whereby such development must serve the consumer and must not obstruct competition [Art. 2 (1) (b) Regulation (EC) 139/2004].

incompatible with the internal market.^{37,38} If the market share of the undertakings concerned in the internal market or in a substantial part of it is 25% or less, it "may be presumed" – an important indication – that there is compatibility with the internal market and that there is no impediment to effective competition.³⁹

In the context of merger control, the Commission "should" – i.e. it is not obliged to – also take account of efficiencies in order to determine the effects on competition. The companies involved can present these. However, the efficiency benefits must be "substantiated" and "likely".⁴⁰ In general, any efficiency benefits may "counteract" the effects on competition. Firstly, however, these must be brought about by the merger. And secondly, they must compensate "in particular for the potential harm to consumers".^{41,42}

The Commission must also observe the fundamental objectives of the Community in the context of merger control. It must therefore contribute, among other things, to the promotion of a harmonious, balanced and sustainable development of economic life" and a "high level of employment". It must also promote "a high degree of competitiveness" and work towards "a highly competitive social market economy" in the internal market.⁴³

2.3 EU Merger Guidelines

In addition to the EU Regulation on merger control, there are also two guidelines on merger control at EU level. These are the guidelines on horizontal mergers (2004/C 31/03) on the one hand, and the guidelines on non-horizontal mergers (2008/C 265/07), on the other. They were published in 2004 and 2008 and have not been adjusted or updated since then. The two guidelines are not binding ("soft law"). However, they provide companies with an indication of how and under what aspects the Commission assesses mergers with a Community dimension. The following section focuses on the guidelines for horizontal mergers.

The guidelines on horizontal mergers set out how the Commission assesses mergers where the companies involved are "actual or potential competitors in the same relevant market".⁴⁴ In principle, the Commission must take into account "any" "significant impediment" to effective competition that is likely to result from such a merger, with the creation or strengthening of a dominant position being considered "the primary form" of such impediment.^{45,46} The Commission's assessment is based on a comparison of the competitive conditions resulting from a merger with the conditions that would prevail if there were no merger. The relevant competitive conditions are "in most cases" those

³⁷ Recital 24 and Art. 2 (2) and (3) Regulation (EC) 139/2004.

³⁸ In this context, the creation or strengthening of a dominant position "generally" results in a significant impediment to effective competition. The significant impediment to effective competition is assumed "in particular" as a result of the creation or strengthening of a dominant position. [Recital 26 Regulation (EC) No. 139/2004]

³⁹ Recital 32 Regulation (EC) No. 139/2004.

⁴⁰ Recital 29 Regulation (EC) 139/2004.

⁴¹ Recital 29 Regulation (EC) 139/2004.

⁴² The fact that efficiency gains may counteract the effects on competition is only mentioned in the Recitals of the Merger Control Regulation. There is no separate provision in the articles of the Regulation.

⁴³ Recital 23 Regulation (EC) 139/2004 in conjunction with Art. 2 EC Treaty and Art. 2 TFEU.

⁴⁴ Point 5 of the Guidelines on the assessment of horizontal mergers (2004/C 31/03).

⁴⁵ Point 2, 2004/C 31/03.

⁴⁶ A "dominant position" means a "situation where one or more undertakings wield economic power which would enable them to prevent effective competition from being maintained in the relevant market by giving them the opportunity to act to a considerable extent independently of their competitors, their customers and, ultimately, of consumers" [Point 2, 2004/C 31/03].

prevailing at the time of the merger. Future changes in the market can be taken into account, but only if they "can reasonably be predicted" and "in some circumstances".⁴⁷

When assessing mergers, the Commission "generally" undertakes both a market definition – product and geographic – and a competitive assessment.⁴⁸ The guidelines are primarily concerned with the competitive assessment, while the Commission's approach to market definition is explained in the aforementioned Notice.⁴⁹ As part of the competitive assessment, the Commission analyses the anti-competitive consequences of a merger. However, it also looks at relevant "countervailing factors". These include, for example, buyer power, the extent of barriers to entry, but also any efficiencies put forward by the companies concerned.⁵⁰

The guidelines distinguish between two ways in which horizontal mergers can significantly impede effective competition. Firstly, such mergers can eliminate competitive pressure without having to resort to coordinated behaviour. As a result, the companies concerned can increase their market power. Secondly, such mergers may induce companies to raise their prices or otherwise harm effective competition - by resorting to coordinated behaviour. If the companies were already coordinating their behaviour before a merger, the merger can additionally "make coordination easier, more stable or more effective".⁵¹

2.4 EU Merger Notice on Relevant Markets

As already mentioned, in the context of merger control and thus for the enforcement of competition law in the EU, the Commission "generally" undertakes a prior definition of the relevant product and geographic market in addition to the competitive assessment.⁵² The Commission has published a Notice on market definition or definition of the relevant market, which serves as a guide for the companies concerned.⁵³ The first such guidance was submitted back in 1997. It was updated in February 2024 to respond to social and technological changes.

The instrument of market definition serves to define the area "in which companies compete with each other" and to determine the competitive pressure to which companies are exposed in a certain area and when offering a certain product, service or technology (hereinafter: products).⁵⁴ It aims to maintain well-functioning markets, counteract market failures and ensure that "markets remain competitive, open and dynamic". As part of the new version of the Notice, the Commission emphasised that it also wants to keep the green and digital transition and the resilience of the internal market and the EU economy in mind when defining the markets. This is aimed, for example, at preventing excessive dependencies, maintaining diverse supply chains and taking sustainability factors into account.⁵⁵

When defining the market, only those products that exert "effective and immediate competitive pressure" count as part of the same relevant market. Those products that generate less effective or only potential competitive pressure are not considered to be part of the market. The competitive

⁴⁷ Point 9, 2004/C 31/03.

⁴⁸ Point 10, 2004/C 31/03.

⁴⁹ Point 10, 2004/C 31/03.

⁵⁰ Point 12, 2004/C 31/03.

⁵¹ Point 22, 2004/C 31/03.

⁵² Point 10, 2004/C 31/03 and point 1, C/2024/1645.

⁵³ Notice on the definition of the relevant market (C/2024/1645).

⁵⁴ Point 6, C/2024/1645.

⁵⁵ Point 3, C/2024/1645.

pressure emanating from these products is only taken into account as part of the competitive assessment.⁵⁶ Only then does the Commission consider "any kind of relevant competitive pressure" to which the undertakings concerned are exposed on the relevant market. This can involve barriers to market entry or market expansion, economies of scale, network effects or access to inputs. "Sufficiently foreseeable changes in competitive pressure" can also be taken into account.⁵⁷

Market definition is not mandatory. However, as an "intermediate tool", it can facilitate the subsequent competitive assessment, in which the Commission analyses the relative competitive strength of companies and examines whether a company has market power.⁵⁸

The relevant market is defined both in terms of product and geography. The relevant product market comprises those products that customers consider to be "interchangeable or substitutable" with the products of the companies involved.^{59,60} The most important aspect of the product market definition is "demand substitution", as this has the "most direct and effective disciplinary force" on the suppliers of a product. Supply substitution is only relevant in certain cases and potential competition is irrelevant as it represents less immediate and less certain competitive pressure.⁶¹ The relevant geographic market is the geographic area in which the companies involved offer or demand the relevant products and in which the competitive conditions are considered to be "sufficiently homogeneous".⁶² As part of the geographic market definition, which can range from "local to global", the Commission examines the competitive conditions and identifies those areas in which the merger in question is "likely" to have an impact, taking into account the location of the companies involved and the customers affected. It then analyses whether the conditions in a particular area are sufficiently homogeneous.^{63,64}

The revised Notice also focussed on making adjustments to the procedure for defining the geographic market. In particular, the Notice now contains additional clarifications on the distinction between global, EEA-wide, national and local markets. If customers throughout the EEA have (a) access to the same providers, (b) on similar terms and (c) irrespective of their location, an EEA-wide market can be assumed. If, on the other hand, customers from all over the world have such access, it is likely to be a global market.^{65,66}

The Commission may base the definition of relevant markets on market definitions from previous merger control proceedings but is not obliged to do so. In fact, it should also take possible changes into account, for example in digitalisation trends or supply chains.⁶⁷ Moreover, the price of a product should not be the only competitive parameter but also, in fact, aspects such as the degree of innovation of the product, its quality – e.g. with regard to sustainability, resource efficiency and

⁵⁶ Points 6 and 17, C/2024/1645.

⁵⁷ Points 8 and 17, C/2024/1645.

⁵⁸ Points 8 and 16, C/2024/1645.

⁵⁹ Point 12, C/2024/1645.

⁶⁰ Interchangeability or substitutability is assessed on the basis of the characteristics of the products in question, their prices and their intended use, taking into account the competitive conditions and the structure of supply and demand on the market.

⁶¹ Point 23, C/2024/1645.

⁶² Point 12, C/2024/1645.

⁶³ Point 38, C/2024/1645.

⁶⁴ In so doing, the Commission takes a variety of evidence into consideration. This includes, for example, the presence of the same or different suppliers in different geographic areas or similarities or differences in market shares and prices [Point 39, C/2024/1645].

⁶⁵ Point 69, C/2024/1645.

⁶⁶ A market may also be considered a global market where individual territories or countries are not part of it, for example due to high entry barriers [Point 69, C/2024/1645].

⁶⁷ Point 14, C/2024/1645.

durability – or its availability – e.g. resilience of the supply chains.⁶⁸ Emphasising these non-price competition factors in the market definition was also part of the focus of last year's revision of the guidelines. The same applies to the increased consideration of future developments. For example, the Commission intends to take greater account, in the definition, of "foreseeable" future changes in market structure, insofar as a competition case requires a "forward-looking assessment". This refers to those market changes that may occur in the short to medium term and for which there is "reliable evidence" and "sufficient likelihood" that they will occur.⁶⁹ Such a change, which indicates a structural change in a market, can be expressed in the imminent and sufficiently probable market launch of a new product, impending technological changes or changes to the legal framework.⁷⁰

⁶⁸ Point 15, C/2024/1645.

⁶⁹ Point 21, C/2024/1645.

⁷⁰ Point 21, C/2024/1645.

3 Discussion of and reasons for the review of the merger control guidelines

European competition policy to date has been characterised by the scientific realisation that intensive competition in the internal market not only leads to low prices, but also increases productivity, encourages investment and raises the potential for innovation. Competition also effectively protects against the abuse of market power and is considered central to maintaining or strengthening the EU's competitiveness.^{71,72} This important realisation is reflected both in the EU Treaties and in the current EU legal framework on merger control. Nevertheless, for some time now there have been increasing calls to modernise the legal framework on merger control, which has been in place for many years.⁷³

In February 2019, the German, French and Polish governments called on the Commission to revise the guidelines on the assessment of horizontal mergers and the Market Definition Notice. In particular, they called for more flexibility and greater consideration of competition at a global level and called for better protection of common strategic EU interests.⁷⁴ A Franco-German manifesto on industrial policy also called for particular attention to be paid to increased competition from state-controlled or subsidised companies in third countries.⁷⁵

Mario Draghi also gave a clear statement on European competition policy in his much-quoted report on European competitiveness. In particular, he indicated that it could conflict with the need of many EU companies for sufficient scale in global competition. He also saw insufficient scale as a potential barrier to innovation in the EU.⁷⁶ Since the economy has shifted to more innovation-intensive sectors and to markets with high fixed costs and network effects, size and innovation are now crucial for competitiveness and no longer just low prices. He concludes from this finding that factors such as the ability and incentive to innovate; non-price aspects such as the quality of products; future competition and competitive potential and the scale required for global competition should play a greater role in merger control in future. He also sees scope for placing greater emphasis on security and resilience considerations in the enforcement of competition policy in order to prevent potential disruption to the EU economy, particularly with regard to companies and sectors that are considered to be of strategic importance.^{77,78}

In December 2024, the then German government went one step further and clarified its ideas for adjusting EU merger control and, in particular, the merger control guidelines. It emphasised that "effective competition [...] is a necessary prerequisite for competitiveness", including at a global level. However, the competitive framework must be designed in such a way that it enables EU companies to "scale up and be successful on global markets". In response to "new global economic and geopolitical realities", the guidelines on merger control should place greater emphasis on non-competitive and innovation-related aspects. The German government also saw potential for facilitating consolidation

⁷¹ EU Commission (2024), The Draghi Report: In-depth analysis and recommendations (Part B), 9 September 2024.

⁷² EU Commission (2025), COM(2025) 30, A Competitiveness Compass for the EU, Communication 29 January 2025.

⁷³ A first step was taken in 2024 with the revision of the Market Definition Notice (see above).

⁷⁴ German Federal Ministry for Economic Affairs and Energy (2019), Modernising EU Competition Policy, Note from Germany, France and Poland, available [here](#).

⁷⁵ Federal Ministry for Economic Affairs and Energy (2019), A Franco-German Manifesto for a European industrial policy fit for the 21st Century, February 2019, available [here](#).

⁷⁶ Draghi is of the opinion that there may be cases in which tougher competition has an innovation-inhibiting effect and mergers can therefore also have an innovation-promoting effect [EU Commission (2024), The Draghi report: In-depth analysis and recommendations (Part B), 9 September 2024].

⁷⁷ Draghi mentions the areas of security, defence, energy and space [EU Commission (2024), The Draghi report: In-depth analysis and recommendations (Part B), 9 September 2024].

⁷⁸ EU Commission (2024), The Draghi Report: In-depth analysis and recommendations (Part B), 9 September 2024.

in key sectors, focusing for example on products that are "of major importance for the resilience of value chains and the overall EU economy", on "globally rapidly growing markets featuring large economies of scale", and on markets that are key to EU security policy.⁷⁹ The coalition agreement of the current German government also addresses merger control and calls for greater consideration to be given to "international competitiveness, European sovereignty and security".⁸⁰

All these calls did not go unheard. Commission President von der Leyen announced in her political guidelines for the 2024-2029 legislative period, in her mission letter to the EU Commissioner responsible for competition and finally in her Competitiveness Compass, that a new approach to EU competition policy is needed. In future, she said, EU competition policy would – in particular by a revision of the guidelines on horizontal mergers –^{81,82,83}

- focus more strongly on the EU's common objectives (e.g. decarbonisation, just transition, security and competitiveness) – and thus also on objectives driven by industrial-policy⁸⁴,
- provide more support for the global expansion capability of EU companies and their leadership in global competition,
- promote the innovation activities and capabilities of EU companies,
- give more weight to potential efficiency gains that may result from mergers,
- support the resilience of the EU economy – e.g. in the face of geopolitical threats to supply chains,
- in sectors that are considered strategic, take appropriate account of the time horizons and investment intensity of competition, and
- take greater account of the changed defence and security environment.

This new approach to EU competition policy should be based on clear and predictable rules, ensure fair competition and guarantee a level playing field in the internal market at all times. In addition, the enforcement of competition law should become simpler, faster and more targeted.⁸⁵

Since 8 May 2025, the EU Commission's plans have become even more concrete. On that day, it launched both a general consultation and a targeted consultation on specific topics with a view to revising the two guidelines on merger control.^{86,87,88} The Commission emphasises in particular that competition policy must "keep pace with evolving markets and tech innovation" and that greater attention must be paid to "resilience, efficiency and innovation, time horizons, the investment

⁷⁹ Federal Government (2024), Modernising EU competition law - German proposals for the 2024-2029 term of the European Commission, December 2024, available [here](#).

⁸⁰ Koalitionsvertrag zwischen CDU, CSU und SPD, Verantwortung für Deutschland, 21. Legislaturperiode, Paras. 324-326, available [here](#).

⁸¹ EU Commission (2024), Europe's Choice - Political guidelines for the next European Commission 2024-2029, Ursula von der Leyen, Candidate for the European Commission President, 18 July 2024.

⁸² EU Commission (2024), Mission Letter, Teresa Ribera Rodríguez, Executive Vice-President-designate for a Clean, Just and Competitive Transition, 17 September 2024.

⁸³ EU Commission (2025), COM(2025) 30, A Competitiveness Compass for the EU, Communication 29 January 2025.

⁸⁴ Federal Ministry for Economic Affairs and Energy (2025), Industrial Policy in Europe, Report by Scientific Advisory Board at the Federal Ministry for Economic Affairs and Energy, 26 August 2025, available [here](#).

⁸⁵ EU Commission (2024), Europe's Choice - Political guidelines for the next European Commission 2024-2029, Ursula von der Leyen, Candidate for the European Commission President, 18 July 2024; EU Commission (2024), Mission Letter, Teresa Ribera Rodríguez, Executive Vice-President-designate for a Clean, Just and Competitive Transition, 17 September 2024; EU Commission (2025), COM(2025) 30, A Competitiveness Compass for the EU, Communication 29 January 2025.

⁸⁶ It identified a total of seven areas of focus. These are: (1) competitiveness and resilience, (2) assessment of market power based on structural characteristics and other market indicators, (3) innovation and other dynamic elements in merger control, (4) sustainability and clean technologies, (5) digitalisation, (6) efficiency benefits, (7) public policy, security and the labour market.

⁸⁷ EU Commission (2025), Review of the Merger Guidelines, Merger Guidelines Consultations, available [here](#).

⁸⁸ Comments on the consultations could be submitted until the beginning of September 2025.

intensity of competition in certain strategic sectors and the changed defence and security environment".⁸⁹ It announced its intention to revise the two guidelines in 2027, in line with the above-mentioned priorities.⁹⁰

Even though the Commission has indicated an urgent need for action with regard to EU competition policy, it is not currently expected to make any changes to primary legislation, i.e. the Merger Regulation or the EU Treaties. This therefore means that the updates to the merger control guidelines which have now been announced cannot give rise to any new provisions in conflict with primary law requirements or with the EU treaties.⁹¹ These therefore remain as the basic framework or point of reference for European merger control, from which there should be no deviation.

⁸⁹ EU Commission (2025), Merger guidelines - review, Call for evidence, Ref. Ares(2025)3736625, 8 May 2025, available [here](#).

⁹⁰ EU Commission (2025), Review of the Merger Guidelines, Merger Guidelines Consultations, available [here](#).

⁹¹ It is also doubtful whether the Market Definition Notice, which was only revised in 2024, will be amended again.

4 Discussion on market definition

In the context of the ongoing revision of the EU merger guidelines, renewed attention has been drawn to whether existing approaches to market definition – both geographic and factual (product) – adequately reflect the realities of increasingly technologically intertwined and globalised markets. European capital markets are fragmented in two dimensions: across national borders and across institutional forms (in the case of financial markets, notably exchange-traded versus over-the-counter trading (OTC)). This dual fragmentation poses a critical challenge to the creation of efficient, competitive, and resilient market infrastructures. Recent policy discussions have increasingly emphasised the need to strengthen the connectivity and interoperability of Europe's trading and post-trading infrastructures to improve market integration and systemic robustness. At the same time, merger control exists to prevent sustained market power and consumer harm, so there is a genuine tension between preserving competition and enabling scale.⁹² The persistent fragmentation of the EU capital market highlights the strategic importance of allowing carefully assessed mergers in market infrastructure. To compare, over the past 15 years, issuance activity in the US has doubled, whereas in the EU it has grown by only a third, widening the gap between the two markets.⁹³

This chapter examines how the EU's current approach to market definition may interact with existing market fragmentation and explores whether adjustments towards a more dynamic and global concept of competition are desirable in order to better serve the Capital Markets Union and Europe's strategic goals.

4.1 Geographic market definition

Defining the relevant geographic market is a primary step in EU competition analysis. It refers to the specific area within which the effects of conduct or concentration are assessed and determines which suppliers and potential entrants constrain a market participant's market power. Traditionally, the Commission has treated markets as national entities in which competitive conditions differ across jurisdictions due to regulation, language, infrastructure, or consumer preferences.^{94,95} In fact, markets are inherently international, characterised by high capital mobility, integrated trading platforms, and uniform regulatory frameworks that transcend national borders.

In recent years, discussions on defining the relevant geographic market have arisen more often.⁹⁶ In many sectors, and particularly in financial, digital, and data-driven industries, markets now operate across interconnected global networks.⁹⁷ As a result, growing global integration, technological change, and the digitisation of trade have increasingly blurred market boundaries. Transactions, data flows, and services move instantaneously across jurisdictions.⁹⁸ Overly narrow market definition tests and inflexible assessments of concentration may therefore miss real competitive constraints caused by

⁹² ESMA (2024), Building more effective and attractive capital markets in the EU - Position Paper.

⁹³ ECB (2025), Advancing the capital markets union in Europe: a roadmap for harmonising securities post-trading. ECB Economic Bulletin, Issue 4/2025.

⁹⁴ German Federal Cartel Office (2012), Decision of 28 February 2012, B4-51/11.

⁹⁵ See Case No COMP/M. 3894 Unicredito/HVB and Case No COMP/M.4155 BNP Paribas/BNL, Case No COMP/M.4843 - RBS / ABN AMRO ASSETS, Case No COMP/M.1856 - CITIGROUP / SCHRODERS, Case No IV/M.611 - DRESDNER BANK / KLEINWORT BENSON.

⁹⁶ Carpi Badia, Josep M., EU Merger Control in a Globalised Economy (March 1, 2020). Competition Law & Policy Debate, Volume 6, Issue 1 (March 2020).

⁹⁷ OECD (2016), Defining Geographic Markets Across National Borders, p.17 et seq.

⁹⁸ European Commission (2025), Review of the Merger Guidelines, sec. 79, 86, 90.

non-EU players and result instead in outcomes that protect short-term market structure at the expense of long-term competitiveness.⁹⁹

Looking at financial infrastructure, we can see that trading, clearing, and settlement infrastructure operates by way of global networks in which transactions, data, and liquidity move instantly across borders.¹⁰⁰ Major exchanges, clearinghouses, and electronic platforms compete internationally for order flow, listings, and clients. Large financial institutions trade and manage risk globally, allocating activity based on efficiency, cost, and regulatory access rather than geography. Excluding these players from competition assessments could misrepresent the actual constraints faced by EU infrastructure and underestimate the scale of competitive pressure from non-EU actors.

Furthermore, the ability to expand by way of acquisition can enable European firms to reach new markets and strengthen their global presence. For many companies, especially those operating in fragmented European sectors, organic growth alone is insufficient to achieve the size needed to compete effectively with large international players. Mergers can therefore serve as an instrument for cross-border integration within the EU and as a mechanism for building globally competitive entities capable of innovating at scale. Achieving greater scale through mergers and acquisitions can, in many cases, be a critical driver of productivity and competitiveness. Without comparable scale and integration, European firms may lack the investment capacity necessary to develop and deploy cutting-edge technologies. The creation of European champions could generate significant economic benefits. Larger firms often benefit from economies of scale and scope, which allow them to operate more efficiently, and leverage network effects that improve the functioning of the market.¹⁰¹ In sectors where technology, data, and connectivity play a central role, these scale effects can translate directly into lower transaction costs, higher liquidity, and more resilient systems.¹⁰² European champions also enhance the global visibility of European industry, helping to attract international investment, talent, and cross-border business. They can establish Europe as a standard-setter in key markets and ensure that strategic industries remain competitive in the face of consolidation in the United States and Asia. Furthermore, by integrating fragmented national markets, large cross-border entities can reduce duplication of infrastructure, improve interoperability, and support deeper and more liquid markets. The policy challenge, therefore, is to distinguish mergers that genuinely strengthen Europe's strategic position in global markets from those that simply consolidate dominance in narrowly defined local markets.

Furthermore, the OECD cautions that data limitations and measurement biases could undermine quantitative methods such as price correlation or import elasticity analyses.¹⁰³ Differences in exchange rates, macroeconomic cycles, and reporting standards can lead to misleading conclusions about whether markets are truly integrated. Therefore, competition authorities should consider a broader combination of quantitative and qualitative evidence, including product characteristics, consumer behaviour, and regulatory barriers. However, there is a risk of inconsistent enforcement outcomes if authorities worldwide adopt diverging geographic definitions. Overly expansive or overly narrow

⁹⁹ European Commission (2025), Review of the Merger Guidelines, sec. 51 et seq.

¹⁰⁰ BIS (2008), The interdependencies of payment and settlement systems June 2008, p. 1.

¹⁰¹ Schmiedel, Heiko & Malkamäki, Markku & Tarkka, Juha (2002), "Economies of scale and technological development in securities depository and settlement systems," Bank of Finland Research Discussion Papers 26/2002, Bank of Finland.

¹⁰² Li, Shaofang & Marinč, Matej (2018), "Economies of scale and scope in financial market infrastructures," Journal of International Financial Markets, Institutions and Money, Elsevier, vol. 53(C), pages 17-49.

¹⁰³ OECD (2016), "Defining Geographic Markets Across National Borders", OECD Roundtables on Competition Policy Papers, No. 194, OECD Publishing, Paris, paras 61-63.

market definitions could have long-term implications, influencing not only current merger cases but also future precedents and the design of remedies. The OECD therefore recommends that authorities proceed cautiously and cooperate closely when assessing global markets, to ensure coherence and predictability. Another challenge in defining cross-border markets lies in access to reliable data and evidence across jurisdictions. Competition authorities' investigatory powers often stop at national borders, even though the markets they assess may not. In several cases, including Arsenal/DSP¹⁰⁴, the European Commission was unable to obtain sufficient data from non-EU suppliers, which limited its ability to construct accurate comparative price analyses.¹⁰⁵ This kind of data gap can distort correct definition of the market and understanding of competitive pressures.¹⁰⁶ Cross-border consistency in assessment is particularly relevant for financial market infrastructures. Data availability from global trading venues and clearinghouses outside the EU can be limited, and the Commission's ability to assess non-EU competitive constraints depends heavily on the cooperation of other jurisdictions.

There are several structural trends that make geographic market definition increasingly complex for various types of product market. The expansion of online and digital delivery models has significantly reduced physical and logistical barriers, while consumer trust and regulatory convergence enable the cross-border provision of services.¹⁰⁷ In the same way that online retailers and digital platforms challenge traditional local market definitions in retail and media, global financial infrastructures increasingly blur the distinction between "domestic" and "foreign" competition. Furthermore, technological innovation such as connectivity and the rise of digital communication tools has transformed markets that were historically national in scope, such as telecommunications.¹⁰⁸ The same logic applies to financial infrastructure, where cross-border connectivity, interoperability, and cloud-based service models go beyond traditional territorial limitations. Furthermore, reductions in informational barriers also contribute to a more integrated market environment. Standardisation of regulatory frameworks and the widespread use of global digital platforms make it easier for non-European firms to enter or expand in EU markets. While national regulation still imposes constraints, its relative importance is declining compared to the speed of technological and market integration. The OECD acknowledges that failing to take account of cross-border competition on retail markets can lead to inaccurate assessments.¹⁰⁹ The same caution applies with regard to financial infrastructure: where global platforms compete for liquidity, clients, and data in functionally similar environments, underestimating global competition should be avoided.

The Commission's latest Market Definition Notice¹¹⁰ reflects these evolving realities. It recognises that, regardless of location, relevant markets may range from local to global in scope according to the similarity of competition conditions faced by the customers. The Notice also emphasises that expected structural transitions, including those driven by globalisation and digitalisation, can be factored into a forward-looking assessment of market boundaries. By integrating multiple sources of reliable evidence and considering the dynamic evolution of markets, the Commission seeks to ensure that geographic

¹⁰⁴ Arsenal/DSP (2008), Case No. Case No COMP/M.5153.

¹⁰⁵ Donath, Daniel (2009), "The use of pricing analysis for market definition purposes: the Arjowiggins/Mreal Zanders Reflex and Arsenal/DSP mergers", Competition Policy Newsletter.

¹⁰⁶ OECD (2016), "Defining Geographic Markets Across National Borders", OECD Roundtables on Competition Policy Papers, No. 194, OECD Publishing, Paris, para. 58.

¹⁰⁷ OECD (2016), "Defining Geographic Markets Across National Borders", OECD Roundtables on Competition Policy Papers, No. 194, OECD Publishing, Paris, paras 54-57.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ Communication from the Commission - Commission Notice on the definition of the relevant market for the purposes of Union competition law. C/2023/6789. OJ C, C/2024/1645, 22.2.2024.

market definition remains both analytically rigorous and adaptable to contemporary competitive conditions.

In some decisions on merger control, the European Commission has assessed geographic market definition more flexibly.¹¹¹ For instance, in the Siemens/Alstom case,¹¹² the Commission recognised that competition for high-speed trains occurred at a global level, excluding only a few national markets such as China, Japan, and South Korea. Similarly, in the Tata Steel/Thyssenkrupp/JV case,¹¹³ the Commission found that competitive conditions for the production and supply of several steel products across the EEA were sufficiently similar to define an EEA-wide market, while explicitly considering the competitive pressure posed by imports from outside the EEA. By contrast, in certain sectors, such as telecommunications, markets have been treated as national in scope, but this largely reflects existing regulatory barriers rather than inherent market characteristics. These examples illustrate that the Commission has, in practice, started to adapt its approach to market definition, recognising global competition where relevant.¹¹⁴ Applying the same logic could be beneficial for other markets, including financial market infrastructure. Exchange-traded and OTC markets increasingly operate across borders, and major trading venues, clearinghouses, and data providers compete globally. Incorporating non-EU competitors that can credibly serve the EU market would allow merger assessments to support the development of integrated, scalable, and globally competitive European capital markets.

Market power in digital and financial infrastructure cannot be properly understood through the lens of local market share alone; it must also consider dynamic rivalry, technological convergence, and global contestability.¹¹⁵ Ultimately, a more dynamic interpretation of merger control would better reflect actual competition in the markets where scale and connectivity generate efficiencies that enhance liquidity, reduce costs, and improve systemic resilience. This implies shifting the focus from narrow structural indicators toward an assessment of how mergers may enhance efficiency, innovation, and resilience in a global context.¹¹⁶ Where integration increases Europe's ability to compete internationally and support the development of the Capital Markets Union, merger control should be interpreted as a complementary instrument of economic policy rather than as a constraint.

Merger control should give greater weight to long-term trends in global competition, particularly in sectors where competitive dynamics are shaped by technological change, network effects, and cross-border integration. In many markets, actors no longer compete solely within national or regional boundaries; they face pressure from global-scale players whose advantages derive from scale, data capacity, and international reach. Assessments that focus primarily on short-term structural indicators may therefore overlook how consolidation can strengthen a European firm's ability to remain competitive in a globalised environment.

A modernised framework would also need to integrate forward-looking metrics, such as potential entry by global players, network connectivity, and innovation capacity, into the competitive

¹¹¹ European Commission (2025), Review of the Merger Guidelines, Public consultation, Topic A: Competitiveness and resilience, p. 32.

¹¹² Case M.8677 - Siemens / Alstom.

¹¹³ Case M.8713 - Tata Steel / Thyssenkrupp / JV.

¹¹⁴ EC Competition Policy Brief, Market definition in a globalised world, March 2015.

¹¹⁵ OECD (2023), Dynamic Competition, Innovation and Merger Control, OECD Competition Committee Discussion Paper. UNCTAD (2022), Competition Policy and Globalisation: Addressing Cross-Border Market Power.

¹¹⁶ Federico, G., Langus, G., & Valletti, T. (2018), A Simple Model of Mergers and Innovation. *Economics Letters*, 157, 136-140.

assessment.¹¹⁷ In particular, when merging firms compete outside the EU and other potential competitors from third countries do not yet generate revenues in the EU, the global market context should still inform the competitive assessment. Potential competitors should be considered from the outset if there is evidence for planned market entry, such as internal documents or strategy announcements.¹¹⁸ This approach will allow for a more detailed assessment of post-merger competitive pressures and ensure that market definition captures both current and expected market dynamics. For instance, scaling-related efficiencies could play a crucial role in enhancing European competitiveness and resilience. These efficiencies include incentives for investment and innovation, improved access to financing, economies of scale in infrastructure, and the pooling of technological or data resources. In capital-intensive sectors such as financial market infrastructure, digital technologies, clean energy, or manufacturing, such benefits often emerge over the long term rather than in the short-term period typically considered by the Commission.¹¹⁹ From a merger control perspective, consolidation that enhances liquidity and improves market depth may thus generate efficiency gains that outweigh structural concentration concerns, particularly in sectors where liquidity and resilience are seen as essential public goods.¹²⁰

Based on these considerations, competition authorities should take the following points into account when defining the relevant geographic market. First, market definition should explicitly incorporate global contestability analysis.¹²¹ Second, the long-term impact from mergers should be better assessed.¹²² That may require additional tests in order to model future scenarios. Rather than focusing solely on short-term concentration ratios, merger assessments should test whether integration improves market depth, liquidity, and technological competitiveness. This would align EU competition policy with broader strategic priorities, ensuring that it promotes an open, efficient, and globally competitive financial ecosystem.

At the same time, competition authorities must remain attentive to the competitive position of domestic and European market participants within these increasingly globalised frameworks. As highlighted by the German Monopolies Commission, the evolution of market regulation and definition must take account of the fact that some financial markets extend well beyond EU borders.¹²³ It is therefore crucial to avoid unjustified regulatory or analytical approaches that impair the competitiveness of European market participants vis-à-vis global rivals. In particular, the Commission and national authorities must consider how differences in regulatory frameworks, risk-weighting systems, and accounting standards can affect market comparability across jurisdictions. For instance, large US banks continue to benefit from higher implicit guarantees and more flexible accounting standards, allowing greater netting of derivative positions.¹²⁴ Such differences may distort competition and should therefore be reflected in geographic market definition and merger assessment, especially where cross-border activity or systemic interlinkages are significant. In doing so, the Commission should also account for the regulatory asymmetries and competitive conditions faced by European

¹¹⁷ OECD (2016), *Geographic Market Definition in Competition Law*, para. 39.

¹¹⁸ OECD (2021). *The Concept of Potential Competition - Note by the EU*. DAF/COMP/WD(2021)21. p. 8.

¹¹⁹ BIS (2022), *Innovation and the Future of Financial Market Infrastructures*.

¹²⁰ Pagano, M. and A. J. Padilla (2005): *Gains from Stock Exchange Integration: The Euronext Evidence*, CEPR Working Paper.

¹²¹ UNCTAD (2022), *"Competition Policy and Globalisation: Addressing Cross-Border Market Power"*.

¹²² OECD (2021), *Competition, Resilience and Recovery: Policy Priorities for Stronger Economies*.

¹²³ German Monopolies Commission (2014), *XXth Biennial Report (2012/2013)*, Chapter VI, *Competition in the Financial Markets*, paras. 1755- 1760.

¹²⁴ See Grasshoff, G. et al. (2013), *Global Risk 2013-2014: Breaching the Next Banking Barrier*, The Boston Consulting Group, 19 November 2013, pp. 5 ff.

undertakings in global markets. Ensuring that market definition accurately reflects the interplay between domestic and international players is essential to maintaining the competitiveness of the European economy.

To sum up, geographic market definition should better reflect the reality of market development in times of increasing globalisation. A more flexible, evidence-based approach would allow merger control to support rather than hinder Europe's competitiveness in global capital and digital markets. Excessive reliance on non-EU infrastructure exposes the Union to financial, technological, and geopolitical vulnerabilities.¹²⁵ Targeted mergers of market infrastructure, when carefully evaluated for competition risks, could strengthen European capabilities, enhance liquidity, and support the development of scalable, globally competitive platforms.¹²⁶ Such an approach aligns with the broader policy imperative of fostering a dynamic and innovative financial ecosystem without undermining fair competition.

4.2 Factual market definition: exchange-traded vs. over-the-counter markets

European financial markets remain institutionally fragmented between exchange-traded and over-the-counter (OTC) platforms.¹²⁷ Exchange-traded markets - such as stock exchanges and futures markets - are typically classified as regulated markets under EU financial law and organized through centralized platforms and operate using centralized order books and transparent price discovery mechanisms. Prices are publicly displayed and determined by the forces of supply and demand within an open order book. By contrast, OTC markets have traditionally been regarded as unregulated or less-regulated markets, as transactions are conducted bilaterally between counterparties without the intermediation of a regulated exchange.¹²⁸ OTC markets are decentralised and information about prices and volumes is generally not publicly available. This structure offers greater flexibility, allowing participants to tailor contracts to their specific needs, but it also introduces higher counterparty and information risks.¹²⁹ Exchange markets tend to generate stronger network effects, attracting liquidity through transparency and regulation, whereas OTC markets compete primarily on flexibility and confidentiality.

In essence, both exchange-traded and OTC markets fulfil the same basic economic purpose: they provide investors and institutions with mechanisms through which to buy, sell, and transfer financial assets such as equities, bonds, and derivatives.¹³⁰ Competition authorities often note that while both types of market serve similar economic purposes, they operate under different structural and regulatory conditions.¹³¹ Against this background, a closer look at how these differences affect their degree of substitutability and, ultimately, their treatment under merger control, is required.

Transparency and regulation represent a key area of distinction between the two market types. Exchange-traded markets are subject to stringent regulatory requirements designed to ensure fair access and protect market participants. The high level of transparency reduces uncertainty and facilitates efficient price formation. OTC markets, in contrast, typically operate with less public

¹²⁵ Monopolies Commission (2023), Main Report XXIV: Competition 2022.

¹²⁶ BIS (2022), Innovation and the Future of Financial Market Infrastructures; European Central Bank (2023), "The Global Dimension of European Banking and Financial Integration".

¹²⁷ Mahmood Bagheri and Chizu Nakajima, 'Competition and Integration among Stock Exchanges: The dilemma of Conflicting Regulatory Objectives and Strategies', *Oxford Journal of Legal Studies*, Vol. 24, No. 1 (2004), p. 88.

¹²⁸ IOSCO (International Organisation of Securities Commissions) (2022). Transparency in OTC Markets.

¹²⁹ European Central Bank (ECB) (2023), Financial Integration and Structure in the Euro Area.

¹³⁰ Gomber, P., S. Sagade, E. Theissen, M. C. Weber and C. Westheide (2015), The State of Play in European Over-the-Counter Equities Trading, *Journal of Trading*, 10, p. 23-32.

¹³¹ Competition Commission DB AG/Euronext NV-LSE Report, 2005, p. 17.

oversight. While this allows them to accommodate complex or bespoke transactions, which might not fit the standardised formats of exchanges, it can also result in reduced visibility.¹³²

A further difference lies in the degree of standardisation. Exchange-traded instruments are typically standardised contracts that can be easily compared and traded by a wide range of participants. This standardisation enhances liquidity and fosters secondary market activity. OTC instruments, on the other hand, are often customised to suit particular risk management or investment needs.¹³³ While this customisation adds value for some users, it reduces the ease with which such instruments can be substituted or traded in secondary markets.¹³⁴

Importantly, the OTC market is quite diverse and it would be an undue simplification to treat the different categories of OTC instruments as a uniform market. First, there are some types of OTC derivatives that are, in practice, highly standardised, such as plain interest rate swaps or foreign-exchange forwards which are subject to mandatory clearing and are increasingly traded on electronic platforms. These products often have similar characteristics to those of exchange-traded derivatives, which makes it possible to treat them as substitutable. Second, there is a category that consists of semi-standardised instruments, including credit index derivatives and certain swaption contracts with standard maturities. These instruments can be executed through both OTC and exchange-like platforms but still require a degree of customisation. Third, at the opposite end are highly tailored structures, such as customised structured products or complex hedging arrangements involving unique underlying exposures. These instruments typically cannot be migrated to exchanges without losing their economic purpose and therefore demonstrate low substitutability. Recognising this taxonomy is essential for merger control: the relevant market may be broad for standardised instruments but narrower for bespoke products, and authorities should assess substitutability on a product-by-product basis.

Looking at OTC and exchange markets more broadly, there is evidence that in recent years these two types of market have become much more connected. Changes in technology, regulation, and trading behaviour have made the boundaries between them far less clear.

From the perspective of investors and financial institutions, regulated and OTC markets often act as alternative venues for executing similar transactions. In practice, large institutions frequently switch between exchange trading and OTC dealing, depending on liquidity conditions, transaction size, and product complexity. For less liquid or more customised instruments, such as derivatives, corporate bonds, or structured financial products, participants often compare exchange and OTC execution based on the relative advantages.¹³⁵ Thus, they may compare price, liquidity, and execution costs across venues in real time. In practice, market participants can decide which market offers better terms and move their trades accordingly. This so-called "cross-venue arbitrage" links the two markets closely together. When price differences appear, participants trade across venues until those differences disappear. As a result, the prices and liquidity of exchange-traded and OTC products increasingly converge, indicating that they are part of the same broader system. Such switching behaviour shows that both venues compete to attract similar types of transaction, even if the relative share of activity

¹³² IOSCO (International Organisation of Securities Commissions) (2022), Transparency in OTC Markets.

¹³³ European Securities and Markets Authority (ESMA) (2020), Annual Statistical Report: EU Derivatives Markets

¹³⁴ BIS (2019), Statistical Release: OTC Derivatives Statistics.

¹³⁵ Jens Nystedt (2004), Derivative Market Competition: OTC Markets Versus Organised Derivative Exchanges, IMF Working Paper, WP/04/61, April 2004.

differs across product categories.¹³⁶ In addition, more standardised types of OTC are in fact suitable for trading on public exchanges.¹³⁷ Automation and the rise of multi-venue trading systems have produced functional convergence between OTC and on-exchange markets, with many OTC derivatives now satisfying the criteria for electronic trading and central clearing. Consequently, merger control needs to recognise cross-venue substitution effects and assess how consolidation might alter competition across both regulated and non-regulated markets.

The expansion of electronic OTC trading platforms, algorithmic trading, systematic internalisers, and electronic communication networks has further narrowed the operational gap between OTC and exchange markets. Many OTC products are now traded via digital platforms that have features similar to those of regulated exchanges: transparent order books, standardised reporting, and automated surveillance. As OTC trading becomes more electronic and standardised, it increasingly resembles exchange-based trading in terms of execution speed, transparency, and accessibility. In some cases, these platforms are owned or operated by entities that also run exchanges, further reinforcing their functional convergence. However, as trading, clearing, and data services become increasingly interconnected, companies that control several of these functions may gain influence across multiple levels of the market. Such vertical integration can give them the ability and incentive to limit competitors' access to essential infrastructure, which may lead to foreclosure risks in mergers.

Regulatory reforms have also brought these markets closer.¹³⁸ After the global financial crisis, the European Market Infrastructure Regulation (EMIR) and the Markets in Financial Instruments Directive II (MiFID II) made OTC trading more transparent and safer by requiring certain OTC derivatives to be centrally cleared, reported, and in some cases traded on organised platforms. The European Commission explicitly linked these reforms to the need to "restore confidence and reduce systemic risk" while fostering greater substitutability between platforms.¹³⁹

These developments have had major economic consequences. Large institutional investors and financial intermediaries increasingly determine which trading venue to use based on efficiency considerations, such as transaction costs, liquidity, and execution quality. When trading standardised contracts, market participants tend to favour exchange platforms. Similarly, when transactions require flexibility, customisation, or discretion, the OTC market becomes the preferred choice. The ability of participants to move between these two venues in response to changing preferences or market conditions indicates that, in reality, they are deeply connected even though the law may define these markets as separate.

To determine whether OTC and exchange-traded venues operate within the same market, competition authorities should identify the degree of cross-venue integration.¹⁴⁰ Several indicators may be taken into account in such an analysis. First, price co-movement across venues - for example, swap rates aligning with futures prices - can reveal whether markets are jointly used for hedging and arbitrage, thus indicating substitutability. Second, order-flow switching patterns between exchange and OTC

¹³⁶ Gomber, P., S. Sagade, E. Theissen, M. C. Weber and C. Westheide, (2015), The State of Play in European Over-the-Counter Equities Trading, *Journal of Trading*, 10, p. 23-32.

¹³⁷ Jens Nystedt (2004), *Derivative Market Competition: OTC Markets Versus Organised Derivative Exchanges*, IMF Working Paper, WP/04/61, April 2004, p. 4-8.

¹³⁸ European Commission (2021), *Report on the Application of the Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR)*.

¹³⁹ MiFID II Recital 7; EMIR Art. 9.

¹⁴⁰ Nanumyan V., Garas A., Schweitzer F. (2015), *The Network of Counterparty Risk: Analysing Correlations in OTC Derivatives*. PLoS ONE 10(9): e0136638, 2015.

platforms, based on trade-repository data or venue-level transaction statistics, show whether market participants treat the venues as alternatives. Third, the proportion of OTC instruments that are centrally cleared through CCPs is a further indicator.¹⁴¹ Rising clearing rates demonstrate the standardisation and comparability of formerly bilateral instruments. Fourth, increasing share of algorithmic or electronic execution in OTC trading indicates the similarities of these products with those on exchange markets.¹⁴² Finally, interoperability arrangements among CCPs, including cross-margining, portfolio compression, and linkages between clearing systems, reflect the integration of risk-management infrastructures.¹⁴³

Another challenge concerns the multi-sided nature of financial exchanges and trading platforms. Unlike traditional one-sided markets, they connect several multiple user groups (issuers, intermediaries, investors, clearing members, and data vendors) whose interactions affect each other. For example, more investors attract more issuers, and higher trading activity increases the value of market data. Because of these cross-side effects, changes in price or access conditions on one side of the market can strongly influence competition on the others.¹⁴⁴ Traditional tools such as the SSNIP test or static concentration indices do not fully capture these interdependencies.¹⁴⁵ They assume that demand on each side of the market is independent, which is not the case for trading platforms. In multi-sided markets such as exchanges, higher participation on one side (issuers, intermediaries) increases value for the others (investors, data vendors), creating loops that are not well captured by static concentration metrics. This means that competition cannot be assessed by looking at one side of the market or by relying only on market share. Market share in such contexts merely reflects transaction concentration at a point in time, not the dynamic contestability of the market or potential for entry.

Market power should be evaluated based on multiple factors, including network effects, cross-platform substitution, and the potential for entry or innovation. For example, an exchange might seem dominant in trading but still face strong competitive pressure from global rivals or technological challengers. Static indicators like market share and concentration ratios can misjudge market power and therefore should be complemented by forward-looking measures: innovation capacity, global contestability, and cross-market connectivity. For instance, US authorities - in comparison to the EU Commission - put greater emphasis on technological competition, innovation incentives, and the ability of new trading platforms to disrupt incumbents.¹⁴⁶ This approach aligns more closely with the economic characteristics of digital and financial infrastructure markets, where competitive pressure often arises not from existing market participants but from potential entrants leveraging technological advancements.

The relationship between prudential regulation and merger control in financial markets reflects an ongoing tension between market stability and competition. Whereas stricter prudential rules such as MiFID II and EMIR were introduced to strengthen transparency and resilience, these measures also increased compliance costs and market entry barriers, influencing how concentration is assessed

¹⁴¹ BIS (2011), The macrofinancial implications of alternative configurations for access to central counterparties in OTC derivatives markets. CGFS Papers No 46. P. 10.

¹⁴² Hautsch N., Scheuch C., Voigt S. (2018), Building Trust Takes Time: Limits to Arbitrage for Blockchain-Based Assets.

¹⁴³ ESMA (2016), Possible systemic risk and cost implications of interoperability arrangements. Final report, p. 7.

¹⁴⁴ David S. Evans, Michael Noel, Defining Antitrust Markets When Firms Operate Two-Sided Platforms, 2005 Colum. Bus. L. Rev. 667.

¹⁴⁵ Filistrucchi, Lapo (2008), A SSNIP Test for Two-Sided Markets: The Case of Media (October 2008). NET Institute Working Paper No. 08- 34.

¹⁴⁶ USA v. Deutsche Börse AG and NYSE Euronext 2011, para 24.

under EU merger control.¹⁴⁷ In financial infrastructures, concentration may generate efficiencies that enhance liquidity and stability, while excessive fragmentation can undermine price discovery and create uncertainty. From a merger control perspective, this means that the traditional focus on preventing dominance must be balanced against the systemic benefits of scale. A transaction that consolidates liquidity across platforms or clearing systems may reduce short-term competition but improve market depth and resilience in the long run.¹⁴⁸ However, prudential regulation can also distort the competitive landscape by favouring large incumbents that can absorb regulatory costs, creating natural-monopoly effects. Merger control must therefore assess not only market share but also the regulatory barriers that shape effective contestability. In markets where entry is limited by prudential rules, concentration thresholds may not fully capture competitive pressure. Against this backdrop, mergers that enhance systemic resilience and ensure reliable market functioning could ensure a more flexible interpretation of concentration effects. Conversely, over-regulation that prevents efficient consolidation can leave fragmented infrastructures that are less competitive internationally.

Comparison with the US

The regulatory reforms introduced in the United States in the aftermath of the 2008 financial crisis has important implications for merger control in the EU. Notably, they mandated central clearing of standardised OTC-derivatives, enhanced reporting and transparency, and consolidated oversight of systemically important market infrastructures. Although these reforms were driven by stability concerns, they also reshaped the competitive dynamics of trading, clearing and settlement markets. Accordingly, European competition authorities can draw valuable lessons when assessing mergers among exchanges, clearinghouses and data providers.

First, by requiring cleared trades and promoting electronic trading of standardised derivatives, US reforms reduced the functional distinction between OTC and exchange-traded markets. This convergence suggests that competition authorities should not rigidly assume separate relevant markets for exchange-traded and OTC segments. In the EU, merger assessments should also recognise that as OTC platforms adopt exchange-like features and interoperate with central counterparties; substitutability between venues increases and a unified competitive space may be more appropriate. Second, US regulatory design emphasised that scale and connectivity matter for both efficiency and resilience. Oversight was extended not only to institutions but also to key infrastructure such as clearing and settlement systems. For EU merger control, this means that the consolidation of infrastructure firms should not automatically be viewed as anti-competitive. When integration enhances liquidity, lowers cost, strengthens global reach or improves resilience, these benefits may justify merger approval or tailored remedies. Third, the US reforms highlight the importance of transparency and data in monitoring market structure and performance. In Europe, competition authorities would benefit from comparable granular data when defining markets, assessing substitutability, and estimating competitive constraints across venues. Fourth, the US approach underscores the need for cross-product and cross-jurisdictional harmonisation. The reforms sought to align securities and futures regulations and to coordinate between agencies to prevent regulatory arbitrage. For the EU, a similar alignment between MiFID II, EMIR, national laws and EU merger control practice would reduce artificial segmentation. Moreover, given the globalisation of trading and

¹⁴⁷ Mahmood Bagheri and Chizu Nakajima (2004), 'Competition and Integration among Stock Exchanges: The dilemma of Conflicting Regulatory Objectives and Strategies', *Oxford Journal of Legal Studies*, Vol. 24, No. 1 (2004), p. 71.

¹⁴⁸ Bullard, N. (2011), Competition, Regulation and the Financial Crisis, *Journal of Financial Regulation and Compliance* 8.

clearing, European merger analysis must take account of non-EU competitors capable of entering or expanding into EU markets.

Interim conclusion: The analysis of both geographic market definition and the relationship between exchange-traded and OTC markets underscores a broader structural challenge for EU merger control: competition increasingly takes place within globally interconnected, technologically convergent ecosystems, while legal assessments still rely heavily on territorial boundaries and rigid market segmentation. As cross-border liquidity, algorithmic trading, and central clearing link European markets to US, UK and Asian infrastructures, the competitive space becomes functionally global rather than geographically confined.¹⁴⁹ Likewise, advances in electronic OTC platforms and regulatory reforms have narrowed the operational distinction between OTC and exchange-based trading, creating cross-venue substitution patterns that static market definition tools often oversee. Both developments point towards the need for a more dynamic framework that better reflects network effects, technological convergence, strategic resilience considerations and global competition.

¹⁴⁹ European Commission (2024), Communication from the Commission - Commission Notice on the definition of the relevant market for the purposes of Union competition law, C/2023/6789.

5 Discussion on efficiency gains

5.1 Why financial infrastructure mergers can cause competition concerns?

Like many other infrastructures, financial market infrastructures – be they trading centres or clearing houses – also have certain characteristics. These ensure that the markets in which they operate consistently exhibit strong tendencies towards concentration and are characterised by only limited competition. This is due to just a few factors.

Network effects: Firstly, there are typically significant network effects. For example, market players often have an interest in becoming active on trading centres or exchanges where other market participants are already active. Each individual market participant benefits from the fact that other participants are already trading there. A higher number of participants increases the chances of finding a partner who is willing to trade at the individually desired conditions, quantities and prices, at any time. A high number of market participants thus promotes the liquidity of a market, which in turn tends to reduce the costs of a transaction on the trading venue and thus attracts further potential participants. Due to the existence of network effects, the attractiveness of a trading centre often increases with the number of users, both for investors and lenders, but also for market players acting as intermediaries.¹⁵⁰ Such effects can also be observed on the clearing markets. If the number of market participants that clear their contracts with a particular clearinghouse (CCP) increases, the interest of other market participants in doing the same with this CCP also increases. This allows efficiencies to be achieved, such as with regard to the netting of positions.^{151,152}

Economies of scale and scope: Secondly, the trading and clearing business of financial market infrastructure operators is strongly characterised by economies of scale and scope. The establishment of infrastructure, whether for trading or clearing, often results in high fixed costs and only low variable costs. As a rule, the fixed costs accrue largely irrespective of the number of market participants, while each additional participant incurs only low marginal costs. Trading centres and clearing houses that attract a significant number of market participants often benefit from lower average costs compared to competitors that do not.¹⁵³

The network effects inherent in the markets as well as economies of scale and scope therefore regularly result in high barriers to market entry and the tendency for infrastructure operators to have a high degree of market power and for the markets to be highly concentrated in some cases. Potential competitors may therefore find it difficult or face high hurdles to entering established (trading or clearing) markets, as they lack a critical mass of market participants that could tempt other market participants to switch trading centres. The contestability of the markets is therefore often more difficult. Due to the aforementioned effects and associated economies of scale, operators of financial market infrastructures may develop a vested interest in maintaining or further strengthening the barriers to market entry through mergers.

Such a market environment with only limited competition is traditionally undesirable from a competition policy perspective, as it harbours the risks of abusive market behaviour on the part of dominant infrastructure operators, limited product choice, high prices for market participants or

¹⁵⁰ EU Commission (2017), Commission Decision declaring a concentration to be incompatible with the internal market and the functioning of the EEA Agreement (Case M.7995- Deutsche Börse/London Stock Exchange), 29 March 2017. Page 19 ff.

¹⁵¹ Pirrong, C. (2011), The economics of central clearing: theory and practice.

¹⁵² Demange, G., & Piquard, T. (2023), On the Choice of Central Counterparties in the EU. *Journal of Financial Markets*.

¹⁵³ Pirrong, C. (2011) and Demange, G., & Piquard, T. (2023)

monopoly returns for operators and the undermining of incentives for innovation. It is also clear, however: Even if the aforementioned network effects and economies of scale and scope are a warning signal from a competition perspective, they are not sufficient grounds for competition policy intervention. It cannot be ruled out, for example, that the anti-competitive impact of the effects will be reduced by innovations, product differentiation, specialisation or new technological developments, or that operators of financial market infrastructures with market power today can be prevented from acting in a potentially anti-competitive manner by potential or imminent market entries.¹⁵⁴

Nevertheless, it is understandable that the structural characteristics of financial market infrastructures can give rise to competition law concerns and that mergers between established operators of financial market infrastructures, especially those with significant market shares and market power, are viewed critically. For the purposes of the Merger Regulation, it often cannot be ruled out from the outset that such mergers may be capable of significantly impeding effective competition. Regulatory and political efforts aimed at achieving a competitive trading or clearing environment are also understandable. This is also true, in principle, beyond the purely competitive focus, of the endeavour to limit risks to the stability of the financial markets. If we look at CCPs, for example, we can see that they have become systemically important institutions in recent years, and their failure would have serious negative consequences for the financial markets and national economies. Their status as "too big to fail" institutions may encourage false incentives for clearinghouses, promote moral hazard behaviour and, if they fail, risk shifting risks, that should be borne by the market players themselves, onto taxpayers. A competitive clearing environment may therefore be the best way to prevent the emergence of such scenarios.¹⁵⁵

5.2 Why financial infrastructure mergers can create efficiency gains?

Due to their structural characteristics, as outlined above, it is no accident that merger projects between financial market infrastructure operators regularly give rise to concerns about their anti-competitive effects. Interestingly, however, these characteristics can also have equally positive effects, not just on the owners or shareholders of the operators themselves, but also more broadly, for example among market participants or customers and beyond.¹⁵⁶

Market liquidity is a good example of this. The aforementioned network effects as well as economies of scale and scope mean that mergers between trading centres create the potential to increase market liquidity. Higher market liquidity in turn brings several advantages for traders and investors. For example, it reduces the risks of trading for both sides. This is because when markets are more liquid and therefore deeper, it is easier for both sides to trade in line with their respective liquidity preferences. Liquidity lowers both the return on capital that investors demand and the cost of capital that borrowers, such as companies in the real economy have to bear when aiming to raise capital via the financial markets. Markets that are more liquid make it easier for both investors and borrowers to enter and exit trading at the desired times, and are therefore more attractive. The costs of trading or the so-called bid-ask spreads tend to be lower, as the risk premiums for trading partners who use less liquid markets may be lower. Mergers of trading centres can therefore increase efficiencies by

¹⁵⁴ EU Commission (2017).

¹⁵⁵ Eckhardt, P. and Kotowski, A (2024) Euro-Clearing after Brexit Ten guardrails for resilient and capital-market-efficient EU clearing markets, cepStudy, 8 January 2024.

¹⁵⁶ Whether these positive effects (can) offset the negative competitive consequences naturally depends on the individual case and is not part of this analysis.

increasing market liquidity, which can benefit not only the merging companies, but also third parties - direct market participants, customers, companies and consumers.^{157,158,159,160}

Another example, which is a direct consequence of more liquid markets, is that they enable more efficient pricing. The more liquid the markets, the less distorted the prices. Traders who want to offer shares, derivatives, bonds or other financial instruments at efficient prices can do so more easily when the markets are more liquid. For their part, investors can be sure that their orders will be executed on attractive terms. This is also associated with greater price transparency. More liquid markets are in a better position to generate information efficiency. Any (short-term) asymmetries in this respect are reduced more quickly, prices are more likely to reflect fundamental values, and the costs of obtaining information are lower. Mergers of exchanges and trading centres that serve to increase market liquidity may also therefore contribute to generating these two effects – price efficiency and price transparency – which are particularly beneficial for market participants. If mergers of exchange and trading centre operators succeed in creating more liquid and transparent markets, this may also encourage investment. The reason being that more transparent, undistorted prices, in combination with a higher probability of finding a trading partner at any time and being able to enter or exit the trade, reduces investment risks and at the same time increases the attractiveness of capital market financing.^{161,162}

Mergers can also make an important contribution to greater capital market integration and more efficient capital markets. Fragmented markets make it difficult for supply and demand to meet. This means that scarce capital does not always flow to where it can be utilised most efficiently. The resulting inefficient allocation of capital means that those companies or sectors that could utilise funds most productively do not necessarily receive them. This applies both in a national and cross-border context. Improved integration across borders, for example through cross-border mergers, can favour additional cross-border investment activities and promote the diversification of financial assets.¹⁶³ Making the allocation of capital via the capital markets more efficient also promotes growth, for example by enabling companies to expand their business activities and increase their productivity.¹⁶⁴ Years of unsuccessful efforts to establish a capital markets union in the EU show that Europe has fallen behind many other jurisdictions and urgently needs to catch up. The trade and post-trade landscape in the EU is highly fragmented and also strongly characterised by national influences. The majority of trading on trading venues in the individual countries still takes place on the domestic stock exchanges.¹⁶⁵ A fragmentation of liquidity pools along national borders requires recourse to the services of a large

¹⁵⁷ Demirgüç-Kunt, A. and Ross, L. (1996), *Stock Markets, Corporate Finance, and Economic Growth: An Overview*, The World Bank Economic Review, Vol. 10, No. 2, 223-239.

¹⁵⁸ Ross, L. (1991), *Stock Markets, Growth, and Tax Policy*, Journal of Finance, Vol. 46, No. 4 (September), 1445-1465.

¹⁵⁹ Douglas, D. and Dybvig, P. (1983), *Bank Runs, Deposit Insurance, and Liquidity*, Journal of Political Economy, Vol. 91, No. 3 (June), 401-419.

¹⁶⁰ Hüther, M. and Demary, M. (2016), *The Economic Effects of a Merger of Deutsche Börse and London Stock Exchange: PART 1: Contribution to Financing the Economy*, 2 June 2016, DIW Institute of the German Economy Cologne.

¹⁶¹ Schiereck, D. (2017), *A multiperspective economic analysis - Why the merger between Deutsche Börse and the London Stock Exchange will strengthen Frankfurt as a financial centre*, January 2017.

¹⁶² Lawrence, G. and Milgrom, P. (1985), *Bid, Ask and Transaction Prices in a Specialist Market with Heterogeneously Informed Traders*, Journal of Financial Economics, No. 14, 71-100.

¹⁶³ Eckhardt, P. and Baran, A. (2016), *cepPolicyBrief No. 1/2016 on a Communication by the Commission on an "Action plan on a capital markets union"*.

¹⁶⁴ Böninghausen, B., Evrard, J., Gati, Z., Gori, S., Lambert, C., Legran, D., ... & Overbeek, F. V. (2025), *Should We Mind the Gap? An Assessment of the Benefits of Equity Markets and Policy Implications for Europe's Capital Markets Union*, ECB Occasional Paper, (2025/373).

¹⁶⁵ Arampatzis, A. S., Christie, R., Evrard, J., Parisi, L., Rouveyrol, C., & Overbeek, F. V. (2025). *Capital Markets Union: A Deep Dive-Five Measures to Foster a Single Market for Capital*. ECB Occasional Paper, (2025/369).

number of intermediaries, which drives up transaction costs.¹⁶⁶ A few indicators underpin these observations. For example, an indicator designed by the ECB on financial integration shows a lower value today than it did 20 years ago.¹⁶⁷ And bank financing is still usually the first choice in the EU. Financing via the capital markets is far less common. The proportion of debt financing in the EU, for example, is significantly higher than in the US (55% vs. 22%) and liabilities from capital market-based financing are significantly lower (21% vs. 45%).¹⁶⁸ Furthermore, more than 50% of trading on the five most relevant trading venues for share indices in Western Europe took place on the respective domestic stock exchange and only a negligible proportion on other stock exchanges. The immediate consequence: Compared to the US markets, the EU markets are often at a disadvantage in terms of market depth and liquidity due to a lack of capital market integration and are less able to take advantage of the associated efficiency advantages.^{169,170} The total volume of private and public financing in Europe has stagnated at around 3% of GDP for many years. This contrasts with the USA where it rose from a significantly higher level of 6% of GDP in 2014 to 8% in 2024, which is 5% points higher than in the EU.¹⁷¹

Overcoming these discrepancies requires much more than "simple" corporate consolidation – e.g. the removal of legal barriers in insolvency and tax law. However, voluntary, market-driven mergers can be a lever for realising the efficiency benefits associated with integrated markets.

A (merger-induced) stronger integration of the capital markets in the EU could also act as a buffer to cushion shocks in the banking sector and thus represent an important pillar for strengthening the resilience of the European economies. If the bank-based credit markets come under pressure, as during the global financial crisis, trading markets could play an important role as an alternative or supplementary option. Liquid, functioning and integrated trading markets therefore also act as a kind of protective shield for companies in the real economy that are dependent on access to financing (even in times of crisis).^{172,173} Well-developed stock markets can therefore reduce dependence on debt capital and act as a more stable source of financing. The systemic risks are also seen as higher in economies that focus on financing via banks than in those that do not.¹⁷⁴

(External) shocks represent another risk that can be mitigated through deeper and, in particular, more integrated cross-border trade markets. If the market participants are broadly spread (across countries), risks can also be spread and shared more widely. Country-specific shocks, for example, do

¹⁶⁶ Council of the European Union (2024), Financial Service Committee's contribution to the follow-up work to the Eurogroup statement on the future of the CMU, 15378/24, 15 October 2024.

¹⁶⁷ The price-based indicator for financial integration had a value of 0.7086 in February 2025. In February 2005 it stood at 0.8199 [ECB Indicators of financial integration and structure in the euro area].

¹⁶⁸ Eckhardt, P. and Anastasia, K. (2024), The Quest for a Bold Capital Markets Union - Overcoming the Reluctance of EU Retail Investors to Participate in Capital Markets, cepInput, 14 May 2024.

¹⁶⁹ Arampatzi, A. S., Christie, R., Evrard, J., Parisi, L., Rouveyrol, C., & Overbeek, F. V. (2025), Capital Markets Union: A Deep Dive-Five Measures to Foster a Single Market for Capital, ECB Occasional Paper, (2025/369).

¹⁷⁰ Prof. Dr Joachim Nagel, President of the Deutsche Bundesbank, emphasised in a speech at the end of November 2025: "Deeper and more integrated capital markets are [...] also necessary for medium-sized and large companies. The European capital markets are still fragmented and underdeveloped compared to their counterparts in the United States. The lack of integration leads to less depth and liquidity, making it more difficult for companies to raise the funds they need for further growth. [Deutsche Bundesbank (2025), Produktivität und Lebensstandard in Europa - eine langfristige Betrachtung, Speech at the European Banking Congress, Joachim Nagel, 21 November 2025, available [here](#)].

¹⁷¹ AFME (2025), Capital Markets Union Key Performance Indicators - Eighth Edition - Turning strategy into action during a period of change, November 2025.

¹⁷² Demertzis, M., Domínguez-Jiménez, M., & Guetta-Jeanrenaud, L. (2021), Europe should not neglect its Capital Markets Union (No. 13/2021). Bruegel Policy Contribution.

¹⁷³ Gambacorta, L., Yang, J., & Tsatsaronis, K. (2014), Financial structure and growth, BIS Quarterly Review March.

¹⁷⁴ Böninghausen, B., Evrard, J., Gati, Z., Gori, S., Lambert, C., Legran, D., ... & Overbeek, F. V. (2025).

not have to be cushioned by domestic investors alone, but can be spread across more shoulders. (Cross-border) mergers of financial market infrastructure operators therefore have the potential to increase the risk-sharing capabilities of an economy or the EU as a whole, to ensure greater diversification and to help cushion such shocks. Studies show, for example, that the capital markets in the US are much better able to do this than those in the EU.^{175,176}

In addition, larger and, in particular, transnationally integrated trading markets are an opportunity to gain easier access to investor groups that cannot be reached via local or national markets, or only to a limited extent. For international investors, participating in integrated markets is often more interesting than focussing on local and/or small markets.¹⁷⁷ Since the attractiveness of a financial market infrastructure inherently increases with its depth and liquidity, and feedback effects often exist in this regard, this knowledge may also encourage companies in the sector, that are considering a merger, to pass on efficiency gains arising from a merger to potential third-country investors so as not to lose them to global competitors.

Compared to fragmented capital markets or bank financing, more integrated capital markets in the EU – merger-driven or not – may also be more capable of supporting long-term and especially high-risk investments and innovative economic activities as well as research and development.¹⁷⁸ In the past, young, barely established companies in the EU in particular have often used trading centres outside the EU to raise capital and finance their growth. Deep capital markets are essential for mobilising large-volume venture capital investments.¹⁷⁹ Such investments are still a marginal phenomenon in the EU however; in the US, they are around eight times higher in total volume relative to GDP than in France and Germany, for example.¹⁸⁰ Over the last 10 years, venture capital funding in the EU has averaged 0.2% of GDP per year, compared to 0.7% in the US, which is attributed in particular to the fragmentation of private capital pools.¹⁸¹ In the first three quarters of 2025, there were 180 IPOs in the USA alone with a total issue volume of USD 48.3 billion. Around 50% of these came from non-US companies. Greater China recorded 155 IPOs with a volume of USD 35.9 billion. With 73 IPOs and a total volume of USD 9.4 billion, Europe is clearly lagging behind.¹⁸² This also applies to Germany, where only five IPOs took place during this period.¹⁸³ According to the Association for Financial Markets in Europe (AFME), the volume of equity financing in Europe continued to decline in the first half of 2025. The IPO volume fell by 23%, while the opposite trend was observed in the USA, China, Japan and Australia. IPO activity there rose by 20-60%.¹⁸⁴

¹⁷⁵ The capital markets in the USA can absorb 30-35% of country-specific shocks. Those in the euro area only manage 10-15% [European Central Bank (2024), *The euro at 25: what next for Economic and Monetary Union?*, Introductory remarks by Piero Cipollone, Member of the Executive Board of the ECB, at the European Parliamentary Week 2024, 12 February 2024].

¹⁷⁶ German Council of Economic Experts (2023), *Capital Market in Germany and the EU: Making better use of potential* - Chapter 3, Annual Report 2023/2024.

¹⁷⁷ LBBW (2025), *Solving Europe's growth brake: Back on the high-tech drive*, Zimmermann, G. and Sarrazin, J., 22 October 2025.

¹⁷⁸ German Council of Economic Experts (2024), *Strengthening the European Capital Markets*, PolicyBrief 2/2024.

¹⁷⁹ LBBW (2025).

¹⁸⁰ German Council of Economic Experts (2024).

¹⁸¹ Arnold, N.G., Claveres G. and Frie J. (2024), "Stepping Up Venture Capital to Finance Innovation in Europe", IMF Working Paper, No 2524/146, Washington, DC.

¹⁸² In the previous year, the number of IPOs in the USA totalled 121 and was therefore significantly lower. By contrast, the opposite trend is evident in Europe. In the previous year, the number of IPOs totalled 97. [Ernst & Young (2025), *EY IPO Barometer, International IPO markets grow significantly in the third quarter*, 1 October 2025].

¹⁸³ Ernst & Young (2025).

¹⁸⁴ AFME (2025).

The current fragmentation of EU markets and their lack of depth not only results in the use of stock exchanges in third countries, but also reinforces the tendency to relocate business activities and expertise and leads to a loss of European innovative strength.^{185,186} Banks are often unable to fulfil the role of financier in these areas, as they often lack the necessary experience with young companies like start-ups and these companies have little or no assets that can be used as collateral for loans. Less fragmented capital markets may therefore be a key to retaining innovative companies in the EU and thus contribute to strengthening the EU's (long-term) productivity.^{187,188,189,190}

Deeper capital markets are also a basis for stimulating growth and productivity.¹⁹¹ There is a positive and significant statistical correlation between capital market development and the productivity or growth of an economy, which is particularly pronounced when the markets – as in the EU – are still poorly integrated and only play a limited role, compared for example to financing via bank loans. More developed markets are better able to fulfil this function, as they are able to steer capital away from unproductive and towards productive companies more easily.^{192,193} In this context, mergers between financial market infrastructures would also have the potential to make an important contribution in this respect.

If we also take a separate look at the clearing markets, we can see that economies of scale favour the concentration of these markets and encourage the emergence of natural monopolies. However, this is not only linked to negative (competitive) consequences, which can be exacerbated by mergers. At the same time, centralised clearing of financial transactions, such as derivative contracts, by a single entity, creates the potential for leveraging the benefits of central clearing. These can be passed on to the counterparties involved in the transactions. For example, risk-reducing netting techniques can be used via central clearing, whereby the transactions of several market participants are consolidated and do not have to be settled individually. Clearinghouses can thus reduce their average counterparty risk through the mechanism of clearing mutually offset transactions. The advantages thereby created in turn offers scope for clearinghouses to pass them on to market participants, in particular in the form of a reduction in the collateral that they usually have to provide for clearing transactions. By helping to increase this clearing potential, mergers may therefore generate efficiency gains that will most notably benefit the players in the relevant markets. These and other potential efficiency benefits are generally difficult or impossible to achieve where clearing activities are distributed across several clearing houses – partly due to the network effects that are at work here. Such a distribution is often accompanied by higher costs, for example because multiple and higher contributions have to be paid to default funds or operational inefficiencies and complexities remain.¹⁹⁴

¹⁸⁵ EU Commission (2024a), The Draghi report: In-depth analysis and recommendations (Part B), 9 September 2024.

¹⁸⁶ German Council of Economic Experts (2024).

¹⁸⁷ Noyer, C., d'Amarzit, D., Calcoen, N., de Courtois, F., Kallala, M., de Mazières, B., ... & Pointet, A. (2024), Developing European capital markets to finance the future. April 2024.

¹⁸⁸ Deutsche Bundesbank (2015), Deutsche Bundesbank's reply to the European Commission's Green Paper "Building a Capital Markets Union".

¹⁸⁹ German Council of Economic Experts (2020), Corona crisis - overcoming it together, strengthening resilience and growth, Annual Report 2020/2021.

¹⁹⁰ International Monetary Fund (2023), IMF Background Note on CMU for Eurogroup, June 15, 2023.

¹⁹¹ Beck, T., R. Döttling, T. Lambert and M. Van Dijk (2023), Liquidity Creation, Investment and Growth, *Journal of Economic Growth* 28 (2), 297-336.

¹⁹² German Council of Economic Experts (2023).

¹⁹³ For example, an increase in stock market capitalisation leads to a higher growth rate in real per capita income and a higher growth rate in total factor productivity [German Council of Economic Experts (2023)].

¹⁹⁴ Eckhardt, P. and Kotowski, A. (2024), Euro-Clearing after Brexit - Ten guardrails for resilient and capital-market-efficient EU clearing markets, cepStudy, 8 January 2024.

A less fragmented financial market infrastructure landscape may also, under certain circumstances, pave the way for maintaining or strengthening financial stability. This may at first sound counterintuitive if you look at the development of the clearing markets, for example, where CCPs have frequently grown into systemically important institutions in recent years and taken on the form of natural monopolies whose failure would have serious consequences for the stability of the financial markets. The reality therefore calls for appropriate regulation and supervision. At the same time, the existence of competitive and liquid clearing markets in the EU may also be a necessity to avert financial stability risks. The inherent tendency of these markets towards monopoly-like structures may mean that such monopolies develop in third countries leading to EU market participants becoming dependent on the functioning of markets in other EU countries and giving rise to dependencies. The failure¹⁹⁵ of central CCPs in third countries – the prevention of which the EU has only limited influence over – could have "significant destabilising effects on clearing members, their clients and other financial market infrastructures", especially if no equivalent alternatives are available in the EU – quickly and without significant costs. The existence of such "equivalent" clearing capacities in the EU would therefore be a necessity in order to ensure smooth functioning of the markets in the EU, to protect against disruptions in third countries and to prevent possible dependencies.^{196,197,198,199} Deeper markets may also contribute to more stable markets in the area of equity trading because if the investor base is more diversified, any losses can be more effectively distributed and spread across larger groups of players.²⁰⁰

Furthermore, market-driven consolidation with regard to operators of financial market infrastructures may also have a strategic component and contribute to strengthening the (geopolitical) resilience of the EU. The existence of globally competitive and liquid trading and clearing markets in the EU amounts to a kind of insurance or fall-back option in an age of increasing geopolitical upheaval and uncertainty. Failing to retain the necessary capacities, skills and expertise in the EU creates dependencies and vulnerabilities that, once created, are difficult to reduce or eliminate. This loss, which is already well advanced – see the low level of IPO activity in the EU –, also involves forfeiture the EU's position as an attractive investment location. Attractive, globally competitive trading and clearing markets in the EU are therefore a basic prerequisite for a sovereign Europe with open markets, increased resilience and stability.^{201,202,203}

¹⁹⁵ This may also include cases where EU market participants are only given restricted access (for political reasons) or their interests are given less weight compared to domestic players.

¹⁹⁶ EU Commission (2022), Commission Staff Working Document, Impact Assessment Report, SWD(2022) 69.

¹⁹⁷ ESMA (2021), Assessment Report under Article 25(2c) of EMIR, Assessment of LCH Ltd and ICE Clear Europe Ltd, ESMA91-372-1945, 16 December 2021.

¹⁹⁸ ECB (2023), Opinion of the European Central Bank of 26 April 2023 on a proposal for a regulation amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards excessive exposures to third-country central counterparties and improve the efficiency of union clearing markets and a proposal for a Directive amending directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 as regards the treatment of concentration risk towards central counterparties and the counterparty risk on centrally cleared derivative transactions (CON/2023/11) 2023/C 204/03.

¹⁹⁹ ESRB (2022), ESRB response to the European Commission targeted consultation on the review of the central clearing framework in the EU, ESRB/2022/0047, 22 March 2022.

²⁰⁰ Böninghausen, B., Evrard, J., Gati, Z., Gori, S., Lambert, C., Legran, D., ... & Overbeek, F. V. (2025).

²⁰¹ Council of the European Union (2019). A new strategic agenda for the EU - 2019 - 2024; European Council conclusions, 1-2 October 2020.

²⁰² European Commission (2020), EU Open Strategic Autonomy and the Transatlantic Trade Relationship.

²⁰³ European Commission (2022), COM(2022) 696, Communication from the Commission to the European Parliament, the Council, the European Central Bank and the European Economic and Social Committee, A path towards a stronger EU clearing system.

Interim conclusion: Some structural factors inherent in the trading and clearing markets have restrictive effects on competition. They favour the emergence of monopolies, the formation of highly concentrated markets and the establishment of high barriers to market entry. It is therefore understandable and necessary that mergers in this segment should be given special attention in order to avoid harm to consumers and customers. However, as shown, mergers can also generate efficiency benefits – e.g. through liquidity advantages, lower transaction costs, more transparent prices – and, if such advantages are defined more broadly, can also have strategic relevance – e.g. in terms of strengthening the EU's resilience and supporting the EU as an IPO location. Refraining from the merger of financial market infrastructure operators may therefore mean that the aforementioned advantages cannot be realised and that potentially less efficient market structures will remain in place. Whether the aforementioned, and deliberately broadly defined, potential efficiency benefits outweigh the adverse competitive effects naturally depends on the individual case and cannot and should not be answered here. Nevertheless, the discussion serves to highlight which factors could play a role in the analysis.

5.3 How does the EU merger framework currently treat efficiency gains?

Efficiency gains play only a subordinate role in the EU Merger Regulation. They are explicitly mentioned only as a recital, but not as part of the more binding articles. The Regulation allows the parties to demonstrate substantiated and likely efficiencies, requires these to be taken into account in merger control and signals that efficiencies may counteract the merger's effects on competition.²⁰⁴ The guidelines on horizontal mergers also explicitly address the role of efficiencies and clarify the requirements of the Merger Regulation. In principle, they recognise that mergers are not necessarily anti-competitive per se but may in fact both be in line the requirements of dynamic competition and increase the competitiveness of an economic sector. In addition, efficiencies could "counteract" the competitive effects. Here, the guidelines focus in particular on "potential harm to consumers", which could be counteracted by efficiency gains.²⁰⁵ However, for efficiency gains to be sufficient to offset the effects on competition, certain "cumulative" conditions must be met:

Requirement 1: The efficiency benefits must "benefit consumers" and lead to "net benefits" for them.²⁰⁶ This implies several things: Firstly, consumers "must not be worse off" as a result the merger.²⁰⁷ Secondly, the benefits to consumers "should" be "substantial".²⁰⁸ Thirdly, the benefits "should" be "timely".²⁰⁹ The Commission "can" therefore assign less weight to efficiency benefits to the consumer that are only going to materialise in the distant future than it assigns to benefits arising "within a foreseeable period". Benefits lying further in the future may therefore not be recognised as a compensating factor.²¹⁰ And fourthly, they "should" benefit consumers "in those relevant markets".²¹¹ Potential efficiency benefits for consumers include lower prices²¹², but also new or

²⁰⁴ Recital 29 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ("EC Merger Regulation").

²⁰⁵ Paragraph 76 of the Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2004/C 31/03).

²⁰⁶ Paragraph 79 and 80, 2004/C 31/03.

²⁰⁷ Point 79, 2004/C 31/03.

²⁰⁸ Point 79, 2004/C 31/03.

²⁰⁹ Point 79, 2004/C 31/03.

²¹⁰ Point 83, 2004/C 31/03.

²¹¹ Point 79, 2004/C 31/03.

²¹² Point 80, 2004/C 31/03.

improved goods or services²¹³. The degree of negative impact on competition also plays a role. Where negative impact is large, the claimed efficiency benefits must firstly be "substantial", secondly "likely to be realised", and thirdly "passed on to consumers to a sufficient degree" in order to counteract the impact. If the merger leads to a monopoly or similar market position, it is unlikely that such a balance will be achieved.²¹⁴

Requirement 2: The efficiency benefits must be merger-specific, i.e. caused by the merger. Firstly, this means that the benefits must be a "direct consequence" of the merger. And secondly, the benefits cannot be achieved to a similar extent by taking a less anticompetitive alternative course of action.²¹⁵

Requirement 3: The efficiency benefits must be verifiable. This is a condition for them to be taken into account by the Commission. They should therefore be presented as precisely and convincingly as possible and be quantified wherever possible. If there are no figures, a "clearly identifiable" positive impact on consumers must be foreseeable. The later the claimed efficiency benefits can be realised the less likely they are to be considered verifiable. Their existence will then be difficult to verify with any certainty.²¹⁶

In general, the Commission may declare a merger compatible with the internal market on the basis of efficiency gains that counteract the effects on competition. However, it must base such a judgement on "any substantiated" efficiency benefits. There must also be "sufficient evidence" that the efficiencies will enable and incentivise the merged companies to stimulate competition for the benefit of consumers and that this stimulation of competition will counteract the adverse effects of the merger on competition.²¹⁷

5.4 How the EU Commission wants to treat efficiency gains in the future?

Efficiency benefits play a prominent role in the consultation on the revision of the merger guidelines. This indicates that the Commission sees a definite need for change when it comes to taking such benefits into account as part of merger control and it has already made initial suggestions in this regard.

Firstly, the Commission emphasises the role of the Merger Regulation as a clear guard rail for the protection of effective competition and the clear objective that efficiency gains must benefit the consumer, taking into account both intermediate and final consumers. It has thereby signalled that it does not intend to adapt the Regulation for the purposes of reassessing efficiency gains, but will continue to rely on this legal basis.

Secondly, it recognises that there may be efficiency benefits that could compensate for competitive harm to consumers, citing as examples lower prices and improved products or services. These efficiency benefits could be realised by way of merger-related cost savings²¹⁸ or higher levels of investment or innovation²¹⁹. The Commission thereby clearly indicates that it has probably paid too little attention to such efficiency gains in the past. This is also evident from its admission that it has not yet approved any merger projects on the basis of compensatory efficiency benefits.

²¹³ Point 81, 2004/C 31/03.

²¹⁴ Point 84, 2004/C 31/03.

²¹⁵ Paragraph 78 and 85, 2004/C 31/03.

²¹⁶ Paragraph 78 and 86, 2004/C 31/03.

²¹⁷ Point 77, 2004/C 31/03.

²¹⁸ EU-Commission (2025), Merger Guidelines consultation, In-depth consultation, Topic F: Efficiencies, available [here](#).

²¹⁹ EU-Commission (2025), Merger Guidelines consultation, In-depth consultation, Topic F: Efficiencies, available [here](#).

Thirdly, it sees practical difficulties in the complex trade-off between the potentially anti-competitive effects of mergers and the potential efficiency benefits and identifies an asymmetry in this trade-off, at least in part. This indicates that, relatively speaking, it has so far given too little weight to the potential efficiency benefits of mergers compared to the competition-related harm to consumers and that it sees room for rebalancing in this regard.

Fourthly, the Commission points to possible time differences in the realisation of efficiency gains compared to the realisation of anti-competitive effects. This is based on the fact that the merger control guidelines currently give less weight to efficiencies that can potentially only be realised in the medium to long term than to those that can be realised immediately after a merger, whereas there is no such "penalty" attached to the longer term when assessing anti-competitive effects.

Fifthly, it points out that there is currently uncertainty as to what type of evidence or metrics can be considered necessary or sufficient to substantiate claimed efficiencies on the part of the merging parties. Providing valid and reliable evidence may also be a major hurdle. The Commission is thus indicating that it sees the need for clearer guidelines on efficiency claims on the one hand and, on the other, the potential for a reduction in the evidential value of the claims.

And sixthly, it sees challenges in analysing whether the efficiency gains could also be achieved without a merger, for example through cooperation agreements that generate fewer anti-competitive effects.²²⁰

5.5 How should the EU Commission treat potential efficiency gains (in the financial markets infrastructure sector)?

As part of the revision of the guidelines on merger control, the Commission is planning to reconsider the role of efficiency defence without, however, wanting to make any changes at Level 1 – i.e. adjustments to the Merger Regulation in this regard. If this guideline is recognised or accepted as a given, it would mean that revised guidelines are not allowed to conflict with the existing rules at Level 1 or must be consistent with them. The central objectives of merger control – no significant impediment to competition in the internal market, maintenance and development of effective competition^{221,222} – therefore remain central. Nor can the Commission be obliged to take efficiency gains into account once the guidelines have been revised.²²³ In addition, the gains must in any case be "substantiated" and "likely", they must result from the merger and "in particular counteract the potential harm to consumers".²²⁴ By implication, this can only mean that the protection of effective competition will continue to be at the forefront of merger control in the future and that any potential efficiency benefits can only be given secondary consideration in the form of recourse to the instrument of "efficiency defence". The fact that the hurdles for claiming efficiency gains are structurally higher is appropriate in order to avoid undermining merger control as an instrument for safeguarding undistorted competition.

Nevertheless, some scope for adjustments is discernible with regard to the consideration of efficiency benefits:

²²⁰ EU-Commission (2025), Merger Guidelines consultation, In-depth consultation, Topic F: Efficiencies, available [here](#).

²²¹ Recital 5 Regulation (EC) 139/2004.

²²² Recitals 23 and Art. 2 (1) Regulation (EC) 139/2004.

²²³ According to the Regulation, the Commission "should" take account of efficiency gains. However, it does not have to. [Recital 29 of Regulation (EC) No 139/2004].

²²⁴ Recital 29 Regulation (EC) 139/2004.

Firstly, there is currently structural discrimination against potential efficiency benefits resulting from mergers that can only be realised in the medium to long term. The existing guidelines require the efficiencies to be "timely". Advantages arising in the distant future are given less relative weight.^{225,226,227} At the same time, the guidelines do not limit the period in which consumer harm from restrictions of competition can materialise. There is therefore an imbalance or asymmetry in the consideration of efficiency benefits vs. consumer harm, for which there is no sufficiently valid justification. Such justification would exist if efficiencies – in general and across all sectors and industries – were to materialise more quickly than merger-related restrictions on competition, with negative consequences for consumers. This is not the case, however, in such a generalised form. In this respect, a more flexible and consistent approach would therefore be appropriate, taking into account most notably industry-specific investment and innovation cycles. These cycles can often be longer, particularly in sectors where infrastructure plays an important role, which means that potential efficiencies are often realised in the medium to long term rather than in the short term. These sectors, which would include the telecommunications and energy sectors, for example, can also extend to the financial market infrastructure operator sector. Many of the potential efficiency benefits described above, which can be generated by mergers of such infrastructure operators, regularly require more time for their realisation than the three to five years typically set – without being specifically stipulated – by the Commission at present. Whilst defining an exact time frame – both for the potential realisation of efficiency benefits and for the possible cessation of consumer harm – might seem counterproductive in this regard, it does make sense to reduce the structural (temporal) discrimination against the consideration of efficiency gains and to take greater account of the cycles in different sectors.

Secondly, there is some – limited – scope for expanding the range of potential efficiency gains that can or should be taken into account. Limited because an excessive and unrestricted expansion would naturally make room for diverse (industrial policy) (individual) interests, which would jeopardise the maintenance of the central competitive focus of merger control and call into question the core function of the instrument. Any expansion therefore requires clear guard rails and safeguards against such "excesses". In any case, the Commission's consultation indicates that it is considering a range of possible efficiency benefits beyond the current focus on the expectation of achieving lower prices or improved products or services. There is some scope for change, although a distinction should be drawn between efficiency gains within relevant markets – currently a particular focus²²⁸ – and those outside a relevant market – likely to be a greater focus in future.²²⁹

With regard to "in-market efficiencies", for example, it would seem worth considering placing even greater focus on merger-driven and sufficiently verifiable investment, innovation or cost-cutting potential (e.g. reduction of marginal costs). At the same time, it may be possible to accept that these potentials do not become apparent immediately and that, while the negative competitive harm to consumers may initially outweigh the positive effects in the short term, a corresponding positive compensation will arise when the potentials are realised. In this sense, the focus would shift more

²²⁵ Point 79, 2004/C 31/03.

²²⁶ A period of three to four years is usually assumed here [EU Commission (2025), Merger Guidelines consultation, In-depth consultation, Topic F: Efficiencies, available [here](#)].

²²⁷ Point 83, 2004/C 31/03.

²²⁸ This refers to potential efficiency gains that result from mergers and from which the merging companies themselves and consumers within a relevant market benefit.

²²⁹ This refers to potential efficiency gains that also benefit third parties that are not part of a relevant market.

towards a dynamic interpretation of efficiency gains and away from a more static view.^{230,231} With regard to financial market infrastructures, this could mean that potential efficiencies that may arise from deeper, more liquid and more integrated trading and clearing markets – e.g. potential for increased information efficiency, price transparency, reductions in transaction or settlement costs (see also above) – are given greater weight, at least if there is a substantiated and high likelihood that these potential efficiencies will benefit the participants in the relevant markets and that the merger-related realisation of economies of scale and network effects, which can often have a restrictive effect on competition, will benefit consumers, i.e. in particular the direct and indirect customers of the operators of the financial market infrastructures.

Potential efficiency gains that do not flow directly to the consumers, participants or customers of a relevant market and from which they themselves may not benefit at all or only indirectly should also be allowed to play a more important role in future ("out-of-market efficiencies"). These are efficiency advantages which take the form of positive external effects and/or which promise to materialise outside the market under consideration. Such efficiency gains can currently only be used to a limited extent in the context of efficiency defence, as this instrument primarily focuses on efficiencies that are evident in the markets in which the restrictions on competition occur.²³² If consumer groups in other markets were to be taken into account, there would generally have to be a close connection ("considerable commonality") to the consumers in the relevant market. However, there is no established and clarified Commission procedure with regard to the consideration of "out-of-market efficiencies".²³³ One example of such "out-of-market efficiencies" are the potentially positive consequences for sustainability caused by a merger – such as an increase in investments in renewable energies – which also generate positive effects for third parties. These third parties can also be consumers in other relevant markets or the general public.²³⁴ Even in highly digitalised, often very dynamic and innovative markets, efficiencies can often be generated which, like spillover effects, not (only) occur within the actual relevant market, but also outside it.²³⁵ And such efficiencies can play a key role, not least in sectors characterised by a strong network or ecosystem – including the trading and clearing industry.²³⁶ Possible (short-term) harm to consumers, participants and/or customers within the ecosystem could be offset by efficiency gains, such as increasing the attractiveness of the EU as a location for investment and financing; preventing innovative companies in need of external financing from relocating to third-country infrastructures; the potential increase in resilience; the reduction of dependencies on non-European infrastructures and the merger-related promotion of stable financial markets.

A stronger consideration of such "out-of-market efficiencies" in the context of merger control would be worth considering – under certain conditions, to a limited extent and possibly subject to safeguards. This would recognise that mergers can also be capable of generating benefits for consumers outside a relevant market or for society or the economy as a whole. At present, companies wishing to merge

²³⁰ International Bar Association (2025), Antitrust committee mergers working group, Feedback on the European Commission's public consultation on the review of the EU merger guidelines, 3 September 2025.

²³¹ Studienvereinigung Kartellrecht (2025), Statement of the Studienvereinigung Kartellrecht e.V. on the revision of the Merger Guidelines of the European Commission, 3 September 2025.

²³² Monopolies Commission (2022), Main Report Competition 2022, Chapter IV Sustainability and Competition, Section 435.

²³³ International Center for Law & Economics (2025), Comments of the International Center for Law & Economics, EU Merger Review Guidelines, 3 September 2025.

²³⁴ Monopolies Commission (2022).

²³⁵ Eonic Partners (2025), Response to the EC consultation on its review of the Horizontal and Non-Horizontal Merger Guidelines, 3 September 2025.

²³⁶ International Bar Association (2025).

may be reluctant to push ahead with a merger because the efficiency gains within the market are supposedly low and not therefore capable of offsetting the negative restrictions on competition, even though, on the other hand, the merger could generate greater efficiency gains for third parties. Such efficiency claims should, however, be more readily accepted by the Commission and allowed to play a greater role in the defence of efficiency in order to prevent the blocking of mergers which drive macroeconomic efficiency or are socially desirable. Such greater emphasis on "out-of-market efficiencies" would, however, have to come with certain conditions. Firstly, clear guidelines and definitions regarding such potential efficiency benefits are needed. Opening a Pandora's box of a lax, far-reaching and vague interpretations of these "supposed" benefits must be avoided. Any public welfare objectives (e.g. sustainability), industrial policy objectives or other EU objectives (e.g. (global) competitiveness, capital markets union, strategic autonomy) which are to be pursued through the stronger implementation of "out-of-market efficiencies", and which are to be categorised or considered as potential "efficiency gains", must be clearly formulated and defined. They should be interpreted narrowly in practice and must always be subordinate to the competition objective.²³⁷ Secondly, there would need to be criteria for weighing up the potential harm and potential gains for different consumer groups inside and outside the relevant markets. The focus on those consumers who will be directly affected as purchasers or users of products and services within the relevant market, and who are most likely to be exposed to competition-related harm, must not be abandoned lightly. Thirdly, with regard to expansion, it remains important that companies must be able to provide sufficient evidence that any efficiency benefits that are new or receiving greater attention, are actually going to materialise or are likely to do so. Finally, however, in all these deliberations, it must be borne in mind that without adapting the Merger Regulation, any possible (increased) consideration of (additional) "in-market" or "out-of-market" efficiencies cannot be to the detriment of the interests of consumers within a relevant market, and any significant impediment to competition must also be avoided, since the Regulation sets limits in this respect.

Thirdly, the existing merger control guidelines frequently make it difficult to take dynamic efficiencies into account – partly due to the requirement that efficiencies must materialise within a limited short period of time. The focus is currently on short-term static efficiency gains and to a lesser extent on the potential impact resulting from innovation activities, investments or research and development efforts in the medium to long term. Consumers and customers may not (be able to) see or feel the potentially realisable benefits in the short term, or they may initially be confronted with disadvantages and/or a deterioration in the competitive environment. Nevertheless, efficiency gains may arise in the long term, for example if the merger makes it easier to step up innovation activities or research and development efforts, resulting in new, improved products and services that lead to consumer benefits in the medium term.²³⁸ As the Commission rightly points out, a competitive situation is often not confined to the short term. On the contrary, it is also important to consider the driving forces that also apply to merging companies in terms of maintaining their (global) competitiveness in the long term, for example through investments in innovation and the possible generation of "innovation

²³⁷ Even if this is probably not currently the intention, decisions on extending the potential efficiency benefits worthy of consideration, must be made by the European legislator, insofar as these are also to include any industrial policy objectives or other public welfare objectives. In view of the far-reaching and material (political) significance, these should not be decided by the Commission alone via updates to non-binding but nevertheless authoritative guidelines. Such decisions should be made at the level of primary legislation (Level 1), i.e. via an amendment to the Merger Regulation.

²³⁸ De Coninck, R. (2016), Innovation in EU Merger control: in need of a consistent framework. *Competition Law & Policy Debate*, 2(3), 41-51.

efficiencies".^{239,240} The increased focus on such dynamic efficiencies would be particularly relevant in sectors that are themselves considered dynamic and are therefore affected by constant (technological) change and in which innovations are common and more likely to take place in the future.²⁴¹ In any case, the assessment should take a holistic view that takes into account both the incentives for a (potentially anti-competitive) merger²⁴², that may hinder investment and innovation, while at the same time does not ignore potential incentives that promote innovation and investment.²⁴³ Now more than ever, the financial sector can be seen as a "dynamic" industry in which a "good" competitive position in the short term can quickly come under threat, not least due to the many upheavals in the course of digitalisation processes, the development of numerous new technologies (e.g. blockchain, high-frequency trading) innovations based on the use and exploitation of data or the emergence of FinTech companies or new types of trading venue, platforms and players (e.g. multilateral trading facilities (MTFs), systematic internalisers (SIs)). Especially in such dynamic and changing industries, it is also more likely that market entries will be able to offset the potential (short-term) increases in market power and the associated restrictions of competition and consumer harm in the relevant market, and that any harmful behaviour by the merged company to the detriment of consumers in the market can be prevented or limited from the outset.²⁴⁴ Ultimately, the "net efficiency" would be decisive here, which requires an assessment of whether the potential static and dynamic efficiency advantages outweigh the potential static and dynamic efficiency disadvantages. Such an assessment will often be across different dimensions which are difficult to compare and weigh up against each other (e.g. short-term price increases vs. long-term innovation gains)²⁴⁵, and which become more difficult to predict the longer the chosen perspective, what with increasing forecasting inaccuracy and growing uncertainties, especially in dynamic markets. A coherent concept needs to be developed for this evaluation and consideration process, which ensures a basic level of predictability for merger decisions. Even if this is challenging, it is important to take greater account than before of potential long-term dynamics in the relevant markets under consideration. The competitive conditions at the time of the merger should therefore be considered as a reference point for evaluating a merger, but also longer-term dynamic developments, provided there are good reasons and a justified expectation that positive efficiency gains will be realised and that their realisation is likely and substantiated. This is particularly true in markets where innovation can be a strong driver of effective competition in the near and distant future and is crucial for maintaining (global) competitiveness.

Fourthly, there are discussions on whether a separate approach is needed regarding certain sectors and infrastructures that could be considered "strategic" for the EU, particularly in terms of improving global competitiveness, strengthening resilience, reducing dependencies and even preserving sovereignty and/or autonomy. This idea is not only taken up in the Commission's Competition

²³⁹ According to the Commission, companies compete "not only through short-term price decisions, but also by investing in their long-term competitiveness" [EU-Commission (2025), Merger Guidelines consultation, In-depth consultation, Topic C: Innovation and other dynamic elements in merger control, available [here](#)].

²⁴⁰ EU-Commission (2025), Merger Guidelines consultation, In-depth consultation, Topic F: Efficiencies, available [here](#).

²⁴¹ International Centre for Law & Economics (2025).

²⁴² A merger can, for example, slow down competitive pressure and encourage the establishment of barriers to market entry, thereby reducing the incentives for the (rapid) development of new products and services.

²⁴³ EU-Commission (2025), Merger Guidelines consultation, In-depth consultation, Topic C: Innovation and other dynamic elements in merger control, available [here](#).

²⁴⁴ International Centre for Law & Economics (2025).

²⁴⁵ Eonic Partners (2025).

Compass²⁴⁶, but also in several places in the consultation(s) on revision of the merger guidelines. The latter focus in particular on determining for which (strategic) sectors this would be of particular importance.²⁴⁷ It also highlights some sectors which the Commission considers to be potentially strategically relevant (e.g. digital and deep-tech markets, clean and resource-efficient technologies, security and defence). It also mentions certain infrastructures that could be considered potentially critical to the European economy (e.g. telecommunications networks) and for which there should be specific regulations in the revised guidelines. In this context, it is striking that sectors of the financial industry and the infrastructures underlying the financial markets have not yet been explicitly mentioned by the Commission. And this is despite the fact that the "functioning" of the European economies is inherently dependent on the "functioning" of these markets and infrastructures, meaning that they could ultimately also be considered to be of increased strategic importance. Globally competitive financial market infrastructures in the EU may, for example, prove to be a key factor in ensuring that EU companies have continuous access to capital markets or that potentially disruptive developments in third countries are accompanied by fewer consequences for capital market participants. Or conversely: Without such infrastructures, EU companies may have to rely on (access to) non-EU infrastructures to finance, settle and clear financial transactions, which could create dependencies and contribute to the emergence of capability gaps.²⁴⁸ In this sense, there is little justification for considering the financial sector and the associated infrastructures as being of no strategic importance across the board, at least insofar as a distinction between non-strategic and strategic sectors or infrastructures is considered appropriate or necessary. Nevertheless, the question arises as to whether there should be special rules within the merger control guidelines for sectors and infrastructures that are considered to be strategic and should play a greater role in the context of efficiency defence²⁴⁹ – conventional competition analysis has so far only given this limited consideration. However, it is questionable whether the separate treatment of certain sectors or individual (types of) infrastructures, recognised as significant in the merger control guidelines, would be appropriate. Firstly, European merger control law per se does not permit any "sector-specific special treatment", meaning that any paradigms of a strategic nature would have to be incorporated into the legal framework in a generally applicable form.²⁵⁰ Secondly, a robust and, if possible, time-consistent approach is required. The difficulty would lie in particular in the fact that strategic sectors and infrastructures and the associated (political) priorities can change over time. And thirdly, a targeted design would have to take robust precautions against any rent-seeking activities and, for example, prevent abuse whereby individual companies or sectors (suddenly) claim strategic relevance for themselves for which there is no justification based on facts and evidence. Consequently, the guidelines should not provide special treatment for specific sectors but rather demonstrate how the strategic dimension is considered on a case-by-case basis and set out clear criteria for this. It is imperative here that, if a strategic component is to be more firmly established, any (legal) predetermination is avoided, and that the analysis of individual mergers is not permitted to lead almost

²⁴⁶ It states that the revised guidelines should also take due account of the resilience of certain strategic sectors as well as innovation and investment in these sectors in view of the acute needs of the European economy [EU Commission (2025), COM(2025) 30, A Competitiveness Compass for the EU, Communication 29 January 2025].

²⁴⁷ EU Commission (2025), Review of the Merger Guidelines, General Consultation, available [here](#).

²⁴⁸ EU Commission (2024), The future of European competitiveness, Part B - In-depth analysis and recommendations, Draghi report, September 2024.

²⁴⁹ An increase in strategic autonomy for the EU, for example, would therefore also be seen as an efficiency advantage, and this increase would be central from a political strategy perspective, particularly in sectors in which the EU has fallen behind in global competition in recent years or is confronted with increasing dependencies.

²⁵⁰ Federal Ministry for Economic Affairs and Energy (BMWE) (2025), Industriepolitik in Europa, Ein Gutachten des Wissenschaftlichen Beirats beim Bundesministerium für Wirtschaft und Energie, 26 August 2025.

automatically to erroneous conclusions. Each case must continue to be examined individually based on a coherent analytical framework. Whilst it is true that strategic questions and considerations will (should) become increasingly relevant due to geopolitical developments and that these could (should) also count as potential efficiency gains to a certain, limited extent, its incorporation will be a challenge and success is not guaranteed. Maintaining undistorted competition must continue to be a top priority.

Fifth, if the call for a departure from the structural discrimination against potential efficiency benefits is taken up in the longer term, a new approach will be needed with regard to the criterion of the "verifiability" of such benefits. First of all, it would seem important to simply provide additional clarity about which (types of) evidence the Commission usually expects in the context of an efficiency defence and how the Commission intends to take this (type of) evidence into account. There are currently often uncertainties here and a reduction in these uncertainties is desirable. It would also be helpful to clarify and specify what can count as a potential efficiency benefit, especially if the Commission were to decide in favour of taking greater account of "out-of-market efficiencies" – and thus previously non-typical efficiency gains. This is precisely where there is a need for more accurate guidelines regarding their assessment and quantification, i.e. how the verifiability of these potential efficiencies can be achieved without their application in practice becoming a pawn in the enforcement of (industrial) political and/or vested interests and undermining the credibility of merger control as an instrument for safeguarding effective competition. Furthermore, it is obvious that potential efficiency benefits expected further down the line are more difficult to clearly identify prior to a merger, and their possible realisation is more difficult to determine with any certainty than are potential benefits in the near future. The bar for presenting evidence of such benefits should remain high and evidence should be as empirical and backed up with credible data as possible. At the same time, the bar must reflect to some extent what the merging companies can realistically be expected to provide in terms of disclosures and evidence at the time of a planned merger. Even if this is desirable in order to ensure efficient and targeted merger control decisions, the general standard for demonstrating potential efficiencies in the short term cannot necessarily be the same in every case as for demonstrating those that might only materialise in the longer term. A standard for efficiency defence must also prove to be fundamentally practicable in the long term – i.e. for asserting the realisation of efficiencies in the medium to long term –; it must exceed a fundamental feasibility threshold and allow a certain degree of forecasting uncertainty so that it does not prove unsuitable as an instrument from the outset and in order to ensure its fundamental usability and applicability – without, however, relieving companies of the need to credibly substantiate their efficiency claims. In addition, the criterion of "verifiability" should be adapted so as to at least mitigate the current unequal treatment in the consideration of claims of potential long-term efficiency benefits as compared with the consideration of potential damage due to the threat of restrictions of competition. The standard for the obligation to provide evidence could be more closely harmonised in this regard, without, however, calling into question or downgrading the primary objective of merger control, i.e. the maintenance of effective competition.

6 General and specific recommendations for financial market infrastructures

Intensive competition is a key driver of productivity, growth, employment, innovation and investment and an essential prerequisite for a competitive economy free from excessive market concentration, excessive prices and inferior products and services. Maintaining and promoting dynamic competition is therefore, not without good reason, a cornerstone of European competition policy and European merger control law. Any adjustments to this long-established law must therefore be based on the maxim of not jeopardising or undermining the economic "gains" derived from competitive processes. Even though the world has changed considerably since the establishment of merger control law and the geopolitical challenges and centrifugal forces have not diminished, strict and predictable merger control, which safeguards and protects competition in the internal market and seeks to minimise consumer harm, will continue to be indispensable in the future. This applies today and should continue to apply tomorrow. This key (protective) instrument must not be weakened through ill-considered action. Nevertheless, there are (global) developments and realities to which merger control law must find an answer and which make a targeted adjustment of this law appear desirable. Below we set out some suggestions regarding the two questions at the centre of this cepStudy:

Considerations for geographic and product market definition:

One of the primary goals of merger control is to prevent market power abuse, while still allowing markets to adapt to technological change. This is precisely where market definition plays a central role. If geographic or product markets are defined too narrowly, there is a risk that the assessment will overlook relevant competitive constraints and may inadvertently shore up fragmented or inefficient market structures. Conversely, excessively broad definitions may dilute effective control and undermine the rule-based framework of competition policy. Against this background, several adjustments are desirable:

- 1) **Strengthen the forward-looking assessment of geographic markets in globally connected sectors:** In many modern industries – including digital services, financial infrastructures and network-based platforms – competitive pressure arises across borders rather than from within national markets. Consequently, the merger guidelines should provide a clarification that geographic market definition must rely not only on current substitution patterns but also incorporate foreseeable cross-border integration, provided that this can be justified with objective evidence. This will prevent market definition from artificially narrowing competitive constraints and ensure that market assessments fully capture the true scope of rivalry in global sectors.
- 2) **Take account of potential competition and future market entry:** Digital tools and reduced cross-border barriers make market entry easier. In global and technology-driven sectors, in particular, real competition no longer stems solely from current market participants but also from those who may enter the market or scale rapidly in the near future. Furthermore, global players often prepare strategic expansion plans long before they start generating revenue in the EU. Merger assessments should therefore consider evidence of credible future entry, such as publicly announced expansion plans, technological capabilities, interoperability arrangements, or prior entry in comparable jurisdictions.
- 3) **Recognise functional substitutability across institutional settings when defining product markets:** In many sectors, products or services are offered using different organizational or

technological systems, such as regulated versus unregulated, or centralized versus decentralized platforms. These structural differences alone should not imply separate product markets. Instead, market definition should pay closer attention to actual customer switching behaviour, functional equivalence, and technological convergence. For example, in financial markets, certain OTCs are now traded electronically and cleared centrally, making them close substitutes for comparable exchange-traded products.

- 4) **Consider regulatory cost in merger control:** In many regulated industries, such as finance, energy, telecoms, and transport, prudential rules raise fixed costs and tend to favour firms with sufficient scale to meet these requirements efficiently. At the same time, these rules can unintentionally create barriers to entry, shielding existing market players from competitive pressure. Merger control should therefore evaluate concentrations not only on the basis of market shares, but also with regard to how regulatory cost structures affect long-term contestability. The merger guidelines could clarify that stability-enhancing efficiencies – such as stronger system resilience, lower operational risk, or improved interoperability – may be relevant in a merger review, provided they do not restrict market access or create foreclosure risks.

Considerations for efficiency gains:

The preservation of undistorted competition is rightly at the focus of merger control. Claims of potential efficiency benefits, which could compensate for any merger-related harm to consumers, have so far been rather marginal, which is also reflected by the frequent mention of an "efficiency defence" and the fact that hardly any mergers have so far been approved on the basis of efficiency gains. There are good reasons to focus more strongly on efficiency gains that could be realised in the context of business mergers²⁵¹, in order that the "compensation concept" also gains practical relevance.

Several adjustments need to be made to achieve this:

- 1) **Consideration of efficiency benefits in the future:** Any efficiency benefits should not have to materialise within just a few years. Even if there have to be "limits" on the time required for their realisation – it should not be open ended – a "timely" potential realisation must not create unrealistic barriers. In many cases, potential benefits are only likely to be realised in the medium to long term, particularly in sectors that have a strong infrastructural character, including the financial market infrastructure sector. The existing structural (temporal) discrimination against the efficiency benefit approach should be reduced and made more flexible.
- 2) **Clarify and, if necessary, expand the range of potential efficiency benefits:** It would be desirable to clarify and specify what can potentially be considered an "efficiency benefit". A definition of the range and type of benefits that the Commission could potentially take into account or potentially consider in the context of merger control in the future would be helpful for creating more planning certainty and predictability. This should also broaden the view and the scope for further potential efficiency benefits that are capable or worthy of consideration, without, however, reducing the competitive focus of merger control. And the potential for a more dynamic consideration of efficiency gains is not limited to the relevant market, i.e. in the case of financial market infrastructures, for example, greater consideration of the benefits that consumers and customers can potentially generate in the medium term from deeper, more liquid and more

²⁵¹ Nevertheless, it should continue to be an efficiency "defence" to preserve the character of merger control as an instrument for maintaining and promoting effective competition.

integrated trading and clearing markets, even if they may be accompanied by potentially harmful market concentration in the short term. At the same time, limited consideration should also be given to attaching greater weight to potential out-of-market efficiencies, in addition to those within the market, and thus to possible benefits for consumers who are outside a relevant market, or benefits for society or the economy as a whole, without, however, abandoning the focus on avoiding competition-related harm to consumers and customers in the market. With regard to the financial sector, this could mean, for example, that economic benefits resulting from companies having easier access to the EU capital markets, or an increase in the attractiveness of IPOs within the EU – e.g. because the liquidity of a market can be increased – could be given greater consideration (see also section 4.2 with further potential efficiency benefits that can result from mergers between financial market infrastructures). However, a clear and unambiguous definition of possible non-market efficiencies and the limits to their consideration is imperative in order to leave little (political) room for abuse and to avoid opening the door to vested interests.

- 3) **Giving more weight to dynamic competition over static competition:** Dynamic competition and medium to long-term investment and innovation efficiencies should be given even greater consideration and recognised as potential efficiency gains, especially in sectors where such dynamics are more likely and a rigid competitive situation appears unlikely. In the past, the financial sector in particular has not been an industry of stagnation or non-development, but has proven to be very changeable. New technologies, digitalisation and a large number of new market players have created a constantly dynamic competitive situation. Nor is any lasting deterioration in competition expected here in the future. This is precisely where potential competition is a key driver for limiting a potential abuse of market power. The revised merger control guidelines should therefore counteract the existing imbalance in the consideration of static and dynamic effects and enable companies to give equal weight to them in the context of the efficiency defence.
- 4) **Do not ignore geo-economic and geopolitical realities and risks, but exercise caution when giving special treatment to sectors/infrastructures that are considered strategic:** Deliberations on incorporating a strategic component in the merger control guidelines and, if necessary, creating special rules for specific sectors or infrastructures, or preferential treatment with regard to the granting of merger clearance must be approached with due caution, without rejecting them outright. It is true that the geo-economic and geopolitical upheavals call for a new mindset in this regard, and competition law cannot completely close its eyes to these changes in the global competition for influence and markets. In order to preserve sovereignty and autonomy, reduce risky dependencies, strengthen resilience and ensure global competitiveness, it is not fundamentally wrong to take a broader view of merger control. And there may also be sectors and infrastructures that are more suitable for such an expansion than others, such as the security and defence industry, the digital sector and the financial sector, and with it the operation of financial market infrastructures. Indeed, "over-reliance on key services provided by non-EU companies in areas such as [...] finance" poses risks to the EU – e.g. the threat of service disruption and economic coercion²⁵². However, a specialised approach to individual industries and sectors – which is to some extent politically understandable and economically justifiable, particularly with a view to global competitiveness – would prove to be complex, prone to error and also susceptible to anti-competitive rent-seeking. Where it is nevertheless pursued for political and economic

²⁵² EU Commission (2025), Strategic Foresight Report 2025, Resilience 2.0: Empowering the EU to thrive amid turbulence and uncertainty, September 2025.

reasons, this "strategic" component must be based on a clear foundation and should be integrated into the existing legal framework in as universal a manner as possible so as not to conflict with the principles of competition law. Any blanket facilitation of mergers in certain sectors defined as strategic should be avoided in any event.

- 5) **Lower the hurdles for verifying potential efficiency gains:** There is the need for an adjustment with regard to the "verifiability" of efficiency benefits. On the one hand, this concerns the future handling of benefits that can only be realised in the medium to long term and for which the evidential bar must be set high, but inevitably lower than for short term benefits. Otherwise, any consideration of potential benefits in the future would only be of limited practical relevance. On the other hand, criteria for providing evidence would also be necessary if the range or types of efficiencies that can be put forward in the context of merger control were to be expanded. For example, there would need to be specific guidelines on how efficiencies outside the market would have to be "proven" as part of the efficiency defence in order to be potentially accepted as such. Furthermore, the hurdles for proving efficiency advantages should not be substantially higher than the hurdles for proving that no or only minor restrictions of competition and consumer harm occur. There is scope here for a certain convergence of the respective standard of proof for efficiency benefits on the one hand and consumer harm on the other.

However, any potential adjustments to the merger guidelines with regard to the consideration of efficiencies should not aim to fulfil a (political) desire to create national or European champions and facilitate mergers for the sole purpose of achieving this goal. After all, effective competition is a basic prerequisite for competitiveness, including at a global level, as well as an essential building block for economic security and a guarantee for innovation.

7 Conclusion

Evolution rather than revolution. That should be the credo when the Commission, as announced in its Work Programme, comes to adapt the merger control guidelines in 2026. Even twenty years after their establishment, the core principles underlying the guidelines remain sound. Its aim "to enable a dynamic and well-functioning internal market, by making sure all businesses are able to compete effectively, and to prevent market distortions that can harm consumers - and ultimately damage productivity and economic growth"²⁵³, is as valid now as it was two decades ago. Although its foundations remain compelling, a targeted update and modernisation seem appropriate, nonetheless. New technological advances, innovation dynamics, geoeconomic and geopolitical developments and a renewed focus on resilience and sovereignty mean that a deliberate revision is necessary to keep up with the challenges of today's global realities. While these new realities are shaping the daily lives of many companies, the financial markets sector, with its many actors doing business across borders, both within the EU's internal market and on a global stage, is often at the very heart of these dynamics. This includes financial market infrastructure operators, such as exchanges and central counterparties. While mergers among these operators often raise valid competition concerns due to their structural characteristics, the same or similar features often give rise to potential efficiency gains for market participants, clients, consumers, and the wider economy, including in the longer term. However, the current merger guidelines may not always adequately address these efficiency gains. As envisaged by the Commission, a fresh look must be taken at potential efficiency gains that could outweigh any harm to consumers. In this regard, it seems appropriate to clearly define the potential efficiency gains which

²⁵³ EU Commission (2025), Review of the Merger Guidelines, General Consultation, available [here](#).

the Commission may take into account as part of the efficiency defence and to broaden their scope, particularly with respect to specific and well-defined out-of-market efficiencies, and also to allow potential efficiency gains to be considered even if they can only realistically be expected to materialise in the more distant future. Furthermore, the dynamic dimensions of competition, potential investment and innovation efficiencies should be given greater consideration in future, and the verifiability standard for more distant efficiency gains lowered to a certain extent. While there is, thus, room for improvement regarding the consideration of efficiency gains, and the new global realities must not be entirely ignored, caution is advised when it comes to giving certain sectors or infrastructures special treatment.

At the same time, the revision of the guidelines should acknowledge that many sectors operate across borders and are shaped by global digital networks. In such sectors, competition does not stop at national borders, and merger assessments should reflect this. Geographic markets should therefore be defined in a forward-looking way, so that real international competitive pressure is not ignored. Likewise, product market assessment must focus on actual substitution patterns rather than on historical regulatory categories. In several industries, including financial markets, formerly separate organisational settings – such as OTC trading and centralised exchange trading – have become functionally substitutable due to electronic execution, standardisation, and cross-venue switching. Furthermore, merger analysis should be more systematic in assessing potential competition, including credible future entrants and firms with announced expansion plans. Incorporating global contestability, functional substitutability and potential entry would better align merger control with the structural realities of today's economy.

Ultimately, any reopening of the merger framework must not compromise its main target – competition – in pursuit of any other policy goals. Competition is and will remain key to upholding and improving Europe's (global) competitiveness as well as its growth and innovative potential. Christine Lagarde rightly stated that "with a careful approach, Europe can preserve the benefits of competition while adapting to the changing world we are facing"²⁵⁴. Yet, preserving the advances made by competition must be a must and not just a maybe. Finally, any policy goals other than safeguarding or strengthening competition should primarily be addressed by other policy instruments, including targeted measures to complete the single market and the capital markets union. Reforms are needed mainly outside competition law.

²⁵⁴ ECB (2024), Competition policy in a changing world, Speech by Christine Lagarde, President of the ECB, at an event to mark the 15th anniversary of the Autorité de la concurrence, 5 November 2024.

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