Merger Guidelines Review

Topic A – Competitiveness and Resilience

I. EXECUTIVE SUMMARY

1. This Response to the European Commission's Consultation on **Topic A** summarizes our views on possible reforms to the assessment of competitiveness and resilience in EU merger control.[1]

2. Effective merger control is essential to safeguard competitive market structures. The Guidelines provide a solid foundation – and have served their purpose well over the last two decades – but could usefully be adapted to reflect the strategic and structural changes that are reshaping competition. Today's markets are increasingly characterized by faster innovation cycles, the growing importance of scale, and the need for resilience to ensure long-term business continuity.

3. This Response submits that any revisions to the Guidelines ("Revised Guidelines") should maintain a rigorous, principles-based approach while allowing greater flexibility to account for dynamic competition, support strategic investment, and address emerging challenges. The goal should be to ensure that all companies can invest and compete fairly in viable and competitive European markets.

4. This Response is structured as follows. **Section I** sets out general observations on aligning merger control with Europe's strategic objectives. Subsequent **Sections** discuss the specific themes of Topic A: the role of scale in global competitiveness, the importance of resilience and value chains, the need to enable investment and innovation, and the implications of global asymmetries.

A. GENERAL: ALIGNING MERGER CONTROL WITH EUROPE'S STRATEGIC OBJECTIVES

5. Mergers can help firms develop critical capabilities, scale innovative technologies, and secure long-term viability – especially in sectors central to the green and digital transitions. The Revised Guidelines could usefully provide clearer guidance on how such benefits may be taken into account, where merger-specific and substantiated by credible evidence.

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[1] "Consultation" refers to the public consultation launched by the Commission on May 8, 2025 concerning the review of the Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ 2004 C 31/5 ("HMG"), and the Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ 2008 C 265/6 ("NHMG") (together "the Guidelines").

6. Moreover, the current framework focuses to a significant extent on static indicators such as market shares and short-term price effects. In many dynamic sectors – ranging from cleantech to digital platforms – competition hinges more on potential entry and innovation pipelines than on immediate overlaps. The Revised Guidelines could better reflect these dynamics by giving appropriate weight to forward-looking evidence and to competition that develops over time.

B. SCALING UP: RECOGNIZING THE ROLE OF SCALE IN GLOBAL COMPETITIVENESS

7. Scale is increasingly a prerequisite for competitive viability – especially in sectors characterized by high fixed costs, fast innovation cycles, or significant R&D needs. In these environments, mergers between complementary players can unlock efficiencies, expand market reach, and improve access to capital and talent. Scale enables firms to compete effectively on global terms and invest in long-term innovation, without necessarily harming competition.

8. The Revised Guidelines should more explicitly acknowledge these procompetitive scale effects. Where sufficient competitive constraints remain, and where customers retain bargaining power, scale-related efficiencies should be assessed on their merits. This includes the ability to improve procurement efficiency, accelerate product development, and reduce marginal costs – benefits that ultimately support consumer welfare. Importantly, even in cases where some degree of market power may arise, the Commission should assess whether substantial, merger-specific efficiencies are likely to be passed on – whether through price, quality, service, or innovation. It is important to avoid a one-dimensional view of concentration and instead pursue a balanced analysis that recognizes both risks and benefits.

C. RESILIENCE AND VALUE CHAINS: ENHANCING SECURITY AND CONTINUITY OF SUPPLY

9. Recent global events, such as the Covid pandemic, have exposed vulnerabilities in critical supply chains. In this context, mergers can help strengthen operational resilience – by securing access to key inputs, enabling vertical integration, or diversifying sources of supply. Such improvements are relevant to business continuity and can even enhance the stability and reliability of entire markets.

10. The Revised Guidelines could usefully incorporate a structured approach to assessing resilience benefits. Mergers that materially reduce exposure to external shocks, de-risk supply arrangements, or ensure continuity of service in essential sectors may contribute to broader market stability and competitiveness.

11. In this assessment, the counterfactual plays a crucial role. The Commission should ensure that its analysis reflects commercial realities – particularly where the target lacks the capacity or incentive to remain viable or scale up independently. Where no credible alternative buyer exists and the firm's competitive position is expected to deteriorate, this should be taken into account, even if the strict legal thresholds of the failing-firm defense are not formally met.

D. ENHANCING INVESTMENT AND INNOVATION: ENABLING LONG-TERM VALUE CREATION

12. Merger control should not stand in the way of transactions that enable investment in innovation and sustainability. Under the current framework, the threshold for accepting efficiencies remains unduly high, particularly where benefits are not immediate or quantifiable in consumer price terms. This creates a disconnect between competition enforcement and the EU's long-term economic goals.

13. The Revised Guidelines should allow for a more realistic and balanced treatment of merger-specific benefits, especially those that relate to long-term innovation, R&D synergies, sustainability outcomes, or infrastructure investment. These benefits should be assessed based on substantiated evidence, such as internal business plans, and reasonable implementation timelines – not excluded simply because they are complex or delayed in impact.

14. Similarly, non-price factors such as innovation capacity, sustainability improvements, and technological advancement should be more systematically assessed. These factors are increasingly decisive in competitive markets and aligned with EU policy priorities. The Revised Guidelines should offer clearer guidance on how to assess these benefits, including how to distinguish those that are truly merger-specific from those that would occur absent the transaction.

15. A more balanced assessment of benefits and non-price factors also requires a more flexible, forward-looking approach to market definition, which recognizes evolving business models, digital ecosystems, and cross-market competition. Defining markets too narrowly risks ignoring innovation overlaps and deterring beneficial consolidation.

E. MERGER CONTROL AND GLOBALIZATION: REFLECTING STRUCTURAL ASYMMETRIES IN THE GLOBAL ECONOMY

16. European firms often compete under structurally different conditions from global competitors that benefit from foreign subsidies, preferential access to raw materials, or less burdensome regulation. These advantages have a significant impact on the competitive dynamics, but are not captured in traditional market indicators such as EU market shares.

17. The Revised Guidelines should recognize these asymmetries and consider them in the broader assessment of mergers. This includes evaluating whether a transaction enables firms to overcome scale disadvantages, achieve a level playing field with global competitors, or maintain viability in the face of structural cost gaps. In certain strategic and innovation-intensive sectors – such as AI, cloud, quantum technologies, or clean energy – consolidation among companies may be necessary to build credible global challengers. These mergers can enhance – not reduce – competition when they reduce fragmentation, unlock investment, and accelerate the deployment of critical technologies. Provided they do not foreclose rivals or remove meaningful sources of future competition, the Revised Guidelines should enable a constructive assessment of such transactions.

F. CONCLUSION: A MODERNIZED FRAMEWORK FOR A COMPETITIVE AND RESILIENT EUROPEAN MARKET

18. The Revised Guidelines must remain rigorous in protecting competition and consumer welfare. At the same time, they must reflect the importance of scale, the value of innovation and resilience, and the competitive constraints of global competitors. A revised framework that integrates these factors – while remaining grounded in evidence, legal certainty, and transparency – will ensure that merger control continues to serve the EU's long-term competitiveness. This would support an open and competitive European economy in which all companies, regardless of origin, can contribute to investment, innovation, and sustainable growth – ultimately to the benefit of consumers, businesses, and the resilience of the Single Market.

II. RESPONSE PAPER[2]

A. GENERAL

1. In your/your client's view, do the current Guidelines provide clear, correct and comprehensive guidance on how merger control reflects the objective of having a productive and competitive economy?

a. Yes, fully

b. Yes, to some extent

c. No, to an insufficient extent

d. Not at all

e. I do not know

A.1.a. [If 'Yes, to some extent' or 'No, to an insufficient extent' or 'Not at all'] Please explain and mention in particular which provisions of the current Guidelines (if any) are not clear or correctly reflecting the objective of having a productive and competitive economy, or what you consider is missing from the Guidelines to address this objective.

19. While the Guidelines provide a solid foundation, they could usefully be adapted to reflect the broader objective of supporting a productive and competitive EU economy in today's context. Several aspects could be clarified or updated to better achieve this:

- **Short-term price focus vs. dynamic competition.** The Guidelines put much weight on immediate price effects and current market shares, which may work well for stable markets but can overlook the real sources of competitive pressure in fast-moving, innovation-driven sectors. In areas like advanced manufacturing, renewable energy, digital services, or life sciences, competition often comes from potential or disruptive players, not just existing players. For example, in digital markets, a new entrant with a breakthrough product or technology can transform a market far beyond what static market shares suggest.

  It is important that merger assessment gives genuine weight to these dynamic factors to avoid decisions that could discourage investment in R&D and scaling up new technologies.

- **Limited practical effect of the efficiencies defense.** While paragraphs 76–88 of the Guidelines recognize that efficiencies from a merger can help offset anticompetitive effects, the standard of proof is so high that these efficiencies rarely have any real impact in practice. In many sectors – such as energy, industrial

2 In response to multiple-choice questions, the selected options are green.

production, or technology – mergers can create economies of scale and scope that bring clear benefits for sustainability and innovation, such as better resource use or lower emissions. However, these benefits often develop over a longer time period and are hard to prove under the current strict requirements.

It is important that the assessment of efficiencies give genuine weight to credible, merger-specific benefits when they are supported by credible evidence, even if they are not immediate. Making sure these positive effects are properly considered would help ensure that merger control does not unnecessarily block transactions that can strengthen (and in some cases maintain) Europe's competences, productivity, resilience, and green transition in the long run.

- **Rigid market definition in rapidly evolving sectors.** The current approach to defining markets – which relies heavily on the SSNIP test and a focus on existing products and direct substitutes – can lead to market definitions that are too narrow, especially in sectors that are changing quickly because of innovation or the introduction of disruptive new business models. When markets are defined too narrowly, the analysis can overlook strong competitive pressures and potential alternatives that matter in practice.

  For example, different parts of a supply chain or related digital services increasingly overlap and interact, but traditional tools may not capture this. A more flexible, forward-looking approach is needed to ensure market definitions reflect real competitive dynamics and deliver consistent, predictable outcomes.

- **Lack of structured consideration of non-price factors linked to EU strategic goals.** Currently, there is no clear or consistent way to take into account important non-price benefits – such as supply chain resilience, technological leadership, or the contribution a merger might make to the EU's green or digital transition. These elements are becoming increasingly relevant for Europe's long-term competitiveness and security, yet they often play little or no practical role in merger assessments today.

  For instance, some transactions help companies scale up, secure key inputs, or develop new technologies that benefit the wider economy in the long run. These effects need to be given real weight where they are credible and merger-specific.

- **Risk of underweighting potential entry or expansion.** Finally, the Guidelines do not adequately address how potential and emerging competition should be taken into account in markets with high entry barriers but strong incentives to innovate. In many sectors, future products and technologies – even if not yet on the market – are crucial for competitive pressure.

20. If merger review focuses only on current market positions, it risks overlooking how deals might affect incentives for new players to enter or grow. Giving proper weight to realistic

evidence of future entry or expansion would help protect dynamic competition and encourage continued investment in innovation.

21. In summary, while the basic framework remains sound, it is important that merger control take into account dynamic competition, credible efficiencies, evolving market structures, and wider strategic factors in actual practice – not just in principle. This will ensure that merger enforcement remains effective in preventing harm while supporting a productive, innovative, and resilient European economy for the long-term.

2. In your/your client's view, should the revised Guidelines better reflect the objective of having a productive and competitive economy in relation to the following aspects? Please select the areas that you believe the revised Guidelines should better address

- **a. Ability and incentives of SMEs and mid-sized companies to scale up**
- **b. Benefits of companies' gaining scale**
- **c. Companies' resilience**
- **d. Ability and incentives of companies to invest and innovate**
- **e. Ability and incentives of companies to compete at global level**
- **f. The revised Guidelines should not better reflect any of these areas**

B. SCALING UP

3. How should the Commission take into account situations where absent the merger the target company would not have the ability or incentives to scale-up? Please explain in particular:

- **a. How should the Commission assess the counterfactual scenario, i.e. what would the situation be absent the merger, in particular when it comes to alternative buyers or sources of financing.**

22. When the target company is unlikely to have the ability or incentives to grow or scale up on its own, the Commission's assessment should reflect this commercial reality and not compare the merger to an unrealistic stand-alone scenario. Many firms – whether in advanced manufacturing, clean technology, or digital services – may have promising technologies or business models but lack the resources, market access, or capital needed to expand and compete effectively. In these situations, merging with another company can be the most realistic way to realize that potential. This can be particularly relevant where achieving the necessary scale or capabilities requires a combination of complementary assets, networks, or investment capacity – for instance, to compete more effectively in global markets or to accelerate innovation in strategic sectors.

23. In assessing such cases, the Commission should establish a credible counterfactual based on concrete evidence – not hypothetical alternatives. This means examining whether there are realistic alternative buyers or sources of financing that could allow the target to scale up without the proposed transaction. For example, has the target actively sought other investors, partners, or acquirers, and are these alternatives commercially viable and likely to materialize within a reasonable timeframe?

24. If there is credible evidence showing that the target cannot secure the necessary investment or market access/growth alone, and that no feasible alternative buyer exists, this should be given proper weight. The counterfactual should reflect the most likely scenario based on the company's actual situation and market conditions – not an idealized outcome.

25. A realistic assessment of scale-up constraints helps ensure that merger control does not stand in the way of transactions that enable growth, innovation, and competitiveness, while still protecting against harmful concentration. This balanced approach is particularly important for businesses that depend on significant investment or market reach to deliver benefits to consumers and contribute to a more productive EU economy.

b. Should the Commission in such cases assess whether the criteria of a failing-firm defence are met, including the exit of the company's assets from the market, and why/ why not. If so, how should the Commission assess this.

26. In these scenarios, the failing firm defense may not always be the right or only tool. The classic failing firm defense is strict and typically requires proving that the firm would exit the market altogether, that there are no less anticompetitive buyers, and that the assets would leave the market otherwise.

27. However, there are many situations where the target firm is not about to exit the market, but its competitive position is likely to deteriorate. For example, the target firm may need to retreat from certain markets if it is no longer able to take on the risks and R&D costs associated with the relevant businesses. This would result in reduced competition but also reduced choice for customers. Applying the strict failing firm defense test in such cases may be disproportionate or inappropriate in assessing the relevant counterfactual scenario, which is not outright market exit but a progressive decline in competitiveness.

28. Instead, the Commission should use a flexible, fact-based assessment of the realistic alternative scenario. If there is clear evidence that the company would likely stagnate or decline without the merger – and that this would limit its ability to compete – that should be factored into the overall competitive effects analysis, even if the strict failing firm defense conditions are not met.

29. This approach would ensure that merger control does not unnecessarily block transactions that enable growth, innovation, and more competitive outcomes, especially where the alternative is that the target remains a non-competitive or marginal player.

4. What are the characteristics of markets where scale is necessary to compete effectively? Please be as specific as possible on the level of scale needed and why.

30. Some markets have structural features that mean firms need to reach a certain size or capacity to be viable competitors. These characteristics can exist on their own or in combination – they do not all need to be present at the same time to make scale important.

- **High fixed or sunk costs.** Industries with large upfront investments – such as building production plants, developing infrastructure, or funding complex R&D – require firms to spread these costs over a large output to lower unit costs.

- **Significant economies of scale or scope.** Some sectors benefit greatly when larger volumes or integrated activities reduce average costs or improve service. For instance, logistics, recycling, and distribution networks depend on high asset utilization and dense customer bases, while digital ecosystems benefit from combining complementary services.

- **Intense global or regional competition.** Where firms compete globally, scale is often needed to match price, capacity, and supply chain reliability. A smaller player without adequate scale may not be able to win large contracts or negotiate favorable input costs.

- **Substantial R&D or innovation needs.** In industries where staying competitive requires continuous, expensive R&D – such as pharmaceuticals, biotech, space or renewable energy technology – firms need sufficient scale to fund ongoing research, manage risk, and bring new products to market.

- **Network effects and large user bases.** In digital markets and platforms, scale is vital for attracting and retaining users, partners, or data flows. A larger user base can create better service quality or more relevant data insights, reinforcing competitiveness. Smaller players may find it difficult to gain traction without this critical mass.

31. The scale required varies by sector: for some it may mean regional or national reach; for others, operating at global scale is necessary to remain cost-effective or innovative.

32. Recognizing how these features can affect competitiveness helps ensure that merger assessments take realistic market dynamics into account. This avoids blocking transactions that enable companies to reach a critical scale that allows them sustainably to invest and innovate, delivering better outcomes for consumers.

5. What are the benefits that merged companies' increased scale might bring to competitiveness:

A.5.1 <u>In a scenario where the increased scale does not create or strengthen market power</u> (e.g. a merger between complementary players in terms of products or geography)? Please select the benefits that you believe are relevant for

increased competitiveness of the merged entity [Multiple options possible] For each selected benefit, please provide concrete examples and underlying data. Please also specify which metrics can be used to measure these elements.

a. **Network effects (i.e., whereby a product or service gains additional value as more people use it)**

b. **Intangible capital (assets lacking physical substance, e.g. patents, copyrights, goodwill, know-how)**

c. **Access to equity investment**

d. **Ability and incentives to invest (e.g. in network infrastructure)**

e. **Ability and incentives to innovate (i.e. R&D, including high-risk innovation)**

f. **Ability and incentives to derive value from aggregation of data**

g. **Improves access to market (i.e. ability to reach new customers or geographies in the internal market or outside the internal market)**

h. **Ability to procure products more competitively from large suppliers?**

i. **Ability to compete in global markets outside the EU**

j. **Ability to use countervailing market power vis-à-vis infrastructure providers**

k. **Other factors (please list)**

l. **No benefits are relevant**

33. In a scenario where increased scale results from a merger between complementary players, the merged entity can achieve several benefits that strengthen its competitiveness without creating or reinforcing market power. For example:

- **Stronger network effects.** When two companies combine their user bases, the overall value of their products or services can grow because more users make the platform or service more useful for everyone. This is especially important in digital or platform businesses, but the principle applies in many sectors. For example, a merged company that combines different but related services – like travel bookings and local experiences, or different types of online marketplaces – can make things more convenient and attractive for customers, encouraging them to use the platform more often and for more of their needs. Over time, this creates a positive cycle where more users attract even more users.

The strength of these network effects can be measured by tracking metrics such as the number of monthly active users, how many customers return to use the service again, and the overall value each customer brings to the business over time.

- **Enhanced intangible capital.** When two companies merge, they often bring together valuable intangible assets such as strong brands, specialized know-how, patents, or long-standing customer relationships. Combining these complementary strengths can help the new company offer higher-quality products or services, build stronger trust with customers, and stand out from competitors. For example, one company's well-known local brand could be combined with another's innovative technology or design expertise, resulting in a more compelling product that attracts and retains customers.

  The value of these benefits can be seen in measures such as the combined value of intangible assets on the balance sheet, improvements in customer trust or satisfaction scores, and the number of patents or unique technologies the company holds after the merger.

- **Improved access to investment.** When two companies merge and grow in scale and in diversification, they often become more stable and financially resilient. This can make the combined company more attractive to investors and lenders, improving its credit ratings and giving it better access to funding through equity or debt markets. As a result, the business is in a stronger position to keep investing in growth, innovation, and improvements – even during uncertain market conditions.

  This benefit can be tracked by looking at whether the company's cost of capital goes down, how much funding it raises over time, and whether its credit ratings improve after the merger.

- **Greater capacity to invest.** When companies merge and reach a larger scale, they can spread their fixed costs across a broader customer base, geographic footprint, or range of services. This more efficient cost structure frees up resources to fund projects that might be too costly or risky for each company on its own, such as innovation initiatives, sustainability upgrades, or entry into new markets. The combined company would also be incentivized to invest knowing that it will have a sustainable return on investment through increased market volume. For example, the combined company may be able to invest in new innovative technologies, upgrade its technology infrastructure to be more secure and reliable, roll out sustainability projects like energy-efficient facilities, or open local service centers to better support customers. These kinds of investments can make the business stronger and deliver better service to customers in the long run.

34. The impact of this greater investment capacity can be measured by looking at total capital expenditure (CAPEX), the number of new sites or facilities opened, and improvements in customer service ratings or response times.

- **Stronger incentives to innovate.** When two companies with complementary expertise and resources come together, they can pool their research teams, technologies, and customer insights. This often makes it easier and more cost-effective to develop new products, services, or features that would have been too risky or expensive for each company alone. For example, a merged company might combine its technical know-how and customer data to create smarter digital tools, more advanced products, or improved production processes. This can lead to faster innovation cycles and better solutions for customers.

  The impact of this can be seen in the number of new products launched each year, the volume of patent applications, or the level of spending on research and development compared to overall revenue.

- **Better use of data.** Combining complementary (non-overlapping) data sets can help the merged company better understand customer needs and deliver more relevant products, services, or recommendations. For example, when two companies merge, they may bring together different insights about customer behavior – such as one company's transaction history and another's customer preferences or feedback data. This richer, combined data can be used to personalize marketing, tailor product suggestions, or optimize pricing, ultimately improving the customer experience and increasing loyalty. The value of this can be tracked through practical metrics like higher click-through and conversion rates on offers, increased repeat purchases, and greater customer engagement over time.

- **Broader market access.** When companies with complementary footprints combine, the merged entity can reach customer groups, sectors, or regions that each firm could not easily serve on its own. For example, one company may have a strong presence in urban areas while the other is well-established in rural regions, or one may specialize in serving small businesses while the other focuses on larger corporate clients. By joining forces, the merged company can serve a wider customer base across different geographies or industry segments, boosting competitiveness and efficiency. This expanded reach can be measured through increases in revenue from newly served regions or sectors, growth in the total customer base, or the share of business generated from new areas over time.

- **More competitive procurement.** When two companies merge, they can often organize their purchasing more efficiently by combining their orders and streamlining supply arrangements. For example, a merged business might be able to better coordinate deliveries, reduce duplication in contracts, or share warehouses or logistics networks. These efficiencies can help lower overall purchasing costs without putting unfair pressure on suppliers. The savings can then be used to offer customers better prices, improved service, or higher quality products. This benefit can be measured by looking at average input costs over time and any improvements in overall profit margins.

- **Stronger global competitiveness.** In many sectors where companies face strong competition from global players, combining complementary businesses can help the merged company compete more effectively on a global scale. For example, by pooling resources, know-how, and regional strengths, a company can expand its reach and stand up to larger players from other regions. This can make the company more resilient, better able to invest in innovation, and more attractive to international customers. Ultimately, this would help maintain and possibly strengthen the EU's position in the global economy. The impact can be measured by looking at growth in exports, the share of revenue generated outside the EU, and the company's success in entering new countries or regions.

35. In summary, these benefits show how increased scale from merging complementary players can generate real efficiencies and improvements that directly strengthen competitiveness and create value for customers. Together, they demonstrate that such a merger can deliver growth, innovation, and resilience without creating or entrenching market power.

A.5.2 <u>In a scenario where the increased scale creates or strengthens market power</u>, please indicate which of the benefits identified in the previous question are still relevant for increased competitiveness of the merged entity, and comment on whether it may damage the competitiveness of other companies or the economy For each selected benefit, please provide concrete examples and underlying data. Please also specify which metrics can be used to measure these elements.

a. Network effects (i.e., whereby a product or service gains additional value as more people use it)

b. Intangible capital (assets lacking physical substance, e.g. patents, copyrights, goodwill, know-how)

c. Access to equity investment

d. Ability and incentives to invest (e.g. in network infrastructure)

e. Ability and incentives to innovate (i.e. R&D, including high-risk innovation)

f. Ability and incentives to derive value from aggregation of data

g. Improves access to market (i.e. ability to reach new customers or geographies in the internal market or outside the internal market)

h. Ability to procure products more competitively from large suppliers?

i. Ability to compete in global markets outside the EU

j. Ability to use countervailing market power vis-à-vis infrastructure providers

k. **Other factors (please list)**

l. **No benefits are relevant anymore**

36. In a scenario where increased scale creates or strengthens market power, the benefits described in A.5.1 can still offset potential harm. Factors such as stronger network effects, valuable know-how, improved access to investment, greater capacity for innovation, smarter use of data, broader market reach, and increased competitiveness vis-à-vis larger global players, can continue to generate real efficiencies and drive growth.

6. How should the Commission assess the benefits of companies' gaining scale through mergers when they create or strengthen market power? Please explain in particular:

a. **Under which conditions could such benefits be sufficient to outweigh competitive harm? Please illustrate with the specific benefits you considered relevant.**

37. Scale-related benefits can be sufficient to offset potential harm when they are merger-specific, material, credible, and likely to deliver positive outcome for customers or end consumers within a reasonable timeframe.

38. In practice, this means the benefits must directly result from the combination in ways that would not be realistically achievable if the companies remained separate, and they must be large enough to counterbalance the expected loss of competition. Crucially, they must improve outcomes for customers – for example by lowering prices, improving quality, expanding choice, or accelerating innovation.

39. Concrete examples include:

- **Significant unit cost savings** that enable the merged firm to offer more competitive pricing for end consumers or business customers. This is often the case in capital-intensive industries like basic materials or manufacturing, where larger production volumes reduce per-unit costs.

- **Operational benefits**, such as integrating overlapping supply chains or networks to improve reliability, cut waste, or expand service reach – which can translate into better service or more competitive offerings for consumers.

- **Innovation or R&D synergies**, where pooling research capabilities allows faster development of new or improved products, directly benefiting customers through enhanced features, quality, or sustainability. This is particularly relevant in investment-intensive industries such as space, life sciences, clean technologies, and digital services.

- **Network or infrastructure integration**, such as optimizing transport or energy networks, which can result in better access, greater reliability, or lower end-user costs.

40. To be credible, these benefits should be backed up by supporting evidence, such as cost analyses, integration plans, and realistic implementation timelines.

b. Under which conditions would such benefits be passed on to business customers/consumers? Please illustrate with the specific benefits you considered relevant.

41. Benefits from scale are most likely to reach business customers or consumers when market conditions, customer bargaining power, or the transaction's design provide strong incentives to share the gains rather than keeping them entirely within the merged firm.

42. Pass-through is more likely when:

- **Sufficient competitive constraints remain**, *e.g.*, when rivals, potential entrants, or strong buyers can discipline prices and quality.

- **Customers have real bargaining power**, *e.g.*, when large industrial buyers, procurement consortia or quasi-monopsonic institutional customers can negotiate (or even determine) supply terms and demand cost savings.

- **Contracts, regulation, or the way the market works** can help ensure that cost savings or other benefits are actually shared with customers rather than kept by the merged firm.

43. In sectors driven by innovation, pass-through may mean faster access to new or improved products rather than immediate price cuts. For example, a merger that pools R&D pipelines in life sciences may make new treatments available sooner, improving outcomes for patients. Similarly, in advanced manufacturing, scale may make sustainable technologies commercially viable, directly benefiting business customers and consumers over time.

c. What are the elements (including evidence and metrics) that the Commission could use to assess whether the benefits of scale outweigh competitive harm, and whether they will likely be passed on to business customers/consumers?

44. To determine whether the benefits of scale outweigh any loss of competition, the Commission should look for clear, objective evidence showing that such benefits are merger-specific, material, and likely to benefit customers in practice. Relevant elements include:

- **Detailed cost evidence.** Analyses of expected unit cost reductions, synergies from combining operations, or savings from removing duplicative assets – supported by realistic operational plans and timelines.

- **Deal rationale and internal documents.** Board papers, strategy documents, and business plans that show achieving these benefits is a genuine driver of the merger, not a justification developed after the fact. A clear rationale explaining why these benefits cannot be achieved separately supports their credibility.

- **Pass-through evidence.** Economic analysis or empirical data demonstrating how similar cost savings have been shared in comparable markets, including estimated pass-through rates, pricing trends, and any market studies.

- **Customer and market evidence.** Information on the degree of remaining competition, customer bargaining power, or procurement practices that encourage suppliers to pass on benefits – for example, the use of competitive tenders, volume-based discounts, or indexation clauses in contracts.

- **Innovation and pipeline metrics.** Where scale supports faster or better innovation, credible pipeline data, R&D budgets, and realistic development timelines showing when and how new or improved products will reach the market.

45. The Commission should weigh these elements together to test whether claimed benefits are realistic and substantial enough to offset any reduction in competition. The benefits must also be genuinely likely to deliver measurable improvements for business customers and end consumers.

d. How can productivity improvements of a firm be balanced appropriately against price increases that can harm productivity of other firms?

46. When a merger generates productivity gains within the merged firm – such as lower production costs, better resource use, or improved output quality – these benefits must be balanced against any risk that greater market power could lead to higher prices for customers or downstream businesses that depend on the input.

47. To strike this balance, the Commission should:

- **Compare the scale and distribution of benefits and harm.** Assess whether the merged firm's cost savings are large enough to offset any price increases that downstream customers may face. For example, if input prices rise significantly, smaller or dependent firms may see their own margins squeezed, reducing their ability to invest in growth or innovation.

- **Analyze the importance of the input for buyers' cost structures.** A modest price increase on a minor input may have little effect, but an increase on a critical raw material can have a large knock-on impact on downstream competitiveness and prices.

- **Consider whether customers have viable alternatives.** If there are other suppliers, or if downstream firms have the ability to switch or negotiate, the risk of harm is lower. Where few alternatives exist, higher input prices can have a more damaging effect.

- **Use relevant evidence to test these effects.** Useful evidence includes cost pass-through analyses, input cost shares in buyers' total costs, margin and profitability data for affected customers, and supply chain impact assessments showing how higher input prices would ripple through the market.

48. Where the broader net effect would be negative – for example, where higher prices for key inputs would make entire sectors less competitive – the Commission should ensure that any claimed productivity gains do not come at the expense of others' ability to compete. Remedies or conditions, such as fair supply commitments or non-discriminatory access, may be needed to preserve competition and investment incentives throughout the supply chain.

7. Under which conditions can scale that brings benefits but creates or strengthens market power be achieved only through a merger, as opposed to other means, *i.e.* organic growth or cooperation? Please be as specific as possible, also pointing to potential differences between markets/sectors with different characteristics as relevant.

49. There are situations where achieving scale is realistically possible only through a merger. While organic growth and contractual cooperation are important alternatives, they often face practical limits that make them less viable or effective.

50. First, structural barriers may make organic expansion prohibitively costly or too slow. In capital-intensive sectors new capacity requires significant sunk costs and long lead times. For example, constructing a new semiconductor manufacturing plant or developing a proprietary satellite constellation can take years and billions of euros. A merger may be the only realistic way to access that scale within a timeframe that meets market demands.

51. Second, scale benefits often depend on combining unique or complementary assets that are not realistically replicable. These may include proprietary technologies, critical intellectual property, established brands, or exclusive datasets. In the pharmaceutical sector, for instance, a company with manufacturing and distribution capabilities may need to merge with a smaller firm that holds key patents, rather than trying to replicate that innovation internally.

52. Third, in some fast-moving or digital markets, the ability to achieve scale quickly is crucial. Network effects, data-driven competitive advantages, and 'winner-takes-most' dynamics mean that organic growth may simply be too slow to keep up. A merger can allow firms to reach critical mass before the market tips irreversibly in favor of a single dominant player.

53. Finally, in regulated or localized sectors, organic growth may not be possible at all. For example, water and waste management services often rely on local concessions or licenses that cannot easily be obtained through expansion alone. Here, consolidation may be the only realistic way to achieve the scale needed to invest in more efficient or sustainable operations.

8. To what extent can scale that brings benefits be achieved through expansion into new geographic or product markets, rather than consolidation within the same product and geographic market? Please explain your answer being as specific as possible.

54. Achieving meaningful scale is often best enabled by consolidation within the same product and geographic market, especially in sectors where resulting benefits depend on local networks, infrastructure synergies, or significant fixed investments. In these cases, expanding into new geographic or product markets can complement growth but may not deliver the same depth of benefits that targeted consolidation can achieve.

55. That said, the right balance depends on the specific market. In innovation-driven or highly diversified sectors, some scale advantages – like spreading R&D costs or reaching new customer segments – can also be realized through expansion or strategic partnerships. However, this typically takes longer, carries more risk, and may be less certain to deliver the same tangible, merger-specific benefits that integrated operations can provide.

C. RESILIENCE AND VALUE CHAINS

9. How should the Commission take into account the negative effects of a merger on competitors', suppliers' or business customers' resilience when assessing its impact on competition? Please explain in particular:

a. What theory/theories of harm could the Commission consider?

b. Under which conditions could this theory/these theories of harm occur? Please explain in particular whether the number of remaining suppliers, supply concentrated in a certain region or country outside the Single Market or other metrics would be relevant.

c. What are the elements, including evidence and metrics, that the Commission could use to assess the negative impact on competitors' resilience post-merger?

56. The Commission can assess the impact on resilience by identifying factors that may weaken competitors' ability to maintain stable operations post-merger. These factors help reveal not only short-term risks to competition, but also long-term vulnerabilities in the market structure.

- **Access to critical inputs**. The Commission should assess whether the merged entity will have the ability and incentive to restrict access to essential inputs, services or infrastructure, using evidence such as internal documents, third-party submissions, and data showing input concentration or reliance on non-EU suppliers.

- **Availability of alternatives.** It should evaluate whether competitors have technically and commercially viable alternative sources of supply, based on the number, capacity, substitutability, and geographic location of those alternatives.

- **Financial vulnerability of competitors.** The Commission should examine whether rivals have the financial strength to absorb cost increases or supply disruptions, using indicators such as profitability, debt levels, and cash reserves.

- **Switching costs and dependency**. It should consider whether the merger would increase customer or supplier dependency on the merged entity by raising switching costs or reducing flexibility in sourcing or sales.

- **Exit risk and market diversity.** The risk that weaker competitors may be forced to exit the market postmerger should be assessed, especially where this would reduce supply diversity and increase systemic fragility.

- **Stakeholder input and scenario testing**. The Commission should take into account feedback from affected market participants and conduct scenario analyses to understand how the market would respond to potential disruptions after the merger.

57. Taken together, these elements allow the Commission to move beyond traditional price-based indicators and capture the broader impact of a merger on market resilience, continuity of supply, and the long-term competitiveness of the EU economy.

10. From your/your client's perspective, how can the revised Guidelines contribute to the security of supply and resilience of the EU economy against outside shocks and dependency on third country input?

A.10.1 <u>In a scenario where the merger does not create or strengthen market power</u> (e.g. a merger between complementary players in terms of products or geography)? Please select the benefits that you believe are relevant for the companies' increased resilience [Multiple options possible]. Please provide concrete examples and underlying data. Please also specify which metrics can be used to measure these elements.

a. Vertical integration

b. Better access to input through new contracts

c. Diversification of sources of supply

d. Better conditions of purchase of inputs

e. Access to critical infrastructure

f. Other (please list)

g. No benefits are relevant

58. Even where a merger does not create or strengthen market power and would normally be cleared under the current Guidelines, the Revised Guidelines could still usefully highlight the procompetitive benefits in terms of resilience such mergers can bring. In particular, they could make clear that these transactions can strengthen the merged entity's ability to withstand supply shocks and reduce dependency on third-country inputs. Explicit recognition of such resilience benefits would ensure they are systematically considered as part of the broader assessment, rather than treated as incidental.

59. In particular, the following benefits can enhance resilience:

- **Vertical integration.** A merger between a firm and its key supplier can bring critical inputs in-house, reducing reliance on external vendors and lowering exposure to disruptions outside the EEA. This strengthens supply chain stability and helps avoid delays or shortages. Resilience gains can be measured by looking at the share of inputs sourced internally after the merger, any reduction in average delivery times for key components, and whether the frequency of supply disruptions decreases over time, based on internal procurement and operations data.

- **Better access to inputs through new contracts.** By increasing scale, the merged firm may have greater bargaining power to secure stable, long-term contracts with key suppliers. This reduces reliance on unpredictable spot markets and improves supply planning. The impact on resilience can be assessed by tracking whether the number of long-term contracts increases postmerger, whether those contracts cover a larger share of the firm's critical input needs, and whether input prices become more stable over time, based on procurement data and pricing records.

- **Diversification of sources of supply.** When two firms with different supplier bases or geographic footprints merge, they can diversify their sourcing and reduce dependency on any single supplier or region. This lowers the risk of disruption from regional or geopolitical shocks. Improvements can be measured by looking at the number of distinct suppliers used after the merger, the distribution of sourcing across different countries or regions, and changes in supplier concentration, using standard indicators like the Herfindahl-Hirschman Index ("HHI").

- **Better conditions of purchase of inputs.** By increasing scale, the merged firm may be able to negotiate more favorable terms with suppliers, particularly those located outside the EU. This can lead to more stable pricing, better payment or delivery terms, and greater protection against supply manipulation. These benefits can be observed through lower average input costs, greater flexibility in supply contracts (such as termination or volume adjustment clauses), and reduced price volatility over time, based on contract and procurement data.

- **Access to critical infrastructure.** Some mergers allow companies to gain access to invest – or jointly invest in –essential infrastructure such as transport networks, storage facilities, or processing plants. This can improve supply chain resilience by reducing bottlenecks, speeding up delivery, and creating backup options in case of disruptions. The impact can be assessed by looking at whether the merged entity expands its infrastructure footprint, whether average delivery times improve postmerger, and whether it increases its storage or processing capacity to handle unexpected supply shocks.

60. These benefits, when backed by clear evidence, should be taken into account under the Revised Guidelines as they contribute to the EU's broader economic resilience.

A.10.2 In a scenario where the merger creates or strengthens market power, please indicate which of the benefits identified in the previous question are still relevant for increased security of supply and resilience of the merged entity [Multiple options possible], and comment on whether it may damage the security of supply and resilience of other companies or the economy against outside shocks and dependency on third country input. Please provide concrete examples and underlying data. Please also specify which metrics can be used to measure these elements.

a. Vertical integration

b. Better access to input through new contracts

c. Diversification of sources of supply

d. Better conditions of purchase of inputs

e. Access to critical infrastructure

f. Other (please list)

g. No benefits are relevant anymore

61. The benefits identified in the previous response – such as vertical integration, better access to inputs or infrastructure, diversification of supply sources, and improved purchase conditions – can still enhance the resilience of the merged entity when market power is strengthened. However, the key difference is that these benefits may come at a cost to other companies and the broader EU economy.

62. The impact on others can be measured through rising input prices or delivery times for non-merging firms, greater contract exclusivity or refusal to supply, higher supplier concentration, and feedback from affected market participants. Metrics such as market-level HHI for sourcing, input price spreads across firms, and reduced access to shared infrastructure can help assess broader harm.

63. In short, while the merged entity may become more resilient, the market as a whole may become more fragile. The Commission should carefully weigh these trade-offs and consider remedies to preserve access, ensure fair terms, and avoid creating single points of failure in critical supply chains.

11. How should the Commission take into account the benefits of a merger on companies' resilience in situations where such merger also creates or strengthens market power? Please explain in particular:

a. Under which conditions could such benefits be sufficient to outweigh competitive harm? Please illustrate with the specific benefits you considered relevant.

64. The Commission should take a balanced, evidence-based approach when assessing mergers that increase market power but also generate significant resilience benefits. While resilience alone cannot justify anticompetitive outcomes, it may be relevant in exceptional cases—particularly in sectors where continuity of supply, strategic autonomy, or exposure to third-country risks are critical.

65. Resilience benefits could outweigh competitive harm when:

- The merger **clearly mitigates a systemic risk** – for example, by reducing reliance on fragile or politically exposed supply chains.
- The merger enables **essential investments in infrastructure, production capacity, or diversification** that would be difficult or impossible to achieve independently.
- The resilience gains are **verifiable, merger-specific, and substantial**, not achievable through less anticompetitive means.
- The market is **unlikely to face price increases or reduced innovation in the short-to-medium term**, because of remaining competition, countervailing buyer power, or regulatory constraints.

66. For example, vertical integration that brings a critical input in-house may significantly improve EU supply security if that input is otherwise sourced exclusively from outside the EEA. Likewise, a merger allowing access to essential infrastructure may enable strategic redundancy and help buffer shocks across the value chain.

b. Under which conditions would such benefits be passed on to business customers/consumers, and how? Please illustrate with the specific benefits you considered relevant.

67. Resilience benefits are more likely to be passed on when:

- The merged firm supplies inputs to multiple downstream players, and the stability or cost-efficiency gains are reflected in broader supply chain performance (*e.g.*, fewer delays, lower stockpiling needs).
- There is sufficient transparency or regulatory oversight to ensure non-discriminatory access to the improved infrastructure or services.

- The market structure or contractual environment ensures competitive pressure or buyer power that forces the merged entity to share the benefits.

- The resilience gains lead to lower total costs of ownership for business customers or reduce the risk of service interruption, which can ultimately benefit end consumers (*e.g*., in utilities, transport, or healthcare).

68. For example, if a merger secures stable, long-term access to critical raw materials with less price volatility, and those materials are widely used by EU manufacturers, the benefit can be passed on to business customers through more reliable supply and more predictable costs.

c. What are the elements (including evidence and metrics), whether at firm or industry level, that the Commission could use to assess whether the increased resilience outweigh competitive harm, and will likely be passed on to business customers/consumers?

69. To assess whether increased resilience justifies a loss in competition and whether it benefits downstream customers, the Commission should focus on clear, measurable indicators that show both the resilience gains from the merger and whether those gains benefit others in the market. Key elements include:

- **Improved security of supply.** The Commission should look at whether the merged firm can access key inputs more reliably than before – either by producing them internally or locking in long-term contracts. This can be shown by a higher share of inputs sourced in-house, longer contract durations, and fewer supply delays or shortages postmerger.

- **Lower risk or cost volatility.** If the merger results in more stable input prices or smoother deliveries, this reduces uncertainty for the merged firm and its customers. The Commission should assess whether price fluctuations for key inputs decrease and whether delivery times become more predictable – helping downstream businesses plan and price their products more effectively.

- **Wider access to benefits.** The Commission should check whether the benefits of the merger – such as better supply terms or improved infrastructure access – are shared with other companies, not just kept by the merged firm. This could be through open access to facilities, fair supply contracts, or broader improvements in service reliability.

- **Customer feedback.** Input from business customers or industry associations is key to understanding whether the merger improves conditions in practice. The Commission should consider whether customers report better supply continuity, more favorable contract terms, or fewer disruptions since the merger.

- **Industry-level impact.** The Commission should assess whether the merger helps reduce the overall market's exposure to fragile supply chains. This includes checking if there is a greater diversity of suppliers, less reliance on high-risk regions, or reduced concentration of sourcing in the hands of a few players.

- **Comparison with the alternative.** The Commission should compare the expected resilience gains from the merger with a realistic alternative scenario. If the same benefits could not be achieved without the merger – or if the market would remain more exposed to disruptions – this weighs in favor of allowing the transaction.

70. These elements may help the Commission judge whether the resilience benefits are real, significant, and shared beyond the merged company – and whether they justify a loss in competition.

12. From your/your client's perspective, what are the characteristics of markets or sectors where resilience is particularly important to compete effectively? Please be as specific as possible e.g. on the number of suppliers needed or on the gravity of the impact in case of shocks or shortage and why.

71. Resilience is essential in markets where disruptions in supply or operations can quickly lead to major losses or loss of competitiveness. These markets typically share the following features:

- **Reliance on critical or scarce inputs.** Sectors like semiconductors, batteries, and pharmaceuticals depend on key materials often sourced from outside the EU. Any disruption can halt production entirely.

- **Few alternative suppliers.** Where there are only one or two viable suppliers – *e.g.*, energy infrastructure – even a small shock can severely impact operations.

- **High cost of supply interruptions.** In industries like food, energy, and healthcare, even short delays can have serious consequences, making continuity of supply a key competitive factor.

- **Lean production models.** Sectors such as automotive and electronics cannot afford delays, as supply chain issues directly impact delivery schedules and customer contracts.

- **Regulated services.** In areas like water treatment or medical equipment, firms must ensure uninterrupted service to meet legal and contractual obligations.

- **Safety-critical assets.** In industries such as defense and space, market disruptions and dependence on non-EU suppliers introduce potential geopolitical vulnerabilities, threatening European sovereignty and security.

72. In these sectors, having stable, diversified, and secure supply is not just a strategic advantage – it is a basic requirement to compete.

D. <u>ENHANCING INVESTMENT AND INNOVATION</u>

13. What are the benefits that mergers might bring to competition <u>in terms of increased innovation</u>:

A.13.1 <u>In a scenario where the merger does not create or strengthen market power</u> (e.g. a merger between complementary players in terms of products or geography)? Please select the benefits that you believe are relevant for increased innovation [Multiple options possible]. For each selected benefit, please provide concrete examples and underlying data. Please also specify which metrics can be used to measure these elements.

a. Network effects (i.e., whereby a product or service gains additional value as more people use it)

b. Intangible capital (assets lacking physical substance, e.g. patents, copyrights, goodwill, know-how)

c. Access to equity or debt capital

d. Integration of complementary R&D capabilities

e. Integration of complementary R&D staff

f. Access to new know-how, data and patents

g. Access to infrastructure or other critical input

h. Other factors (please list)

i. No benefits are relevant

73. Mergers between complementary firms – by product, technology, or geography – can significantly boost innovation without harming competition. They allow companies to combine strengths, eliminate inefficiencies, and accelerate the development and delivery of new solutions. These benefits can be measured through faster time-to-market, increased R&D output, and more effective use of resources. The following benefits are particularly relevant:

- **Network effects.** In digital or platform-based markets, a merger between two complementary platforms can accelerate the network effects by combining user bases, data sets, and technical ecosystems, making the overall service more attractive, functional, and competitive. This can lead to faster innovation, as more users generate more data, feedback, and opportunities for product improvement. For example, combining two mobility platforms or fintech apps may improve service accuracy, expand reach, and attract more developers or users. These benefits can be measured through increased user numbers, higher engagement and retention rates, and enhanced service performance driven by data.

- **Intangible capital.** Intangible assets – such as patents, trade secrets, proprietary processes, brand reputation, and organizational know-how – are often key drivers of innovation. A merger can unlock value by bringing together complementary or reinforcing intangible capital, allowing the combined firm to integrate technologies more efficiently, reduce duplication, and launch new products more quickly and effectively. This is especially valuable in sectors where time-to-market and brand trust are critical for adoption. For example, a merger between a research-intensive biotech firm and a company with strong market presence in healthcare can accelerate the launch of new treatments by combining scientific innovation with commercial credibility. The benefits can be measured by the growth and use of the merged IP portfolio, increased licensing revenues, the number of new products using pre-existing know-how, and faster consumer uptake of innovations under an established brand.

- **Access to equity or debt capital.** Innovation – especially in sectors like biotech, cleantech, or semiconductors – often requires substantial upfront investment, long development cycles, and high risk tolerance. A merger can improve the financial position and creditworthiness of the combined entity, making it easier to secure external funding at better terms. This can unlock investment in R&D projects that would be too costly or risky for the firms to undertake alone. For example, a merger between two mid-sized clean energy firms might allow the new entity to access larger equity rounds or more favorable debt financing, enabling scale-up of next-generation battery or hydrogen technologies. The benefits can be measured through increased R&D expenditure, the size and conditions of postmerger funding rounds, improved credit ratings, and the launch of capital-intensive innovation programs that were previously out of reach.

- **Integration of complementary R&D capabilities.** When firms with different but complementary areas of technical or scientific expertise merge, they can combine strengths to tackle more complex innovation challenges. This often leads to faster development cycles, broader applications, and more disruptive outcomes than what either firm could achieve alone. The merger allows teams to share tools, research findings, and methodologies across disciplines, opening up new innovation pathways. For example, a merger between a company specializing in AI and another with deep healthcare domain knowledge could lead to the rapid development of diagnostic tools that are both technically advanced and clinically relevant. Success can be measured by the number of new cross-technology products launched, expansion of the innovation pipeline into new fields, and an increase in high-impact R&D outputs such as joint patents, prototypes, or regulatory filings.

- **Integration of complementary R&D staff.** A merger can bring together teams with diverse but complementary expertise – such as engineers, scientists, data specialists, or regulatory experts – creating a more dynamic and collaborative innovation environment. This integration allows for richer idea exchange, better problem-solving, and more efficient R&D processes, as teams build on each other's strengths rather than working in silos. It also fosters a stronger innovation culture, where cross-disciplinary input leads to more practical, scalable solutions. For example, merging a MedTech company with strong clinical knowledge and a digital health firm with software development skills can enable the joint development of AI-powered diagnostic devices. The impact can be measured by the creation of integrated R&D teams, joint patent filings that reflect mixed expertise, employee innovation initiatives, and internal metrics on collaboration and knowledge sharing.

- **Access to new know-how, data and patents.** Mergers often give firms access to each other's proprietary knowledge, datasets, and intellectual property – resources that, when combined, can unlock new innovation opportunities that would not have been possible separately. This is particularly valuable in data-intensive or IP-driven sectors, where the integration of previously siloed assets enables more powerful technologies, faster development, or broader applications. For example, a merger between two cybersecurity firms –one with expertise in endpoint protection and the other with advanced threat intelligence data – can result in more accurate, real-time threat detection systems. The impact can be measured through the creation of new patents that build on or cite legacy IP from both firms, the development of product features reliant on combined datasets, and the speed or scope of product innovation following the merger.

- **Access to infrastructure or other critical input.** Mergers can give R&D-intensive or smaller firms access to physical and technical infrastructure that they previously lacked– such as laboratories, testing equipment, pilot manufacturing lines, or cloud computing resources. This access can significantly accelerate product development, improve quality control, reduce costs, and increase the pace of experimentation and iteration. For example, a merger between a deep-tech start-up and a larger industrial partner might allow the start-up to move from lab-scale prototypes to full-scale testing and certification more quickly. The benefits can be measured by the increase in internal testing or validation activities, reduction in reliance on third-party R&D services, shorter prototyping and product refinement cycles, and earlier readiness for market launch.

- **Increased attractiveness to external collaborators.** A merger may also enhance the firm's ability to attract new R&D partners, secure public funding, or join strategic innovation consortia. A larger, more capable merged entity can be a more credible and resourceful partner for universities, research institutions, or EU-funded projects. For example, a merged cleantech firm might be better positioned to lead a Horizon Europe consortium focused on sustainable innovation. This benefit can be tracked through the number of new research partnerships, funding awarded postmerger, or the firm's involvement in joint R&D programs or innovation clusters.

74. These benefits should be fully considered in the Commission's assessment of innovation-driven mergers, as they reflect real and measurable improvements in firms' ability to innovate. Recognizing these effects is especially important in sectors where scale, speed, and access to talent, data, or infrastructure are critical to compete. Doing so ensures that merger control supports – not hinders – the EU's broader innovation and competitiveness goals.

A.13.2 <u>In a scenario where the merger creates or strengthens market power</u>, please indicate which of the benefits identified in the previous question are still relevant for increased innovation of the merged entity [Multiple options possible], and comment on whether it may damage the ability and incentives to innovate of other companies. Please provide concrete examples and underlying data. Please also specify which metrics can be used to measure these elements.

a. Network effects (i.e., whereby a product or service gains additional value as more people use it)

b. Intangible capital (assets lacking physical substance, e.g. patents, copyrights, goodwill, know-how)

c. Access to equity or debt capital

d. Integration of complementary R&D capabilities

e. Integration of complementary R&D staff

f. Access to new know-how, data and patents

g. Access to infrastructure or other critical input

h. Other factors (please list)

i. No benefits are relevant anymore

75. In a scenario where the merger creates or strengthens market power, innovation benefits may still be relevant for the merged entity. Access to capital, integration of complementary R&D capabilities and staff, and access to infrastructure can continue to support internal innovation by enabling larger-scale projects, better coordination, and improved use of resources. These benefits can be measured through post-merger increases in R&D expenditure, the number of joint patent filings, the number of contracts in particular for larger-scale global projects, reduced development timelines, or higher utilization of internal facilities.

76. Other benefits, such as access to data, know-how, and network effects, may also support innovation within the merged firm, but their broader value depends on whether they remain open and interoperable. If these assets are leveraged solely to strengthen the firm's

position, the risk is not necessarily harm, but concentration of innovation capacity, which may reduce the incentive for others to invest unless collaborative channels remain.

77. To assess these effects, the Commission could look at changes in the merged firm's innovation output (*e.g.*, patents, product launches), alongside market-level indicators such as industry-wide R&D trends, access to shared assets (*e.g.*, data or infrastructure), and the continued activity of smaller innovators. The key is to distinguish between innovation driven by efficiency and scale, which can be procompetitive, and innovation that results from competitive advantage tied to market control, which may be more limited in its broader benefits.

14. What are the benefits that mergers might bring to competition <u>in terms of increased investment</u>:

A.14.1 <u>In a scenario where the merger does not create or strengthen market power</u> (e.g. a merger between complementary players in terms of products or geography)? Please select the benefits that you believe are relevant for increased investment [Multiple options possible] and provide concrete examples and underlying data. Please also specify which metrics can be used to measure these elements.

a. Network effects (i.e., whereby a product or service gains additional value as more people use it)

b. Intangible capital (assets lacking physical substance, e.g. patents, copyrights, goodwill, know-how)

c. Access to equity or dept capital

d. Integration of complementary R&D capabilities

e. Integration of complementary R&D staff

f. Access to new know-how, data and patents

g. Access to infrastructure or other critical input

h. Other factors (please list)

i. No benefits are relevant

78. Mergers between complementary players can bring substantial benefits for increased investment, particularly by improving access to financial resources, infrastructure, talent, and innovation capabilities. These benefits are especially relevant in capital-intensive or innovation-driven sectors where scaling is essential to invest and compete effectively. The following benefits are particularly relevant:

- **Network effects.** By combining user bases or platforms, a merger can enhance network effects, making the service more valuable as usage grows. This creates stronger incentives to invest in infrastructure, product development, and customer experience to support and monetize the expanded ecosystem. For example, in digital markets, the merged entity may invest more in platform features, data capabilities, or scaling infrastructure. These investment effects can be measured by growth in active users, engagement levels, retention rates, and postmerger capital expenditure.

- **Intangible capital.** Mergers can bring together complementary assets such as brands, patents, proprietary know-how, and customer trust, which strengthen the merged firm's ability and confidence to invest in long-term projects. For example, combining a trusted brand with innovative technology may support greater investment in product development or market expansion. These effects can be tracked through metrics like postmerger growth in brand value, expansion of the IP portfolio, goodwill on the balance sheet, and customer satisfaction scores.

- **Access to equity or debt capital.** Mergers can improve a company's financial profile by increasing its scale and diversification, making it more attractive to investors and lenders. This can lower the cost of capital and enable greater investment in growth and innovation. For example, a merged clean energy firm may be better positioned to raise funding for pilot facilities or technology deployment. These investment benefits can be measured by improved credit ratings, increased postmerger fundraising volumes, lower borrowing costs, and higher capital expenditure.

- **Integration of complementary R&D capabilities and staff**. Mergers can bring together distinct scientific expertise, technical tools, and research teams, enabling larger-scale and more effective investment in innovation. By uniting complementary capabilities and talent – such as combining AI engineers with clinical researchers – the merged entity can tackle complex projects that would be too costly or risky for either firm alone. These investment benefits can be measured through increased R&D budgets, new joint research programs, co-authored patents, and indicators of cross-functional team integration.

- **Access to new know-how, data, and patents.** Mergers can unlock new opportunities for investment by combining proprietary knowledge, datasets, and intellectual property in ways that create added value. For example, integrating customer data from one firm with behavioral analytics from another can support investment in more advanced personalization tools or product features. These effects can be measured through the reuse of legacy IP in new developments, data integration efforts, and the launch of data-driven products or services postmerger.

- **Access to infrastructure or other critical input**. Mergers can give companies access to essential assets such as manufacturing sites, testing facilities, or digital infrastructure, enabling larger or faster investments that would be inefficient or unaffordable for either party alone. For example, shared access to pilot production lines may accelerate product development and reduce reliance on third parties. These benefits can be measured by increased internal use of infrastructure, reduced outsourcing costs, and faster time-to-market for new offerings.

79. These benefits are merger-specific and credible when supported by internal investment plans, pipeline data, and integration roadmaps. They are also measurable through concrete indicators such as increased capital expenditure, improved credit ratings, higher R&D intensity, expanded IP portfolios, and shorter time-to-market. Recognizing these effects is essential to ensure that merger control supports – rather than deters – investments that strengthen competitiveness, drive innovation, and deliver long-term value.

A.14.2 In a scenario where the merger creates or strengthens market power, please indicate which of the benefits identified in the previous question are still relevant for increased investment of the merged entity [Multiple options possible], and comment on whether it may damage the ability and incentives to invest in other companies. Please provide concrete examples and underlying data. Please also specify which metrics can be used to measure these elements.

a. **Network effects (*i.e.*, whereby a product or service gains additional value as more people use it)**

b. **Intangible capital (assets lacking physical substance, e.g. patents, copyrights, goodwill, know-how)**

c. **Access to equity or dept capital**

d. **Integration of complementary R&D capabilities**

e. **Integration of complementary R&D staff**

f. **Access to new know-how, data and patents**

g. **Access to infrastructure or other critical input**

h. **Other factors (please list)**

i. **No benefits are relevant anymore**

80. Even where a merger creates or strengthens market power, many of the investment-related benefits identified under A.14.1 – such as improved access to capital, integration of complementary R&D capabilities, and shared use of infrastructure – may still apply and continue to support increased investment within the merged entity.

81. However, in such cases, the key question is whether these benefits come at the expense of other companies' ability or incentives to invest. For example, if the merged firm gains

control over strategic infrastructure, essential datasets, or distribution channels, it may reduce their rivals' ability to compete for funding or justify long-term investment. Similarly, if market opportunities become concentrated in the hands of the merged firm, smaller players may delay or abandon planned projects.

82. Potential harm can be assessed using market-level indicators such as reduced fundraising activity or capital expenditure by competitors postmerger, exits or consolidation among smaller firms, and a decline in overall R&D intensity in the sector. The Commission should also consider changes in access conditions to critical inputs or infrastructure and whether the merged firm's investment gains are being used to reinforce market power, rather than driving broad-based innovation and growth.

83. To the extent that investment benefits remain merger-specific, credible, and efficiency-driven, they should still be recognized – but they must be carefully balanced against any chilling effect the transaction may have on dynamic competition in the wider market.

15. From your/your client's perspective, in which type of markets/sectors are smaller or larger firms typically more innovative? Please provide supporting data and evidence.

84. From our perspective, both smaller and larger firms can be highly innovative, but their strengths tend to vary by market structure, sector maturity, and innovation type.

85. Smaller firms are often more innovative in fast-moving sectors like biotech, cleantech, software, or deep tech. They are agile, take more risks, and usually instigate disruptive breakthroughs.

86. Larger firms tend to be more innovative in sectors that require scale, heavy investment, and regulatory expertise – like pharma, automotive, and semiconductors. They are better at turning ideas into marketable products and sustaining long-term R&D.

87. In practice, the highest innovation output often comes from a combination of the two – where smaller firms provide breakthrough ideas and larger firms contribute resources, scale, and regulatory expertise. Mergers or strategic alliances in such contexts can enable innovations that neither could deliver alone.

16. From your/your client's perspective, how do different market structures, such as tight oligopolies or markets with a leading company followed by smaller firms, influence the ability and incentives to innovate and invest?

88. In tight oligopolies, where a few firms hold similar market power, companies often innovate to stay ahead of close rivals. This can lead to steady, competitive investment in product improvements. However, if market shares are stable and competition is limited, innovation may slow over time.

89. In markets with a dominant firm and smaller challengers, the picture is mixed. The leading firm may have the resources to invest heavily in R&D, but if it faces little threat, its

incentive to innovate may decline. Meanwhile, smaller firms often drive disruptive innovation – but may lack funding, scale, or access to infrastructure, limiting their impact.

90. The most dynamic innovation environments usually involve contestable markets – where smaller firms can grow and challenge incumbents, and larger firms feel pressure to invest and improve. Merger control should preserve this balance.

17. How should the Commission factor in that competition to invest and innovate may take place at global level while markets for consumers may be of significantly narrower geographic scope? Please explain in particular:

a. Specifically, in which circumstances may a merger lead to competitive harm due to the reduction of competition at global level, even when pre-merger the companies were not competing in the same narrower geographic markets? How should that be taken into consideration?

91. The Commission should factor in that competition to invest and innovate often takes place at global level, while consumer markets may remain national or regional in scope. In such cases, mergers can generate procompetitive benefits that may not be immediately visible in narrower geographic markets but are critical for long-term innovation and resilience.

92. A merger can reduce competition at the global innovation level where the merging firms are among a small number of companies actively investing in a particular technology – even if they do not yet compete in the same consumer markets. This may be relevant in sectors where: (i) innovation takes place upstream (*e.g.*, in R&D pipelines or data infrastructure); (ii) competition is global for talent, capital, and patents; and (iii) market entry is driven by breakthrough innovation rather than existing overlap.

93. In such cases, the Commission should assess whether the merger would significantly reduce the number of independent innovation paths or incentives to invest at global level. This can be done using evidence such as global R&D spending, pipeline data, patent filings, and the strategic importance of innovation for the merging firms. At the same time, where the merger enables the parties to scale up innovation and accelerate development – for example, through shared R&D infrastructure, data, or know-how – it may strengthen, rather than reduce, global competition to innovate. The Commission should weigh both effects carefully.

b. Vice versa, in which circumstances may a merger lead to competitive harm due to the reduction of competition at the narrower geographic level (e.g. national), while at the same time bringing benefits to competition at global level? How should that be taken into consideration?

94. A merger may generate clear benefits at global level – such as increased R&D capacity, improved access to capital, or stronger global positioning – while also affecting competition in a narrower national or regional market. This may occur where: (i) the parties are close competitors in a specific EU Member State or regional market; (ii) the

merged entity gains significant local market power and will not face sufficient competitive constraints from alternative suppliers and/or customers; and (iii) the global innovation benefits are not guaranteed to flow down to local customers.

95. In such cases, the Commission should assess whether the broader benefits – including long-term innovation, supply resilience, or sustainability – are likely to outweigh any local short-term harm. This includes analyzing whether innovation gains will be passed on to business customers or end users through lower prices, better quality, or faster access to improved products.

E. MERGER CONTROL AND GLOBALISATION

18. What are the benefits companies may enjoy due to their global presence that can give them a competitive advantage in markets (with)in Europe? Please select the advantages that you believe are relevant [Multiple options possible] and provide concrete examples and underlying data.

a. Less regulation in markets outside of Europe.

b. Less costs in markets outside of Europe

c. Better access to raw materials and/or manufacturing capacity

d. Better access to financing or equity investments

e. Lower standards of environmental protection, social rights or similar

f. Other

g. No benefits are relevant

96. Companies with a global presence may benefit from several structural and operational advantages that strengthen their competitive position in European markets. These advantages are especially relevant in industries where scale, access, and agility matter.

- **Less regulation in markets outside of Europe.** Operating in jurisdictions with more streamlined regulatory regimes can reduce the time and cost of launching new products or scaling operations. Global firms may be able to test, iterate, and commercialize innovations faster abroad, and then enter EU markets with more mature offerings. In some sectors, such as tech or life sciences, the ability to navigate simpler approval or certification processes elsewhere can create a time-to-market advantage that is difficult for companies to match.

- **Lower costs in markets outside of Europe.** Firms with global operations can benefit from lower input costs, whether related to labor, energy, infrastructure, or taxation. For example, producing in lower-cost jurisdictions can free up capital for reinvestment in R&D or expansion in higher-cost markets like the EU.

Additionally, global companies can optimize their value chain by allocating different stages of production to the most cost-efficient locations, reducing overall unit costs and improving pricing flexibility in Europe.

- **Better access to raw materials and/or manufacturing capacity.** A global footprint enables firms to secure long-term contracts with suppliers in resource-rich regions, mitigating risks related to shortages, trade restrictions, or geopolitical disruptions. These firms can also shift production between regions to avoid bottlenecks, maintain delivery schedules, and meet EU customer expectations more consistently. This supply chain resilience can become a critical competitive differentiator, particularly in sectors dependent on scarce or strategic inputs (*e.g.*, energy, chemicals, electronics).

- **Better access to financing or equity investments.** Global companies often have access to a wider range of capital sources, including international banks, sovereign funds, and institutional investors. Their size, geographic diversification, and growth prospects make them attractive investment targets, enabling them to raise capital more easily and at better rates than smaller, local competitors. This financial advantage can support larger R&D budgets, faster expansion, and a greater ability to absorb short-term losses while pursuing long-term innovation in the EU.

- **Lower standards of environmental protection, social rights or similar.** Companies operating outside the EU may face less stringent requirements on environmental compliance, labor protections, or corporate reporting. This can translate into lower operating costs – for example, by avoiding strict emissions controls, occupational safety standards, or due diligence obligations. While these advantages may be temporary and are not aligned with EU policy objectives, they can still provide a short-term cost edge in global markets. In highly competitive sectors, this cost differential may impact the companies' ability to compete on price or invest in higher-standard production models.

- **Other: Global scale, knowledge transfer, and operational learning.** Companies active across multiple continents gain exposure to a wider range of customer needs, market dynamics, and technological approaches. This global learning can accelerate innovation cycles and allow for early identification of trends that shape future demand. Multinational firms also benefit from internal benchmarking and cross-market knowledge sharing, helping them refine strategies and tools that are then deployed more effectively in European markets.

97. These advantages can allow globally active firms to enter, scale, or dominate in markets more rapidly than firms operating only at national or regional levels. When assessing mergers or market dynamics, the Commission should take these global asymmetries into account to ensure companies are not structurally disadvantaged in the long-term.

19. How should the Commission factor in that some companies, including merging parties or competitors, benefit from competitive advantages linked to their global presence when assessing the impact of a merger on competition (with)in Europe?

a. In this context, please explain whether such competitive advantages would (not) be reflected already in the level of market shares, and why/why not.

98. The Commission should take into account that some companies – including merging parties or their competitors – benefit from structural advantages linked to their global presence. These include lower production costs, faster time-to-market, access to critical raw materials, broader financing options, and global learning effects. Such advantages can significantly shape competitive dynamics within the EU, especially in sectors that are capital-intensive, innovation-driven, or exposed to global supply chains.

99. These global advantages are not always fully captured by market shares, which reflect current sales volumes or revenues, but not the underlying ability to scale, invest, or outcompete rivals in the future. For example, a globally integrated competitor may hold a modest EU market share today but have the capacity to rapidly expand, undercut prices, or deploy new technologies – especially post-merger. Conversely, the merged entity's market share might appear high, but it may still face intense pressure from international players with more agile business models or access to cheaper inputs.

100. Therefore, when assessing a merger, the Commission should look beyond static indicators like market shares and incorporate forward-looking factors such as global supply advantages, investment capacity, cost structures, and innovation pipelines. This provides a more accurate view of the competitive constraints faced by companies and the strategic rationale for cross-border mergers aiming to match global rivals.

b. In this context, please explain how and in which circumstances benefits linked to e.g. subsidies in other markets can be considered as a competitive advantage in the relevant market.

101. Foreign subsidies can create structural competitive advantages for globally active firms that materially affect competition within the EU – even if those subsidies are granted outside the Single Market. These advantages are not always visible in market share data but can shape firms' cost structures, investment capacity, and ability to expand or undercut rivals in the EU (and when competing with other players on the global market).

102. Such advantages are particularly relevant where subsidies lower production or export costs – for instance through cheaper energy, labor, or capital – allowing firms to offer prices that would otherwise be unsustainable, thereby depressing margins and discouraging investment by rivals. They also matter where subsidies de-risk capital expenditure or R&D, enabling faster innovation cycles or large-scale expansion; this is often seen in foreign-funded factories, gigafactories or tech ecosystems that give firms a head start in building global capacity and gaining long-term dominance in the EU. In addition, when subsidies secure privileged access to raw materials or infrastructure, they strengthen firms' control

over supply chains – including for inputs critical to EU industry – increasing dependency, weakening supply security, and limiting space for competitive entry or growth within the internal market.

103. In its merger review, the Commission should consider whether a party's global presence is supported by foreign subsidies or public investment that enhance its competitiveness. While such support can reflect legitimate industrial policy choices abroad and enable firms to innovate, scale, or compete more effectively, it may also influence the merged entity's ability to expand rapidly or absorb greater risks within the EU or when in competition with other companies on the global market. These advantages may not be fully captured by current market shares but could shape future competitive dynamics, particularly in sensitive or capital-intensive sectors. Factoring in these elements can help the Commission reach a more accurate and forward-looking assessment of market power and ensure proportionate and well-calibrated outcomes.

c. In this context, please explain in which circumstances, and based on which evidence, such benefits can be considered as part of the long term and structural counterfactual, i.e. the situation absent the merger.

104. Benefits linked to global presence – such as foreign subsidies, better access to capital, or lower input costs – can be considered part of the structural counterfactual where there is concrete evidence that these advantages would continue absent the merger. This is the case if, for example, internal documents, investment plans, or third-party funding commitments show that a party would independently expand, innovate, or reduce costs using those advantages, even without the transaction.

105. In such cases, the Commission should not attribute those benefits to the merger itself, but rather treat them as part of the baseline scenario. This ensures that only merger-specific efficiencies are weighed against potential competitive harm.

20. What would be pro-competitive consolidations in global strategic sectors, such as digital and deep-tech markets (e.g., IoT, advanced connectivity, cybersecurity, cloud, quantum, and/or AI), clean and resource efficient technologies or biotechnologies that would benefit competition in the Single Market? Please explain why in particular in terms of harm and benefits to competition.

106. Certain mergers in strategic sectors can be procompetitive and benefit the Single Market, provided they are carefully assessed. These sectors are typically characterized by high fixed costs, long development timelines, and the need for access to talent, data, and infrastructure. In this context, consolidation can help companies overcome fragmentation, scale their operations, and compete more effectively on global markets.

107. From a competition perspective, these transactions can generate benefits that outweigh potential harms – particularly where consolidation enables the emergence of credible challengers to dominant players. In deep-tech fields, global markets tend to tip quickly toward a small number of providers because of network effects and economies of scale.

Mergers that allow companies to pool complementary capabilities – such as proprietary data, technical expertise, or infrastructure – can support the development of high-quality alternatives, increasing market contestability and innovation.

108. Similarly, in cleantech and biotech, where high capital intensity and regulatory hurdles limit entry, consolidation can promote competition by enabling firms to bring new products to market more rapidly and efficiently. This can widen consumer choice, speed up the green transition, and reduce Europe's dependence on foreign technologies.

109. Such transactions can enhance competition by strengthening the ability of companies to offer high-quality, competitive alternatives – benefiting users through greater choice, better performance, and faster innovation. In markets where a few players have already reached scale, procompetitive consolidations can contribute to a more balanced and resilient ecosystem, supporting long-term innovation and investment across the Single Market.

110. When carefully reviewed to ensure they do not result in foreclosure or a weakening of competitive pressure, these mergers can support a dynamic internal market and reinforce Europe's position in strategically important sectors. In this light, merger control should take a forward-looking, innovation-sensitive approach – recognizing that, in these markets, scale and integration can be key enablers of effective competition.

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