

Merger Guidelines Review

Topic D – Sustainability and Clean Technologies

I. EXECUTIVE SUMMARY

1. This Response to the European Commission’s Consultation on **Topic D** summarizes our views on possible reforms to the assessment of sustainability and clean technologies in EU merger control.¹
2. EU merger control must take place “within the general framework of the achievement of the fundamental objectives” of the EU.² These include the promotion of “a harmonious, balanced and sustainable development of economic activities”, “sustainable and non-inflationary growth”, and “a high level of protection and improvement of the quality of the environment”.³ In this context, the Commission’s Market Definition Notice provides that “competition policy [...] can complement the Union’s regulatory framework on environmental sustainability by taking into account sustainability factors to the extent relevant to the competition assessment”.⁴ In recent decisional practice, the Commission has assessed sustainability considerations in different aspects of its merger analysis, including market definition, competitive constraints, and efficiencies.⁵

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”).

² Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, Recital 23, which refers to fundamental objectives of the European Union contained in Article 2 of the Treaty establishing the European Community and Article 3 of the Treaty on the European Union (“TEU”) (ex Article 2 TEU).

³ Article 2 and Article 3(3) TEU. *See also* Article 11 of the Treaty on the Functioning of the European Union (“TFEU”), which states that “[e]nvironmental protection requirements must be integrated into the definition and implementation of the Union’s policies and activities, in particular with a view to promoting sustainable development.”

⁴ Commission Notice on the definition of the relevant market for the purposes of Union competition law, OJ 2024 C/2024/1645 (“Market Definition Notice”), Recital 3.

⁵ For example, the Commission has assessed elements of sustainability in its market definition (*Marine Harvest/Morpol* (Case COMP/M.6850), decision of September 30, 2013 (“Marine Harvest/Morpol”) and *DEMB/Mondelez/Charger Opco* (Case COMP/M.7292), decision of May 5, 2015 (“DEMB/Mondelez/Charger Opco”)), competitive constraints (*Norsk Hydro/Alumetal* (Case COMP/M.10658), decision of May 4, 2023 (“Norsk Hydro/Alumetal”)), and efficiencies analysis (*Aurubis/Metallo* (Case COMP/M.9409), decision of May 4, 2020 (“Aurubis/Metallo”)).

3. The Commission’s substantive appraisal of horizontal mergers, as reflected in the Revised Guidelines, should support the European Green Deal and the EU’s broader sustainability objectives where feasible. The European Climate Law establishes a target for the EU to achieve climate neutrality by 2050, which is legally binding on all EU institutions and Member States. Achieving this transition “requires changes across the entire policy spectrum and a collective effort of all sectors of the economy and society”.⁶ Accordingly, “all relevant EU legislation and policies are required to be consistent with, and contribute to the law’s climate-neutrality objective.”⁷
4. The current Guidelines do not address how the Commission should assess mergers with a sustainability objective, nor how the Commission should balance the anticompetitive effects of a merger against its contribution to climate and other sustainability objectives, or how to weigh the sustainability harms of a merger against its competitive gains. Such guidance is urgently needed, given the possibility that short-term impacts on competitive parameters such as price and output may be outweighed by long-term gains from accelerating the global transition to net zero.
5. Our recommendations for the Revised Guidelines are as follows:
 - **The Revised Guidelines should recognize that merger control can contribute to the EU’s sustainability objectives.** The Revised Guidelines should recognize the role merger control can play in achieving sustainable development within the EU, and include a framework for assessing mergers that generate sustainability-related consumer benefits. The Commission’s merger assessment of sustainability to date has been focused on sustainability-based theories of harm, referencing customer preferences for sustainable products or services, with less of a focus on a transaction’s contribution to climate neutrality and wider sustainability objectives. In updating the Guidelines, the Commission can draw from the work done for other areas of competition enforcement, including the Commission’s new Horizontal Guidelines⁸ and its enhanced approach to evaluating sustainability-related efficiencies.
 - **Sustainability can be a parameter of competition.** The Revised Guidelines should acknowledge that sustainability factors may drive competition in certain markets, where evolving regulations, government policies, technologies, or social norms are influencing customer demand for more sustainable solutions, and are requiring companies to adapt their business models to remain competitive. The Revised Guidelines should set out the Commission’s approach to investigating

⁶ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (“European Climate Law”), OJ L 243, Recital 25.

⁷ *Ibid.*

⁸ Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ 2023 C 259/01 (“Horizontal Guidelines”).

sustainability-led competition, including relevant market characteristics and sources of evidence.

- **The Revised Guidelines should approach sustainability-related theories of harm with caution.** Recent Commission decisions have pursued competition concerns arising from overlaps in emerging sustainable solutions or inputs. In developing such theories, the Commission should ensure it does not unjustifiably penalize parties that have invested in more sustainable technologies. Competitors in legacy markets or with a lower sustainability performance may still exert significant competitive pressure through economies of scale, access to cheaper inputs that do not internalize environmental externalities, or mature technologies.
- **The Revised Guidelines should recognize the broad range of sustainability-related merger benefits.** The Revised Guidelines should update existing guidance on efficiencies to align with the new Horizontal Guidelines, clarify the relevant consumers for whom these benefits are recognized, and develop guidance on timeliness to better address dynamic efficiencies. The Revised Guidelines should explicitly recognize the challenges in proving non-cost efficiencies and establish a clear framework for their evaluation. This includes explaining how non-cost efficiencies should be assessed (including the level of quantification required) and clarifying how such benefits will be weighed against the potential competitive harms identified in the absence of precise values. The Revised Guidelines should provide guidance on relevant types of evidence and include case study examples on the assessment of sustainability efficiencies.
- **The Revised Guidelines should take account of dynamic and out-of-market efficiencies, to ensure due consideration of sustainability-related merger benefits.** Sustainability-related benefits (such as greenhouse gas (“GHG”) emission reductions) may arise from mid-to-long-term post-merger developments, through the parties’ investments in product development and R&D, or the scale-up of acquired green technologies. These new solutions or improvements – as well as the environmental positive externalities they bring – may arise in markets beyond those impacted by potential competition concerns. The Revised Guidelines should admit consideration of out-of-market benefits, regardless of the consumers they benefit. This would also give the Commission the flexibility to weigh any benefits arising in neighboring or next-generation markets against potential competition harms to legacy solutions.

RESPONSE PAPER

D.1. In your/your client's view, do the current Guidelines provide clear, correct, and comprehensive guidance on how merger control reflects the transition to a climate neutral, clean, and sustainable economy with clean and resource-efficient technologies and solutions? [One option possible]⁹

- a) Yes, fully
- b) Yes, to some extent
- c) **No, to an insufficient extent**
- d) Not at all
- e) I do not know

D1.a. [If 'Yes, to some extent' or 'No, to an insufficient extent' or 'Not at all'] Please explain which provisions of the current Guidelines (if any) do not adequately reflect the evolutions linked to the transition to a climate neutral, clean, and sustainable economy.

6. Please see Executive Summary.

D.2. In your/your client's view, should the revised Guidelines better reflect the evolutions linked to the transition to a climate neutral, clean, and sustainable economy in relation to the following aspects? Please select the areas that you believe the revised Guidelines should address. [Multiple options possible]

- a) **Sustainability as a parameter of competition**
- b) **Ability and incentives to innovate in clean and decarbonised products, technologies and services**
- c) **Risks of discontinuation of or reduced innovation in clean and decarbonised products, technologies and services**
- d) **The revised Guidelines should not reflect any of these areas**
- e) **Other**

7. The Revised Guidelines should address all of these aspects as well as a number of areas concerning the assessment of sustainability-related merger benefits that require clarification. Please see the Executive Summary for key recommendations.

⁹ In this submission, the options selected in response to multiple-choice questions are shown in **green**.

- D.3. How should the Commission factor in sustainability as a parameter of competition in its assessment of a merger’s effects? In particular, please explain in which circumstances and based on which metrics (e.g., shares of saved CO₂ emissions) and evidence the Commission could consider the development of sustainable products or services as an important parameter of competition.**
8. As the Commission’s recent decisional practice shows, sustainability can be a parameter of competition that is relevant to the analysis of a merger. In certain markets, a business’s competitive position is driven by sustainability-related factors. This occurs where:
- **Consumers have a preference for products or services based on their sustainability performance.** The Commission has considered customer preferences for products that are perceived as healthier or more environmentally friendly, in defining the relevant market and the competitive assessment. In *Marine Harvest/Morpol*, the Commission considered a separate product market for organic salmon due to consumer perception of a healthier and more premium product.¹⁰ In *Novelis/Aleris*, the Commission concluded that steel car body parts and aluminum car body parts were not part of the same market, due to their different CO₂ emissions and weight performance (aluminum body parts allowed the production of lighter and more fuel-economic vehicles).¹¹
 - **The regulatory landscape favors products or services with better sustainability performance.** As the EU and other economies adopt ambitious laws and regulations to improve sustainability standards (e.g., on circularity, energy efficiency, emission levels, etc.), businesses may need to adapt their business models and R&D plans to continue operating and remain competitive in the market. Forward-looking businesses may also be better positioned to raise capital for growth. These considerations are particularly relevant to a dynamic analysis of the merger’s effects, when assessing competition between the merging parties and entry or growth of new rivals. In *Norsk Hydro/Alumetal*, the Commission observed that suppliers were positioning themselves to serve the growing demand for low-carbon aluminum foundry alloys (“AFAs”) due in part to regulations driving increased customer demand for lighter, more sustainable aluminum in the automotive sector. The Commission considered (but dismissed) a separate market for low-carbon AFAs but assessed the parties’ closeness of competition in its competitive assessment.¹²
9. While the Commission’s past merger decisions demonstrate that it considers sustainability factors in its assessment, its approach has not always been consistent and companies cannot be sure of the weight sustainability will carry in a particular transaction. In some cases, such as *Norsk Hydro/Alumetal*, the Commission did not to define a distinct market for the sustainable product alternative, but still considered the competitive constraint posed by the

¹⁰ *Marine Harvest/Morpol*, ¶¶61–62.

¹¹ *Novelis/Aleris* (Case COMP/M.9076), decision of February 18, 2021, Sections 6.2.2. and 6.4.

¹² *Norsk Hydro/Alumetal*, ¶¶46–47, 112 and Sections 7.2, 8.2.1.3.3 and 9.1.3.3.7.

sustainable product in its competitive assessment.¹³ In other cases, the Commission explored narrow sustainable product segments in its market definition assessment which were ultimately rejected, but then not subsequently revisited (even as out-of-market constraints) in the competitive assessment.¹⁴

10. The Revised Guidelines should specifically recognize that sustainability considerations may be a parameter of competition, and provide guidance on when these are relevant to the merger analysis. In particular, the Revised Guidelines should:
 - Clarify how the Commission will assess if sustainability considerations are a relevant parameter of competition. The Revised Guidelines could explain what market characteristics lead to such a finding and the sources of evidence considered, *e.g.*, the parties' internal document, market reports, market feedback, and the deal rationale.
 - Discuss if sustainability considerations would be particularly important to certain industries or sectors, such as energy-intensive sectors that are particularly impacted by the EU's legally-binding net zero objective and other climate policies (*e.g.*, the automotive sector, the critical raw materials industry, and sectors covered by the EU Emissions Trading System).
11. For discussion on relevant metrics on sustainability performance, please see the response to question D.7.d below.

D.4. What type of harm to competition on the development and supply of clean and decarbonised products, technologies and services and the circular economy can a merger do? Please select the harm that you believe is relevant for mergers' assessment and provide concrete examples and underlying data. [Multiple options possible]

- a) **Reduced ability and incentives to invest and develop clean and decarbonised products, technologies and services;**
- b) **Risks of discontinuation of clean and decarbonised products', technologies' and services' R&D;**
- c) **Foreclosure of access to critical inputs for clean and decarbonised products, technologies and services;**
- d) **Increased prices and lower quality of critical inputs for clean and decarbonised products, technologies and services;**
- e) **Foreclosure of access to clean and decarbonised products, technologies and services;**

¹³ *Norsk Hydro/Alumetal*, ¶¶137 and 322.

¹⁴ *See DEMB/Mondelez/Charger Opco and Marine Harvest/Morpol.*

f) Increased prices and lower quality of clean and decarbonised products, technologies and services;

g) Other factors (please list).

12. Please see the response to question D.5 below.

D.5. How should the Commission consider the ability and incentives to invest and develop clean and decarbonised products, technologies and services in its assessment of the impact of a merger on competition?

D5.a. Having in mind both horizontal and non-horizontal mergers, please explain in particular: What theory/theories of harm could the Commission consider?

D5.b. Having in mind both horizontal and non-horizontal mergers, please explain in particular: Under which conditions could this/these theory/theories of harm occur?

D5.c. Having in mind both horizontal and non-horizontal mergers, please explain in particular: What are the elements, including evidence and metrics, that the Commission could use to assess the competition risks beyond a foreclosure conduct?

13. The EU merger control system can contribute to the EU's sustainability goals by ensuring effective competition in clean and decarbonized products, technologies, and services. In doing so, the Commission's assessment would consider traditional elements such as potential overlaps between the merging parties in sustainable goods or services (including relative sustainability performance), the competitive position of rivals and potential entrants, and market participants' investment plans and expected growth in the relevant area.

14. It is important that the Commission consider these issues to complement sustainability regulations and support efficient market-driven outcomes. At the same time, the Commission should recognize potential risks, and the need for caution, in developing (novel) theories of harm in a fast-moving area. In particular, the Commission should take care that its theories of harm do not unjustifiably penalize merging parties that have invested in sustainability improvements, to the benefit of rivals that have not.

- **Competition in sustainable vs non-sustainable solutions.** The Commission may consider that a merger raises concerns because (among other reasons) the merging parties are close competitors or market leaders in a sustainable product.¹⁵ In

¹⁵ For example, in *Cargotec/Konecranes*, the Commission raised the concern that the parties were the main developers of electric/hybrid vehicles, and that even the parties considered that "competitors are in fact not ahead of them in a meaningful way" (*Cargotec/Konecranes* (Case COMP/M.10078), decision of February 24, 2022, ¶1406). In *Schwarz/Suez*, the Commission concluded that the parties appeared to be "particularly close competitors, and possibly the closest to each other" in the Netherlands, in part because it found that sorting light packaging plants located at greater distance from the collection points than the Parties' plants

reaching such conclusions, the Commission should take care that it does not inappropriately dismiss competitive constraints from rivals with a lesser sustainability performance. Companies that have invested less in sustainability – or that focus on legacy, carbon-intensive technologies – can still exert significant competitive pressure through economies of scale, access to cheaper inputs that do not internalize environmental externalities, or mature technologies.

- **Merging parties’ incentives to invest.** The Commission may consider that a merger raises concerns because (among other reasons), it reduces the merging parties’ incentives to invest in their overlapping sustainable products. Such innovation theories of harm warrant a thorough assessment based on detailed evidence, as they require the Commission to predict counterfactual outcomes with a reasonable degree of certainty. The Commission should not automatically assume that overlaps in the development of sustainable technologies could diminish the parties’ R&D incentives, much less reduce competition in this area. The Commission should also consider neutral or procompetitive outcomes such as (i) the acceleration of R&D through complementary assets and knowledge transfer (cross-pollination); or (ii) the potential entry or impact on rivals in increasing their incentives to innovate or carry out a transition towards sustainable technologies.

D.6. What are the competitive benefits, related to clean and decarbonised products, technologies and services, and the circular economy, that a merger can generate? Please select the advantages that you believe are relevant for supporting the climate and clean transition [Multiple options possible] and provide concrete examples and underlying data.

- a) **Vertical integration involving critical inputs**
- b) **Better access to, or better purchase conditions of, critical inputs through new contracts**
- c) **Combination of complementary R&D capabilities and staff**
- d) **Access to new know-how and patents**
- e) **Other factors (please list).**

15. The Revised Guidelines should account for the broad range of sustainability-related economic benefits that can arise from a merger. As the Commission has acknowledged, the notion of sustainability includes addressing climate change, limiting the use of natural resources, reducing waste, and promoting animal welfare.¹⁶ Sustainable development may also include the phasing out or withdrawal of non-sustainable products and processes, the

may also be seen as environmentally less efficient. Longer transport distances implied higher CO₂ emissions and environmental costs, and customers – representing nearly half of demand – expressly preferred local plants for sustainability reasons (*Schwarz Group/Suez Waste Management Companies* (Case COMP/M.10047), decision of April 14, 2021, ¶123).

¹⁶ Communication from the Commission, Guidelines on vertical restraints, OJ 2022 C 248/01, Recital 8.

harmonization of packaging to facilitate recycling, or standardization to promote animal welfare.¹⁷ These outcomes translate into a range of economic benefits: (i) individual use value benefits, (ii) individual non-use value benefits; and (iii) collective benefits, which are recognized in the Commission’s Horizontal Guidelines. Mergers may generate sustainability-related consumer benefits through all the mechanisms outlined in the question.

16. The current Guidelines’ assessment framework for efficiencies, with a focus on (undefined) consumer benefits, merger-specificity, and timeliness, is inadequate to comprehensively assess the sustainability-related benefits of a given merger. The Revised Guidelines should therefore align with the sustainability efficiencies framework contained in the Horizontal Guidelines, as discussed in more detail in our response to question D.7 below.
17. Examples of the kinds of mergers that may give rise to consumer benefits include:¹⁸
 - Acquisitions of businesses with less carbon-intensive production technologies that enable broader adoption of their advanced operational capabilities and processes. Such mergers are particularly appropriate in energy-intensive industries like steel and other metals, paper, and chemicals;
 - Mergers that provide manufacturers with access to greener inputs or energy sources, such as a chemical company acquiring bio-based feedstock, or an industrial company pivoting to green hydrogen sources or acquiring its own electricity generation assets for major sites;
 - Acquisitions that improve supply chain circularity, such as a plastics producer acquiring a downstream plastics recycling facility;¹⁹ and
 - Mergers that shorten the pipeline for bringing sustainable products to market. Transactions that pair innovative technologies or energy sources with considerable capital are capable of bringing sustainable products to market more quickly. Acquisitions of companies providing key inputs may also accelerate the launch of more sustainable products – for example, an electronics company might acquire a low-carbon metal producer, enabling it to incorporate more sustainable materials into its products more rapidly.
18. The response to question D.9 provides real-world examples of sustainability-driven mergers giving rise to sustainability-related benefits.

¹⁷ See Horizontal Guidelines, Recital 538.

¹⁸ See McKinsey & Company, “Creating value from green M&A”, February 29, 2024, available [here](#) (accessed on August 15, 2025).

¹⁹ Producers of consumer goods may also acquire other companies to improve sustainability and circularity in packaging. See Chanel’s acquisition of a minority stake in Sulapac, a producer of bio-based alternatives to plastic for packaging: Sulapac, “Sulapac, the multi-awarded Finnish start-up, welcomes CHANEL as an investor”, available [here](#) (accessed on August 21, 2025).

- D.7. How should the Commission assess the benefits that mergers can bring to the transition to a climate neutral, clean, and sustainable economy, and verify that those are not mere claims made by businesses gaining market power (e.g., ‘greenwashing’)? What are the metrics that could be used to measure this?**
19. The EUMR framework evaluates the benefits that a merger brings as part of the overall assessment of whether a merger gives rise to a significant impediment of competition (“SIEC”).²⁰ In practice, the Commission only carries out a detailed assessment of the merger’s benefits when it has identified potential competition concerns. In this situation, the Commission will consider those merger benefits which constitute cognizable efficiencies to determine if they counteract the adverse effects on competition.²¹ Under the Commission’s current Guidelines and decisional practice, efficiency claims are only taken into account if they satisfy three stringent conditions: they must benefit consumers, be specific to the merger, and be capable of verification.²²
20. Sustainability-related benefits arising from mergers include economic efficiencies that contribute to consumer welfare,²³ which are cognizable under the EUMR efficiencies framework.²⁴ However, we recommend the current framework be updated to reflect recent advances in competition policy on sustainability issues.
- (a) Benefit to consumers**
21. The Revised Guidelines should:
- **update its guidance on efficiencies** to align with the new Horizontal Guidelines;
 - **clarify the relevant consumers** for whom these benefits are recognized; and
 - **develop guidance on timeliness** to better address dynamic efficiencies.

Scope of sustainability-related efficiency gains.

22. Sustainability-related efficiency gains can constitute “technical and economic progress” within the meaning of Article 2(1)(b) EUMR, which the Commission shall take into account in its merger assessment. This should be acknowledged in the Revised Guidelines.
23. The HMG already provide that efficiencies can take the form of price and non-price benefits to consumers.²⁵ However, it only provides very limited guidance on the evaluation of non-price benefits, with a reference to possible types of non-price benefits. It does not explain how to recognize or value such non-price benefits. The lack of guidance creates

²⁰ HMG, ¶76; NHMG, ¶18.

²¹ HMG, ¶77.

²² HMG, ¶78.

²³ See Response to question D.6. above.

²⁴ See, for example, *Aurubis/Metallo*, ¶¶831 *et seq.*

²⁵ HMG, ¶¶80–81.

uncertainty for merging parties seeking to rely on sustainability-related benefits, many of which could be considered non-price benefits. For example:

- Improvements in product quality or choice, *e.g.*, through the introduction of products with a smaller environmental footprint, or greater supply chain traceability.
- Faster time-to-market for new (more sustainable) products.
- Collective benefits from positive externalities, *e.g.*, reduced GHG emissions through cleaner or more efficient production processes.

24. Against this background, the Revised Guidelines should be updated to align with the Horizontal Guidelines, which recognizes that consumer benefits encompass:

- **Individual use-value benefits** *i.e.*, consumer benefits deriving from the use of the product in question such as product quality or lower prices,
- **Individual non-use value benefits** *i.e.*, consumer appreciation for the positive effects of their sustainable choices on others, and
- **Collective benefits** *i.e.*, positive externalities that benefit non-consumers.

Relevant consumers.

25. Under the HMG, the assessment of consumer welfare is, “in principle”, limited to consumers “in those relevant markets where it is otherwise likely that competition concerns would occur”, *i.e.*, the consumers in those markets directly affected by the potential competition concerns.²⁶ This narrow focus means the merger assessment overlooks the broader positive effects a merger may have outside the immediately affected markets.

26. The Revised Guidelines should be consistent with the Horizontal Guidelines, which recognize that “out of market” efficiencies are relevant to the antitrust analysis – at least where consumers in both markets substantially overlap.²⁷

27. The Revised Guidelines should also discuss when it is appropriate to consider sustainability-related benefits in markets that do not substantially overlap with those giving rise to potential competition concerns. In addition to the reasons discussed in our Response to Topic F, there are strong reasons to include such out-of-market sustainability-related benefits in merger control:²⁸

- **This approach is more equitable in valuing the interests of all consumers equally.** A merger may give rise to negative effects for one group of consumers,

²⁶ HMG, ¶79.

²⁷ Horizontal Guidelines, ¶¶583–584.

²⁸ *See also*, Response to Topic F.

but positive effects for another group. In limiting the efficiencies assessment to consumers affected by competition concerns, the current framework privileges the interests of consumers in the market raising potential competition concerns, over those of other consumers who may be positively affected by a merger. This means that (potentially large) groups of consumers may be deprived of (potentially significant) merger benefits because they are not the consumers also at risk of being harmed by the transaction. This creates an imbalance: even where the potential benefits are substantial, widely shared, or enjoyed by far greater numbers of consumers, they are disregarded if they fall outside the narrowly-defined “affected market.” Such an outcome is not only economically inefficient (since it ignores potentially significant consumer welfare gains), it is also inequitable, as it favors certain consumers over others rather than treating all consumers in the EU single market equally.

- **This approach permits the Commission to fully consider dynamic efficiencies.** The Commission already recognizes that mergers may generate efficiencies by strengthening the merging parties’ capacities and incentives to innovate and conduct R&D. Such efficiencies are particularly significant in the context of sustainability-related benefits – particularly in support of the EU’s net zero transition and other Green Deal objectives, which depend on the development of more environmentally sustainable processes and products. This approach enables the Commission to take account of the consumer benefits generated by the new or improved products/services or processes that may emerge from the merger – even in cases where it is unclear (or the Commission wishes to leave open) whether this involves markets distinct to those raising competition concerns.
- **This approach enables the Commission to undertake a dynamic assessment of mergers.** In the merger assessment, it may be unclear (or the Commission may wish to leave open) whether a next-generation product or technology – that delivers improved sustainability performance – forms part of the same market as the existing “traditional” or “mainstream” product. Under an efficiencies framework that takes into account “out of market” benefits, the Commission would not have to resolve such threshold market definitional issues in order to weigh the merger’s benefits for strategically important emerging products and technologies against any adverse effects in declining or legacy markets. As with the innovation and R&D efficiencies discussed above, this flexibility is particularly important for capturing sustainability-related benefits, given that the transition to a net-zero, resource-efficient, and circular economy will necessarily involve the adoption of new production methods, materials, and technologies.

28. Such a holistic approach to merger efficiencies that takes into account “out of market” benefits has been adopted by other competition agencies. In several European jurisdictions, potentially problematic mergers may still be approved if they deliver economic benefits in another market. In Germany, the *Bundeskartellamt* may clear a merger if the parties demonstrate that the concentration produces pro-competitive effects in a different

(“improved”) market.²⁹ In Switzerland, efficiency gains in one market may outweigh the detrimental effect of a merger in another market.³⁰

Timeliness.

29. The HMG specify that “[...], in order to be considered as a counteracting factor, the efficiencies must be timely”.³¹ This means that less weight is assigned to efficiencies which take more time to materialize after the merger.³² The HMG’s approach prejudices the consideration of dynamic efficiencies (which necessarily take time to materialize) and more generally, a dynamic assessment of mergers (which takes into account how the relevant markets will evolve post-merger).
30. The HMG’s approach is particularly detrimental to the consideration of sustainability-related benefits. A number of these benefits, such as GHG emission reductions or improved circularity, are realized through post-merger investments in product development and R&D, and/or the implementation acquired technology and techniques. Thus, such benefits may only materialize over a medium to long-time horizon, and may not immediately translate into short term price or output improvements. The Revised Guidelines should also recognize that the relevant timeframes may depend on the distinct characteristics of the markets at issue (*e.g.*, it may be appropriate to adopt a longer timeframe for industries with long-investment cycles). If the Commission needs to balance short-term competition concerns against longer-term benefits, established discounting methodologies are available to account for both the time value of those benefits and the inherent uncertainties associated with future projections.³³

(b) Merger-specificity

31. The Revised Guidelines should align the counterfactual for efficiencies with the counterfactual for assessing competitive effects.
32. To the extent the Commission does not adopt this suggestion, it should, at the very least, recognize efficiencies that can be achieved through cooperation agreements or alternative structures if the merger enables these to be achieved more quickly and at lower cost. This would be consistent with the Horizontal Guidelines, which recognize efficiencies that enable the achievement of sustainability objectives “in a more cost-efficient or quicker

²⁹ In *KDG/Orion* (Case B7—200/07), *Bundeskartellamt* decision of April 3, 2007, the *Bundeskartellamt* approved an acquisition of a broadband cable network operator despite finding concerns in the signal delivery and feed-in markets, as it concluded that the transaction’s benefits, in improving the supply of internet and telephone services, outweighed these anticompetitive effects.

³⁰ In *Gateway Basel Nord (Joint Venture)*, the Swiss Competition Commission approved the joint venture despite finding it was capable of “eliminating effective competition in the handling of containers, swap bodies and semi-trailers in import and export traffic” due to efficiencies through improved competitive conditions in the rail transport of goods. See Switzerland Competition Commission Annual Report 2019, p. 6.

³¹ HMG, ¶79.

³² HMG, ¶83.

³³ Horizontal Guidelines, ¶591.

way”.³⁴ This makes sense since the delivery of benefits more quickly and/or with fewer resources also has value for consumers. This is particularly the case for climate-related benefits, given the urgency of meeting climate targets and higher costs of delayed mitigation (due to lock-in effects, the need for more adaptation measures, and greater reliance on more costly mitigation measures such as carbon capture). Accordingly, a merger that delivers measurable sustainability-related outcomes in a shorter timeframe than would be possible under a cooperation agreement should satisfy the merger-specificity test, with the temporal advantage itself constituting a distinct efficiency.

33. Please also see the response to question D.8 below for a discussion on why mergers may be necessary to achieve sustainability benefits over lesser forms of cooperation.

(c) Verifiability

33. As with all efficiencies, sustainability-related benefits should be verifiable, in that it should be “reasonably certain that the efficiencies are likely to materialize” and they should “be substantial enough to counteract a merger's potential harm to consumers”.³⁵ However, the Revised Guidelines should provide more guidance on (a) the verification of such efficiencies – particularly where they do not relate to cost savings with direct price effects; and (b) how the Commission assesses the off-setting effect of efficiencies.

34. On the first point, please see the response to question D.7.d which discusses the challenges of quantifying sustainability-related benefits and possible metrics to assess these benefits.

35. On the second point, please see our [Response to Topic F](#).

D7.a. In which circumstances, and based on which evidence, benefits related to the transition to a clean and sustainable economy are likely to materialise post-merger?

36. The likelihood that claimed sustainability-related benefits will materialize post-merger depends on the ability and incentives of the merged entities to pursue such benefits.

37. The relevant metrics and evidence to evaluate where the merging parties are situated in relation to the benefits claimed will depend on the nature of these benefits. For benefits relating to the reduction of GHG emissions or improved environmental performance, for example, the Commission could look at: (i) the carbon intensity of the parties’ operations (*e.g.*, CO₂ emissions per unit of output) and performance against industry benchmarks; (ii) the share of renewable energy in total energy consumption; (iii) environmental performance ratings from independent bodies; (iv) the parties’ green revenue ratio (share of turnover from products or services classified as sustainable under the EU Taxonomy); or (v) track record in eco-innovation, such as patent activity in low-carbon technologies.

³⁴ Horizontal Guidelines, ¶562.

³⁵ HMG, ¶86.

D7.b. Under which conditions such benefits could be sufficient to outweigh competitive harm. Please illustrate with the specific benefits you considered relevant?

38. Please see the response to question D.7 above for our comments on the weighing of efficiencies against competition concerns.
39. In addition to those comments, the Revised Guidelines should reflect the following considerations when weighing price effects against non-price effects, and in evaluating dynamic markets. Importantly, the potential negative price effects of a merger should not be analyzed in isolation, but in the context of their impact on longer-term efficiencies and sustainability benefits. As a general consideration, a merger should be treated as justified where the public benefits or avoided social costs exceed the potential negative effects associated with the merger, provided the relevant efficiencies criteria of merger-specificity and verifiability are met.
40. When evaluating short-term price increases as a potential competition concern, the Commission should evaluate if competitive forces will drive these prices down over time, particularly as markets evolve and transition towards more sustainable alternatives. In such cases, the Commission should dismiss such concerns.

D7.c. Under which conditions such benefits would be passed on to business customers/consumers. Please illustrate with the specific benefits you considered relevant?

41. First, the Revised Guidelines should recognize that innovation efficiencies are likely to be passed on to consumers. It is in the nature of such efficiencies that they materialize as new or improved products and services, and the merging parties' commercial incentive is often to pass on such efficiencies to consumers since they enhance the attractiveness of their product and their R&D/innovation roadmaps are developed in response to consumer demand. Where innovation efficiencies manifest as process improvements (such as the integration of a sustainability improvement into a production process), the resulting benefits flow automatically and are not contingent on the level of competitive intensity in the market.
42. Second, the Revised Guidelines should recognize that certain sustainability-related benefits accrue to consumers automatically without the need or incentive for the merging parties to pass them on. This would be the case where the benefits eliminate negative externalities and/or generate positive externalities for society (*e.g.*, where more sustainable production methods generate positive externalities such as reduced pollution or resource use).
43. Third, the Revised Guidelines should revisit the HMG's position that fixed cost savings are less likely to generate efficiencies that are passed on to consumers, compared to variable or marginal cost reductions.³⁶ In the first place, there may not be a clear distinction between fixed and variable costs in practice, particularly when assessing the dynamic effects of mergers, as many costs that appear "fixed" in the short term are variable in the

³⁶ HMG, ¶80 and fn. 107.

long run. In the second place, it is necessary to take into account improvements in fixed costs when evaluating efficiencies arising from the development of new (more sustainable) production processes or business models.

D7.d. What are the elements, including evidence and metrics, that the Commission could use to assess whether the benefits of the transition to a climate neutral, clean, and sustainable economy outweigh competitive harm, and will likely be passed on to business customers/consumers?

44. Sustainability-related benefits encompass a wide range of benefits. They may take the form of cost benefits (such as cost savings or improved valorization from more efficient production processes),³⁷ or non-cost benefits. Non-cost benefits encompass qualitative improvements to the merging parties' products or services (such as improved quality or variety), accelerated innovation, or collective benefits from positive externalities such as mitigation of climate risk, nature loss, or restoration of damage to the environment or ecosystems. Sustainability-related benefits may be passed on by the combined entity to different groups of consumers, including direct and indirect consumers of the parties' products or services (in the form of individual use and non-use benefits) and wider sections of society (in the form of collective benefits *i.e.*, positive externalities such as reduced GHG emissions, improved biodiversity, or lower pollution).
45. The various types of benefits present different challenges in terms of verification, quantification, and pass-on. Generally speaking, this is most straightforward for cost benefits: the parties are likely to have information available to value and demonstrate the realization of such benefits and they readily translate into price effects that can be passed on to consumers. By contrast, the assessment of non-cost and collective benefits is often a more complex exercise, involving specialist expertise and techniques, as well as information that is not readily maintained by the parties in the ordinary course of business.
46. The Revised Guidelines should acknowledge and seek to address the challenges associated with proving non-cost sustainability-related efficiencies. Absent clear guidance, it may not be realistic for merging parties to seek to rely on such efficiencies in the merger review process because of the considerable time and costs involved in proving them, to an uncertain legal standard.
47. The Revised Guidelines should:
 - Recognize and discuss the complexity of proving sustainability-related (and particularly non-cost) efficiencies.
 - Establish a framework for evaluating sustainability-related (and particularly non-cost) efficiencies. Provide case study examples to illustrate how the framework applies in practice.

³⁷ In *Aurubis/Metallo*, the Commission accepted the better valorization of copper scrap as an efficiency, however, it could not accept any of the benefits claimed by the Parties in relation to metal recovery and environmental benefits, *see* ¶¶844, 854, and 855.

- Recognize there is no single relevant metric for all sustainability-related benefits, and provide guidance on key metrics or benchmarks for common sustainability parameters, such as the reduction of GHG emissions or energy efficiency gains.
 - Provide guidance on acceptable quantitative and qualitative evidence to prove sustainability-related benefits, such as lifecycle assessments, independently audited environmental impact assessments, and sustainability reporting under recognized standards (*e.g.*, EU Taxonomy disclosures).
 - Discuss relevant sources of evidence to demonstrate that sustainability-related benefits are likely to materialize, such as: (i) internal documents on the transaction rationale and expected synergies; (ii) integration plans validated by third party experts; (iii) governance and supervisory structures to ensure implementation; and (iv) track record in executing the relevant activities.
 - Discuss reasons why the Commission may reject sustainability-related benefit claims. Precedent decisions are often heavily redacted and generalized guidance drawn from the Commission’s enforcement experience will help merging parties critically evaluate their efficiency claims and prepare effectively.
48. The reduction of GHG emissions is particularly deserving of specific guidance in the Revised Guidelines. Such reductions directly contribute to the EU’s legally-binding net zero target, and are potentially relevant in a large number of sustainability-driven transactions. Accordingly, the Commission should consider including a specific section in the Revised Guidelines that discusses the evaluation of GHG emission reductions as a potential efficiency. This includes the tools and methodologies for estimating the volume of such reductions, and valuing the corresponding benefit for consumers (such as official carbon abatement cost figures).
- D.8. How should the Commission make sure that such benefits cannot be achieved with less harmful means, including via cooperation agreements? Please explain how green benefits can be achieved through cooperation and in which circumstances only a merger may bring such benefits and why.**
49. The Commission’s Horizontal Guidelines recognize that cooperation agreements often drive sustainability-related benefits. For example, sector-wide initiatives to set common environmental standards, collective agreements to use of greener materials, or joint commitments to phase out older polluting product models can drive sector-wide behavioral change. The Commission has developed a framework to assess sustainability-driven cooperation under Article 101(3) TFEU, which exempts potentially restrictive agreements which are indispensable to generate net positive benefits for consumers.
50. However, certain sustainability-related benefits can only be realized through deeper structural integration, because they require a sustained alignment of economic incentives between separate businesses. These are typically benefits that are realized through:
- Significant and/or long-term capital investments, for example, to engage in R&D activities or deploy green technologies at scale.

- The exchange of know-how and information, which firms would not otherwise share outside their enterprise. Such exchanges are not limited to licensable IP rights or business secrets, but may encompass the complementary skills, knowledge, and expertise of internal experts who must work together to develop new products.
 - Achieving the necessary scale to spread costs across a broad base of products and services.
51. The Revised Guidelines should describe and explain how the merger-specificity requirement applies in the context of sustainability-related benefits. It should recognize that – in the situations described above – mergers are uniquely capable of delivering these benefits as they establish a single governance structure, align economic incentives over the long term, and create the financial and operational integration necessary to realize sustainability efficiencies.
- D.9. Please provide examples of the types of mergers as well as of cooperation agreements (e.g., licensing, R&D sharing) that you/your client believe are beneficial to the transition to a climate neutral, clean, and sustainable economy, and explain whether your company has considered - or implemented - them and why/why not, as relevant.**
52. While we are unable to provide examples from confidential client matters, there are many examples of mergers and cooperation agreements in the public domain that have been motivated by sustainability objectives such as resource-efficiency, reduced pollution, or a lower carbon footprint, with corresponding benefits for consumers. Sustainability considerations have become a major driver in M&A decisions, with green mergers increasingly pursued as companies recognize the value they can bring to their businesses through efficiencies. According to a 2024 survey by Deloitte,³⁸ a significant proportion of private equity respondents (72%) report that ESG factors are considered in at least half of their deals, with 14% assessing ESG in all transactions. Similarly, nearly three-quarters (74%) of companies reported evaluating acquisition targets from an ESG perspective. This focus is also reflected in deal pricing, with a 2022 BCG study finding that average acquisition prices for green deals exceeded the market average by 7%, with premiums of 20-30% in some industries.³⁹
53. With regards to cooperation agreements, the Horizontal Guidelines already provide helpful examples of agreements that pursue sustainability-related objectives and which are unlikely to raise competition concerns.⁴⁰ These include:
- Agreements to engage in internal sustainability initiatives within firms, such as reducing single-use plastics or limiting office printing.

³⁸ See Deloitte, “2024 ESG in M&A Trends Survey: Rising influence of ESG”, available [here](#) (accessed on August 22, 2025).

³⁹ See Boston Consulting Group, “Green Deals Gain Steam: The 2022 M&A Report”, available [here](#) (accessed on August 22, 2025).

⁴⁰ Horizontal Guidelines, Section 9.2;

- Joint campaigns to inform consumers or advocate for sustainable policies.
 - Joint industry databases *e.g.*, on (un)sustainable suppliers.
 - Joint commitments to comply with binding legal obligations or voluntary codes of conduct.
 - Joint development of shared methodologies to measure and report environmental impact.
54. Certain cooperation agreements require in-depth assessment to ensure compliance with competition law, but have the potential to deliver significant sustainability-related benefits for consumers. These include:
- Joint commitments to source only from suppliers meeting certain sustainability criteria.
 - Joint agreements imposing sustainability requirements on supply chain partners such as distributors or retailers.
 - Joint agreements setting minimum sustainability thresholds, such as requiring a fixed percentage of recycled material in a product.
55. The various Net Zero Alliances that have been concluded in the financial, insurance, and corporate sectors illustrate how companies can cooperate to accelerate decarbonization.⁴¹ In fact, several recent studies discuss the benefits of such cooperation:
- A study by Harvard Business School professors Peter Tufano and Matteo Gasparini found that financial service firms joining climate alliances adopt more ambitious climate management practices, set and implement emissions targets, reduce their own emissions, and engage more actively in pro-climate lobbying. The research, which examines 11 major alliances and 424 publicly-traded financial institutions, finds no evidence of traditional antitrust violations, reduced funding to fossil fuels, or lower risk-adjusted shareholder returns. It also identifies a “booster effect” when firms participate in multiple alliances, though with diminishing returns, and points to network and peer influence effects among alliance members.⁴²
 - A 2025 study from Carradori, von Meyerinck and Sautner of Zurich University on insurers’ carbon underwriting policies showed that insurance companies which adopted coal restrictions significantly reduced the number of coal mines and the

⁴¹ Net Zero Alliances are voluntary industry-wide initiatives in which companies, financial institutions, or insurers commit to aligning their business strategies and portfolios with pathways to achieve net zero greenhouse gas emissions by 2050, often through coordinated target-setting, disclosure, and investment practices. *See also* UNPRI, “Net zero alliances and the way forward for our industry”, available [here](#) (accessed on August 28, 2025).

⁴² *See* Matteo Gasparini and Peter Tufano, “An Empirical Examination of Business Climate Alliances: Effective and/or Harmful?”, available [here](#) (accessed on August 28, 2025).

amount of coal which they insured in the US, therefore contributing to the shift away from coal.⁴³

- A 2022 study published by Adrian, Bolton, and Kleinnijenhuis for the IMF demonstrated the large economic benefits of replacing thermal coal with clean energy sources. The IMF paper calculated net global welfare gains of USD 77.9 trillion – equivalent to 1.2% of world GDP annually through 2100 – using a conservative social cost of carbon of USD 80 after accounting for the full costs of transition, including grid and storage expansion and compensation of affected communities.⁴⁴
- A 2024 brief from think tank Bruegel showed that mobilising climate finance at scale to assist emerging countries in replacing coal with renewable energy sources is also beneficial to advanced economies, with even small coalitions of advanced countries (*e.g.*, G7 plus EU) able to achieve net positive returns through coordinated financing instruments.⁴⁵

56. Please see below other specific, real-life examples of how mergers and cooperation agreements are and have been beneficial to the transition to a climate neutral, clean, and sustainable economy.

57. **Mergers**

- **Mergers that combine complementary resources to scale up green technologies.** In 2022, Hamburg-based P2X Europe and the Navigator Company established a joint venture in Portugal for industrial-scale production of non-fossil aviation fuels based on green hydrogen and biogenic CO₂. The project leverages biogenic CO₂ generated by Navigator’s biorefineries using sustainable forests, P2X Europe’s extensive know-how in Power-to-Liquids⁴⁶ project development and technology configuration, and its parent companies H&R Group’s and Mabanafit’s market expertise in waxes for the chemical-pharmaceutical industry and liquid fuels.⁴⁷
- **Mergers which improve a company’s access to greener inputs and energy sources.** In 2018, energy companies RWE and E.ON agreed an asset swap, with RWE obtaining the renewable energy businesses of E.ON, in exchange for E.ON acquiring RWE’s energy distribution and consumer solutions business. Until the

⁴³ See Olimpia Carradori *et al.*, “Insurers’ Carbon Underwriting Policies”, available [here](#) (accessed on August 28, 2025); see also Peter Bosshard, “Insurers accelerated the shift away from coal, new study finds”, available [here](#) (accessed on August 28, 2025).

⁴⁴ See Tobias Adrian *et al.*, “The Great Carbon Arbitrage”, available [here](#) (accessed on August 28, 2025).

⁴⁵ See Bruegel, “The economic case for climate finance at scale”, available [here](#) (accessed on August 28, 2025).

⁴⁶ Power-to-liquids refers to a production pathway for liquid hydrocarbons based on electric energy, water, and CO₂ as resources.

⁴⁷ See P2X Europe, “The Navigator Company and P2X-Europe announce a unique Joint Venture in Portugal to produce green, non-fossil synthetic eFuels and scale-up Power-to-Liquid business”, available [here](#) (accessed on August 22, 2025).

transaction, RWE relied heavily on coal and gas-fired power plants and the renewable asset acquisition facilitated its transition towards more sustainable energy production.⁴⁸

58. Cooperation agreements

- **Collaboration combining complementary capabilities.** Car manufacturers BMW and Toyota are collaborating on the development of hydrogen fuel cell technology for energy generation, which BMW aims to use in its electric vehicles from 2028 onwards. The collaboration combines BMW’s expertise in electric drive technologies with Toyota’s third-generation fuel cell systems, creating synergies across passenger and commercial vehicles while driving down costs. Both companies share the aspiration of “advancing the hydrogen economy” and view this partnership as key to scaling FCEVs and making hydrogen mobility commercially viable.⁴⁹
- **Collaboration to scale up green technologies.** In 2020, Etihad partnered with Boeing to test sustainable aviation fuels, in a program which has led to the production of the largest volume of 50/50 blend biofuels ever produced commercially and exposed continuing challenges in quantity availability and limited supply points globally.⁵⁰

D.10. How should the Commission make sure that such green competitive benefits would not have been achieved irrespective of the merger? Please explain how the Commission can, and based on which evidence and metrics, assess what would have been the situation absent the merger, and whether the green competitive benefits would not have been achieved in any case.

59. The Revised Guidelines should affirm that the assessment of whether sustainability-related benefits would have materialized, absent the merger, must be rooted in a robust counterfactual analysis. Accordingly, once the merging parties have demonstrated the existence of verified efficiencies and the necessity of the conditions described in the response to D.8 above (*e.g.*, the need for significant capital investments, exchanges of relevant know-how, or scale advantages), it is for the Commission to disprove that such

⁴⁸ See “RWE, E.ON reshape German power sector in Innogy asset swap deal”, available [here](#) (accessed on August 22, 2025). RWE’s acquisition was cleared by the Commission following a Phase I investigation (*RWE/E.ON Assets* (Case COMP/M.8871), decision of February 26, 2019) while E.ON’s acquisition of RWE assets was assessed separately and cleared subject to conditions (*E.ON/Innogy* (Case COMP/M.8870) decision of September 17, 2019).

⁴⁹ See BMW Group, “Hydrogen Pioneers: BMW Group and Toyota Motor Corporation take collaboration to the next level to offer Fuel Cell Electric Vehicle (FCEV) options for passenger cars”, available [here](#) (accessed on August 17, 2025).

⁵⁰ See Etihad, “Etihad expands strategic sustainability programme uniting industry leaders in the most comprehensive, cross-organisational aviation sustainability initiative ever undertaken”, available [here](#) (accessed on August 18, 2025).

efficiencies would have materialized – and with the same (or better) timeliness and costs – absent the merger.

60. The relevant counterfactual would consider whether the parties, acting independently, could realistically achieve comparable improvements in sustainability performance, or bring to market the same sustainable products and services, within the same time frame and at the same scale. This requires an evaluation of the parties’ respective business plans, investment strategies, track record, and existing capabilities to determine if they would have the financial and technical capacity to deliver such outcomes without the transaction. The Commission should accord particular importance to any complementarities in expertise, IP, know-how, products, or technologies which the parties would bring together in the merger and which are central to achieving the relevant sustainability-related benefits. Where these complementarities exist, a merger will often be the optimal means through which these sustainability-related benefits can be fully unlocked, as cooperation agreements or independent efforts are unlikely to replicate the same outcomes with comparable speed, certainty, or efficiency.
61. The analysis should also consider the market structure and competitive dynamics. In fragmented markets with numerous small players, individual firms may lack the scale, customer base, or market influence needed to justify large-scale green investments or to drive sustainability practices. Achieving large-scale production, distribution, or consumer adoption may therefore be unattainable for independent players but achievable through consolidation.
62. In sum, the counterfactual assessment should weigh the parties’ capabilities, the complementarities that are unlocked through integration, the market and competitive environment, as well as the timeliness of achieving sustainability outcomes.

D.11. How should EU merger control account for global competition dynamics when it comes to sustainability, in particular where certain players receive subsidies for clean tech solutions?

63. The Commission should be cognizant of subsidies when evaluating the competitive constraint posed by undertakings in its merger analysis. At the same time, the Commission should also clarify how this assessment interacts with the Foreign Subsidies Regulation (“FSR”), which enables the Commission to intervene against “distortive” subsidies.
64. If the relevant companies are already active in the single market and such subsidies give them a distortive competitive advantage, the Commission should be able to impose remedies under the FSR to address the effect of these subsidies and level the playing field. Given the Commission’s powers under the FSR, the Revised Guidelines should clarify if it is appropriate for the Commission to also take into account the impact of such subsidies within the merger assessment.

D.12. Have you/your client experienced chilling effects in your industry, in the sense that a merger that would boost investment or innovation in clean tech and resource-

efficient or sustainable solutions was not pursued due to concerns related to merger control scrutiny?

a) Yes

b) No

D.13. If yes, please identify the specific transaction that was abandoned, delayed, or restructured.

65. Yes, we are aware of transactions that have not been pursued due to concerns that they would not have been approved (or only subject to a potentially complex and lengthy merger investigation), which may have proceeded if there was better consideration of sustainability-related benefits. This reflects a chilling effect, particularly for sectors central to the achievement of sustainability goals, where mergers that could pool capital, technology, and R&D to accelerate clean-tech deployment are abandoned or restructured because merger control is seen as a barrier.
66. In recent transactions involving sustainability-relevant sectors, the Commission has systematically resorted to far-reaching structural remedies. In fact, the Commission has suggested that “where the concerns relate to innovation, the appropriate remedy may require the divestment of significant parts of the R&D departments”.⁵¹ These remedies can be onerous, requiring divestment of significant business lines, global R&D assets, or entire local operations, even where sustainability-focused innovation was central to the parties’ transaction rationale. By way of illustration:
- In *Sika/MBCC*, the Commission assessed that both parties were “global leaders in R&D on admixtures” based on various parameters including R&D spending, patents, R&D sites, cooperation agreements, and pipelines.⁵² On this basis, the Commission concluded that the parties were close competitors with overlapping innovation trajectories, particularly in the area of admixtures designed to reduce the carbon footprint of construction. Importantly, the Commission’s concerns were not limited to current product overlaps but extended to the risk that the merger could undermine future sustainability-driven innovation. The transaction was only cleared after the parties agreed to divest MBCC’s entire global chemical admixtures business, including all R&D sites, personnel, intellectual property, and other innovation assets. Such an extensive divestiture, while potentially addressing the Commission’s concerns, also risked weakening the resulting entity’s ability to deliver on its sustainability-focused business plans by separating the very R&D capabilities that could have accelerated these activities.
 - In *KPS Capital Partners/Real Alloy Europe*, the Commission acknowledged that the transaction took place “against the background of broader industry developments within the ‘green’ transition, which sees an increasing demand for

⁵¹ Commission Brief, Competition Merger Brief, Issue 2/2023, dated September 2023, pp. 5–6 (available [here](#)).

⁵² *Sika/MBCC Group* (Case COMP/M.10560), decision of February 8, 2023, ¶¶220–226.

recycled aluminium”.⁵³ Nonetheless, to address vertical concerns in aluminum recycling and dross/salt slag recovery, the Commission required the divestment of Real Alloy’s aluminum and dross recycling facility in the UK as well as its salt slag recycling plant in France. The parties submitted documents illustrating the importance of the recycling of aluminum and salt slag to reduce the CO₂ footprint of their aluminum product. In reducing the merged entity’s recycling facilities, this remedy directly impaired its ability to pursue low-carbon production and its ability to contribute to the EU’s decarbonization goals.

- In *Bayer/Monsanto*,⁵⁴ the Commission made clear that innovation in agrochemicals was intrinsically linked to environmental sustainability: when companies developed more effective active ingredients for pesticides, herbicides, or fungicides, the same level of crop protection could be achieved with less toxicity, helping to protect biodiversity and the environment. The Commission considered that both parties were close competitors in innovation (with heavy R&D investments to develop more environmentally-friendly products), and that the merger could lower the parties’ overall innovation capacity by diminishing incentives to invest in duplicative pipeline projects and R&D infrastructure. To address these risks, Bayer was required to divest almost all of Monsanto’s global R&D organization and pipeline, to enable a third party to emerge as a fully integrated R&D competitor. While these remedies were aimed at preserving competition, they also materially restructured the transaction, separating key innovation assets that were central to advancing the merged entity’s sustainability projects.⁵⁵

67. In sum, these cases illustrate how merger control outcomes can have a deterrent effect on transactions that may otherwise accelerate the transition to sustainable and resource-efficient solutions. The Commission’s reliance on large-scale structural remedies – particularly the divestiture of global innovation assets and business lines – creates uncertainty for companies considering pro-competitive combinations in clean technologies.

⁵³ *KPS Capital Partners/Real Alloy Europe* (Case COMP/M.10702), decision of October 19, 2022, ¶17.

⁵⁴ *Bayer/Monsanto* (Case COMP/M.8084), decision of March 21, 2018.

⁵⁵ See also Jens-Uwe Franck, “EU Merger Control and Climate Action: The Struggle for the Proper Framework”, available [here](#) (accessed on August 22, 2025).