

CONSUMER RECOMMENDATIONS



The Consumer Voice in Europe

Review of the EU Merger Guidelines

BEUC's response to the public consultation on the draft text

26 June 2026



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The European Consumer Organisation (BEUC) is the largest organisation promoting the general interests of Europe's consumers. Founded in 1962, it proudly represents more than 40 independent national consumer organisations from over 30 European countries. Together with our members, we inform EU policies to improve people's lives in a sustainable and fair economy and society.

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WHY IT MATTERS TO CONSUMERS

Consumer welfare in the European Union depends on the existence of competitive markets. Yet, market concentration in consumer-facing sectors (such as air transport, telecoms, food or energy) has increased in recent years, and there is significant evidence showing that this has resulted in negative outcomes for consumers, including higher prices, less choice, and reduced quality of products and services.

Merger control is essential in this context: by preventing corporate transactions that reduce competition from being implemented, it encourages innovation and investment, and ultimately ensures that companies deliver value for money for consumers.

The EU Merger Guidelines play a central role in this framework, as they guide the assessment of mergers by the European Commission and national competition authorities for the years to come. Ensuring that they remain focused on the protection of competitive markets and that they do not become a vehicle for advancing industrial or political objectives at consumers' expense must therefore be a priority.

SUMMARY

The review of the EU Merger Guidelines is intended to modernise the assessment framework for mergers and ensure that it remains updated to new market realities and transformational changes in the economy, including digitalisation.

BEUC welcomes several improvements in the draft Merger Guidelines, which aim at strengthening the Commission's ability to assess corporate transactions in increasingly complex and fast-moving markets. Such improvements include the expansion of the analytical toolkit available to the Commission, the recognition of new theories of harm, and the dedicated guidance on digital markets and ecosystem-related market power.

The draft Merger Guidelines should nevertheless be improved to ensure that the protection of effective competition and consumer interests remains at the core of merger control. In particular, greater safeguards are needed regarding the assessment of efficiency claims, as the current framework risks allowing unverifiable projections to override certain and immediate consumer harm. The Guidelines should also better reflect the risks associated with increasing concentration in already concentrated markets, strengthen scrutiny of acquisitions of small innovative players by large incumbents, and make greater use of behavioural and financial evidence in merger control assessments.

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INTRODUCTION

BEUC, the European Consumer Organisation, welcomes the opportunity to submit its views on the European Commission’s consultation on the draft revised Merger Guidelines published on 30 April 2026 (the “**Draft Guidelines**”). In this paper, we highlight our key concerns and recommendations, as a complement to our detailed response to the consultation.

Merger control plays a fundamental role in ensuring that corporate transactions do not lead to market concentration that could harm competition and consumers by increasing prices, restricting choice, or limiting innovation and investment. In this context, BEUC is following carefully mergers that may have detrimental consequences for consumers and regularly intervenes in merger control proceedings before the Commission, to defend the interests of European consumers¹.

In recent years, consolidation has increased in a wide range of consumer-facing markets within the European Union, such as air transport, energy, food retail, and telecommunications. As highlighted in the Commission’s 2024 Report on “Protecting competition in a changing world”² (the “**Commission’s 2024 Report**”), this consolidation is particularly high in markets that make up a relatively high share of poorer households’ expenditure and which have contributed significantly to the recent surge in inflation. This, in turn, has come with significant detrimental effects not only on prices and consumer purchasing power, but also on the competitiveness of EU firms and overall economic growth³.

BOX 1. INCREASING CONSOLIDATION IN THE EU AIRLINE SECTOR

Over the past two decades, the airline industry has undergone significant consolidation through successive mergers and acquisitions, resulting in a small number of large airline groups now dominating intra-EU and intercontinental routes without sufficient competitive constraint⁴.

The consequences for consumers are multiple and include higher flight ticket prices, fewer regional routes, less connectivity and lower quality services.

On prices specifically, the Commission’s 2024 Report highlighted that:

- Higher concentration in the EU airline sector is associated with higher prices, and fares per mile are lower on routes operated by more airlines.

¹ By way of example, see BEUC’s letter to the Executive Vice-President Margrethe Vestager calling for strong remedies in Case M.11071 – Lufthansa / MEF / ITA (available [here](#)).

² Report on “Protecting competition in a changing world” (2024), European Commission (available [here](#)).

³ Report on “Protecting competition in a changing world” (2024), *ibid*. See also P. Affeldt, T. Duso, K. Gugler and J. Piechucka (2021), “Market Concentration in Europe: Evidence from Antitrust Markets”, DIW Berlin, German Institute for Economic Research (available [here](#)).

⁴ This consolidation is set to intensify further, with the ongoing acquisition by Air France-KLM of SAS (Scandinavia’s leading airline), and with the competing offers that have been submitted by Air France-KLM and the Lufthansa Group for the acquisition of a stake in TAP Air Portugal.

- The average price paid by passengers in the two years following Air Berlin's exit of the market has been 11% more than the average price before the exit.
- The gains for consumers of a more competitive landscape in the EU airlines industry could amount to approx. € 900 million per year.

The revision of the EU Merger Guidelines takes place at a time of geopolitical and economic uncertainty, with significant pressure to relax competition rules in the name of EU competitiveness. The argument that European businesses must consolidate to remain competitive globally is however not supported by evidence, and the current context makes strong merger control even more important.

To ultimately protect consumer interests, the Merger Guidelines must aim at preserving competitive markets rather than serving political priorities or corporate interests. As the Report on “The future of European Competitiveness” (the Draghi Report) has pointed out, the primary barrier to EU competitiveness remains the incomplete Single Market. It further noted that “the evidence is overwhelming that competition stimulates productivity, investment, and innovation”⁵. As such, EU competitiveness will not be achieved through increased concentration, but through the removal of Single Market obstacles and protection of effective competition that boosts innovation and investment, supports resilience and brings positive outcomes for consumers.

The Draft Guidelines provide welcome updates to deal with evolving market dynamics (notably in the digital sector). They introduce additional tools and guidance to assess market power and substantiate new theories of harm. Ultimately, these changes should strengthen merger control enforcement by the European Commission and national competition authorities.

However, BEUC remains seriously concerned by the overall framing of mergers as drivers of competitiveness, which stands in contrast with the empirical evidence showing that most mergers fail to deliver efficiencies sufficient to compensate consumer harm⁶. This important focus on the potential benefits of mergers and the absence of sufficiently clear guidance on the balancing between harm and efficiencies are likely to give more room to large companies with significant resources to shape the narrative around their transactions. This may in turn make it harder for the Commission to block anticompetitive transactions and could reduce predictability in merger control enforcement.

⁵ Draghi Report on “The future of European competitiveness”, September 2024 (available [here](#)).

⁶ P. Affeldt, T. Duso, K. Gugler and J. Piechucka (2021), “Assessing EU Merger Control through Compensating Efficiencies”, CESifo Working Paper No. 9403 (available [here](#)).

1. POSITIVE DEVELOPMENTS

1.1. An extended toolkit for reviewing anticompetitive transactions

BEUC welcomes the expansion of the analytical toolkit available to the Commission, both in terms of market power and theories of harm.

The Draft Guidelines acknowledge that a static assessment of market power using exclusively traditional structural indicators cannot fully and adequately capture competitive dynamics in certain industries. While market shares and concentration levels must remain decisive in the assessment, the use of additional indicators (e.g., sensitivity to price, high profit margins or barriers to competition) may enable the Commission to better identify and address harmful transactions in rapidly evolving markets.

The introduction of a more comprehensive and clearer framework on theories of harm, based on decisional practice and case law of EU courts, is also particularly relevant. Notably, BEUC supports the move away from the traditional distinction between horizontal and non-horizontal mergers, as it better reflects the complexity of today's markets. The formalisation of loss of potential competition, innovation competition and entrenchment of dominant position as theories of harm should also contribute to better tackling anticompetitive transactions by dominant players (including so-called “killer acquisitions”⁷): the Commission should now have clearer grounds to intervene against transactions that do not necessarily raise significant concerns under a traditional head-to-head competition analysis but that could nonetheless harm market contestability and reinforce the power of incumbents.

1.2. Useful guidance for digital markets

The structure and characteristics of digital markets have enabled a small number of dominant players to act in ways that can significantly harm competition, innovation, and ultimately consumers, notably by leveraging their position in multiple adjacent markets, foreclosing rivals, and preventing smaller competitors from entering the market. As highlighted in the Commission's 2024 Report, the rise of network and platform effects in the last 25 years has come with benefits, but also with important negative effects, including higher barriers to entry through increased switching costs for customers.

In this regard, the Draft Guidelines provide useful developments reflecting the specificities and business models in the digital sector, and notably consider the role played by ecosystems, multi-sided platforms, network effects and customer lock-in. In BEUC's opinion, this guidance is key to preventing accumulation of disproportionate market power by digital giants.

⁷ See notably BEUC's written contribution submitted for the OECD Competition Committee on 11 June 2020: “Start-ups, killer acquisitions, and merger control” (available [here](#)), in which we called for better enforcement of killer acquisitions and other anticompetitive acquisitions of start-ups, notably through the adoption of additional tools and the introduction of rebuttable presumptions of anti-competitiveness for acquisitions of nascent rivals by entrenched dominant companies.

2. KEY CONCERNS AND RECOMMENDATIONS

2.1. A need to rebalance the overall framework

The Draft Guidelines frame mergers as drivers of EU competitiveness, placing significant emphasis on the role of consolidation in achieving scale. BEUC believes this framing is misplaced. Scale is not an objective of merger control, whose purpose is to preserve competitive markets for the benefit of consumers and the economy. Instead of weakening merger control, scale should be achieved through other means that do not risk harming competition: completing the Single Market to allow companies to grow across borders, reducing market fragmentation, and improving access to capital markets.

The Draft Guidelines also place a disproportionate focus on the potential benefits of mergers. Extensive new developments on how merging parties can argue for efficiencies resulting from their transactions have been added, notably with the introduction of a “theory of benefit” as a mirror of the “theory of harm”. Dynamic and longer-term benefits are now admitted alongside traditional cost savings, and merging parties are encouraged to engage on efficiency claims as early as the pre-notification stage (i.e. before the Commission has been able to assess the competitive harm of a transaction).

This important emphasis on efficiencies is difficult to reconcile with empirical evidence. In 2025, the OECD has notably carried out an extensive literature review and published a report assessing efficiencies in merger control across various jurisdictions⁸, which indicates:

- “[T]here is evidence ex-post that efficiencies from mergers that substantially reduce competition are limited, short in duration or do not end up occurring, and academic studies that conclude that efficiencies tend not to materialise in highly concentrated markets, which is precisely where they could make more of a difference in the authority’s decision.”
- “Literature generally does not strongly support the argument that mergers that restrict competition bring significant efficiencies to markets (even less to consumers). While not unanimous, studies often suggest that efficiencies may be overestimated or that they fail to materialise in the magnitude initially thought. This supports the argument for their cautious consideration and acceptance.”
- “[E]fficiencies hardly ever materialise after horizontal mergers have been consummated and [...] often, the transactions are associated with price increases and quality degradation instead. This, in turn, indicates that anticompetitive effects prevail over efficiencies.”

On this basis, the OECD concluded that “standards used to evaluate efficiency claims should remain unchanged”, keeping efficiency defences “still as the exception rather than the rule” – a conclusion inconsistent with the Draft Guidelines’ proposed expansion of benefit considerations.

⁸ Efficiencies in Merger Control, OECD Roundtables on Competition Policy Papers (2025), No. 321 (available [here](#)). See in particular “Box 7. Literature reviews on the existence of merger efficiencies”.

In parallel, the Draft Guidelines grant the Commission a wide margin of discretion in balancing harm against claimed benefits, including across different and incommensurable parameters of competition (price v. non-price). Despite a specific section in the Draft Guidelines, no sufficiently clear rules are provided for how this balancing exercise will be conducted in practice. This is particularly concerning as claimed benefits are often uncertain, difficult to quantify, and long-term in nature – as is the case for dynamic efficiency claims such as innovation or investment gains – while the harm they are meant to offset typically takes the form of predictable, immediate and measurable price increases for consumers.

Overall, this creates leeway disproportionately benefitting large companies, as they can invest significant resources in constructing pro-competitive narratives for their transactions, including speculative and unverifiable claims about future innovation or investment benefits. The imbalance in terms of resources and asymmetries of information between the incumbents and competition authorities will make it overly difficult for such authorities to assess effectively the credibility of efficiency defences, despite evidence showing that extra profit derived from increased market power generally does not lead to increased innovation, investment or resilience⁹.

BOX 2. ILLUSTRATIVE SCENARIO: HOW BROAD EFFICIENCY BALANCING COULD PLAY OUT IN PRACTICE

Let's imagine a hypothetical merger between two competitors in the EU telecoms sector, a market that is already highly concentrated and where the Commission's 2024 Report confirms that higher concentration is associated with higher prices. Despite increased consumer prices, the merging parties claim that the transaction will accelerate 5G investment and enable the development of new technologies that benefit consumers in the long run – claims that are very difficult to verify *ex ante*. Backed by teams of consultants and legal advisers, and with resources that far exceed those available to the Commission, the merging parties then engage at the pre-notification stage, framing their transaction as positive for consumers through a detailed "theory of benefit" (before any theory of harm has been formally substantiated).

Under the Draft Guidelines' framework, the Commission would then be required to weigh these dynamic efficiency claims against identified competitive harm across incommensurable parameters – price effects today versus uncertain innovation benefits tomorrow – with no clear rules governing how that balance should be struck. The outcome would depend heavily on the weight the Commission chooses to assign to speculative future benefits, creating a structural advantage for the well-resourced parties and significant unpredictability for third parties and consumers.

Importantly, the three-prong test – which requires merging parties to demonstrate that efficiencies are verifiable, merger-specific, and passed on to consumers – has been maintained in the Draft Guidelines. BEUC acknowledges this positive outcome which constitutes an important safeguard. However, it is not sufficient to counterbalance the disproportionate importance given to the benefits of mergers.

⁹ J. Stiebale and F. Szücs (2022), "Mergers and market power: evidence from rivals' responses in European markets", *RAND Journal of Economics*, Vol. 53, no. 1 (available [here](#)).

Accordingly, BEUC considers that major changes to the overall narrative and strong safeguards should be added, including as follows:

- The framing must be revised throughout the Draft Guidelines to make clear that consumers' interests remain at the core of competition policy, and ensure that the pursuit of broader competitiveness and industrial objectives does not come at the expense of consumers.
- A more precise methodology on the Commission's balancing exercise of harm and benefits must be included, with consumers' interests remaining a guiding principle. Given that they are predictable, measurable and directly impact consumers, price effects should remain an overriding parameter in merger control assessments, with less weight given to long-term, uncertain, and immeasurable projections.
- The framework must include an enforcement mechanism and strict monitoring: where a merger is cleared on efficiency grounds, this should be subject to binding commitments by the merging parties to deliver the claimed benefits to consumers, with an effective ex post monitoring and meaningful penalties in case of non-compliance. Where such commitments cannot be provided, claimed efficiencies should be disregarded, as the harm resulting from reduced competition is certain while the claimed benefits depend on decisions within the merging parties' control.

2.2. Introducing rebuttable presumptions of harm

The Draft Guidelines do not introduce rebuttable presumptions of harm in circumstances where the risk of anticompetitive effects is particularly high, notably for transactions occurring in already highly concentrated markets or involving dominant companies. BEUC considers the inclusion of such rebuttable presumptions essential, particularly in the context of a framework that gives considerable weight to efficiency claims, and considering the existing presumptions that certain mergers do not give rise to anticompetitive concerns (notably when the merging parties have a combined market share below 25%).

Rebuttable presumptions of harm would serve as a necessary counterbalance: where a transaction presents clear indicators of competitive risk, the burden would shift to the merging parties to demonstrate that their transaction does not harm competition, rather than requiring DG Competition to build its case from scratch. This would strengthen enforcement, improve predictability, and be consistent with the empirical evidence showing that further concentration in already concentrated markets is unlikely to generate efficiency gains that benefit consumers¹⁰.

¹⁰ G. Koltay, S. Lorincz, T. Valletti (2023), "Concentration and Competition: Evidence from Europe and Implications for Policy", *Journal of Competition Law & Economics*, Volume 19, Issue 3, September 2023 (available [here](#)).

2.3. Strengthening conditions of the ‘innovation shield’

The Draft Guidelines introduce a new "innovation shield" under which acquisitions of start-ups and small innovative companies are presumed not to raise competition concerns if certain conditions are met. While providing legal certainty for acquisitions of genuinely nascent companies can be legitimate, BEUC however considers that, in its current version, this mechanism risks shielding a significant number of anticompetitive start-up acquisitions from scrutiny.

The circumstances under which a transaction can benefit from the innovation shield are too broadly defined. They would fail to prevent many killer acquisitions aimed at removing potential competitors. Even more problematic, the largest firms in a relevant market and gatekeepers under the Digital Markets Act (DMA) – which are precisely those most likely to engage in killer acquisitions – may benefit from the innovation shield (though subject to stricter conditions).

To fix this, the conditions for benefiting from the innovation shield should be narrowed and focus more on the characteristics of the acquirers than the target. Additionally, the largest firms in a relevant market and gatekeepers under the DMA should be entirely excluded from the mechanism

2.4. Integrating behavioural economics and financial evidence analysis in merger control assessments

The Draft Guidelines place greater emphasis on theoretical economic models and efficiency projections, and risk moving merger control further away from the reality of consumer markets. BEUC considers in this regard that merger control should give more consideration to the manner consumer-facing markets actually function, rather than to hypothetical models that fit incumbents’ narratives.

Competition enforcement, including merger control, has relied traditionally on models assuming that consumers act rationally and in their own best interests. Behavioural economics supported by empirical evidence has demonstrated that this assumption is often incorrect: consumers are ‘boundedly rational’ and do not behave in accordance with standard economic theories, as their decisions are affected by several biases¹¹. Against this background, merger control assessments in consumer-facing markets should systematically take behavioural economics and insights into account, as cognitive biases directly and significantly influence consumer choices. The merger control framework should also give explicit weight to real-world consumer evidence – including evidence submitted by consumer organisations – alongside traditional economic analysis.

Finally, financial analysis and projections should also be integrated systematically into the Commission’s assessment as a source of evidence. Indicators such as the acquisition price (compared to earnings or

¹¹ Recent competition cases demonstrate that importance of using not only traditional industrial organisation economics but also behavioural economics, including in merger control. See notably Case M. 10615, Booking Holdings/eTraveli Group where DG Competition identified consumer inertia as a key factor enabling Booking to entrench its dominant position in its core market for hotel online travel agencies.

other metrics) and the merging parties' profit margins can provide essential information on possible anticompetitive concerns, market power, or the merging parties' incentives¹².

BOX 3. A DIFFERENT PATH: THE US 2023 MERGER GUIDELINES

The Draft Guidelines' approach – expanding the role of efficiency claims while leaving the Commission a wide discretion to balance them against harm on a case-by-case basis – stands in contrast with the approach followed by the United States.

To fight increased market concentration, the US Department of Justice and the Federal Trade Commission adopted in December 2023 revised Merger Guidelines (the “**US Guidelines**”) that moved towards a stricter approach to merger control enforcement:

- Introduction of clear structural presumptions, under which a merger is presumptively unlawful above defined concentration thresholds (including where it results in a combined 30% market share and a HHI increase of more than 100 points)¹³.
- Application of a high evidentiary bar for efficiency claims, including a reference to a decision of the US Supreme Court that held that possible benefits from a merger cannot be used as a defense to a merger illegality¹⁴.

Interestingly, the US Guidelines specifically indicate that: *“In the Agencies’ experience, this legal presumption provides a highly administrable and useful tool for identifying mergers that may substantially lessen competition.”*

This comparison is particularly illustrative: while many European corporate actors invoke the EU’s lack of competitiveness compared to the US as a justification for relaxing merger control, the US moved in the opposite direction and strengthened their framework with the stated objective to prevent growing market consolidation.

More on this topic:

- BEUC’s consumer checklist of strengthening EU merger control – March 2026 (available [here](#))
- www.beuc.eu/priorities/competition

¹² F.-M. Lancieri, T. Valletti (2024), “Towards an effective merger review policy: A defence of rebuttable structural presumptions”, New Working Paper Series, No. 345, University of Chicago Booth School of Business, Stigler Center for the Study of the Economy and the State, Chicago, IL (available [here](#)).

¹³ See Guideline n°1 (Mergers Raise a Presumption of Illegality When They Significantly Increase Concentration in a Highly Concentrated Market) of the US Guidelines. In practice, almost all transactions resulting in a combined market share above 30% will be presumed unlawful under the US Guidelines (except where one of the two merging parties has very low market shares, well below 5%).

¹⁴ See Section 3.3 of the Guidelines (Procompetitive Efficiencies) of the US Guidelines and US Supreme Court decision cited in the US Guidelines, *FTC v. Procter & Gamble Co.*, 386 U.S. 568, 580 (1967). The decision also indicates: “Congress was aware that some mergers which lessen competition may also result in economies but it struck the balance in favor of protecting competition”.