Review of the Merger Guidelines

The Confederation of Swedish Enterprise welcomes the European Commission's review of the guidelines for horizontal and vertical merger control. It is essential that the regulatory framework remains up to date and reflects the realities faced by businesses. There is a need to clarify and, to some extent, adjust how the Commission assesses efficiency aspects of mergers, as well as various qualitative parameters that influence competition between firms. These should be evaluated within the framework of a robust economic analysis based on consumer welfare, while also to some extent considering effects beyond the relevant market.

The Confederation of Swedish Enterprise therefore urges the European Commission to:

1. Maintain a merger control regime that is **neither tightened nor diluted** compared to the current framework.
2. Continue applying an **evidence-based approach** focused on the effects of mergers on competition and consumer welfare.
3. Clarify how the scope of merger review will remain **proportionate and predictable**, including the use of thresholds and the possibility to request notifications in individual cases.
4. Specify how companies may **invoke increased efficiency** to offset reduced competition resulting from a merger, and broaden the understanding of efficiency and **quality aspects** that may be considered in such assessments.
5. Describe how **out-of-market efficiencies** may be invoked without creating legal uncertainty.

General on merger control

The current review concerns the guidelines, not the regulation itself. Therefore, major changes to the merger control regime are not expected, which we welcome. Businesses benefit from long-term regulatory stability, and changes to the guidelines should primarily aim to enhance clarity and predictability.

In principle, the greatest possible freedom should be afforded to businesses to carry out market transactions, which typically aim to strengthen firms, improve efficiency and competitiveness, and offer better products and services to customers. Vertical mergers, in particular, can lead to more efficient and resilient supply chains, lowering end-product prices without harming competition. At the same time, merger control plays a vital role in preventing excessive market power that could reduce competition and hinder market entry.

It is worth noting that the number of transactions blocked by merger control is very limited. Between 2015 and 2024, only nine of the 2,833 mergers assessed by the Commission were prohibited. Around 5% of cases involved behavioural or structural remedies. However, merger control also influences corporate behaviour, deterring firms from pursuing transactions they believe will not be approved or will require burdensome remedies. This chilling effect is difficult to quantify but suggests that merger control is more intrusive than statistics alone indicate.

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Overall, we see no compelling reason to change the level of intervention in merger control, insofar as this can be addressed within the guidelines. Some argue for a more permissive regime to foster "European champions" capable of achieving greater efficiency and global competitiveness. In general, strong competition drives innovation and investment. While mergers may sometimes yield scale economies, this should be assessed empirically on a case-by-case basis.

In certain sectors, there could indeed be potential to consolidate the number of players in the European market, achieve economies of scale, and create scope for increased investment in both innovation and infrastructure, without limiting competition. A prerequisite for would be that it concerns a genuine European market, and not a fragmented one or, indeed, purely national markets. Where national barriers need to be removed to establish a genuine European market, in which companies compete across borders, action from the Commission and the Member States is required before such transactions can be approved by the competition authorities. We would like to see more decisive steps taken to remove barriers within the Single Market to enable such developments in more markets where this potential exists.

Review of mergers below thresholds

Although thresholds are set out in the regulation rather than the guidelines, we wish to stress the importance of maintaining clear turnover thresholds to limit the number of firms required to notify mergers. Most notified mergers are cleared without intervention, representing an unnecessary burden for businesses. This leads to costs, uncertainty, and delays, increasing the risk of disruption from external factors.

Competition authorities have expressed a need to review certain mergers below the thresholds, particularly in sensitive markets or involving firms with low turnover but high value, such as those with valuable innovations. Some Member States can request notifications under specific conditions or apply value-based thresholds. The Commission currently lacks such powers but may review cases referred by Member States.

Additionally, the Towercast judgment allows competition authorities to review mergers retrospectively under abuse of dominance rules. This creates unacceptable legal uncertainty and is the least desirable method for addressing potentially harmful mergers.

It should also be noted that acquisitions of smaller firms can incentivise investment and innovation. The prospect of being acquired by a larger company at a high valuation is a strong motivator for entrepreneurs and private investors, contributing to a dynamic and innovative business environment.

We would welcome clarification from the Commission on how future merger control can balance the need for legal certainty and predictability with a proportionate regime that avoids unnecessary burdens, while still capturing the few problematic mergers below the thresholds.

Avoid presumptions that shift the burden of proof

We caution against introducing presumption-based approaches that shift the burden of proof onto merging parties. Market power and competition concerns should be identified using traditional metrics such as market shares and concentration. It is also reasonable to consider other indicators to better capture competitive dynamics, including sector-specific aspects like access to data.

A holistic and empirical approach would be undermined by simplistic presumptions, which would place a significant burden on companies to rebut them, leading to higher costs and discouraging pro-competitive deals—especially in fast-moving or innovation-driven sectors where static metrics may misrepresent market dynamics. The merger guidelines should reflect an effects-based approach focused on efficiency; otherwise, it may become extremely difficult, if not impossible, for companies to discharge the burden of proof.

Assessment of efficiency claims

Currently, it is possible to offset increased market power with demonstrable efficiency gains that benefit consumers. However, this has proven difficult in practice due to strict evidentiary requirements. Efficiency claims must be merger-specific, verifiable, and consumer-benefiting.

Such claims are only relevant in cases where the merger is likely to result in increased market power that could harm competition. It is therefore reasonable to require proof that efficiency gains genuinely compensate for this. The value of well-functioning competition should not be underestimated, especially in the long term.

We do not see a need for radical changes to the evidentiary standards for efficiency claims. However, it would be helpful if the Commission clarified these requirements and summarised relevant case law and decision-making practice. The concept of efficiency should be given a holistic meaning, encompassing both quantitative and qualitative aspects—not only lower costs and prices, but also quality improvements, innovation, sustainability, resilience, and security.

The Commission should clarify how these quality aspects can be considered, and how a longer-term perspective may be adopted, given that many such benefits materialise over time. These aspects should be illustrated clearly and concretely, preferably with examples, to aid understanding among market participants.

It should be emphasised that factors such as innovation, sustainability, resilience, and security are not automatically enhanced by a merger. In some cases, mergers may reduce overall investment in sustainability or increase vulnerability by concentrating production in a single firm. These are empirical questions to be assessed case by case.

Out-of-market efficiencies

There has been discussion about whether out-of-market efficiencies should be considered in merger assessments. We believe the primary focus should remain on consumer harm within the relevant market, as this underpins effective competition and supports competitive businesses.

Expanding the assessment to include broader societal effects risks making the process more complex, prolonged, and politically influenced. Balancing negative competition effects against positive sustainability or supply chain benefits is a challenging task.

We are therefore cautious about incorporating broader societal considerations into merger control, beyond a greater focus on product and service quality.

However, it would be unreasonable to block a merger that causes minor harm in the relevant market but generates substantial positive effects elsewhere. Still, such effects should not be given equal weight to those within the relevant market. It should also be considered whether similar societal benefits could be achieved through less competition-distorting means.

We would welcome clarification from the Commission on the extent to which out-of-market effects may be considered, which effects are relevant, and how they should be weighed against competition concerns. These effects should also be merger-specific and verifiable.

For more information, please contact:

Stefan Sagebro
Director Industrial Policy, Competition and State Aid Law
stefan.sagebro@svensktnaringsliv.se
+46 8 553 43 101

Göran Grén
Director, Head of Business Policy and Law Division
goran.gren@svensktnaringsliv.se
+46 8 553 43 131

Charlotte Andersdotter
International Director, Head of EU-Office
charlotte.andersdotter@swedishenterprise.se
+ 32 472 50 46 75

Tuomas Nousiainen
Director, Senior Policy Advisor on EU Affairs
tuomas.nousiainen@swedishenterprise.se
+32 487 11 72 71

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