

European Commission Consultation on Draft New Merger Guidelines

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Consultation on the draft text of the new Merger Guidelines

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We thank the European Commission (EC) for the opportunity to comment on Draft New Merger Guidelines (DNMG).

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¹ See Mercatus Center (website), Mercatus Center Scholars, Alden Abbott, accessed June 11, 2026, <https://www.mercatus.org/scholars/alden-abbott>.

Executive Summary

The EC's DNMG deem global competitiveness a central goal of EU competition policy.² The EC also has stressed the congruence between strong competition enforcement and promoting competitiveness, stating that “rigorous and effective merger enforcement in the Single Market is crucial to enhance the EU’s competitiveness by ensuring fair competition and incentivising companies to innovate and become more efficient.”³

In recent years, however, several European public officials have claimed that increasing market consolidation is the solution to EU global competitiveness concerns. They argue that merger regulation should be relaxed to allow greater consolidation, thereby creating “European Champions” with the scale necessary to compete on the global stage.⁴

In this comment, we first critically assess the economic premises and practical implications of the European Champions argument. We then advocate that the final guidelines adopt a focused approach to dynamic efficiencies that includes both capabilities analysis and out-of-market effects. We raise the following points for the EC’s consideration:

1. A narrowly focused European Champions approach to improving EU global competitiveness encourages stagnation and complacency rather than increased market share in the global innovation economy.
2. Practical implementation of a protectionist European Champions approach would be susceptible to special-interest capture and would reduce consumer welfare.
3. European Merger Regulation (EUMR) goals to improve EU global competitiveness could be better advanced by a revitalized focus on dynamic efficiencies in merger regulation, consistent with the DNMG’s recognition of dynamic competitive potential.⁵
4. Analysis of dynamic efficiencies should include an assessment of firms’ future innovation capabilities and their potential to improve EU global competitiveness.
5. Analysis of dynamic efficiencies should consider out-of-market effects of potential mergers, in addition to in-market effects, when assessing their potential contribution to improving EU global competitiveness.

Discussion

1. A narrowly focused European Champions approach to improving EU global competitiveness encourages stagnation and complacency rather than increased market share in the global innovation economy.

In his 2024 report, former EU Central Bank President Mario Draghi diagnosed weaknesses in the “emerging technologies that will drive future growth” as a central cause of declining EU

² European Commission, *Draft Communication from the Commission: Guidelines on the Assessment of Mergers under Council Regulation (EC) No 139/2004 on the Control of Concentrations between Undertakings* (European Commission, 2026), para. 10, https://competition-policy.ec.europa.eu/document/download/46dde10f-85c1-4590-a3f4-2b71f85685ef_en?filename=Merger%20Guidelines%20-%20final%20for%20public%20consultation.pdf#page=81.36.

³ European Commission, *Topic A: Competitiveness and Resilience*, 2026, 8.

⁴ Bill Baer and Jack Malamud, “Europe Needs Competition, Not National Champions,” Brookings Institution, July 3, 2024.

⁵ “Dynamic competitive potential” emphasizes factors such as R&D spend, patents, pipeline assets, and access to critical data and technology, rather than mere market share. European Commission, *Draft Communication*, paras. 80–83.

competitiveness.⁶ Accordingly, EUMR and DNMG goals of improving global competitiveness depend on encouraging greater European innovation—innovation that requires experimentation and market incentivization of new approaches with the potential to disrupt North American and Asian markets. Indeed, the DNMG already recognize the importance of innovation in discussing the concept of dynamic competitive potential.⁷

The European Champions approach, supported since 2019 by leaders such as Peter Altmaier of Germany and Emmanuel Macron of France,⁸ frames abstract scale as the solution to EU global competitiveness.⁹ The approach argues that EU firms must consolidate more market share in the Single Market to compete against foreign giants, implying that traditional merger regulation should be loosened in favor of protecting European conglomerate champions. The approach assumes that scale is a requirement for competitiveness, and that internal competition is worth sacrificing to achieve scale. Recently, EC President Ursula von der Leyen suggested that loosened merger guidelines allowing such European Champions would better “reflect the realities of the global market.”¹⁰

While scale can enable greater access to R&D resources and increased flexibility to innovate through experimentation, the European Champions approach confuses scale as a direct determinant of competitiveness rather than as an enabler of innovation. The distinction matters because unexamined scale—the type encouraged by loosened merger regulations for favored champion firms—encourages stagnation and reduced efficiencies rather than greater global market share.

Economist David Teece’s dynamic competition framework argues that high market share alone is a poor proxy for durable market power in innovation markets, especially when such large firms survive without innovation by being insulated from entry or potential competition via a grant of special privilege, i.e., being a European Champion.¹¹ Research shows that companies insulated from competition are disincentivized to innovate and have less aggregate R&D activity compared to firms in competitive markets, patterns that undermine the measures of progress called for in the 2024 Draghi report.¹²

Importantly, while government support for selected firms may characterize the competitive strategy of countries such as China, through state-owned enterprises and government-held “golden shares,” such an interventionist approach would hinder innovation in the EU.¹³ In the China example, although protectionist strategies involving state-supported firms increased the ability of firms to obtain initial R&D resources, interferences with market processes reduced the efficiency of such firms in using

⁶ Mario Draghi, *The Future of European Competitiveness: A Competitiveness Strategy for Europe* (European Commission, September 2024), 5.

⁷ European Commission, *Draft Communication*, paras. 80–83.

⁸ Simon Van Dorpe, “Macron Strikes Back with His Champion of Champions,” *Politico*, October 30, 2019, <https://www.politico.eu/article/emmanuel-macron-challenges-eu-thierry-breton-european-commission-pick/>.

⁹ Baer and Malamud, “Europe Needs Competition.”

¹⁰ European Commission, “Statement by President von der Leyen with President Costa following the Informal EU Leaders’ Retreat,” news release, February 8, 2026.

¹¹ David J. Teece, “Understanding Dynamic Competition: New Perspectives on Potential Competition, ‘Monopoly,’ and Market Power,” *American Bar Association (ABA) Antitrust Law Journal* 86, no. 3 (2025): 754.

¹² Joanna Piechucka et al., “Competition and Industrial Policies: Complementary Action for EU Competitiveness,” *Journal of Competition Law & Economics* 20, no. 4 (2024): 384.

¹³ Franklin Allen et al., “Reassessing the Role of State Ownership in China’s Economy,” Stanford Center on China’s Economy and Institutions, Stanford University, updated January 15, 2024.

those resources to produce innovation.¹⁴ Europe lacks the resources to afford such inefficiencies against players such as China and India, and it should avoid protectionist policies that lead to such inefficiency.

2. Practical implementation of a protectionist European Champions approach would be susceptible to special-interest capture and would reduce consumer welfare.

Apart from discouraging innovation, the implementation of a European Champions approach to mergers would also be susceptible to special-interest capture and subsequent loss of consumer welfare. Protectionist industrial policy effectively converts the market process of competition dynamics into a political process for determining which firms get to be considered European Champions. Public choice economics illustrates how such political processes are linked with reduced consumer welfare.¹⁵

Corresponding to economist Gordon Tullock's work in public choice, a European Champions approach would heavily incentivize lobbying and rent seeking from deep-pocketed incumbent firms, resulting in broad social costs to consumers.¹⁶ Empirical research supports this, with larger mergers and market consolidation being correlated with greater corporate political action committee spending and increased rates of forming in-house lobbying teams.¹⁷

Existing politicization of economic markets already reduces consumer welfare in EU industries such as agriculture, where lobbying and rent seeking have supported direct payment policies that reduce allocative efficiency and discourage new entrants by capitalizing payments into land prices.¹⁸ Broadly, research has shown that bureaucratization and politicization of economic issues in Europe have reduced the wealth of the continent as a whole.¹⁹ If the new merger guidelines aim to improve the EU's global competitiveness and consumer welfare, then the rent-seeking effects of a European Champions approach are incompatible with guidelines designed to maximize consumer welfare while preserving effective competition.

3. EUMR goals to improve EU global competitiveness could be better advanced by a revitalized focus on dynamic efficiencies in merger regulation, consistent with the DNMG's recognition of dynamic competitive potential.

We suggest that, instead of granting special privileges to European Champions, the EC can best advance its goal of improving the EU's global competitiveness through a more serious application of dynamic efficiencies in merger analysis. If the technological and global competitiveness goals of the Draghi report are to be met, the EC's antitrust project must work to encourage dynamic innovation rather than undermining it.

The current draft guidelines have made progress by elevating efficiencies into a "theory of benefit," allowing firms to present merger-specific consumer-welfare benefits that can be weighed

¹⁴ Kevin Zheng Zhou, Cong Wang, and Hao Zhang, "State Ownership and Firm Innovation in China: An Integrated View of Institutional and Efficiency Logics," *Administrative Science Quarterly* 62, no. 2 (2016): 376.

¹⁵ Annika Stöhr and Oliver Budzinski, "Merger Control Meets Industrial Policy with the New EU Merger Guidelines," *Promarket*, University of Chicago Booth Stigler Center, June 4, 2026.

¹⁶ Robert D. Tollison, "The Economic Theory of Rent Seeking," *Public Choice* 152, nos. 1–2 (July 2012): 74.

¹⁷ Bo Cowgill, Andrea Pratt, and Tommaso Valletti, "Political Power and Market Power" (NBER Working Paper No. 33255, National Bureau of Economic Research, December 2024), 3.

¹⁸ Andrew Schmitz, Charles Moss, Triy G. Schmitz, G. Kornelis van Kooten, and H. Carole Schmitz, *Agricultural Policy, Agribusiness, and Rent-Seeking Behaviour*, 3rd ed. (University of Toronto Press, 2022).

¹⁹ Gheorghita Dincă, Marius Sorin Dincă, Camelia Negri, and Mihaela Bărbuță, "The Impact of Corruption and Rent-Seeking Behavior upon Economic Wealth in the European Union from a Public Choice Approach," *Sustainability* 13, no. 12 (May 15, 2021): 17.

against potential anticompetitive merger harms. Regarding dynamic competition, the draft guidelines weigh possible impediments to the “innovation competition process” as a potential anticompetitive harm of a merger.²⁰ Correspondingly, dynamic efficiencies encouraging future innovation are also outlined in the draft guidelines as a countervailing source of benefit.²¹ In understanding dynamic efficiencies, the EC should not discount forward-looking dynamic efficiencies merely because they are harder to quantify than short-run price effects. Rather, to foster innovation, the EC should treat dynamic efficiency concerns with equal seriousness in both theories of harm and theories of benefit in future merger analysis.

4. Analysis of dynamic efficiencies should include an assessment of firms’ future innovation capabilities and their potential to improve EU global competitiveness.

The current DNMG outline one type of dynamic efficiency as deriving from “combining scarce complementary assets or capabilities.”²² We suggest that the new guidelines draw upon this dynamic capabilities framework as a means of advancing European global competitiveness, in addition to long-term consumer welfare goals.

Legal scholar Nicolas Petit and economist David J. Teece outline the dynamic capabilities framework as a method of analyzing the firm-level and firm-specific “sensing, seizing, and transforming skills” that allow firms to innovate and adapt to future market changes.²³ Through a dynamic capabilities lens, mergers that increase dynamic capabilities of firms serve potential future consumer welfare through enhanced innovation, while mergers—such as those that create European Champions—that produce scale with little to no increases in dynamic capabilities are likely to reduce consumer welfare through monopoly rents rather than contribute to innovation.²⁴

The EC has already employed dynamic efficiency arguments as a part of a theory of harm in the 2017 Dow and Dupont merger, where future innovation was used to argue against a merger that would have reduced dynamic efficiencies.²⁵ If the goals of the Draghi report are to be met, the DNMG should emphasize dynamic efficiencies identified through a dynamic capabilities framework as a theory of benefit in large mergers. Mergers that increase dynamic capabilities create firms with the ability to effectively innovate and experiment, thereby contributing to EU goals of global competitiveness.

5. Analysis of dynamic efficiencies should consider out-of-market effects of potential mergers, in addition to in-market effects, when assessing their potential contribution to improving EU global competitiveness.

When examining dynamic efficiencies in merger analysis, the scope should not be limited only to the relevant market in which anticompetitive effects may take place. In dynamic innovation economies, growth often occurs in a nonlinear fashion through networks of interconnected talent, resources, and capital.²⁶ Since the effects of such innovation often spill over into adjacent markets through new modes

²⁰ European Commission, *Draft Communication*, para. 175.

²¹ European Commission, *Draft Communication*, para. 295.

²² European Commission, *Draft Communication*, para. 302.

²³ Nicolas Petit and David J. Teece, “Innovating Big Tech Firms and Competition Policy: Favoring Dynamic over Static Competition,” *Industrial and Corporate Change* 30, no. 5 (2021): 1176.

²⁴ Petit and Teece, “Innovating Big Tech,” 1181.

²⁵ European Commission, “Mergers: Commission Clears Merger between Dow and DuPont, Subject to Conditions,” news release, March 26, 2017.

²⁶ Shamil Ibragimov, “Growth Markets Are Node-Scarce, Not Idea-Scarce,” MIT Sloan, January 22, 2026.

of production and unexpected applications of new technology, merger analysis of dynamic efficiencies related to innovation should extend to out-of-market effects.

The DNMG state that out-of-market efficiencies should be considered only when “the group of consumers negatively affected by the merger and benefiting from the efficiencies are substantially the same.”²⁷ We do not believe that dynamic efficiencies are susceptible to such a limitation. Mirroring legal scholar and economist Louis Kaplow’s market definition argument, we posit that the consumer-welfare-enhancing effects of dynamic efficiencies in innovation sectors are not well captured by traditional market definition analysis due to the difficulty of predicting the breadth of possible impacts of innovation.²⁸ Whereas it is generally possible to trace the impact of static efficiencies, such as marginal cost savings, to a particular product market, dynamic efficiency gains often appear in the form of benefits to the complements and supplements of production that naturally occur outside the focus market. Accordingly, many “out of market” consumers are affected, and an exclusive focus on benefits to “within market” consumers could cause mistaken opposition to mergers that enhanced consumer welfare as well as competitiveness.

The *Aurubis/Metallo* case demonstrates that the Commission is already capable of considering dynamic efficiencies that extend past the normal static price effects.²⁹ In this specific case, the Commission examined if there would be gains by combining the two companies’ complementary technology and specific knowledge, and if those gains would be passed onto the suppliers via higher payments for the valuable metal components in the copper scrap. Although the Commission did not clear the merger solely because these out-of-market efficiencies outweighed the harm, the case nevertheless demonstrates that the Commission is capable of assessing dynamic efficiencies in a manner suitable for application in the “theory of benefit.”

Closing

We respectfully suggest that the final EC merger guidelines reject the presumption that greater scale implies greater global competitiveness. The relevant question is not whether a transaction creates larger European Champion firms, but rather whether the transaction preserves the necessary competitive pressure and creates the dynamic capabilities for firms to be efficient, innovative, and globally contestable. As such, we recommend that the final guidelines place greater emphasis on understanding dynamic efficiencies through a capabilities framework, including out-of-market dynamic efficiencies.

²⁷ European Commission, *Draft Communication*, para. 355.

²⁸ Louis Kaplow, “Out of Market, Out of Mind,” *American Bar Association (ABA) Antitrust Law Journal* 87, no. 2 (March 2026): 551.

²⁹ European Commission, *Case M.9409 – Aurubis / Metallo Group Holding*, April 5, 2020, 140.