Revision of the EU Merger Guidelines
France Digitale's contribution to the European Commission consultation

Improving the consideration of Innovation in the future framework
September 3rd, 2025

Introduction

France Digitale welcomes the European Commission's initiative to revise the EU Merger Guidelines. Our non-profit organisation representing French and European startups and VCs is committed to fostering a vibrant ecosystem of startups and scaleups in Europe. While we welcome the new EU Startup and Scaleup Strategy put forward by the Commission, these measures will only be effective if accompanied by a **modern competition framework that is truly fit for sustaining innovation and growth**.

The EU Merger Guidelines were adopted in 2004 for horizontal mergers and in 2008 for non-horizontal mergers. Since then, **markets have profoundly changed and the case law of the Court of Justice of the European Union has evolved significantly**. It is therefore essential that the revision of the Guidelines reflects these developments, so as to provide the Commission and national competition authorities with tools adapted to today's market realities when assessing mergers.

Although the Guidelines already acknowledge that innovation is an important parameter of competition in certain markets, they do not specify how the Commission evaluates the effects of mergers on innovation. In this regard, **the Draghi Report highlights the need for competition policy to continue adapting to the evolutions of the economy** to not to become an obstacle to Europe's objectives, and stresses that, "since innovation in the tech sector is rapid and requires large budgets, merger evaluations should assess how the proposed concentration will affect future innovation potential in critical innovation areas."[1]

With this contribution to the consultation on the revision of the Merger Guidelines, France Digitale aims to foster a **better understanding of how M&A and innovation are deeply intertwined, and to put forward recommendations for a new framework that fully integrates innovation considerations into merger review**.

We will continue to engage with our members on this issue and to document both the potential positive and negative effects of mergers on innovation. **France Digitale remains at the Commission's disposal throughout this revision process.**

[1] Mario Draghi, The Future of European Competitiveness. Report to the President of the European Commission, 9 September. Brussels: European Commission, 2024, "A competitiveness strategy for Europe" (part A), p. 17.

Preliminary Remarks

A Strong and Functioning M&A Market is Crucial to Foster Innovation in Europe

Engaging in the revision of the Merger Guidelines with the aim of fostering innovation requires a thorough understanding of the European innovation ecosystem, its strengths and weaknesses, to fully appreciate how M&A supports startups, whether by enabling consolidation or providing viable exit opportunities.

1. **Growth through Consolidation is the Only Way Forward to build European Innovation Champions**

Europe has built a thriving startup ecosystem over the last years, and innovation is undeniably alive across the continent. Yet, despite this progress, European startups still face significant hurdles that make scaling difficult. Chief among these challenges is **the fragmentation of the EU market**, where regulatory barriers, 27 distinct legislations create a costly and complex environment for expansion. This fragmentation underscores the urgent need for a 28th regime, a harmonized framework, to streamline market access and reduce burdensome compliance.

In this context, **consolidation through cross-border acquisitions emerges as the most effective solution to overcome regulatory compliance**. Moreover, consolidation provides deeper insights into local markets and cultures, enabling startups to integrate into new ecosystems, including public institutions and universities. **Mergers can therefore encourage innovation by allowing companies to grow and to overcome the fragmentation of the European market.**

Consolidation is not only the fastest and most effective way to enter new markets, it is also the most powerful strategy to **rapidly build innovative capacity**. With mergers, startups instantly unlock access to critical assets, expanded customer bases, advanced infrastructure, top talent, and cutting-edge technology, while pooling R&D efforts, expertise, and financing to fuel faster breakthroughs. Consolidation also helps startups **overcome Europe's talent shortage** by offering employees better compensation and career prospects, which they often can't match on their own compared to larger companies.

Ultimately, **consolidation is the best path to building true European champions**. By leveraging the unique strengths, talents, and ecosystems of each Member State, startups can achieve the scale necessary to compete globally, and face the competition of large players outside Europe.

Yet, to create these champions, **Europe must first cultivate a pan-European mindset**, one that transcends national borders and aligns member states with a shared vision. If startups must often first consolidate at the national level to prepare for European expansion, the step forward is European-level consolidation, enabling companies to compete on the global stage. Without this, the high costs of entering outside-EU markets will remain a barrier, leaving European firms fragmented with several national champions, unable to compete on a global scale.

Having European champions is also about favoring EU citizens. Consumer welfare in the realm of innovation goes beyond price, it's about giving consumers the freedom to choose innovations from European players, who directly create value in our economy. In a fragmented world driven by technological breakthroughs, where innovation is deeply intertwined with societal progress, we must ask: What truly benefits the consumer? Is price the sole determining factor? Instead, shouldn't we prioritize access to European innovation? Conversely, **wouldn't consumers benefit more from high-quality, innovative products that align with European values and our vision for responsible innovation?**

Moreover, if European authorities restrict startup consolidation, the question becomes: who will step in? **Large European corporations often lack the financial firepower or acquisition culture to absorb startups.** If we want our startups to grow and thrive in Europe, enabling strategic consolidation is not just a policy choice, it's a necessity.

The forthcoming Merger Guidelines must therefore strike a delicate balance: **it should preserve a diverse and vibrant innovation ecosystem in Europe, while also allowing for strategic consolidation and cooperation among innovative players**. Such consolidation is often essential, providing startups and scale-ups with the necessary resources to compete effectively on a global stage.

2. M&A is Necessary for a Vibrant startups Ecosystem to thrive in europe

The startup financing ecosystem works like a cycle, where each step depends on the success of the next. It starts with limited partners, institutional investors, private individuals, pension funds, or public entities, who invest in venture capital funds (VCs . These VCs then fund early-stage startups, helping them grow through organic expansion or acquisitions. As startups mature, they must eventually provide exit opportunities, such as IPOs, full acquisitions, or secondary buyouts, for their VC backers. Successful exits allow VCs to return capital to LPs, who can then reinvest in new VC funds, keeping the cycle alive and fueling future innovation.

But the final exit stage is critical, and far from guaranteed. Startup investment is high-risk: most ventures fail, and only 1 in 10 delivers the returns needed to sustain a VC fund. For the ecosystem to thrive, these rare successes must generate high-value exits, ensuring capital is recycled into new opportunities. Yet today, **exit options are limited**, creating a bottleneck in the financing cycle. **The alternatives to M&A are limited, with a stagnant IPO market and scarce secondary funds. M&A appears to be the only viable exit option**.

Exits also benefit talent and the ecosystem's attractiveness. A healthy M&A market means liquidity for employees, rewarding talent and encouraging entrepreneurs to launch new projects. Many entrepreneurs adopt a "serial entrepreneur" mindset, a successful exit gives them the resources and credibility to innovate again, increasing their chances of success.

Yet, acquisitions often raise concerns regarding "killer acquisitions", deals made solely to eliminate competitors and stifle innovation. However, our members report little firsthand experience with such practices. Without concrete evidence, the European Commission should gather robust data and conduct a thorough impact assessment before regulating a phenomenon that lacks empirical support.

The debate around killer acquisitions is also tied to geopolitical dynamics and Europe's pursuit of technological sovereignty. While building European champions should ideally rely on a strong network of European investors and exit opportunities for startups, this ecosystem is still underdeveloped. As a result, acquisitions by non-European players are sometimes necessary, they are often the only ones with the capital and market access to help startups scale, especially into regions that would otherwise remain out of reach.
The key question remains: Is it better to have no sovereignty at all, or to embrace a global strategy that ensures growth and competitiveness?

As for concerns about dominant players buying startups, we fully support the use of the Digital Markets Act and its enforcement, including gatekeepers' obligation to inform the Commission of its acquisitions. Additionally, foreign investment controls provide a second layer of safeguards. If the goal is to protect strategic assets, we already have effective tools to ensure autonomy and prevent misuse.

Recommendation 1 : acknowledge the fundamental role of M&A in building a vibrant innovation ecosystem in Europe.

I. Because Disruptive Markets Differ Fundamentally from Traditional Ones, Assessing Mergers' Effects on Innovation Requires a Deep Understanding of Innovation Dynamics and Careful Case Analysis

The impact of mergers is highly case-specific in the innovation realm. Assessing the impact of a merger on innovation, both for the merging parties and the broader ecosystem, is a complex endeavor. This complexity is further amplified when considering the ripple effects across the entire innovation landscape. As such, **authorities must first develop a deep and nuanced understanding of the dynamics of innovation across different sectors. Only then can they conduct a thorough and informed analysis of a merger's true impact.**

Old competition law concepts do not fully apply to disruptive markets. As highlighted above, mergers are a cornerstone of a healthy startup ecosystem. They provide the essential resources for companies to innovate and scale. This is especially true for vertical and complementary transactions, which usually generate efficiencies by securing supply chains, eliminating bottlenecks, or accelerating innovation and R&D. Moreover, **the very nature of innovative markets, characterized by disruption and constant experimentation with new ideas, products, and services, challenges the traditional frameworks of competition law, which were originally designed for more static industries**. These old logics must therefore be nuanced and seen in light of the dynamic nature of the market. Several of the effects usually deemed negative for the incentive to compete, and eventually to raise price and reduce the choice for consumers, can prove to be positive when assessing innovative markets that by definition constantly evolve.

Mergers are a fundamental part of the strategy that startups employ to ensure their innovations not only survive but thrive. Mergers can significantly enhance a startup's innovative capability not just by providing resources, but by connecting them with the right partner to unlock new ambition, expertise, and market reach. For many startups, a merger can also serve as a strategic pivot: it allows them to move beyond the relentless focus on short-term profitability and marketing required for survival, and instead refocus their energy and resources on long-term R&D and breakthrough innovation. This aligns with the vision of **many entrepreneurs, who view strategic consolidation as a deliberate step to propel their innovation forward**. Ultimately, the value of a merger depends on the trajectory that founders believe will best advance their mission whether through independence, partnership, or integration into a larger ecosystem. The key lies in recognizing that innovation thrives not only through competition but also through collaboration and strategic alignment.

Sometimes, acquisition by an incumbent is the only way for innovation to survive. While startups can outpace larger players with agility, two critical challenges often stand in their way: Europe's fragmented market and limited access to capital, which undermine their ability to scale, and the reality that big incumbents, even with inferior products, can dominate simply by leveraging their existing customer trust and market presence. If a startup's innovative product risks being overshadowed by a larger competitor's release, acquisition can be the lifeline that ensures its technology not only survives but thrives. By joining forces with a bigger player, the startup gains the financial firepower and market reach needed to bring its innovation to a broader audience, an outcome that would be impossible if it had to compete alone. In such cases, being acquired doesn't just save the technology; it ensures it reaches the consumers who would otherwise default to the incumbent's solution.

Beyond necessity, innovating near a dominant player with the intent of being acquired can also be a deliberate and strategic choice. Rather than disrupting from the periphery, startups can innovate at the edges of traditional markets, refining processes, reimagining products, and challenging established norms, while aligning their solutions with the needs of incumbent players. This approach not only increases the likelihood of acquisition but also positions the startup's innovation as indispensable to the industry's evolution. This strategy also aligns with the economic realities of venture capital, where acquisitions offer a clear exit and a tangible return on investment. In Europe, where growth opportunities are often stifled by limited funding, acquisition can be more than just an option, it can be the only viable path forward. By leveraging this route, startups don't just survive, they ensure their innovations gain the scale and influence needed to thrive in a competitive landscape.

Mergers among competitors are a key driver for the players that remain in the market. Just like a competitor secures significant funding, when two startups in the same field compete and one is acquired, the other faces challenges that ultimately drive progress. **A merger doesn't guarantee immediate dominance on a given market, especially in innovation-driven fields**. There is always a window of adaptation: even when an acquisition brings additional resources, market expansion, and new opportunities, the integration phase can be fraught with challenges; cultural clashes, talent attrition, or operational hurdles. This transitional period creates a critical opening for competitors to seize momentum. **Rather than being a setback, it forces rivals to make strategic decisions : either accelerating their growth, shifting their trajectory, or innovating in a more targeted and efficient way.** This adaptability is at the heart of startup culture, enabling them to innovate faster and more effectively than larger players. Ultimately, both the merged entity and its competitors are spurred to push innovation further.

Disruptive markets make it difficult to apply the cannibalization effect theory. When two firms compete over a close, substitutable product in traditional markets, a merger between them risks reducing the acquirer's incentive to cut prices or improve product quality, since doing so would only cannibalize sales from its other product[2]. While this cannibalization effect is relevant in traditional markets, its importance is more nuanced in the technological sector, where innovation moves particularly fast. For existing products, the cannibalization effect can be measured by analyzing sales before and after the arrival of a competing product. However, in highly innovative sectors, it is much harder to observe. **New products can disrupt existing markets or even create entirely new ones, and their appearance is often unpredictable**. Even when a new product is announced, it is difficult to estimate its attractiveness or to anticipate whether it will reshape or create a market.

Mergers reassure startups that their innovation investments can pay off, whereas without them, the risk of losing everything to a competitor is extremely high. A merger can generate **dynamic efficiency gains[3]**, which can take the form of the reduction of fixed costs, the diffusion of know-how, the optimization of intellectual property rights, the improvement of the quality of a product or of a service, or an increase of investments in research and development, and thus reinforce the innovation capacities of the company resulting from the merger. **Mergers can also create synergies** resulting from the combination of the assets of the merging companies, which affect the capacities and incentives to innovate of the company resulting from the merger. These effects are particularly strong in the technological and digital sectors, where innovation requires highly specialized professionals, significant investments, and sophisticated intellectual property management. A merger can therefore allow developing companies to combine these essential assets for innovation, which are difficult to transfer between separate companies. **Finally, mergers can reduce redundant investments** and thus increase the level of available investments within the company resulting from the merger. This **rationalization effect** can improve the quality of products in technological and digital sectors, where the investments in innovation are particularly high.

Recommendation 2 : Merger control authorities should reach a deep understanding of innovation dynamics and conduct careful case analysis to better assess the potential negative and positive effects on innovation.

[2] Gönenç Gürkaynak, Innovation Paradox in Merger Control, Concurrences, 2023, p. 68.
[3] Gönenç Gürkaynak, Innovation Paradox in Merger Control, Concurrences, 2023, pp. 96-99 ; p. 119.

II. A Novel Analytical Framework Fit for Disrupted markets is Needed to Fully Grasp the Impact of Mergers on Innovation

Assessing the positive or negative impact of a merger on innovation will require to better fine-tune tools and methods of analysis available to regulators. The revision of the Guidelines must therefore provide an analytical framework adapted to dynamic markets, particularly in the digital and technological sectors, in order to encourage the emergence of European champions capable of innovating and of competing on a global scale.

To the end, we make the following recommendations :

Recommendation 3 : Introducing a presumption of neutrality.

No presumption can be justified regarding the effects of a horizontal merger on the incentives to innovate. Given its potential negative and positive effects, it is necessary to apply a presumption of neutrality of the effects on innovation in merger control, before proceeding to an empirical balancing of these effects, case by case[4].

Recommandation 4 : Introducing an innovation defence.

We fully support Draghi Report's idea to introduce an innovation defence in the Guidelines, particularly in the sectors where there is a necessity "to pool resources to cover large fixed costs and achieve the scale needed to compete at the global level."[5] It is essential that merger control takes into account such a defence in the digital and technological sectors, marked by important costs of innovation. This should weigh particularly in the evaluation of mergers involving innovative start-ups, whose innovation capacities, and therefore competitiveness, depend on such operations.

Recommendation 5 : Expand the assessment of merger benefits to include out-of-market and sustainability impacts.

Mergers should not be evaluated solely on their immediate effects within a defined product or geographic market. Instead, merger control should explicitly recognize the broader benefits of innovation, such as enhanced scalability, accelerated R&D, and improved consumer access to advanced technologies, as well as sustainability gains, like cleaner production methods and circular economy initiatives. These benefits often generate positive externalities for society as a whole, even if they are not directly captured by consumers. By incorporating these dimensions into the assessment, **merger control can better align with Europe's competitiveness and climate objectives**, ensuring that innovation and sustainability are prioritized alongside traditional competition concerns.

Recommendation 6 : The necessity to lighten the burden of proof for efficiency gains linked to innovation.

[4] Bruno Jullien, Yassine Lefouili, "Horizontal Mergers and Innovation", Toulouse School of Economics, Working Papers n° 18-892, 2018, quoted in Gönenç Gürkaynak, Innovation Paradox in Merger Control, Concurrences, 2023, p. 112.

[5] Mario Draghi, The Future of European Competitiveness. Report to the President of the European Commission, 9 September. Brussels: European Commission, "In-depth analysis and recommendations" (part B), p. 299.

We support a broader consideration of efficiency gains linked to innovation in merger control, relying on a burden of proof identical to that used to evaluate the harms. Efficiency gains and harms could therefore be balanced one against the other by weighing their impact according to their probability. Currently, merging parties often face a double standard: speculative theories of harm are investigated rigorously, while efficiency claims are dismissed as too uncertain. Yet innovation-related benefits are inherently harder to quantify. **The Guidelines should require that efficiency claims, once supported by credible arguments and evidence, are accepted unless convincingly refuted**[6].

Recommendation 7 : Introducing new types of evidence.

Evaluating the effects of a merger on innovation is challenging due to uncertainties about future innovations and limited information on companies' innovation strategies. To address this, it would be helpful to clarify the types of evidence the Commission could consider when assessing a merger's impact on innovation.

Possible types of evidence include:

- Research and development (R&D) expenditures ;
- Product feature releases and adoption metrics ;
- Customer feedback metrics, such as Net Promoter Score (NPS).

While these metrics have the advantage of being quantifiable, the Commission should also incorporate qualitative evidence to better capture the effects of mergers. Dialogue with the merging parties, industry stakeholders, and experts is therefore essential.

The specific characteristics of digital and technological sectors must also be considered. Evidence should be evaluated in a manner adapted to these sectors, taking into account their unique assets, including technical expertise and human capital. Economic models used in merger control should integrate companies' management and organizational practices and treat technologies developed by different firms as distinct, non-interchangeable assets.

III. New Tools of Dynamic Analysis Should be Introduced to Better Consider Disruptive Innovations

[6] M. Katz, Howard Shelanski, "Mergers and Innovation", Antitrust Law Journal, Vol. 74, 2007, in OECD 2018 "Considering non-price effects in merger control", OECD Roundtables on Competition Policy Papers, No. 216, OECD Publishing, Paris, p. 11.

Traditional economic analyses struggle to apply in environments shaped by disruptive innovations, which dismantle and structurally reshape markets. Assessing the effects of a merger in sectors dominated by such innovations is particularly challenging for two main reasons: 1) predictive analyses are difficult because these markets do not evolve in a linear or predictable way ; 2) access to companies' internal information can be limited, and even when available, it may be difficult to interpret accurately[7].

Therefore, **we recommend introducing dynamic economic analysis in the upcoming Merger Guidelines**. If static competition rests on models where products are substitutable and companies compete for existing rents, dynamic competition analyzes the competition for future rents in models where companies use innovation to introduce new products on the market[8]. The tools of dynamic analysis are therefore much more adapted to the analysis of the digital and technological sectors, which are strongly marked by disruptive innovations. Several recommendations can thus be made to implement such dynamic analyses.

Recommendation 8 : The Integration of Innovation in the Definition of Markets and the Calculation of Market Shares.

Competition authorities must reduce the emphasis on traditional market definitions and market shares when analyzing mergers in innovative sectors. The European Commission has long acknowledged the limitations of these tools for dynamic markets. For example, in the Microsoft/Skype case, it noted that market shares only provide a limited indication of competitive strength "in a nascent and dynamic sector [where] market shares can change quickly within a short period of time."[9] **It is therefore essential that the Commission restates this observation in its Guidelines and applies it to the digital and technological sectors**, in order to provide more predictability to innovative companies in these fields.

Traditional market definitions are ill-suited to capture the effects of a merger in sectors where innovation is central. In these markets, **companies compete more on the ability to innovate and scale new technologies than on price[10]**. In traditional markets, analysis focuses on static price and market shares. Yet, in innovative markets, what matters in innovative sectors is a company's capacity to deploy new solutions quickly while rivals can emerge from adjacent markets or through disruptive innovations.

Therefore, we recommend explicitly integrating innovation into the definition of markets and the calculation of market shares. **Analyses should adopt a forward-looking perspective that captures the dynamic and evolving nature of competition in digital and technological sectors**, providing greater predictability for innovative companies.

Recommendation 9 : Strengthening the Analysis of Dynamic Efficiency Gains

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[7] Frédéric de Bure, Laurence Bary, "Disruptive innovation and merger remedies: How to predict the unpredictable ?", Concurrences n° 3-2017, art. N° 84407, septembre 2017.

[8] Nicolas Petit, David Teece, "Innovating Big Tech Firms and Competition Policy: Favouring Dynamic over Static Competition 9" (DCI Working Paper) 2021, p. 5.

[9] Commission européenne, décision M.6281 – Microsoft/Skype, 18 novembre 2011, par. 78

[10] OECD 2018 "Considering non-price effects in merger control", OECD Roundtables on Competition Policy Papers, No. 216, OECD Publishing, Paris, p. 40.

Dynamic efficiency gains are particularly relevant to analyze the effects of a merger on innovation, since they can take the form of reductions of fixed costs, improvements of the quality of a product or of a service, or the development of new products. **These dynamic efficiency gains should be examined** as they can compensate for the negative effects of mergers on innovation[11].

The standards of proof required to demonstrate dynamic efficiency gains are very high, since the Commission requires companies to demonstrate that these gains result directly from the merger and that they are quantifiable. However, it is very difficult to quantify in a predictable manner these gains, particularly in the digital and technological sectors where innovations are rapid and the emergence of new products difficult to anticipate. **It is therefore absolutely necessary to lighten the burden of proof of these dynamic efficiency gains** so that they can be effectively taken into account in merger control.

Recommendation 10 : Resorting to long-term analyses

Short-term analyses prove to be inefficient as the positive effects of a merger on innovation and its dynamic efficiency gains occur in the long term[12]. Even R&D expenses of the merged companies initially decreased in the short term, essentially due to temporary restructuring costs, they later increased in the medium term. This difficulty of measuring the effects of a merger on innovation in the short term is even greater in sectors marked by long-term investment cycles. It is therefore considered that the examination of the effects of mergers in a horizon of two years does not provide a pertinent analysis[13].

Therefore **we recommend that the Merger Guidelines provide for a long-term analysis of the effects of mergers on innovation**, and allow companies to demonstrate efficiency gains without limitation of time of their realization. It is therefore necessary that the Commission reconsiders its current approach, which provides that “the later the efficiencies are expected to materialise in the future, the less weight the Commission can assign to them.”[14] On the contrary, the Guidelines must provide, for dynamic markets, that these efficiency gains are considered in the long term.

Recommendation 11 : Lightening the examination of remedies proposed

The Commission allows commitments in merger operations to include a review clause, which permits it to re-examine the commitments, upon request by the parties showing good cause[15]. However, the Commission rarely uses this clause and its implementation is particularly long. As a result, it is difficult for the parties to a merger to obtain modifications in the implementation of their commitments to take account of market evolutions. This situation is particularly problematic for dynamic markets in rapid evolution. **A clarification of the Commission is therefore necessary so that companies can effectively rely on such clauses.**

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[11] Gönenç Gürkaynak, Innovation Paradox in Merger Control, Concurrences, 2023, p. 112.
[12] OECD, Merger control in dynamic markets, Contribution from BIAC, DAF/COMP (2019), 6 December 2019, p. 8.
[13] OECD, Merger control in dynamic markets, Contribution from BIAC, DAF/COMP (2019), 6 December 2019, p. 8.
[14] Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, Official Journal C 031 , 05/02/2004 P. 83.
[15] Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, OJ C 267, 22.10.2008, pp71

Moreover, remedies should be adapted to dynamic markets, for which the evolution can't be predicted, either through conditional commitments or through review clauses attached to a specific event[16], such as the evolution of the market. In the digital and technological sector, for example, the clause could be triggered by the entry of a new competitor, the launch of a new product, or the creation of a new market by the company resulting from the merger.

[16] Frédéric de Bure, Laurence Bary, "Disruptive innovation and merger remedies: How to predict the unpredictable ?", Concurrences n° 3-2017, art. N° 84407, septembre 2017.

About France Digitale: Founded in 2012, France Digitale is the largest startup association in Europe, bringing together over 2000 startups and investors (venture capitalists and business angels). The association's goal is to help build Europe's future tech champions by raising the voice of those who innovate to change the face of the world.

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