



## **The Startup Test for EU Merger Control**

Position on the Review of the EU Merger Guidelines

June 26th 2026

### **Introduction**

The European Commission's review of the EU Merger Guidelines represents a major evolution in EU competition policy. The draft reflects a broader political shift towards innovation, resilience, strategic autonomy, and global competitiveness.

For startups and the wider innovation ecosystem, the review contains welcome elements. The draft recognises the importance of dynamic competition, innovation-driven markets, and Europe's long-standing scale-up challenges. It also acknowledges that mergers can play a legitimate and positive role in helping startups grow, attract investment, and commercialise innovation.

At the same time, the draft introduces broader and more flexible enforcement theories that may increase legal uncertainty for startups, investors, and acquirers. For innovation ecosystems, predictability and proportionality are essential.

Europe's competitiveness objectives should not unintentionally weaken the investment environment that startups need to scale successfully.

Merger policy has a direct impact on startups and the wider innovation ecosystem. Acquisitions are a key mechanism through which startups scale, attract investment, and recycle capital and talent into new ventures. Predictable exit opportunities are therefore essential to venture capital activity, founder incentives, and Europe's long-term innovation capacity.

Allied For Startups supports a merger framework that protects competition and also preserves innovation in markets. The review should ensure predictable and proportionate enforcement, targeted intervention against genuinely harmful mergers, and clear guidance for innovative firms and investors. In particular, the final

guidelines should avoid overly speculative theories of harm, reduce unnecessary procedural burdens for smaller companies, and provide greater certainty regarding startup-related transactions.

The Commission has correctly identified innovation and competitiveness as priorities. The question is whether the final guidelines will deliver those objectives through predictable and proportionate enforcement.

## **Positive Elements of the Draft**

### **Recognition of innovation and future competition**

The draft modernises merger assessment by placing greater emphasis on innovation, R&D capabilities, ecosystems, and future market dynamics.

This is an important shift away from purely static analysis based only on current market shares or short-term price effects. In many technology and innovation-driven sectors, startups compete through disruptive potential rather than immediate scale.

The stronger recognition of innovation markets better reflects the realities of sectors such as AI, biotech, cybersecurity, quantum, climate tech, semiconductors, and defence technologies.

### **Greater acknowledgement of Europe's scale-up gap**

The draft reflects a growing awareness that Europe's challenge is not just about creating new startups but, critically, scaling them into globally competitive businesses.

The increased consideration of efficiencies, investment incentives, resilience, and strategic autonomy may support the development of stronger European innovation ecosystems and improve conditions for scaling.

This is particularly relevant given persistent concerns that European startups struggle to access sufficient late-stage capital and scaling opportunities compared to competitors in the United States and China. At the same time, these considerations should remain firmly embedded in the competition assessment and should not reduce legal certainty for innovative firms and investors.

## **Steps towards greater predictability and transparency**

By providing a more comprehensive overview of contemporary merger assessment, particularly in relation to innovation, ecosystems, digital markets and efficiencies, the draft may help startups, investors and acquirers better understand the Commission's analytical approach and assess potential risks earlier in the transaction process.

At the same time, the benefits of broader guidance will depend on whether the final framework delivers sufficient legal certainty and consistent enforcement in practice.

## **Recognition that acquisitions can support innovation**

The draft appears more nuanced in its treatment of acquisitions involving startups and innovative firms. Acquisitions are one of the main exit routes for successful startups, alongside IPOs and other liquidity events.

By allowing founders and investors to realise returns, they recycle capital and experience into new ventures and support the development of successive generations of European startups.

Additionally, acquisitions can provide startups with access to capital, infrastructure, talent, distribution networks, and international markets. Predictable exit opportunities are essential for maintaining healthy venture capital ecosystems.

This is particularly relevant for dynamic efficiencies, including increased incentives and ability to invest, innovate, and scale over time. A merger framework that recognises the positive role acquisitions can play in scaling innovation is therefore welcome.

At the same time, not all acquisition pathways are treated equally. The draft suggests a more favourable approach to certain innovation-driven transactions involving smaller or non-dominant acquirers, while deals involving dominant firms or designated gatekeepers may face more stringent scrutiny. This differentiation raises questions about how predictable and accessible acquisition routes will remain for startups whose most likely buyers are large platforms or ecosystem players.

## **Key Concerns for Startups and Investors**

### **Increased legal uncertainty and enforcement discretion**

A major concern arising from the draft is the significant increase in flexibility afforded to the Commission when assessing transactions.

The expanded focus on ecosystem effects, entrenchment of dominance, network effects, data advantages, and future market positioning introduces broader and more open-ended theories of harm.

While flexibility may help address evolving digital markets, it may also reduce predictability regarding how mergers will be assessed in practice. For startups and investors, legal certainty is critical. Unpredictable merger enforcement can affect investment decisions, acquisition strategies, and incentives to innovate.

In addition to substantive uncertainty, startups may also face disproportionate procedural burdens. Increased complexity in merger assessment, broader information requests, and uncertainty regarding the scope of review can create high costs for smaller firms with limited legal and financial resources.

Transactions that fall below traditional turnover thresholds, or that appear non-problematic on a conventional market-share analysis, may still be called in for review where they involve innovative firms or sensitive technologies. While this referral mechanism can help address genuinely problematic under-the-radar deals, its open-ended use risks making it harder for startups and investors to predict which transactions may be scrutinised, and at what stage in the deal process.

These concerns arise against a broader backdrop of regulatory change, including evolving practice on below-threshold referrals, new procedural tools, and parallel initiatives on competitiveness and industrial policy. For startups and their acquirers, the cumulative effect is that transactions may face more scrutiny, earlier in the process and through a wider set of lenses, even where they appear non-problematic in traditional competition terms.

## **Risk of speculative intervention in future markets**

The draft gives the Commission greater scope to intervene in transactions involving emerging competitors or future innovation markets.

While preventing anti-competitive acquisitions remains important, there is also a risk that speculative assessments of future competition could discourage legitimate investment and acquisition activity.

Startups frequently operate in uncertain and fast-moving markets. Overly broad interventions based on hypothetical future harms may create unintended barriers to growth and scaling.

Speculative assessments of future competition may also weaken confidence in M&A exits as a core assumption underpinning startup financing. If investors perceive acquisitions as increasingly uncertain or difficult to complete, this may affect funding availability, valuations, and incentives to invest in high-risk innovative companies.

Increased uncertainty around future acquisitions may also affect startup valuations, as the expected probability of successful exits is an important part of venture capital investment decisions. Where acquisition pathways become less predictable, investors may discount valuations or redirect capital towards ecosystems perceived as offering greater regulatory certainty.

## **Concerns regarding the “innovation shield”**

The draft’s “innovation shield” is one of the most prominent new concepts for startups and scale-ups. In principle, it aims to ensure that acquisitions which expand innovation, investment, and competition involving smaller innovative targets can be reviewed more swiftly and with fewer obstacles. This reflects the Commission’s stated objective of avoiding unnecessary red tape for startup deals that are unlikely to harm competition.

While this approach may help support Europe’s competitiveness agenda, the criteria for applying these considerations remain insufficiently defined.

A key feature of the innovation shield is that it appears most accessible where the acquirer is not a dominant firm or designated gatekeeper. Transactions involving very large platforms or ecosystem leaders are unlikely to benefit from the same

presumption of benign effects, even where the target is a genuine startup. This risks creating a two-tier system of exit opportunities. Startups whose natural buyers are mid-sized or emerging European players may benefit from the innovation shield, whereas those operating in platform-dominated markets may find their main exit routes subject to greater uncertainty and delay.

To be effective, the final Guidelines should establish concrete and measurable criteria for when innovation-related transactions may benefit from more favourable treatment, including factors such as company size, market position, R&D intensity and the presence or absence of entrenched market power. The Commission should also provide explicit guidance for transactions involving large digital platforms and ecosystem players, so that startup exits to mid-sized European firms or non-dominant acquirers are not inadvertently caught by the same presumptions. Without greater clarity, there is a risk that the “innovation shield” remains too conditional or narrow to benefit the startup transactions it is intended to support.

In addition, the guidelines should clarify how the innovation shield interacts with the broader list of theories of harm. Without clear guardrails, there is a risk that transactions nominally eligible for more favourable treatment are nonetheless subjected to extensive investigation under other, more flexible concepts, undermining the shield’s ability to provide meaningful certainty in practice.

### **Limited practical clarity on efficiencies**

The draft’s explicit move towards a more structured “theory of benefit” alongside the “theory of harm” is a welcome development. It signals an effort to integrate efficiencies and innovation benefits earlier in the analytical process rather than treating them as a residual consideration. However, in practice, it remains unclear how these efficiencies will be assessed or weighed against perceived competitive risks.

While the draft gives greater prominence to efficiencies than previous guidance, it remains uncertain whether these considerations will receive greater weight in practice.

For startups and scale-ups, it will be important that innovation benefits, investment incentives, and pro-competitive scaling effects are assessed realistically and proportionately.

## Conclusion

The review of the Merger Guidelines reflects an important attempt to align EU competition policy with Europe's broader competitiveness and innovation objectives. For startups and the wider innovation ecosystem, this evolution presents both opportunities and risks.

These concerns are not confined to startups: the broader business and investor communities similarly underline the importance of legal certainty, clear theories of harm, and a coherent approach to efficiencies in the revised framework.

A modernised merger framework should support dynamic competition, investment, and scaling, while avoiding unnecessary uncertainty that could undermine Europe's attractiveness as a place to build and grow innovative companies.

The success of the final Guidelines will ultimately depend on whether they deliver both effective competition enforcement and a predictable environment for innovation and entrepreneurship.