EUROPA

Position Paper
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Economic

Merger Guidelines Consultation

Executive Summary

The proposed EU merger control guidelines reflect current economic developments, including digitalisation, decarbonisation, global value chains and geopolitical risks.

AK supports modernising the guidelines but urges stronger consideration of labour market, consumer and public interests. The grounds for merger justification must always be subject to a specific assessment of each individual case and tied to macroeconomic value.

Merger control must remain a legally certain and evidence-based instrument for limiting market power and tendencies towards monopolisation, and for safeguarding fair prices, quality, choice, innovation and competitive labour markets.

- **Labour market policy considerations**

For the first time, the draft guidelines also address the labour market effects of mergers. AK calls for these issues to receive greater attention. Negative effects such as labour market concentration and employer monopsony power can lead to disadvantages for employees, for example through lower pay and weaker bargaining power for employee representatives. Efficiency gains from mergers should also benefit employees, including through improved working conditions.

- **Consumer and economic impacts**

Consumer welfare remains a primary objective of merger control. Efficiency gains must be passed on to consumers, which is likely only where competitive pressure is sufficient. Mergers may lead to higher prices, especially in consumer-relevant markets such as telecommunications and food retail. 'Killing mergers' (the takeover of small competitors by large companies) can jeopardise innovation and competition and should therefore warrant closer scrutiny.

- **Social conditionalities and co-determination**

To ensure fair competition, AK calls for mergers to include social conditionalities. At a minimum, these should protect jobs and location guarantees as well as assurances that working conditions will not deteriorate. Employees' rights to information, consultation, and co-determination must also be respected.

- **Engagement with interest groups**

AK calls on the European Commission to regularly draw on the expertise of consumer protection organisations, employee representatives and trade unions, as these groups have a good understanding of the economic context and provide an important counterbalance to the business sector.

- **Focus on data power and digitalisation**

Mergers should not lead to excessive data aggregation that jeopardises competition or privacy. Deals involving public data infrastructure or private data power, such as health data, are especially concerning. AK therefore calls for interoperability and open-source requirements as merger conditions to enable and support European alternatives to major tech platforms. Concentrated economic power is not only a competition issue but also a democratic concern. Data power should be recognised as a distinct form of market power because it can also enable political and social influence.

AK's position

General

Mergers must be notified to the European Commission (Directorate-General for Competition) once the financial turnover thresholds set out in the Merger Regulation (EUMR) are met. The Commission then assesses whether the merger would significantly impede effective competition, particularly by creating or strengthening a dominant position. If no such impediment is found, the Commission authorises the merger. If the Commission concludes that the merger would create such an impediment, and the parties do not offer suitable remedies, it declares the merger incompatible with the internal market and prohibits it.

To provide guidance on merger assessments, the European Commission adopted the Guidelines on horizontal mergers in 2004 and the Guidelines on non-horizontal mergers in 2008, (hereinafter collectively referred to as the 'Guidelines').

For the first time in roughly twenty years, the European Commission is revising its merger assessment guidelines. The draft addresses major developments driven by digitalisation, decarbonisation, global value chains and geopolitical risks. From AK's perspective, this update is generally welcome. However, the guidelines must remain a legally sound, evidence-based tool for competition control.

Evaluation of the draft guidelines

AK welcomes the revision of the merger control guidelines and their adaptation to evolving economic framework conditions. Effective merger control is essential to limiting market power and monopolisation trends, thereby ensuring fair prices, quality, choice, innovation and competitive labour markets.

Encouragingly, the draft consultation document considers the labour market implications of mergers for the first time. In AK's view, the new guidelines should give this issue even greater weight.

AK fundamentally supports the aim of giving greater weight to competitiveness, innovation and investment in merger control. However, placing greater emphasis on justifying factors such as economies of scale, resilience or sustainability must not increase market concentration to the detriment of workers and consumers; such factors must always be set out in a case-by-case assessment. The objective should be to strengthen and safeguard resilience, security of supply and technological sovereignty within Europe.

Any reform of the guidelines - and thus of the European Commission's decision-making practices - must not sideline the interests of workers and consumers under any circumstances. Consequently, the grounds for justification cited must always be subject to a specific assessment of each individual case and tied to clear macroeconomic added value.

The impact of mergers on the labour market and employees

1. **Share efficiency gains with workers and prevent negative effects on labour markets.**

Efficiency gains from mergers must also benefit employees through better working conditions, such as higher pay and stronger employee protection. Labour market concentration and employer monopsony power can have a negative effect on employees and labour markets in many ways. These potential disadvantages for employees must be properly considered when assessing mergers and setting conditions.

Considering mergers' negative effects on labour markets and employees is especially relevant in light of sometimes severe labour shortages. A merged company that gains a dominant position as an employer in a specific labour market faces less pressure to attract current or potential employees. As a result, affected employees may have fewer or no viable alternatives, while employee representatives, including works councils and trade unions are losing their bargaining power. In this context, AK refers to an analysis by Wouter/Zwysen, which finds that a 10 per cent increase in labour market concentration, measured by fewer employers, is associated with a 0.2 per cent reduction in employee pay in those markets.

Algorithmic management systems with opaque information asymmetries can further weaken employees' bargaining power and create lock-in effects, even when formal employment alternatives exist. Where a merged company can influence work allocation, pay, performance monitoring or customer access within a larger network, its market power may extend beyond the immediate labour market and affect working conditions across downstream supply chains.

2. Focus on access to labour and skills.

Access to skilled workers is relevant when assessing the harm models recognised in the draft guidelines, including loss of direct competition, competition in investment and expansion, innovation competition, potential competition, market foreclosure, market consolidation and coordination. Competitive labour markets support innovation, productivity, resilience, skills development and businesses' ability to adapt to technological change and the triple transformation.

Conversely, negative labour market effects can weaken incentives to invest in skills, further training, capacity and innovation, reduce sectors' attractiveness, and limit access to the skilled workers needed for market entry, expansion and dynamic competition. These factors should therefore be reflected in the European Commission's labour market policy assessments.

Social conditionalities are therefore needed to preserve fair competition and a level playing field. The following factors should be considered both in the assessment and when evaluating the employment-related impact:

- **a guarantee to preserve jobs or maintain the location, backed by a corresponding obligation to provide financial resources**
- **a commitment not to worsen working conditions, and**
- **compliance with employees' rights to information, consultation and co-determination.**

The impact of mergers on consumers and the economy

1. Keep consumer welfare as a central priority.

Consumers are likely to benefit from the efficiency gains claimed by merging companies only if sufficient competitive pressure from rival firms remains after the merger.

Mergers in consumer-relevant markets, particularly telecommunications, food retail and upstream production, can negatively affect consumers. This is shown by the telecommunications sector, where prices rose after the European Commission approved a merger. Similar concerns arise in food retail and upstream production, both of which are highly concentrated in Austria and other Member States.

2. Prevent killing mergers.

Innovation competition and consumer benefits must also be protected in areas such as digitalisation. However, the present draft does not yet devote sufficient attention to "killing mergers", where large companies acquire smaller competitors. This issue is essential to preserving the innovative capacity of smaller competitors that might otherwise exit the market. In AK's view, each case should therefore be examined carefully to determine whether the main purpose of the merger is to acquire a relevant competitor to prevent innovative competition. This is the only way to ensure that any claimed benefits are likely to improve consumer welfare.

For consumer-relevant markets, any revision of the guidelines should therefore place greater emphasis on consumer impacts and scrutinise any potential efficiency gains rigorously.

Other relevant topics

1. Draw on the expertise of consumer protection organisations, employee representatives and trade unions.

AK considers it essential that the Commission gives due weight to the interests of both employees and consumers in its decision-making. To this end, it should regularly seek and consider input from consumer organisations and employee representatives. These institutions are familiar with and understand the relevant framework conditions and economic realities and can help balance the perspective of businesses.

2. Limit the data power of digital conglomerates and make European alternatives competitive.

Mergers must not result in excessive data aggregation that distorts competition or undermines consumers' privacy. This is particularly important for data brokers in the security and public sectors, where mergers that transfer or consolidate state data infrastructure in private hands can threaten public control over critical systems. Mergers that create private-sector data power, including through health, location or behavioural data, should also face especially rigorous scrutiny.

A mechanism is also needed for imposing interoperability obligations and open-source commitments as accompanying measures for merger approvals. This is essential for enabling European alternatives to US tech platforms, including in cloud, AI and social media, to emerge.

3. Public-interest considerations should receive greater weight.

The concentration of economic power in individual companies is not only a competition concern but also a democratic one. Data power should be recognised as a distinct form of market power, functioning not only as a barrier to competitors but also as a tool for political and social influence, including election interference.

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About us

The Austrian Federal Chamber of Labour (AK) is the legal body which represents the interests of approximately 4 million employees and consumers in Austria. It represents its members on all social, educational, economic and consumer policy-related issues at national level and at EU level in Brussels. Furthermore, the Austrian Federal Chamber of Labour is a part of the Austrian social partnership. The Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.

The main objectives of the 1991 established AK EUROPA Office in Brussels are the representation of AK vis-à-vis the European Institutions and interest groups, the monitoring of EU policies and to transfer relevant information from Brussels to Austria, as well as to lobby the in Austria developed expertise and positions of the Austrian Federal Chamber of Labour in Brussels.