

Summary

3 September 2025

Building on a strong foundation

1. EU Merger Control enforcement by the European Commission's (EC) Directorate General for Competition (DG COMP) is rightly respected as a leading example of effective enforcement both within the EU and worldwide. Critically, it seeks to ensure open markets, deliver consumer benefits and maintain a fair level-playing field between companies. Equally critically, it is a hallmark of how merger enforcement can, and should be, predictable, stable and free from outside political influence. These must remain as cornerstones of effective EU merger enforcement in the years ahead, and the EU must appreciate the fact that its policies, guidelines and enforcement directly influence many other antitrust authorities worldwide.
2. That said, ERT enthusiastically welcomes the Commission consulting on ways to improve or enhance the framework for EU merger control in order to allow merger decisions to support wider EU objectives (competitiveness, sustainability, security and resilience), as mandated by President von der Leyen in Teresa Ribera's Mission Letter. In ERT's view, this provides an opportunity to reset and reframe certain aspects of EU merger enforcement (as summarised thematically below and explored in more detail in the responses to the individual components of the consultation) to ensure that, with those cornerstones retained, EU merger control – both in theory and in practice – is fit for purpose for the current economic and business environment.
3. Given the critical importance of merger control within the EU and therefore of this consultation, it is regrettable that the Commission chose to consult on it over the summer break. This has necessarily impaired the ability of stakeholders – particularly those such as ERT whose input is built on a multitude of viewpoints from across a range of sectors and industry participants – to participate as fulsomely and meaningfully in this exercise as it would otherwise have wished.

A more holistic and dynamic view

4. In ERT's collective experience, EU Merger Control has tended to be unduly focussed on short-term potential price effects of mergers, without considering the net impact across a fuller view of competitive dynamics including quality, choice, investment, innovation, sustainability, resilience, and other long-term benefits to EU consumers.
 5. This more holistic and dynamic approach may not be appropriate in every case – it should not come at the expense of proportionate and timely decision making – but will ensure, especially in more complex cases, that DG COMP's assessment is sufficiently rounded in its viewpoint, and grounded in market realities and dynamics.
 6. In a similar vein, there should be no reversion to the use of presumptions, nor a slavish reliance on market shares and HHIs. ERT has seen the use of these measures returning
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to EU merger enforcement in recent years – this is regrettable and to be strongly discouraged in favour of a more holistic and dynamic assessment on a case-by-case basis, taking into account the particularities of the industry/ies concerned. Whilst presumptions might have the appeal of predictability, they do so at the expense of fairness, dynamic considerations, as well as intellectual and economic robustness and inclusiveness.

Time for a rethink on efficiencies

7. Crucially, this more holistic and dynamic view will require a sea change in the DG COMP approach to merger efficiencies. Whilst the legislation clearly envisages that hypothetical competitive merger harm could be outweighed by countervailing merger efficiencies, this has not materialised and with the result that, in practice, merging parties do not even discuss merger efficiencies with DG COMP, seeing it as a futile exercise (and waste of costs and resources) or even as an implicit admission of merger harm.
8. The current consultation should mark a turning point for DG COMP to take a more balanced approach on efficiencies, consistent with the legislation and underlying intent of the merger regulation. However, this will only happen if all relevant materials issued in response to the current consultation make explicit and concrete references to a change in the practical and theoretical approach of the treatment of efficiencies in the context of merger review.
9. Importantly, in ERT's view, this would, at a minimum, reflect the following:
 - i) The standard of proof for efficiencies cannot be higher than the standard of proof for the establishment of merger harm.
 - ii) "Out-of-market" efficiencies can contribute to outweighing "in-market" harm. This explicit recognition will be important for ensuring that mergers which would otherwise be of clear benefit to the EU, its citizens and the EU's broader policy objectives are not prohibited or subject to remedies which would remove, impede, or delay the delivery of those benefits.

A longer-term perspective

10. An inherent component of a more holistic approach to merger review, and a balanced view of merger efficiencies (consistent with the extant legislation) will require DG COMP to also take a more dynamic and long-term view of its merger assessment. To date, that longer-term viewpoint seems to have been applied only to the detriment of the merging parties (that is to analyse the loss of potential competition between them). If harm can be anticipated over a longer period, then so too can merger benefits, and third-party entry/expansion, for example.

Flexibility to fix

11. DG COMP has already established itself (relative to many other authorities) as more pragmatic and creative in devising suitable remedies to solve merger harm.
12. In the context of necessarily unique sets of complex facts, pragmatism should always be preferred over dogma. ERT encourages the Commission – as part of the current consultation – to crystallise that position further, by explicitly recognising the role that behavioural and investment remedies may play in ensuring competitive markets that benefit consumers post-merger. In addition to the (already widespread) use of monitoring

trustees, this could involve making greater use of industry regulators and other DGs in the design, monitoring and enforcement of those remedies.

Less rigidity

13. In a world where most of the product markets under analysis were tangible, a compartmental approach of siphoning market overlaps as horizontal, vertical or conglomerate may have worked. However, in today's digital markets, the boundaries between and within markets are more fluid, as is their allocation as an alternative, input, or complement. To keep pace with these changing times, it will be important for DG COMP's analysis not to be hung-up on the appropriate categorisation and instead to be able to look through more readily to the underlying substance of the relationship between and within products.

Merger control and its role in the EU

14. While ERT believes firmly in the independence of merger control from political influence and appreciates that the Commission remains a model in that regard, it is imperative that EU merger control considers the changing market and social conditions as well as the EU's other policy objectives.
15. To this end, it is important that EU merger control remains predictable but also able to adapt to the changing priorities of its members and citizens, as captured by the mission statements and priorities of the EU Commission as a whole.
16. In the current context (which, as noted, will change over time) that might include a greater focus on EU industrial sovereignty and resilience, climate sustainability and cooperations, regional security and European autonomy and competitiveness.

Jurisdictional Thresholds for Joint Ventures (JVs)

17. ERT also urges the Commission to review the Jurisdictional Notice and introduce a local nexus test to JVs, in order to exclude JVs with no EU nexus.
18. Antitrust authorities around the world have copied the EU's approach of assessing parent turnover to assert jurisdiction, resulting in either many useless and costly notifications around the world or, worse, projects being dropped or inefficiently modified to avoid notifiability.