



Address from Deputy Director-General Guillaume Lorient

Panelist

Guillaume Lorient, Deputy Director-General for Mergers in the Directorate-General for Competition | European Commission

Moderators

Thomas Janssens, Partner Freshfields

Merger Control & Innovation

1. Killer acquisitions – relevant studies:
 - a. Competition Policy Brief on Non-Price Effects in Merger Control (2023): The European Commission's 2023 Competition Policy Brief explores if and how mergers can negatively impact non-price dimensions of competition, particularly innovation. Focusing heavily on the pharmaceutical sector, it highlights concerns about deals that eliminate pipeline products or early-stage R&D efforts, even when price effects are absent. The brief stresses the importance of considering innovation harm as a standalone theory of harm in

merger assessments and encourages authorities to scrutinize transactions that may reduce future competitive pressure by absorbing innovative challengers.¹

- b. Ex-post evaluation study into killer acquisitions: On November 28, 2024, the Directorate-General for Competition (DG Comp)² of the European Commission published an ex-post evaluation study into ‘killer acquisitions’ in the pharma sector³ performed by Lear⁴. Key conclusions are:⁵
 - i. For the period 2014 to 2018, Lear analysed 6,315 pharma sector transactions, with public data available for 3,193 of them. Among these, 240 involved overlapping R&D projects, and in 37% of those cases (89 deals), pipeline discontinuations occurred without a clear technical or safety reason—suggesting potential ‘killer M&A’ motives. While conclusive evidence was lacking, these deals were flagged for further scrutiny.
 - ii. The study also found that possible ‘killer M&A’ motives couldn’t be ruled out in 54% of traditional M&As, 43% of R&D agreements, and 27% of licensing deals. This raised concerns about non-M&A deal structures, especially in light of recent regulatory updates that generally view such agreements as pro-competitive and innovation-friendly.
- c. Workshop to discuss the ex-post evaluation study: The European Commission hosted a public workshop to discuss the study findings and broader implications for innovation and merger policy. The workshop covered an academic assessment of the study’s strengths and weaknesses, the detectability of potential ‘killer acquisitions’ under antitrust rules, as well as avenues for further research. European Commission officials explained that, while the study did not

¹ See further information at [Competition policy brief](#).

² The Directorate-General for Competition (DG COMP) is the European Commission department responsible for EU policy on competition and for enforcing EU competition rules, in cooperation with national competition authorities. For further information, please see: [Directorate-General I COMP](#).

³ For further information, please see [Ex-post evaluation, EU competition enforcement and acquisitions of innovative competitors in the pharma sector leading to the discontinuation of overlapping drug research and development projects](#).

⁴ Lear is an economic consultancy based in Rome, specializing in competition policy, regulation, and market analysis. They often conduct research and provide expert advice to institutions like the European Commission, national competition authorities, and private clients. In this case, DG Comp commissioned Lear to carry out the ex-post evaluation study on killer acquisitions in the pharmaceutical sector. For further information, please see <https://www.learlab.com/>.

⁵ For further information, please see [The Dark Side of the Moon: Detecting and Scrutinizing Life Sciences M&A Remains Top of Mind at EC Expert Workshop](#).

find evidence of ‘killer acquisitions’, their view nevertheless remains that detecting ‘killer acquisitions’ should continue to be an enforcement priority⁶.

- d. On March 25, 2025, the European Commission launched a [call for tender](#) for an economic study on the dynamic effects of mergers, underlying the consideration of mergers’ impact on incentives to innovate and invest, and how these factors may trade off against static factors such as prices and output. Once finalized, the study will include suggestions on how EU merger control could better address these concerns⁷.
 - e. In 2020, the OECD published a background paper and held a roundtable discussion on “Start-ups, Killer Acquisitions and Merger Control”, highlighting growing concerns that dominant firms—particularly in digital and pharma sectors—may acquire innovative start-ups to prevent future competition. The OECD emphasized that traditional merger thresholds often fail to capture these deals, as targets typically have low revenues but high strategic value. The discussions called for enhanced tools and more flexible jurisdictional thresholds to ensure early-stage innovation is protected and potential anti-competitive mergers don’t escape review⁸.
2. Relevant cases (European Commission):
- a. *Illumina / Grail*:⁹ The European Commission expressed concerns that the Illumina/Grail merger (Illumina specializes in genomics and DNA sequencing; Grail focuses on early cancer detection tests) would significantly impede innovation in the emerging market for early cancer detection. However, due to the jurisdictional limitations under Article 22 European Merger Regulation (EUMR)¹⁰, the European Court of Justice annulled the European Commission’s decision.¹¹

⁶ For further information, please see [Online expert workshop - DG Competition study on ‘killer acquisitions’ in the pharma sector](#) on the Freshfields blog.

⁷ See further information at [DG Competition launches a call for tender for an economic study on the dynamic effects of mergers](#).

⁸ See further information at [Start-ups, Killer Acquisitions and Merger Control](#).

⁹ See further information at [Illumina-Grail Merger: AG Emiliou proposes to set aside the General Court judgment and annul Commission decisions on referral request](#).

¹⁰ It allows Member States to request the European Commission to review mergers that may affect trade between Member States and threaten to significantly affect competition, even if the merger does not meet European merger control thresholds (i.e., is not notifiable at the European level).

¹¹ See further information at Article [Illumina wins Grail battle in blow to EU merger power](#).

- b. *Qualcomm's proposed acquisition of Autotalks*:¹² In 2023, Qualcomm (a global semiconductor company) planned to acquire Autotalks (an Israeli startup specialized in vehicle-to-everything (V2X) communication technologies). Although the deal didn't meet national notification thresholds, several Member States referred it to the European Commission under Article 22 EUMR.¹³ The transaction was ultimately abandoned by the parties to the transaction. The European Commission had flagged that the deal could chill Qualcomm's and Autotalks' incentives to innovate.¹⁴ That risk was "particularly acute" given how the market for V2X chips was "highly concentrated, characterized by high R&D investments and may evolve as further applications are explored."¹⁵
- c. *Nvidia's acquisition of Run:ai*:¹⁶ In 2024, NVIDIA (manufacturer of graphics processing units (GPUs) and AI technologies) planned to acquire Israeli startup Run:ai (specialized in AI workload management and orchestration software for GPUs.). Although the deal did not meet European merger control notification thresholds due to Run:ai's low revenues, Italy requested a referral to the European Commission under Article 22 EUMR. The European Commission accepted the request and assessed the deal. After reviewing potential impacts on markets for datacentre GPUs and GPU orchestration software, the European Commission concluded the merger raised no competition concerns and approved it unconditionally.¹⁷

3. Political discussions on the matter:

- a. In President Von der Leyen's Mission Letter, the EU's new Executive Vice-President for Competition Teresa Ribera is tasked with, among other priorities, modernizing EU competition policy to better support innovation and resilience, including revising merger control to account for innovation, facilitating the scaling of European companies through a new state aid framework, protecting SMEs from killer acquisitions, and accelerating enforcement of competition rules and the Digital Markets Act.¹⁸ Ribera's hearing confirmed plans to address

¹² [For further information, please see the press release.](#)

¹³ *Id.*

¹⁴ For further information, please see [Qualcomm abandons Autotalks deal amid antitrust scrutiny.](#)

¹⁵ For further information, please see more at [Comment: Qualcomm-Autotalks will struggle to resolve EU concerns over car-chip market concentration.](#)

¹⁶ [For further information, please see the press release.](#)

¹⁷ See more at [Commission approves acquisition of Run:ai by NVIDIA.](#)

¹⁸ See more at [Mission Letter to Teresa Ribera.](#)

“enforcement gaps”. However, the Mission Letter does not propose changing merger control thresholds defined in the European Merger Regulation. Instead, the European Commission may push Member States to broaden national review powers and support referrals under Article 22 EUMR.¹⁹

- b. Germany and Austria have introduced new legal frameworks that allow the review of mergers based not only on turnover thresholds but also on transaction value. The aim of the provisions on transaction value thresholds is to adapt competition law to structural changes triggered by technical developments and international competition.²⁰ Further, such rules are aimed at complementing the European Commission’s broader strategy to ensure effective scrutiny of acquisitions. Other Member States might follow and introduce similar rules.
4. Implications for U.S. companies
- a. According to the Centre for Research on Multinational Corporations, less than 5% of the transactions by large U.S. tech companies over the past six years were notifiable to the European Commission.²¹
 - b. While the Mission Letter does not announce specific reforms to merger control thresholds, concerns about capturing potentially anti-competitive acquisitions by large tech companies continue to drive discussions among policymakers, regulators, and academics.

“Draghi agenda” for the competitiveness of Europe

1. According to the Mission Letter,²² DG Comp is mandated to modernize competition policy in order to support European companies to innovate, compete and lead worldwide. This reflects the recommendations of Mario Draghi (former Italian Prime Minister and former President of the European Central Bank) in his report mandated by the

¹⁹ See more at [The Future of EU Merger Review under EVP Ribera](#) and [EU antitrust chief nominee vows to intensify Big Tech crackdown](#).

²⁰ See more at [Guidance on Transaction Value Thresholds for Mandatory Pre-merger Notification \(Section 35 \(1a\) GWB and Section 9 \(4\) KartG\)](#).

²¹ See further information at [EU merger control missing potential Big Tech killer acquisitions, NGO claims](#).

²² See further information at [Mission Letter](#).

European Commission, which called for a revamping of competition policy as part of a broader set of means to support the competitiveness of European businesses.²³

2. The European Commission is undertaking a comprehensive review of its Horizontal and Non-Horizontal Merger Guidelines to better account for innovation, resilience, investment intensity, and sustainability in merger assessments. As set out in the European Commission's Competitiveness Compass,²⁴ the review aims to adopt a “fresh approach” to facilitate the scaling up of European companies in the context of a global race for deep technologies and breakthrough innovations. Ribera emphasized that the updated framework would reflect novel issues relevant to economic productivity and competitiveness. European Commission officials have further indicated that the impact of mergers on innovation is already well-researched, while the effects on investment are newer and more complex, requiring greater analytical focus. The European Commission is also considering consolidating the Horizontal and Non-Horizontal Merger Guidelines into a single document and exploring ways to incorporate innovation defences and non-price considerations more explicitly in merger reviews, as demonstrated in cases like *Norsk Hydro/Alumetal*.²⁵
3. In 2022, the European Commission published the report “Merger review in digital and technology: Insight from national case law”, which analyzed selected cases brought in front of the European Member States' and the United Kingdom's national competition authorities. The report highlights that while horizontal theories of harm—particularly the loss of actual or potential competitors—remain the predominant concern in digital mergers, vertical and conglomerate effects (such as input foreclosure and digital ecosystem consolidation) are gaining relevance. Remedies imposed were often behavioural, focusing on access and interoperability rather than structural divestitures. The study also emphasizes the need for a more integrated assessment of digital ecosystems, data advantages, and the cumulative impact of multiple transactions,

²³ See further information at [The Draghi report on EU competitiveness](#).

²⁴ See more information at Competitiveness Compass.

²⁵ For further information on this, please see [EU to revamp guidance for vertical, conglomerate deals and state aid: Ribera](#); [EU's Guersent says merger analysis of innovation clearer than investment](#); [EU open to combining horizontal and non-horizontal merger guidelines](#); and [Big Tech's EU antitrust fines are no benchmark for DMA sanctions, Guersent says](#).

suggesting that traditional merger frameworks may not fully capture competitive risks in dynamic digital markets.²⁶

4. Political discussions and comments

- a. At a conference held in March 2025²⁷, Andreas Mundt (President of the Federal Cartel Office in Germany) warned that supporting European champions should not be achieved through a weakening of merger control. To illustrate his point, he described how, in Germany, the Federal Minister for Economic Affairs can override a prohibition decision of the Federal Cartel Office and clear a merger on political grounds. Mundt emphasized that, in past cases, such as the *Edeka/Kaiser's Tengelmann* merger, this led to undesirable effects for consumers, including higher prices in the food retail market.
- b. Similarly, at a conference held in October 2024²⁸, Andreas Mundt had already expressed his scepticism towards reviewed merger rules that would enable the creation of bigger-scale companies, asserting that smaller companies play a higher role in promoting innovation, with the examples of key-innovative start-ups (e.g., OpenAI, BioNTech) and of the failed attempt to create a European champion (e.g., Uniper).
- c. In December 2024, Portuguese Prime Minister Luis Montenegro expressed his position in favour of European champions, but warned that their needs to exist “equal opportunities” among Member States. In particular, he expressed that the strategy towards developing such champions should not be guided by “the interests of France and Germany alone”.²⁹
- d. In March 2025, Vodafone published a report advocating for the EU to learn from the approach adopted by the CMA to clear the merger of Vodafone and Three. Vodafone underlines that, in its decision, the CMA accounted for long-term efficiencies and innovation, improved network coverage and quality, and security and resilience. In merger control, Vodafone calls for the European Commission to: (i) adopt a longer-term horizon and broader perspective for assessing efficiencies, (ii) take proper account of the current market and the real competitive dynamics which matter for future competition, (iii) move away from

²⁶ See more at [Merger review in digital and technology: Insight from national case law](#).

²⁷ See more at [Weakening competition to create European champions can backfire, says Mundt](#).

²⁸ See more at [Germany's Mundt rebuts political claims that companies' scale is key to innovation](#).

²⁹ For further information, please see [Portuguese PM in favour of 'European champions' if not in France, Germany](#).

traditional structural remedies as the default solution, (iv) leverage the role of sector regulators.³⁰

- e. Teresa Ribera made clear that supporting European champions would not come at the expense of protecting fair competition. She also asserted her commitment to protect European companies from the unfair competition of foreign companies³¹.

Potential remedies in merger control cases

1. In recent years, the European Commission, along with other authorities, has shown more openness to creative remedies solution in complex merger cases, including the possibility of considering purely behavioural remedies (see examples below).
2. The *Microsoft / Activision* deal (2023)³² raised concerns that Microsoft could gain exclusive control over Activision's games for its own cloud gaming platform (Xbox Cloud Gaming), thereby harming competition in the emerging cloud gaming sector.
 - a. First proposed transaction:
 - i. The first proposed transaction was cleared by the European Commission which approved behavioral remedies consisting in licensing commitments with a 10-year duration enabling gamers to play Activision games on the cloud gaming services of their choice, thus ensuring alternatives to Microsoft's cloud gaming platform.³³ In the context of this decision, Margrethe Vestager (former European Commissioner for Competition) stated that while structural remedies are preferred, merger control requires case-by-case assessment, and in some situations, non-divestiture remedies can be accepted.³⁴
 - ii. Nonetheless, the CMA prohibited the transaction.³⁵ The CMA considered that the proposed behavioral remedies were not satisfactory to address all competition concerns and that they would require "a high level of

³⁰ See more at [Vodafone report urges EU to 'draw on lessons' of UK merger approval](#).

³¹ For further information, please see [We'll support European champions, but not on the backs of consumers, Ribera says](#).

³² [For further information, please see the press release](#).

³³ See [Commission clears acquisition of Activision Blizzard](#).

³⁴ See more at [EVP Vestager keynote speech at the International Forum of the Studienvereinigung Kartellrecht: "Recent Developments in EU merger control"](#).

³⁵ See [Microsoft / Activision Blizzard merger inquiry - GOV.UK](#).

regulatory oversight”, as opposed to allowing market forces to shape the development of the cloud gaming market.

- b. Second proposed transaction:
 - i. The transaction was later notified a second time, after agreeing to divest the cloud streaming rights at issue to a competitor. This fix-it-first approach allowed the merger to be approved in Phase 1 and with relatively few behavioral remedies.³⁶
3. In December 2024, the CMA cleared the *Vodafone/Three* merger with behavioral remedies consisting in an investment commitment to improve the quality of the combined network along with additional price-related commitments to protect consumers (see also above).³⁷
4. Fix-it-first and upfront buyer remedies solutions remain most common: In 2024, the European Commission cleared three transactions with remedies following a Phase 2 investigation (*Orange/MásMóvil*,³⁸ *Korean Air/Asiana Airlines*,³⁹ and *Lufthansa/ITA Airways*⁴⁰). All three cases involved an upfront buyer or a fix-it-first structural remedy solution.

European Commission and Member States dynamics in merger control enforcement

1. Referrals under Article 22 EUMR
 - a. The European Court of Justice ruled that the European Commission cannot accept referrals under Article 22 EUMR from Member States lacking jurisdiction under their national laws. This decision arose from the *Illumina/Grail* case (see above), emphasizing that Article 22 EUMR cannot serve as a “corrective mechanism” for transactions below national thresholds.⁴¹
 - b. In November 2024, the European Commission withdrew its 2021 guidance on referrals under Article 22 EUMR, acknowledging that the ECJ's decision in the *Illumina/Grail* case rendered the guidance ineffective.⁴²
2. Alternatives to review below-threshold mergers:

³⁶ See more at [Microsoft / Activision Blizzard \(ex-cloud streaming rights\) merger inquiry](#).

³⁷ See [CMA clears Vodafone / Three merger, subject to legally binding commitments - GOV.UK](#).

³⁸ See [Joint venture between Orange and MásMóvil](#).

³⁹ See [Acquisition of Asiana by Korean Air](#).

⁴⁰ See [Acquisition of ITA by Lufthansa](#).

⁴¹ See at [Illumina-Grail: The Rise and Fall of Article 22 EUMR?](#).

⁴² See further information at [Predictably Uncertain: Managing merger control call-in risk at local level in the EU](#).

- a. Revising National Thresholds:⁴³
 - i. Germany and Austria have already implemented transaction value thresholds (see also above), while other countries are considering similar measures to ensure significant deals don't escape scrutiny.⁴⁴
 - ii. The French Competition Authority is working on a proposal to introduce a targeted call-in power to review below-threshold mergers that could harm competition.⁴⁵
 - b. Utilizing Article 102 TFEU to review below-threshold mergers
 - i. In the Towercast judgment (March 2023), the European Court of Justice confirmed that mergers involving dominant companies can be reviewed under Article 102 Treaty on the Functioning of the European Union (TFEU) – which prohibits abuses of dominance –, if they are capable of significantly strengthening that dominance and harming competition. Such transactions can be reviewed even if they are below the relevant notification thresholds.
 - ii. Following Towercast, national competition authorities have begun using this approach. For example, shortly after the ruling, the Belgian Competition Authority launched an investigation into Proximus' acquisition of EDPnet, examining whether the transaction constituted an abuse of dominance under Article 102 TFEU.⁴⁶
3. Enforcement and coordination challenges
- a. The European Court of Auditors (ECA) identified challenges in the European Commission's merger enforcement. It states that the European Commission only has limited resources to monitor markets and detect violations of antitrust laws. In addition, increasing amounts of data to be processed and the emergence of digital markets made investigations complex and not all challenges have been addressed yet. While the cooperation with national competition authorities is largely described as good, there is still room for improvement.⁴⁷

⁴³ For further information see [Merger jurisdiction in EU competition law after Illumina/Grail: What's next? | Journal of Antitrust Enforcement | Oxford Academic](#).

⁴⁴ See at [Merger jurisdiction in EU competition law after Illumina/Grail: What's next?](#).

⁴⁵ See further information at See at [Mergers below the control thresholds : Following the public consultation, the Autorité is continuing its work to propose a reform ensuring effective control | Autorité de la concurrence](#).

⁴⁶ See further information at See at [Reviewing Mergers Under Article 102 TFEU: Proximus/EDPnet \(Belgium\)](#).

⁴⁷ See further information at See at [The Commission's EU merger control and antitrust proceedings: a need to scale up market oversight](#).

- b. The European Commission welcomed the ECA's 2024 report and accepted most of its recommendations to improve market monitoring and merger enforcement, while defending the overall effectiveness of its system. It, however, rejected proposals for introducing merger filing fees.⁴⁸
- c. Member States collectively welcomed the report's findings, agreed on the need for stronger market oversight, and considered the audit a useful contribution to improving European competition law enforcement.⁴⁹

Cooperation with U.S. authorities in merger control enforcement

1. Over the years, formal and informal working relationships and frequent staff contacts have grown, creating a longstanding tradition of close cooperation in competition matters (reaffirmed in a 2021 joint statement).⁵⁰ Officials on both sides have long emphasized the importance of EU–U.S. cooperation, including during earlier phases of coordination under Chairwoman Khan, AAG Kanter, and Executive VP Vestager. These exchanges highlighted a deepening of ties, especially in addressing digital market challenges. For instance, in 2021, the EC, FTC, and DOJ launched a dedicated U.S.–EU Joint Technology Competition Policy Dialogue. This high-level forum aims to “develop common approaches and strengthen [...] cooperation on competition policy and enforcement in the digital sector.”⁵¹
2. According to Olivier Guersent, Director-General for Competition at the European Commission, recent U.S. criticisms of the EU's Digital Markets Act have not disrupted transatlantic cooperation. Guersent stated that after FTC Chairman Andrew Ferguson's comments, the agencies had a “good discussion” and remain aligned on enforcing competition in digital markets.⁵² In a letter to the Financial Times, Olivier Guersent highlighted the EU's track record in antitrust and merger enforcement, noting that the

⁴⁸ See Replies of the European Commission to the European Court of Auditors Special Report at [The Commission's EU merger control and antitrust proceedings: a need to scale up market oversight](#). See also

⁴⁹ See [Draft Council conclusions on Special Report No 24/2020 from the European Court of Auditors entitled: "The Commission's EU merger control and antitrust proceedings: a need to scale up market oversight"](#).

⁵⁰ See further information at [FTC, Justice Department, and European Commission Hold Third U.S.- EU Joint Technology Competition Policy Dialogue](#).

⁵¹ See further information at [FTC, Justice Department, and European Commission Hold Third U.S.- EU Joint Technology Competition Policy Dialogue](#). And: [FTC, Justice Department, and European Commission Hold Third U.S.- EU Joint Technology Competition Policy Dialogue](#)

⁵² See more at [Guersent: EU and US aligned on tech enforcement](#).

EU has often been at the forefront of enforcement actions, sometimes in cooperation with U.S. agencies.⁵³

Interplay with the Foreign Subsidies Regulation (FSR)

1. The Foreign Subsidies Regulation aims to address distortions of competition in the EU internal market caused by foreign subsidies, i.e., financial contributions granted by non-EU governments that may give undertakings an unfair advantage. A distortion of competition, under the Foreign Subsidies Regulation, occurs when a foreign subsidy improves the competitive position of an undertaking in the EU and thereby actually or potentially negatively affects competition in the internal market.⁵⁴
2. In particular, the Foreign Subsidies Regulation requires mandatory notification of acquisitions, mergers, and joint ventures if (i) the acquired party, the merging parties, or the joint venture generate an EU turnover of at least EUR 500m and if (ii) the acquirer, the merging parties, or the parties creating the joint venture have received financial contributions or support – directly or indirectly – of more than EUR 50m from third in the past three years (Articles 19 et seq. Foreign Subsidies Regulation). I.e., certain mergers are notifiable both under the EU’s merger control and foreign subsidies regimes.

Interplay with the Digital Markets Act (DMA)

1. The Digital Markets Act imposes ex ante obligations on large online platforms (“gatekeepers”), aiming to pre-emptively police digital markets rather than relying on traditional competition law enforcement.⁵⁵ As of April 2025, the European Commission has designated seven gatekeepers: Alphabet, Amazon, Apple, ByteDance, Meta, Microsoft, and Booking.⁵⁶
2. In addition to other obligations, the Digital Markets Act requires gatekeepers to notify all intended mergers in the digital sector, regardless of whether traditional merger thresholds are met or not (Art. 14 Digital Markets Act).⁵⁷

⁵³ See more at [Letter: Europe has an unrivalled record on antitrust](#).

⁵⁴ For further information see [Foreign Subsidies Regulation - European Commission](#).

⁵⁵ For a summary of obligations under the DMA see [About the Digital Markets Act](#).

⁵⁶ See further information at [DMA designated Gatekeepers](#).

⁵⁷ See further information at [DMA List of Acquisitions](#).