Review of the Draft Merger Guidelines – response to the Commission's public consultation

A submission by Frontier Economics

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1 Frontier Economics is an economic consultancy that regularly advises clients on merger investigations before the European Commission.

2 We welcome the Draft Merger Guidelines,[1] and congratulate the Commission on its efforts to produce new guidelines that are comprehensive and clear, and which take a brave step in updating the Commission's approach for the new economic realities facing Europe. The Draft Guidelines take a particularly positive step forward in placing more weight on the dynamic effects of mergers and more broadly on potential positive effects of transactions as part of the competitive assessment under EU merger control.

3 We also welcome the opportunity to provide further input through this consultation on the Draft Guidelines. In this submission, we comment on certain aspects of the Draft Guidelines and suggest a number of changes that, in our view, would further improve the Draft Guidelines. We comment separately on the sections relating to theories of benefit and on theories of harm, with a particular focus on the practical application of the proposed framework.

1 Theories of benefit

4 We welcome the fact that the Draft Guidelines indicate a material shift in the Commission's approach to assessing transaction efficiencies as part of the overall merger assessment. In particular, it is positive that the Draft Guidelines:

(a) treat the assessment of benefits as an integral part of the case analysis and introduce new helpful concepts and vocabulary (such as the very introduction of the 'theory of benefit' language);

[1] Draft Communication from the Commission. Guidelines on the assessment of mergers under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings published on 30 April 2026, thereafter "Draft Guidelines".

(b) broaden the scope of relevant efficiencies in merger control, acknowledging both direct and dynamic effects, within and out-of-market;

(c) encourage early engagement on efficiencies in the review process; and

(d) establish a clearly symmetrical evidentiary standard for theories of harm and efficiencies.

5 The Guidelines would in our view benefit from the following further improvements:

(a) More direction on the assessment of resilience-related effects would facilitate more effective discussions between the Commission and merging parties;

(b) Adopting a broad definition of consumers in the assessment of benefits would increase the internal conceptual consistency of the Guidelines and help ensure that the assessment supports and is aligned with the goals and guiding principles set out in the introductory part of the document; and

(c) Further guidance on the approaches to quantifying benefits (and harm) would help ensure that the exercise is conducted in line with established best-practice methods in economic analysis.

6 We elaborate on each of these suggestions in turn below.

1.1 More direction on the assessment of resilience-related effects

7 It is positive that the Draft Guidelines provide a definition of resilience,[2] as well as examples of resilience-related merger benefits.[3]

8 The definition rightly refers to the resilience of the internal market (or a part of it). We encourage the Commission to recognise explicitly that this concept is relevant irrespective of the geographic market definition ultimately adopted in a given case. Even where the relevant market is found to be global in scope, the resilience of the segment of that market serving European customers and the security of supply to those customers, in particular by European market players, should remain relevant considerations within the Commission's assessment of resilience-related benefits and concerns.[4]

2 Draft Guidelines, footnote 18. "*Resilience refers to the readiness and ability of the internal market or part of it to continue servicing customers and to anticipate, withstand and recover from serious shocks. Examples of factors that are particularly relevant for the resilience of the internal market include the security and diversity of supply chains, the security and cyber security of physical and digital critical infrastructure, defence readiness and the ability and incentives of companies to invest in critical technologies.*"

3 Draft Guidelines, paragraph 299.

4 We note that this would be conceptually consistent with the taxonomy of direct efficiencies, in which the Draft Guidelines refer to "*increasing resilience or sustainability to the benefit of EU consumers*", See Draft Guidelines, paragraph 302e).

9 Moreover, to support the operationalisation of this assessment in practice, we would encourage the Commission to provide further guidance on how the competitive assessment with regard to resilience-related effects will be conducted in practice. This would help merging parties identify those resilience-related effects that can reasonably be considered as part of the assessment and facilitate more meaningful and constructive discussions between the Commission and merging parties on resilience in merger control proceedings.

10 The Draft Guidelines acknowledge that *"[m]ergers can have both positive and negative effects on resilience*";[5] therefore, the Guidelines would particularly benefit from introducing a framework that can be applied to both resilience-related theories of harm and resilience-related theories of benefit.

11 Economic literature can be helpful in defining an appropriate framework. For instance, a recent article by Boa and Carpenter (2026)[6] puts forward a four-step approach. The authors suggest that the assessment should involve:

(a) identifying the nature and risk profile of potential shocks in the relevant market;[7]
(b) analysis of whether any lack of resilience is likely to cause significant harm to consumers;
(c) analysis of whether the merger improves or weakens the firm's ability to withstand shocks;
(d) analysis of how the merger affects customer options during stress.[8]

12 While the above approach helps identify and assess the relevant resilience-related effects in a systematic manner, it is similarly important that the identified effects are appropriately taken into account as part of the overall assessment. This raises another conceptual question, which we discuss in the next section.

1.2 Broad definition of consumers in the assessment of benefits

13 The Draft Guidelines recognise that "*efficiencies may reflect advantages that also further the objectives of EU policies recognised in EU Treaties and bring benefits for customers, as well as the internal market and the society at large. These advantages may be incommensurable and sometimes subject to market failures because*

5 Draft Guidelines, footnote 18.

6 Boa and Carpenter (2026), Supply chain resilience in merger assessments in: Journal of European Competition Law & Practice, forthcoming.

7 The identification of specific shocks may involve historical analysis of past disruptions, as well as forward-looking methods such as supply chain mapping.

8 This means that prices and wider market conditions should be assessed under "crisis counterfactual".

customers do not attribute adequate value to them in their individual decisions (…)."[9] The Draft Guidelines further acknowledge that "*individual consumption decisions can have positive and negative effects that are not fully taken into account by the customers that cause them ('consumption externalities')*".[10] This means that the Draft Guidelines explicitly recognise a broader set of efficiencies that may be relevant as part of the competitive assessment. We welcome this as a very positive and important development.

14 At the same time, however, the Draft Guidelines continue to rely on a three-pronged test, requiring efficiencies to be: i) verifiable, ii) merger specific; and iii) benefit consumers.[11] This may create conceptual inconsistencies within the Guidelines.

15 As regards the verifiability criterion, it is very positive that the Commission explicitly introduces the same evidentiary standard as for the anticompetitive effects.[12] It is also positive that in relation to dynamic efficiencies, the Commission refers to the ability-incentive framework.[13] This is conceptually consistent with the established approach to theories of harm and should support the symmetrical evidentiary standard.

16 We suggest the Guidelines link the verifiability and merger-specificity criteria to the ability-incentive framework in a more explicit and systematic manner. In particular, the Guidelines could clarify that, for both direct and dynamic efficiencies, demonstrating that the parties would have the ability and incentive to engage in the commercial behaviour resulting in the claimed effects should generally be considered sufficient to establish that those benefits are both verifiable and merger-specific. This would increase the conceptual consistency of the assessment but also provide further guidance on the evidence that the Commission considers necessary for these conditions to be met.

17 As regards the benefit to consumers criterion, it appears important that the Commission interprets this criterion broadly. In the case of sustainability and resilience-related effects, the Commission should move beyond 'consumers in the relevant market' towards a wider definition of consumers, including all EU citizens. In particular when balancing harm and benefits, the Commission's approach should take into account both customers directly affected by the merger and those affected indirectly, whether through related but distinct markets or more broadly as members of European society.

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9 Draft Guidelines, paragraph 300.

10 Draft Guidelines, paragraph 322.

11 Draft Guidelines, paragraph 294.

12 Draft Guidelines, paragraph 304.

13 Draft Guidelines, paragraph 327.

18 This is particularly relevant in the context of resilience-related efficiencies:

(a) As acknowledged in the Draft Guidelines a transaction may give rise to resilience-related efficiencies, e.g. in the form of "*increased security of supply, broader or reinforced infrastructures or other enhancement that reduces exposure to risks of external disruptions*".[14] Such efficiencies may affect entire supply chains and consequently consumers throughout those supply chains.

(b) By way of example, consider a horizontal transaction that through generating sufficient economies of scale and creating new investment incentives increases the resilience of certain IT infrastructure services by reducing the likelihood and duration of outages. Let us assume that this transaction may be expected to result in some price increases of these services. This means that customers directly affected by the transaction (companies purchasing the services) may be worse off.[15] However, where those companies use the relevant IT infrastructure services as an input into services provided to a broad range of end consumers, the latter may benefit from greater resilience across a number of critical services, such as online payments.

(c) Similarly, spillover effects into adjacent markets, both along product and geographic dimensions, are also possible, particularly in the case of strategic sectors and products such as semiconductors, cloud infrastructure and energy.

19 It is therefore important that when assessing which consumers may be affected by the positive and negative effects of a transaction, the Commission takes into account the extent to which those effects are likely to be passed through to downstream markets and create positive (or negative) spillovers to other markets.

20 As regards sustainability benefits, full pass-on of positive effects to end-consumers (and society more broadly) should be presumed to enable such effects to be fully taken into account. By their nature, environmental benefits cannot readily be attributed to specific groups of consumers or citizens. It would therefore appear unduly restrictive to require "*a substantial overlap*" between the beneficiaries of those effects and the group of consumers harmed by the transaction.

21 Furthermore, it appears unnecessary (and in some cases potentially implausible) to expect that customers in the relevant market value out-of-market or collective benefits.[16] Similarly, excluding environmental effects that do not directly improve parameters of competition in the relevant market appears overly restrictive in light of the EU's ambitious sustainability and climate change goals. A broader interpretation

14 Draft Guidelines, paragraph 299.

15 They will be worse off if they are unable to pass on the cost increases without reducing their profits.

16 See Draft Guidelines, paragraph 357.

of consumers affected by transaction benefits, would in our view enhance the conceptual consistency of the overall framework governing both the assessment of benefits and the balancing exercise.

22 There is a risk that the Guidelines would create an inconsistency with the Commission's approach to the enforcement of Article 101 TFEU.[17] However, as expressed in our previous submissions,[18] we continue to believe that such a change is necessary in order to allow environmental, but also resilience-related, benefits to be meaningfully taken into account as part of the competitive assessment. Failing to do so would represent another missed opportunity to establish a framework that gives these benefits sufficient weight.

1.3 More guidance on quantifying benefits (and harm)

23 The Draft Guidelines require merging parties to quantify benefits where this is "reasonably possible".[19] We encourage the Commission to commit itself to applying, and similarly require merging parties to apply, best-practice economic methods when quantifying positive and negative effects. While the appropriate approach will need to be selected and tailored on a case-by-case basis, a wide range of relevant methods exists outside traditional antitrust economics, particularly in the fields of policy appraisal and public policy analysis.

24 Innovation and investment efficiencies can be quantified using well-established financial modelling techniques, although the specific approach will often need to be tailored to the nature of the investment. For instance:

(a) Benefits to customers from improved or new products can be estimated based on surveys that measure customers' stated willingness-to-pay or historical data on previous product improvements;
(b) The broader impact of new products or new markets on economic growth can be measured in terms of the increase in gross value added (GVA);
(c) In certain industries, investments will generate qualitative changes beyond their direct economic impact. For example, additional R&D spend by pharmaceutical companies can lead to enhanced longevity, which can be quantified using established values (e.g. quality-adjusted life year).

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17 See Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (2023/C 259/01), Section 9.

18 See Frontier Economics' submission to the consultation on the Commission's draft revised guidelines on horizontal agreements – sustainability agreements, available online: https://www.frontier-economics.com/media/b15kr5ey/ec-draft-revised-guidelines-on-horizontal-agreements-section-9-sustainability-agreements.pdf

19 Draft Guidelines, paragraphs 316 and 329.

25 In this context, we note that the scope of scale-driven investment efficiencies relevant to the quantitative assessment should be broader than that recognised in the Draft Guidelines. In particular:

(a) Investments in capacity constitute another important example of economies of scale;[20]

(b) Greater scale may create incentives to invest by increasing the customer base over which investment costs can be recovered. Revenue synergies may therefore be just as important as cost synergies when assessing the parties' incentives to undertake investments.

26 Established methods in environmental economics and public policy analysis are available to quantify sustainability benefits. These include:[21]

(a) Demand-side approaches, based on consumers' willingness to pay for environmental improvements. These can be measured through:

(i) stated preferences, i.e. preferences elicited through surveys concerning hypothetical choices; or

(ii) revealed preferences, based on consumers' actual choices and observable market prices (e.g. hedonic pricing methods that estimate the impact of environmental quality on real estate prices);

(b) Supply-side approaches, which seek to measure the contribution of a natural resource (or ecosystem service) to economic performance. This can be achieved in a number of ways, including:

(i) assessing the impact of ecosystem services on productivity (the productivity change method);

(ii) the revenue foregone from the next-best alternative use of a resource (the opportunity cost approach);

(iii) the cost of replacing the environmental benefit through alternative means (shadow project method); and

(iv) indirect approaches that focus on the indirect effects of environmental improvements on health and wellbeing (e.g., improvements in quality of life or reductions in healthcare costs).[22]

20 See Draft Guidelines, paragraph 324b).

21 See e.g. Markandya et al. (2002), Environmental Economics for Sustainable Growth. A Handbook for Practitioners, Edward Elgar Publishing; Dasgupta (2021), The Economics of Biodiversity: The Dasgupta Review, London: HM Treasury; Inderst et al. (2021), Technical Report on Sustainability and Competition.

22 Publicly available monetary estimates of quality-adjusted life year (QALYs) used in the appraisal of public policy interventions may help quantify such benefits.

27 Resilience-related effects may require a scenario analysis, including the definition of relevant stress scenarios under different modelling assumptions, for example drawing on historical evidence, as well as the use of real options analysis.

(a) A quantitative analysis requires a sufficiently precise definition of the relevant resilience-related benefits. The parties need to identify which resilience risks (e.g. security of supply or security of quality) are particularly relevant for the market in question, how they affect the market outcome and how the transaction would improve the market's resilience against those risks. This is why a sound conceptual framework for an analysis of resilience is a necessary precondition for any attempt to quantify resilience-related benefits (see Section 1.1 above).

(b) For example, if a transaction reduces the market's exposure to supply shocks and the associated knock-on effects on prices, it may provide consumers with a form of insurance against the impact of uncertain but plausible future disruptions. Quantifying this benefit would require the development of a range of supply-shock scenarios, together with evidence on the likelihood of those scenarios (for example, based on historical experience, market analysis and expert evidence). The analysis would then estimate the impact of different shocks on future prices both with and without the transaction. The resulting simulations could provide a useful indication of the extent to which increased resilience may benefit consumers under different scenarios.

(c) In some cases, however, an assessment of the full economic value of resilience-related benefits will also need to take into account their effects on related markets (i.e. spillover effects). As a result, a broader cross-market or even economy-wide assessment may be required. This is particularly relevant where the affected market supplies an important input into a wide range of downstream products, such as energy or semiconductors.

28 We note that where multiple effects are considered, all relevant approaches should be derived from a coherent, case-specific assessment framework grounded in the characteristics of the relevant market and the substantiated commercial rationale for the transaction. This would not only facilitate a conceptually coherent assessment and reduce the risk of double counting but also help identify and explain any links between individual effects. In most cases, these effects will be interconnected, even where they accrue, at least in part, to different groups of consumers.

29 In addition, we understand that under the proposed symmetrical evidentiary standard the Commission also intends to quantify harm where reasonably possible, in particular where the balancing exercise requires identified harms and benefits to be weighed against one another. The Guidelines could provide further guidance on how harm should be quantified in practice, both to facilitate a meaningful balancing

exercise and to ensure that the proposed symmetrical evidentiary standard can be applied effectively.

30 Finally, with regard to the Commission's expectation that independent external analyses seeking to identify and quantify transaction benefits should be produced in *tempore non suspecto*, that is, prior to the start of negotiations of the merger agreement,[23] we consider this expectation to be unrealistic. In practice, parties are likely to commission such analyses only once they are actively considering a transaction. Moreover, in many cases, these analyses will require access to information held by both parties and therefore cannot be undertaken before transaction discussions have commenced. We therefore encourage the Commission to revise this guidance and instead place greater weight on high-quality financial and economic evidence that is firmly grounded in the commercial context of the transaction and credibly demonstrates the parties' ability and incentive to realise the claimed benefits.[24]

2 Theories of harm

31 We welcome the Draft Guidelines' more forward-looking approach to the competitive assessment. In particular, it is positive that the Draft Guidelines recognise that mergers may affect competition through a range of price and non-price parameters, including quality, choice, capacity, investment, innovation, sustainability and resilience. This reflects the reality that competition is not always captured by short-term price effects alone.

32 The Draft Guidelines also bring together a broad range of theories of harm that have developed through the Commission's decisional practice, including loss of head-to-head competition, loss of investment and expansion competition, loss of innovation competition, loss of potential competition, foreclosure and entrenchment. This provides a more comprehensive framework for assessing competition in dynamic markets.

33 The Draft Guidelines raise a number of important questions regarding the practical application of these theories of harm. In particular, the observations below focus on the role of capabilities as an organising framework for assessing competition in dynamic markets; the assessment of innovation, investment and expansion competition; the application of the important competitive force concept; and the operation of the new entrenchment theory of harm in the context of ecosystems.

23 Draft Guidelines, paragraph 330.

24 This was the approach adopted by the CMA in its review of the Vodafone/Three transaction in the UK.

2.1 Capabilities: a useful organising framework, provided capabilities are not equated with mere resources

34 The Draft Guidelines' greater emphasis on capabilities is one of their most welcome developments. It is consistent with Frontier's previous submissions and with the capability-based framework developed in Boa, Elliott and Foster,[25] which emphasises that firms in dynamic markets often compete through what they are able to do in the future, not only through the products they currently sell. Frontier's previous response proposed that, in dynamic markets, the assessment should identify the merging firms' capabilities, assess whether they overlap and test whether any overlapping capabilities are scarce. If the merging parties' capabilities overlap but a number of rival firms have these capabilities and/or if they are easy to acquire, then the merger would be unlikely to give rise to competition concerns. By contrast, if the overlapping capabilities are unique or difficult to acquire, this could raise a red flag. In that case, it would be necessary to assess any potential pro-competitive effects from the merger and then balance potential harms against pro-competitive effects.

35 This framework is particularly useful because it complements the traditional product-market approach. It allows the assessment to capture future competitive interactions that may not be apparent from current product overlaps alone, while also providing a way to focus attention on those assets and activities that are most relevant to future competition.

36 In this context, it may be helpful for the final Guidelines to distinguish more clearly between resources and capabilities. A resource is an asset, or set of assets, that a firm possesses or can access. A capability is the ability to deploy and combine those resources effectively in order to compete, innovate, expand or enter.

37 At certain points, the Draft Guidelines appear to use these concepts interchangeably. For example, in the section on loss of general innovation competition, references to "innovation capabilities" include both capabilities stricto sensu and innovation resources,[26] such as general-purpose technologies, laboratories, skilled workers, natural resources and infrastructure.

38 A clearer distinction between the two concepts could help make the framework more operational. The mere possession of resources does not necessarily imply the existence of a competitively significant capability. For example, two firms may both employ engineers, hold patents or have access to data, but that does not mean they have overlapping innovation capabilities in any economically meaningful sense.

25 Boa, Elliott and Foster (2023), A Capability Approach to Merger Review.

26 Draft Guidelines, footnote 365.

Rather, the relevant question is whether those resources can be deployed and combined in a way that creates a capability that is scarce, difficult to replicate and material to competition. The Guidelines could clarify that resources such as data, talent, infrastructure, IP or laboratories would not be treated as competitively significant in isolation, but only insofar as they contribute to such a capability.

2.2 Loss of innovation, investment and expansion competition: focus on scarce overlapping capabilities and the deal rationale

39 The Draft Guidelines contain a helpful distinction between specific innovation competition and general innovation competition. They recognise that innovation competition may be affected where a merger involves overlapping R&D projects, existing products, innovation capabilities or R&D organisations. They also recognise that concerns may arise where firms have overlapping innovation capabilities and where the elimination of one rival significantly impedes innovation processes. This provides a useful framework for assessing dynamic competition.

40 To make this framework more operational, it may be helpful for the final Guidelines to clarify that overlapping capabilities are not necessarily indicative of competitive harm. A relevant consideration is whether the merger removes a scarce and material competitive constraint that would otherwise have supported innovation, investment or expansion rivalry. As we noted in our previous submission, the competitive significance of overlapping capabilities depends not only on their existence, but also on whether they are scarce and difficult to replicate.

41 The Draft Guidelines could also provide additional clarity on the role of the deal rationale in this assessment. In a capability-based framework, the commercial rationale for the transaction is often highly informative. A merger intended to remove duplication between overlapping R&D capabilities may raise different questions from a merger intended to combine complementary assets, such as technical expertise on one side and regulatory, manufacturing or distribution capabilities on the other. As noted in our previous response, combining complementary capabilities can itself be an important source of innovation, particularly where neither firm could achieve the same outcome independently.

42 One possible way of making the framework more operational would be to recognise explicitly that the assessment may consider how the parties intend to integrate, redeploy or combine capabilities following the transaction. Where a merger removes scarce overlapping capabilities that would otherwise have supported competing innovation paths, this may support concerns. Equally, where the transaction combines complementary capabilities, this may increase the merged entity’s ability and incentive to innovate, invest or expand.

43 Additional clarity may also be helpful regarding competitor responses. In innovation and investment spaces, the removal of one potential innovator or investor may create opportunities for others to expand or reposition. The Guidelines could therefore make clearer how evidence on contestability, entry, expansion and rival responses may be taken into account when assessing whether any reduction in innovation rivalry is likely to be durable.

2.3 Important competitive force: clearer evidence thresholds are needed

44 We welcome the additional guidance that the Draft Guidelines provide on the concept of an important competitive force ("ICF"). In particular, the Draft Guidelines build on the Court of Justice's clarification in *CK Telecoms* that an important competitive force is not limited to a firm that behaves as a "maverick" but may also encompass firms whose influence on the competitive process exceeds what conventional indicators such as market shares might suggest.

45 We consider the ICF concept to be a valid and useful theory of harm, particularly in markets where static indicators may understate a firm's competitive significance. However, the concept remains inherently difficult to operationalise in practice. Many firms may display one or more of the characteristics identified in the Draft Guidelines, particularly in dynamic markets where competition takes place across multiple dimensions. As a result, it can remain difficult to determine where the threshold lies between a firm that contributes meaningfully to competition and a firm whose removal would materially weaken the competitive process.

46 One area where additional clarity may be helpful is the role of different types of evidence in establishing that a firm constitutes an important competitive force. The Draft Guidelines identify a broad range of potentially relevant characteristics, including aggressive pricing, expansion plans, innovation activity and valued capabilities. These can all provide useful evidence. However, many of these indicators relate primarily to the inputs into competition rather than its effects.

47 In practice, evidence on competitive outcomes may often be particularly informative. For example, indicators such as customer acquisition, investment levels or innovation activity may show that a firm is active in the market, but they do not necessarily demonstrate that the firm exerts a competitive influence that exceeds what its size would suggest. Evidence of how competitors, customers or market outcomes respond to the firm's conduct may in some cases provide a more direct indication of its competitive significance.

48 Additional discussion of this distinction could help make the concept more operational in practice. For example, evidence that competitors systematically respond to a firm's actions, that customers view the firm as a particularly important alternative, or that

the firm's conduct has a material impact on pricing, quality, investment or innovation decisions elsewhere in the market may provide particularly useful evidence of competitive influence. This type of evidence can complement more traditional indicators such as market shares, customer acquisition metrics, investment levels or innovation inputs.

49 More generally, additional guidance on the evidential threshold could help businesses and advisers better understand how the concept will be applied in practice. The Draft Guidelines identify a broad range of potentially relevant characteristics but provide little guidance on when those characteristics are likely to be sufficient to show that a firm's removal would materially weaken the competitive process. Greater clarity on this point could improve predictability while preserving the flexibility needed to assess competitive dynamics across different industries and business models.

2.4 Entrenchment theory of harm: avoid treating ecosystems as inherently problematic

50 The Draft Guidelines formalise an entrenchment theory of harm, including the possibility that a merger may reinforce a dominant position across closely related markets or within an ecosystem. The Draft Guidelines explain that entrenchment arises where the merged firm gains control over assets in a way that structurally creates or reinforces barriers to entry and expansion, reducing market contestability.[27] They also identify relevant factors, including dominance in a core market, relatedness of acquired assets, and whether those assets are important to compete effectively.

51 In applying this theory of harm, it would be useful to avoid any implication that the development or expansion of an ecosystem is inherently anticompetitive. Ecosystems can create risks, but they can also be an important mechanism for growth, innovation and entry. They can allow firms to combine complementary capabilities, reduce transaction costs, improve interoperability, create better user experiences and bring new products to market. Frontier’s previous response made this point in relation to digital mergers, noting that the challenge is to protect against competition risks without stifling innovation, and that a capabilities framework can help assess both harms and synergies.

52 The concern with the current drafting is that the entrenchment section is less structured than the foreclosure section. Foreclosure analysis is anchored in a familiar ability, incentive and effects framework. That discipline helps ensure that concerns

27 Draft Guidelines, paragraph 252.

are tied to an identifiable mechanism of harm and supported by evidence. By contrast, the entrenchment theory appears to move away from that structure. If left without clear limiting principles, there is a risk that simply strengthening a dominant firm, or enabling it to offer a better integrated product, could be treated as problematic in itself.

53 The final Guidelines could therefore clarify that an ecosystem entrenchment theory of harm requires a concrete and merger-specific mechanism through which the transaction materially reduces contestability over time. That mechanism might involve, for example, reinforcing network effects, increasing switching costs or lock-in, reducing interoperability, limiting data portability, combining strategically important data or traffic advantages that rivals cannot realistically replicate, or making entry and expansion materially more difficult. But the Commission should explain how those effects arise, why they are merger-specific, and why they amount to a SIEC rather than stronger competition on the merits.

54 The same analysis should also consider procompetitive effects of ecosystem integration. Ecosystem growth may generate benefits through improved functionality, greater interoperability between complementary products, product differentiation, lower transaction costs, improved security or resilience, stronger investment incentives, and faster innovation. Those benefits should not be relegated to an afterthought. They are often central to the rationale for ecosystem-based business models and may be particularly important where integration allows firms to offer new or improved products that would not otherwise be developed.

55 The Draft Guidelines already recognise that network effects do not automatically imply harm, and that multi-homing, interoperability and data portability may mitigate market power. This is a useful principle and provides an important reminder that ecosystem growth and integration are not, in themselves, indicative of competitive harm.