Connect Europe and the GSMA's contribution to the Merger Guidelines' consultation

This document sets out Connect Europe and the GSMA's submission to the Commission's consultation on the Draft Merger Guidelines. For ease of reference, the cases, Commission decisions and academic sources cited throughout the submission are listed below:

CJEU cases:

- *Hoffmann-La Roche v Commission*, C-85/76, EU:C:1979:36 (*Hoffmann-La Roche*)
- *AKZO Chemie BV v Commission*, C-62/86, EU:C:1991:286 (*AKZO Chemie*)
- *Gencor v Commission*, T-102/96, EU:T:1999:65 (*Gencor*)
- *GlaxoSmithKline Services and Others v Commission*, T-168/01, EU:T:2006:265 (*GlaxoSmithKline*)
- *General Electric Company v Commission*, T-210/01, EU:T:2005:456 (*General Electric*)
- *Commission v Tetra Laval BV*, C-12/03 P, EU:C:2005:87 *(Tetra Laval)*
- *EDP v Commission*, T-87/05, EU:T:2005:333 (*EDP*)
- *Bertelsmann AG and Sony Corporation of America v Impala*, C-413/06 P, EU:C:2008:392 *(Bertelsmann)*
- *Ryanair v Commission*, T-342/07, EU:T:2010:280 (*Ryanair 1*)
- *Commission v United Parcel Service*, C-265/17 P, EU:C:2019:23 (*United Parcels Service*)
- *Wieland-Werke AG v Commission*, T-251/19, EU:T:2022:296 *(Wieland-Werke)*
- *EVH v Commission*, T-312/20, EU:T:2023:252
- *Ryanair v Commission,* T-737/20 EUR, EU:T:2023:641 (*Ryanair 2*)
- *European Commission v CK Telecoms UK Investments Ltd*, C-376/20 P, EU:C:2023:561 *(CK Telecoms)*
- *Thyssenkrupp AG v Commission*, C-581/22 P, EU:C:2024:821 (*Thyssenkrupp*)
- Opinion of AG Emiliou in *Royal Antwerp Football Club and Others*, C-209/23 (*RRC Sports*)

Commission merger decisions:

- Case M.6166 — *Deutsche Börse/NYSE Euronext*
- Case M.7018 — *Telefónica Deutschland/E Plus*
- Case M.7758 — *Hutchison 3G Italy/WIND/JV (Wind/Tre/JV)*
- Case M.8900 – *Wieland/Aurubis Rolled Products/Schwermetall* (*Wieland/Aurubis*)
- Case M.10896 — *Orange/MásMóvil/JV*
- Case M.11506 — *Parker/Meggitt*

Academic sources:

- The future of European competitiveness: Report by Mario Draghi (*Draghi Report*)

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- Padilla J., Dryden N., Caldana M., Nardini C., Fischer R. (2026): “Reflections on the European Commission’s draft Merger Guidelines – Where should we focus?”, *Compass Lexecon* (*Padilla et al.*)
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- Williamson, O.E. (1968), *Economies as an Antitrust Defense: The Welfare Tradeoffs*, American Economic Review, 58(1), 18–36

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Part I – Introduction and Guiding Principles

I. Introduction (Paras 1 – 6)

1. Europe’s competitiveness depends on sustained investment and innovation, in particular in capital-intensive sectors such as telecoms, energy and transport where high fixed costs, long asset life cycles and periodic technology renewal make scale essential to making viable investments and delivering productivity growth. Telecoms are the backbone of EU economy: they underpin AI, autonomous mobility and IoT, yet wireless infrastructure investment per capita in the US was 2.5x higher than in the EU in 2024 (CTIA, 2024). As Draghi noted, '*facilitating consolidation in the telecoms sector is needed to deliver higher rates of investment in connectivity’* (Draghi, p.35). The same logic applies across critical infrastructure – ports,

energy assets and transport networks – where Europe's growth and sustainability agenda equally depends on attracting investment at scale.

2. In this context, Connect Europe and the GSMA welcome the draft merger guidelines ('***DMG***') as a meaningful step forward. We strongly support the objective of incentivising mergers that enhance competitiveness and growth in the Internal Market (DMG, ¶2, ¶5) and welcome the Commission's acknowledgement that its approach has evolved in light of experience and the changing global economic landscape (DMG, ¶5). The reference to mergers generating *'synergies such as economies of scale or scope'* (DMG, ¶2) is also particularly relevant to capital intensive sectors such as telecommunications.

3. To that end, and more broadly, we are supportive of the steps taken by the Commission to elucidate a more dynamic approach to its assessment of both the potential harms as well as the potential benefits of a merger. Similarly, the recognition of a wider range of competitive parameters against which a merger may be assessed is helpful. We particularly welcome the Commission's efforts to put the assessment of both theories of harm (as identified by the Commission) and theories of benefit (as demonstrated by the merger parties) on an equal footing in reaching an overall view on whether a merger results in a SIEC (DMG, ¶21, ¶24, ¶32).

4. However, while the DMG strike a constructive and forward-looking tone especially in the Guiding Principles section, further changes within the detailed aspects of the draft text are required to deliver the pro-investment and innovation, competitiveness-, growth- and resilience-oriented approach set out in the mission letter and in the introduction of the DMG. In particular, the DMG must:

   - **Adopt a genuinely effects-based approach** which gives equal weight to pro-competitive and anti-competitive effects, by removing structural presumptions of harm that are not supported by evidence but rather rely on static indicators such as market share and concentration levels.

   - **Acknowledge that the appropriate balance between static and dynamic assessment depends on the characteristics of the market and the sector**. The Commission should apply a sliding scale: in fast-moving, innovation and investment-driven markets, dynamic analysis should carry more weight and should reflect long innovation and investment horizons rather than short-term structural snapshots.

   - **Introduce a true symmetry in the evidentiary standard for harm and efficiencies** throughout the document, so that efficiencies are not subject to a higher standard of proof or treated as exceptional, contrary to the stated aim of applying symmetric requirements for the standard of proof and a robust and cogent body of evidence.

   - **Elaborate the framework for assessing efficiencies in practice**, so that dynamic efficiencies are properly recognised through evidential, procedural, and analytical tools that do not depend excessively on quantification. The DMG must provide guidance as to how the Commission and merger parties can meaningfully engage to achieve a balanced assessment of non-price factors to avoid an excessive margin of discretion.

   - **Ensure that the time horizon better reflects economic reality**, by avoiding an overly short 3-4 year assessment window in industries where investment and competitive effects materialise over 8-10 years (or more).

   - **Reduce complexity**. The current draft expands the scope of the market power and theories of harm chapter. This should not lead to even more complex merger procedures, in particular filings and RFIs. Therefore, wherever possible, the DMG should provide instructions and guardrails for simplification (e.g. by introducing anticipated safe harbours below which certain theories need not be assessed in any detail).

- Be rooted in a clear analytical framework that recognises the distinction between static and dynamic competition rather than direct vs dynamic. It should also consistently apply the concept of potential "benefits" arising from mergers, rather than reverting to "efficiencies" which is a narrower concept and is unnecessarily restrictive.[1]

5. The following sections develop these points and propose further targeted changes to assist the Commission in finalising the DMG.

II. The Role of EU Merger Control (Paras 7 – 18)

6. Connect Europe and the GSMA welcome the recognition that mergers can result in pro-competitive increase in scale (DMG, ¶7) and that productivity, investment, innovation and resilience matter in merger review (DMG, ¶9). This matches the Merger Regulation ('***EUMR***') which welcomes mergers *'in line with dynamic competition and capable of increasing the competitiveness of European industry, improving the conditions of growth and raising the standard of living in the Community'* (EUMR, Recital 4). The DMG could, however, go further in several respects to better enable that assessment.

A. The importance of EU Merger Control for the internal market and competitiveness

7. The DMG do not consistently capture the importance of investment in boosting productivity and stimulating innovation highlighted in the Draghi report (see, for example, Draghi, pp.23-27). The DMG use '*investment*' and '*innovation*' interchangeably in some places (e.g., DMG, ¶7, ¶10, ¶18) but distinguish them elsewhere (DMG, ¶20; footnote 364) — a distinction that matters because the DMG's policy prescriptions differ depending on which concept is engaged, and conflating them risks understating the significance of asset investment in capital-intensive sectors. For this submission, '*investment*' means capital expenditure in assets (e.g., network infrastructure, spectrum, sites) and '*innovation*' means R&D and technological development. Wherever the DMG refer to '*innovation*' as a driver of competitive dynamics or a pro-competitive benefit, they should also refer to '*investment*' where appropriate. Specifically, the DMG should list promoting investment as a potential merger benefit (DMG, ¶7) and include '*and investment-heavy*' after '*innovation-heavy*' (DMG, ¶10).

8. The DMG refer extensively to '*resilience*' but the definition is limited to footnote 18. The definition should be integrated into the main text. As drafted, the references to preventing '*mergers that result in a SIEC'* and to '*stronger competition*' risk implying resilience is achieved only through more competitors (DMG, ¶9), which we do not believe is the intended reading. In practice, resilience can be improved by greater scale: fewer but stronger entities may be more resilient than numerous weaker firms unable to invest adequately to withstand shocks. Telecommunications firms with greater scale can, for example, deploy double-homed base stations, increase on-site battery capacity, and harden networks against extreme weather events or deliberate attacks — delivering direct consumer benefits through shorter outages, faster recovery, and lower cybersecurity risk. The definition should therefore (i) acknowledge that consolidation can itself foster resilience; and (ii) refer to the robustness — in addition to the security and diversity — of supply chains.

B. Benefits from scale versus market power should recognise how scale in the relevant market can intensify competition.

9. The DMG's discussion of pro-competitive scale focuses heavily on complementary mergers, cross-border scenarios or '*global industries*' facing pressure '*from competitors active globally*' (DMG, ¶18). While relevant to the Single Market, this framing fails to sufficiently capture the role of scale in the relevant markets, particularly in capital-intensive sectors with high fixed costs such as telecoms, energy or transportation/logistics, where the critical issue is achieving in-market scale. In these sectors, competition is primarily national and it is scale, capability and network density within the relevant market – rather than

[1] Notwithstanding this, we have used the term "efficiencies" in places in this response because the term is used throughout the DMG. Our comment about "benefits" replacing the word "efficiencies" should read as being applied throughout the document,

cross-border – that drives firms' ability and incentive to invest (e.g. the take-up of the networks within a given geography in the case of telecoms).

10. In such markets, horizontal consolidation can enhance competition across all its parameters. Where firms lack the scale to compete effectively on parameters driving long-term consumer benefits, mergers may enable them to remain viable – in terms of capacity and investment incentives – so as to compete in a context of ongoing technological progress and continue serving European industry, consumers, and public administrations. Failing to recognise this risks weakening both entry incentives and ongoing incentives to invest across all market participants (see Padilla et al. (2026) / BRG (2026)). DMG, ¶12 should therefore remove or replace the reference to '*global industries*', so that the references to capital-intensity and scale apply equally to national markets. Likewise, DMG, ¶15(c) recognises that mergers may increase investment in the security of critical infrastructure but limits this to combining complementary capabilities; the reference to *'complementary capabilities'* should be removed to allow greater flexibility, and 'resilience' should be added alongside security.

11. The section also uses investment and innovation interchangeably which leaves the impression that scale matters mainly for innovation rather than for infrastructure investment which is not consistent with the rest of the DMG which recognises that pro-competitive scale matters for both. DMG, ¶12 should therefore refer to industries with *'high capital intensity and / or rapid research and development (R&D) innovation'.* This would better reflect the distinction between sectors with large but relatively predictable capital investments (e.g. telecommunications, energy and transport/logistics) and sectors where R&D outcomes are highly uncertain. In both, scale may be critical, albeit for different reasons, as footnote 364 recognises. With the same logic, DMG, ¶15(a) should refer to *'investment, innovation and technological progress'* since mergers may increase not only innovation but also investment in assets that would otherwise be unattainable.

12. DMG, ¶18 is unclear in purpose. While it seeks to distinguish pro-competitive scale from harmful market power, it provides no guidance on where that line falls. Connect Europe and GSMA are not advocating for a safe harbour for any merger that increases scale, which would make no economic sense. However, as drafted the paragraph creates confusion rather than drawing a line between what is pro- or anti-competitive. It should either be deleted or amended to expressly include consolidations that increase firms' ability and incentive to invest as a possible category of pro-competitive merger distinct from those that merely increase market power.

III. Guiding principles (Paras 19 – 51)

13. Connect Europe and the GSMA welcome the ambitions set out in this chapter, in particular (A) the consideration of price and non-price parameters, including investment, resilience, and sustainability, as relevant for merger assessment, (B) the confirmation that the same standard of proof applies to theory of harm and to the theory of benefit, (C) the stronger emphasis on balancing harms and benefits of mergers within an overall assessment before concluding on a SIEC and (D) the greater focus on realistic, dynamic counterfactuals.

A. The Commission's margin of discretion cannot prioritize price parameters against non-price parameters

14. Connect Europe and the GSMA support the DMG's assessment of merger effects with regards to different parameters of competition. There is, however, no need to state that *'many'* non-price parameters are not readily subject to quantification (DMG, ¶20). Whether a non-price effect is difficult to quantify is beside the point: here it would be important to establish that both should be given equal weight. This follows from the DMG's own recognition that there is no hierarchy between qualitative and quantitative evidence (DMG, ¶31). DMG, ¶20 should therefore be amended to state only that although non-price effects '*may sometimes be difficult to quantify'*, they are *not* less relevant than price parameters.

15. The DMG should not refer to the Commission's margin of discretion (DMG, ¶20). That concept governs the Union Courts' review of Commission decision-making (*CK Telecoms*, ¶84) and has no place in

guidance intended to bind the Commission itself. It also risks conflating the Commission's prosecutorial and decision-making roles. The margin of discretion applies to the latter, not the former, and the lack of clarity in the DMG risks implying that the Commission has a margin of discretion in the case it develops for harm (a margin of discretion which is not afforded to the merging parties in their case for efficiencies).

16. If retained, the reference must at minimum be aligned with *CK Telecoms*, which confines the margin of discretion to economic matters, not to the weighing of price against non-price parameters as such (*CK Telecoms*, ¶124). As drafted, the reference risks implying that non-price effects may receive less weight, especially where they are harder to quantify. The DMG should instead make clear that price and non-price parameters are subject to the same approach and in the same balancing exercise more weight cannot be given to price parameters versus non-price parameters.

B. There must be a true symmetry between the standard of proof for theories of harm and benefit

17. The DMG explain that a theory of harm should articulate how a merger would enable the parties to profitably reduce non-price parameters, including investment and innovation, '*thereby*' harming consumer welfare (DMG, ¶23). The DMG would however benefit from a clearer and more consistent distinction between inputs (e.g. levels of investment or R&D effort) and outcomes (e.g. product quality, variety, or the pace and direction of innovation).

18. This distinction is important because increases or decreases in inputs do not map mechanically onto consumer outcomes. Higher pre-merger levels of investment do not necessarily translate into better products, greater choice, or more valuable innovation; conversely, a reduction in duplicative or fragmented investment may improve the effectiveness and allocation of resources, leading to stronger innovation outcomes. For example, a merger may rationalise overlapping R&D programmes, eliminate inefficiencies, or allow the combined entity to focus resources on higher-value projects, ultimately resulting in improved quality, new or enhanced products and services, or faster deployment of innovation. This in turn will increase consumer welfare.

19. Against this background, the Commission's assessment should focus on the likely impact of the transaction on competitive outcomes, rather than treating changes in the absolute level of investment or innovation as proxy for harm. In particular, a finding that a merger leads to a reduction in investment or innovation inputs should not be sufficient to establish harm.

20. Instead, the Commission should examine whether, and through what mechanism, any such reduction is likely to translate into a deterioration of consumer welfare along the relevant parameters of competition, such as quality, choice, innovation, or other non-price dimensions that are material in the specific case. This requires, as a preliminary step, a careful identification of the relevant welfare dimensions affected by the deal in the market concerned. Only once these dimensions are clearly defined the Commission can meaningfully assess whether changes in firms' conduct, including adjustment in investment or innovation, are likely to harm consumers.

21. Further, while the Commission bears the burden of demonstrating any anticompetitive effects arising from the merger, the Commission does not have to specifically demonstrate or quantify such harm in every case (¶22). Conversely, the parties have to quantify benefits (e.g. ¶307, ¶316 or ¶329, ¶336) and when exact quantification is not possible, the parties must demonstrate the order of magnitude of benefits (e.g. ¶308 or ¶329). In the respect of the guiding principle which recognises that the evidentiary standard is the same for both the harm and benefits (¶26), a symmetric approach must be applied - either the Commission should demonstrate or quantify harm or the additional evidentiary requirement on the parties to do so should be dropped.

22. Likewise, DMG, ¶25 narrows *'investment'* to '*investment intensity underpinning stronger competitive behaviour across multiple products or geographies'*, but the purpose of that limitation is unclear, especially because DMG, ¶20 recognises investment more broadly as a parameter of competition and DMG, ¶23

refers simply to investment as a potential theory of harm. The DMG should instead refer to *'positively influencing other relevant parameters of competition such as investment…'* to avoid suggesting that investment-related efficiencies face a different or higher standard. Furthermore, ¶25 should amend or remove the phrase '*thereby offsetting, on a lasting basis, the harm to consumers brought about by the merger*' as the standard for harm is a decrease of consumer welfare and it should be the same for benefit (whether the benefit outweighs harm is part of the balancing exercise to decide on a SIEC).

23. Finally, ¶25 should amend or remove the phrases '*in due time*' (which leaves a margin of discretion to the Commission to reject a theory of benefit if not submitted in a timing acceptable for the Commission) and '*enhance effective competition*' (the purpose of efficiencies is not to enhance competition versus the counterfactual).

C. The Commission's rules of evidence should avoid inadvertently distorting the existing rules of evidence and increasing the Commission's margin of discretion

24. If the Commission retains the reference to its margin of discretion (which as explained above is not justified), in DMG, ¶27 and footnote 45, it should be clarified that the Commission's margin of discretion does not entitle it to give greater weight to its own economic assessments than those provided by the parties. All economic assessments necessarily rest on assumptions and the Commission's own view should not prevail by default. The Commission should explicitly refer to its best practice for the submission of economic evidence, which explain the standard required for economic evidence to be given probative value.[2] The Commission should explicitly acknowledge that the same standard applies to arguments brought by the Commission and by the parties, and for evidence related to the "assessment of the anticompetitive or procompetitive effects of a merger" (paragraph 11). This document usefully clarifies that "*[a]ny economic model which explicitly or implicitly supports a theoretical claim must rely on assumptions that are consistent with the facts of the industry under consideration. These assumptions should be carefully laid out and the sensitivity of its predictions to changes to the assumptions should be made explicit*." (paragraph 10). It also explains that "*[b]y their very nature, economic models and arguments are based on simplifications of reality. It is therefore normally not sufficient to disprove a particular argument or model, to point out that it is "based on seemingly unrealistic assumptions". It is also necessary to explicitly identify which aspects of reality should be better reflected in the model or argumentation, and to indicate why this would alter the conclusions."* (paragraph 12) Importing directly such language would set a useful and symmetric standard for the assessment of economic reasoning, in the context where the Commission often insists on the limitations of the approaches brought forward by the parties, while very seldom discussing the assumptions underpinning the tools it uses (including market shares and GUPPI).

25. The DMG state that the Commission may take into account additional information *'provided to it in a timely manner* during *the administrative proceedings'* (DMG, ¶30). There is, however, no evidentiary rule granting the Commission a discretion to admit or disregard evidence simply on the basis it is admitted later in the process. *Wieland-Werke,* on which the DMG rely, only observes that the Commission may adjust its assessment considering new information sent during the administrative proceedings (*Wieland-Werke*, ¶516). The statement should therefore be deleted.

26. The statement that post-announcement internal documents *'have generally limited value in terms of exculpatory evidence'* (DMG, footnote 61), and the distinction between *'*contemporary*'* and *'*new*'* evidence (DMG, footnote 55), are both unworkable in the context of efficiencies. Merging parties typically assess efficiencies only in relation to a specific transaction, meaning detailed synergy assessments and integration plans necessarily arise after the deal is being explored, with quantification only becoming possible as plans develop. Dismissing such evidence is impractical, undermines the symmetric standard of proof applicable to harm and efficiencies alike, and is inconsistent with evidentiary rules under which relevance is the key criterion. These statements should accordingly be deleted. In the same spirit of symmetry, it should be

[2] Commission Staff Working Paper – Best Practices for the Submission of Economic Evidence and Data Collection in Cases Concerning the Application of Articles 101 and 102 TFEU.

clarified that internal documents drawn up in close connection with the relevant events, or by direct witnesses to them, may be particularly reliable and credible not only when they run counter to the interests of the relevant party, but also when they support those interests.

27. Business plans and synergy assessments shall also be added as evidence (DMG, ¶31). Moreover, it is unclear why some forms of evidence may be prioritized and others discounted. If that approach is retained, the DMG should clarify the criteria for doing so and recall that the Commission's assessment is subject to judicial review, to avoid giving the Commission an unjustified margin of discretion and creating legal uncertainty.

28. Finally, the current draft does not adequately reflect the general evidentiary standard that the Commission must rely on a '*sufficiently cogent and consistent body of evidence'* (*CK Telecoms,* ¶75). The statement that the Commission may rely on a single item of documentary evidence should be removed or at least be framed as strictly exceptional and narrow (DMG, ¶31). In any event, the same principle should also apply symmetrically to the merging parties when proving efficiencies.

D. Overall assessment of mergers must balance demonstrated harm and benefits without by default presumptions

29. The DMG state that the *'the greater, more certain and immediate the negative effects on competition, the more substantial and certain the efficiencies must be…'* (DMG, ¶35). The inclusion of '*immediacy*' and '*certainty'* is not in the relevant case law cited in footnote 67 and should be removed. The legal test requires balancing the likelihood and magnitude of harm and efficiencies; adding a separate emphasis on immediacy risks favouring existing over future consumers and discounting benefits that materialise in mid-long term. Nor is any additional threshold for establishing efficiencies justified. Harm and benefits should be assessed under the same standard, and the balancing exercise already captures issues of magnitude and certainty.

30. The statement that '[t]*he more market power the merged entity holds … the less likely efficiencies will be sufficient to outweigh competitive harm*' (DMG, ¶35) should also be deleted. At most, that is a rebuttable evidential consideration requiring case-specific analysis of the magnitude of harm and any efficiencies. As drafted, it reads as a structural presumption against efficiencies in mergers involving large firms. The previous statement – that greater harm requires more substantial efficiencies – already stipulates the correct framework. The contested sentence risks prejudging outcomes, contradicts the introductory recognition of scale benefits, and overlooks that such benefits often arise in mergers where market power increases. Likewise, reference to efficiencies that '*counteract the harm ... that might otherwise result from the merger*' (DMG, ¶36) should be revised. This formulation appears throughout the document and should be revised consistently. The test is not whether the efficiencies outweigh the established harm, but whether the overall assessment of harm and benefits establishes that the merger is more likely than not to give rise to a SIEC.

31. Connect Europe and the GSMA agree that the purpose of the counterfactual is to assess the chains of causation between the merger and the relevant effects on competition. As the Court of Justice held in *CK Telecoms,* the Commission must *'envisage various chains of cause and effect with a view to ascertaining which of them are the most likely'* (*CK Telecoms,* ¶84). This also entails an assessment of what would have occurred absent the merger to determine whether a merger gives rise to a SIEC.

32. The DMG therefore should therefore use the same counterfactual for harm and efficiencies for the assessment to determine whether there is a SIEC (DMG, ¶37). The balancing exercise necessarily asks whether, on balance, the merger harms competition relative to the counterfactual sufficiently to produce a SIEC. Excluding efficiencies from that comparison undermines the purpose of the exercise as it does not factor in the impact the efficiencies will have on merger effects. The reference to *'absent efficiencies'* should therefore be removed from DMG, ¶37 to preserve symmetry in the standard of proof.

33. The DMG also risk creating a mismatch between the default counterfactual and a genuinely dynamic assessment. While the *status quo* may be a sensible baseline in stable markets, it is ill-suited to markets where competitive effects inherently unfold over a longer timeframe, including capital-intensive sectors where investment decisions are made on multi-year horizons. The DMG should not imply that a status quo counterfactual is subject to a lower evidentiary standard than one based on foreseeable market developments (DMG, ¶¶38–39). The standard for *all* evidence — regardless of which counterfactual scenario is applied — is that the Commission must rely on a *'sufficiently cogent and consistent body of evidence'* (*CK Telecoms,* ¶87).

34. In place of the requirement that market developments be predictable with *'a sufficient degree of certainty*', the DMG should adopt the standard that the Commission assesses effects over any time horizon for which the relevant chain of cause and effect is the most plausible outcome based on available evidence (*CK Telecoms*, ¶84). The Commission must not limit itself to effects that are virtually certain. *EVH v Commission* does not depart from this standard: it confirms only that the Commission is not required to assess effects beyond the horizon for which evidence is reasonably available — it does not license a lower standard of proof for the scenario the Commission finds most convenient. The DMG should therefore be amended to delete the *'sufficient degree of certainty*' formulation from ¶39 and 40 and replace it with a requirement that the Commission identifies the most plausible competitive trajectory based on a cogent and consistent body of evidence, applied symmetrically across all counterfactual scenarios.

E. Failing firm

35. Connect Europe and the GSMA welcome the DMG's addition of a '*failing division*'. However, the conditions for establishing a failing firm or failing division remain excessively demanding and risk entrenching economically inefficient outcomes. The Draghi Report identifies barriers to the efficient reallocation of capital as a structural drag on EU competitiveness (Draghi, pp.65-66), and the economic literature demonstrates that merger control can amplify this problem by preserving so-called 'zombie firms' — enterprises that consume resources and crowd out investment without generating competitive value (see Padilla et al. (2026) / BRG (2026)). Where a firm or division is on a deteriorating competitive trajectory, its continued independent existence may actively harm market dynamics: ex-ante investment incentives are weakened because prospective entrants and competitors cannot rely on efficient exit, and existing competitors face distorted competitive conditions from a player that would not survive absent implicit or explicit support.

36. It is therefore critical that the Commission develops a framework capable of accurately assessing the competitive trajectory of firms, not only their current financial position, and of permitting efficient exit where the competitive case for independent operation is not possible going forward. The addition of *'cease to play a competitive role*' (DMG, ¶49) is not sufficient to address this issue as it concerns only the assets of the firm and not the firm, and the cumulative condition requiring a forced market exit in the near future is still applicable. To establish an adapted framework, in particular, DMG, ¶40 should be amended in two respects. First, the current formulation, which requires the impact of firm's financial situation on the firm's market position to be established with a *'sufficient degree of certainty'*, sets an unworkably high threshold; it should instead require that the Commission identify the most plausible financial trajectory based on available evidence. Second, the paragraph should expressly permit the Commission to assess how a firm's deteriorating financial position affects its prospective contribution to price and non-price competitive parameters — including investment, quality and innovation — going forward. A firm with deteriorating financial situation is not a neutral competitive force: its constrained ability to invest and compete should be assessed as part of the counterfactual analysis, not treated as outside the scope of the defence. This is particularly true in the presence of scarce resources and assets. By holding these assets, it excludes its usage by third parties, including competitors. This limits the benefits these assets could deliver to customers (including through scale) if they were operated by a healthier firm.

Part II – Competitive Assessment

I. Introduction and Market Power (Paras 52 – 59)

37. Connect Europe and the GSMA welcome the Commission's commitment to a more dynamic and long-term assessment of merger effects (DMG, ¶¶53-54). The framework is better suited to the economic realities of modern markets, particularly those characterised by rapid technological change, large capital requirements and long investment cycles, and consistent with the Draghi Report's recommendation that merger decisions focus on *'future potential competition and innovation'* (Draghi, p.299).

38. That said, sections A and B of Part II (*Competitive Assessment*) risk functioning as a cumulative checklist of harm factors rather than balanced framework for assessing whether market power exists and whether a merger is likely to lead to anticompetitive effects. The draft presents both structural indicators and '*other factors*' mainly as reinforcing a presumption of harm, without equally explaining when those same factors may instead be compatible with effective competition or reflect sectoral characteristics rather than market power. As a result, although the draft formally endorses a flexible and case-specific approach (DMG, ¶54), that flexibility risks being applied asymmetrically: it expands the Commission's discretion to identify harm, while reducing predictability and weakening the defensive value of traditional indicators.

39. This concern is compounded by DMG, ¶56's formulation which appears to suggest that any merger creating or increasing market power is harmful to the competitive process. This formulation should be deleted or qualified. Under the EUMR, an increase in market power does not in itself establish a SIEC. At a minimum, the draft should clarify that where a merger may increase market power, a closer assessment is required in which potential competitive harm and benefits are collectively assessed in accordance with the balancing principles set out in the DMG. Alternatively, the statement should be limited to cases involving the creation or strengthening of a dominant position.

40. More generally, DMG should recognise that all indicators of market power are assessed in the context of the pro-competitive benefits that mergers may bring through enabling transaction parties to achieve scale and the implications for this in terms of their ability and incentive to compete for investment or innovation, as set out in Part I of this submission. The current discussion of market power in the DMG is overly one-sided (strongly linking firms' size and market concentration to market power, in a negative sense, meaning that larger market shares and/or higher concentration in market structure reflect larger market power) and does not recognise the importance of scale in achieving appropriate levels of investment or innovation and therefore enhancing competition on these parameters. A framework that ignores this dimension risks systematically over-identifying harm where none exists, while precluding a range of dynamic effects from occurring, hence depriving consumers of the related benefits. Connect Europe and the GSMA agree that market power should be assessed *'using a combination of factors'* (DMG, ¶57). However, the suggestion that dynamic assessment is relevant only *'in specific dynamic settings'* (DMG, ¶58) is unduly narrow and sits uneasily with the principle that the weight attached to different metrics and parameters depends on the case (DMG, ¶52). Dynamic competitive potential is relevant wherever future investment, quality, capacity or innovation materially affect competitive outcomes – not only in sectors arbitrarily labelled as '*specifically dynamic'*. The primacy afforded to static market power indicators such as market shares is also contrary to the Draghi Report's emphasis on *'future competition and innovation'* (Draghi, p.299). Where competition is driven by investment and innovation, dynamic evidence should form an integral part of the assessment, and its weight should increase accordingly.

41. The DMG should furthermore clarify in DMG, ¶58 that dynamic factors may reveal potential sources of market power, but also may show why current static indicators of concentration (and the consequent position held by the identified firm(s)) may not be indicative of market power. Continued investment requirements, technological transitions, financial constraints and regulatory obligations may all limit firms' ability to acquire market power or sustain it over time. A balanced framework should expressly recognise both possibilities.

A. Structural indicators risk operating as presumptions of market power (Paras 60 – 67)

42. The DMG have hardened the presumptions derived from market shares and HHI in two directions: they have strengthened the evidential weight of high market shares as indicators of market power (and, consequently, potential harm) while simultaneously softening the pre-existing safe harbour that mergers with a combined share of no more than 25% are likely to be compatible with the Internal Market. This both contradicts the objective set out in the Draghi Report that merger control becomes less reliant on *'existing market shares'* (Draghi, p.299) and creates an unjustified asymmetry that operates to the detriment of merging parties and reduces the predictability that the DMG are intended to provide.

1. High market shares are not sufficient evidence of market power (Paras 60 – 64)

43. The DMG state that '*market shares reflect the position and competitive strength of firms*' and that '*the greater a firm's market share, the greater the degree of market power is it likely to possess*' (DMG, ¶61). This is too categorical and should be nuanced. Indeed, it should be clarified that high market shares may be indicative of market power, but are not determinative (Wieland/Aurubis, ¶249) alone and should therefore be assessed alongside other indicators of market power and competitive interaction, including dynamic competitive potential and supply-side characteristics.

44. Furthermore, while market shares may reflect a firm's historic position in the market, they may not (in themselves) capture the intensity of competition on a forward-looking basis and across all competition parameters. This is particularly important in markets characterised by economies of scale, high sunk costs and substantial investment requirements, where the reliance on static share metrics creates a material risk of false positives, as high shares may overstate a firm's future competitive strength, specially where continued investment and access to funding are needed to maintain that position and the firm's competitive potential moving forward is limited.

45. The DMG should therefore make clear that market shares may both understate and overstate market power, consistent with the Horizontal Guidelines ("**HMG**") which also explain the circumstances in which market shares exceeding 50% are not indicative of market power (HMG, ¶17). In particular, DMG, ¶64(a) – (d) should explicitly state that each of the four circumstances listed may result in market shares either overestimating or underestimating merging parties' market power, and that the Commission should consider both possibilities symmetrically when assessing market shares figures.

46. Against that background, the five-band share taxonomy in DMG, ¶62 should be deleted or, at minimum, substantially amended. It is unnecessary and lacks any anchor in EU merger case-law. Only two primary thresholds exist under the EUMR, the HMG and case-law: shares above 50% may indicate dominance (HMG, ¶17), while shares below 25% are generally compatible with the EUMR (EUMR, Recital 32). There is no legal or analytical basis for the additional intermediate thresholds introduced in the DMG — '*material*' (25–40%), '*high*' (40–50%) and '*very high'* (50%+) — and their introduction is not without consequence. On one hand, they risk bringing competitive concerns into ranges historically considered non-problematic, eroding the predictability of the framework. On the other, DMG, ¶127 uses them to set a presumption, treating shares above 40% as requiring substantial rebuttal to avoid a SIEC finding. This goes beyond what the law requires: even the creation or strengthening of a dominant position does not give rise to a presumption of SIEC; the Commission must still demonstrate that the specific transaction gives rise to SIEC (*General Electric*, ¶84 and 87; *EDP*, ¶45 and ¶49). The burden-shifting suggested in DMG, ¶127 therefore has no legal foundation and, read together with DMG, ¶62, reveals an effective lowering of the intervention threshold below the standard established in case law.

2. High HHI may reflect structure, not market power (Paras 65 – 67)

47. DMG, ¶65 should be amended to make clear that market concentration, whether measured by HHI or otherwise, is only an indicator of market power, whose reliability varies across sectors and therefore, it should not be treated as a presumption. As drafted, the statement that *'the more concentrated the market is and the more likely the largest firms in the market will possess market power'* (DMG, ¶65) is too

categorical and of limited analytical value. A more concentrated market structure comprised of a few players of sufficient scale may be compatible with, and in some cases conducive to, stronger competition and enhanced consumer welfare. The DMG should accordingly delete the reference to likelihood, which implies a presumption of market power, and refer to market concentration being '*an indicator*' of market power which should be assessed in combination with other indicators, and which by itself can neither be considered accurate nor sufficient to establish a current or expected situation where market power is being exercised by one or more firms with certain levels of market shares.

48. The same concerns apply to DMG's identification of markets with an HHI 2,000 as '*highly concentrated*' (DMG, ¶65). That label carries unwarranted negative presumptive influence, is not included in the HMG, and risks overstating the potential for anticompetitive effects in sectors where high concentration is a necessary feature for competition or due to sector specificities rather than a standalone function of market power. As the BRG report explains, outside homogeneous-goods markets, structural indicators such as the HHI *'rapidly lose their connection to competitive mechanisms'* and should therefore serve only as *'analytical inputs'* for an initial screening function, and be considered alongside *'more direct indicators'* tied to the competitive mechanisms in the market, such as capabilities, investment overlaps, and competitive incentives (BRG, ¶¶267-275).

B. "Other indicators" can point towards less, and not only more, market power (Paras 68 – 79)

49. The DMG present '*other factors*' as additional reasons to establish market power without acknowledging that the same factors, in the appropriate market context, may be consistent with effective competition and even indicative of the absence of market power (DMG, ¶¶68–79).

1. High price sensitivity should be included as an indicator of a lack of market power (Paras 68 – 69)

50. Connect Europe and the GSMA agree that low price sensitivity is potential evidence of market power. The reverse, however, is also the case and the DMG should accordingly state that '*[s]ensitivity to price can conversely be evidence of low or moderate market power'.* The DMG should also reflect that sensitivity to other factors (such as quality or innovation) may be relevant. For example, a customer may have less sensitivity to price but be more sensitive to changes in quality, and such effect can be even more relevant in market where quality is a parameter highly valued by customers.

51. Similarly, while the DMG are correct that customer churn rates can be indicative of market power, they ignore that the reverse is also true. However, this is context dependent. Customers may, for example, not switch due to satisfaction with the relevant services. It is accordingly important that the Commission interrogate such data to establish whether low sensitivity is driven by limited suitable alternatives or is consistent with vibrant (successful) competition leading to high customer satisfaction (and thereby retention over time).

2. Variable-cost is the wrong default in high-fixed cost sectors and cannot be the default metric (Paras 70 – 74)

52. Margin over incremental cost can be a relevant input in assessing market power, but it should not be treated as an automatic proxy. High margins may reflect equally signal cost efficiency, successful innovation or the need to sustain ongoing investment, particularly in sectors with significant capital investment requirements. The DMG is therefore right to acknowledge that high margins may be temporary and reflect innovation and risk-taking. However, for the same reason, the DMG's emphasis on price-cost margins appears conceptually incomplete, and the use of '*broader profitability measures*' should not be limited to the specific case of a firm protected by barriers to entry and expansion (¶ 71). T

53. The DMG's reliance on margin over incremental cost raises two issues. First, incremental cost is often not the relevant benchmark in sectors with high fixed and sunk costs, where pricing consistently at marginal

cost yields a financial deficit and prices must deviate from pure marginal cost for firms to cover total costs.[3] In industries such as telecommunications, energy networks, or transport infrastructure, the gap between incremental cost and total cost is structurally wide, so margins over incremental cost will appear high even in fully competitive settings, as it does not adequately account for the level of investment required to generate those returns. Any meaningful assessment must therefore be calibrated to the capital intensity, the share of fixed costs involved in the investments, and investment cycles of the industry. Second, price-cost margins disregard the intertemporal dimension of costs and revenues. In many investment-intensive markets, costs are incurred upfront, while revenues are realised only over time. A simple contemporaneous static comparison between price and cost[4]therefore misrepresents economic profitability, as it fails to capture whether firms are able to recover their investments and earn a normal return over the lifecycle of the asset. Taken together, these two limitations make margins over incremental cost an unreliable indicator of market power.

54. This is particularly true in sectors characterised by significant upfront investment and innovation, in which margins over incremental cost will mechanically appear high even when economic profitability is low or negative once depreciation and the cost of capital are taken into account. Assuming that prices above short-term incremental costs is an indication of market power implicitly assumes that firms should price at levels that do not allow recovery of fixed costs or a normal return on capital, which is economically unsound. Indeed, according to such view, the level of profitability that would be consistent with the preservation of competition would by design prevent the investor from recovering its relevant incurred cost. This assumption is also inconsistent with the DMG's correct own recognition that fixed costs may affect firms' incentives and ability to invest (DMG, footnote 391). This approach would also be coherent with the Commission's own sector-specific regulatory framework. The European Electronic Communications Code (Directive 2018/1972) adopts the Long-Run Incremental Cost Plus (LRIC+) as its cost standard, explicitly incorporating fixed and common costs because pricing at pure incremental cost would not allow operators to recover their total costs. A more robust and consistent framework would therefore rely on profitability metrics that explicitly take into account the capital employed and the timing of costs and revenues. Measures such as return on capital employed (ROCE), return on equity (ROE), return on assets (ROA), or other economic profitability indicators provide a more meaningful assessment by linking earnings to the asset base and assessing returns over time. These metrics are not affected by the two key shortcomings identified above: they do not rely exclusively on incremental cost, and they inherently incorporate the intertemporal nature of investment and returns. The DMG already acknowledges some of these measures in the context of barriers to entry (DMG, footnote 114), but they should be applied more broadly and systematically to the overall assessment of market power.

55. Importantly, while these profitability measures are more economically grounded, they are not without limitations and must be interpreted carefully in light of sector-specific characteristics. Accounting-based metrics reflect the treatment of assets, depreciation, and intangibles, while measures such as ROE can be influenced by firms' leverage. In addition, what constitutes a "normal" level of profitability varies across sectors depending on capital intensity, risk level, regulatory constraints, and innovation dynamics. In innovation driven industries, higher returns may, for example, simply compensate for the level of uncertainty and risk taken by investors. A sound assessment must therefore be holistic and dynamic, benchmarking profitability against industry norms, verifying whether returns exceed average total cost over time, and ensuring consistency with sector specific regulatory practice, such as cost standards that explicitly incorporate fixed and common costs.

[3] Baumol, W.J. & Bradford, D.F. (1970), "Optimal Departures from Marginal Cost Pricing", American Economic Review, 60(3), 265–283.

[4] When discussing the relevant cost benchmark, the Commission refers to short-term incremental costs estimated as "*(average) variable costs or direct production costs computed from accounting data*" (see DMG, footnotes 112 and 113), which do not reflect investment or other fixed costs.

3. The DMG should also acknowledge factors reducing the significance of structural barriers (Paras 75 – 79)

56. Connect Europe and the GSMA welcome the DMG's clarity on factors indicative of *'high and durable'* barriers to entry and expansion (DMG, ¶¶75–79). However, the draft is asymmetric: it omits any assessment of circumstances in which barriers are likely to be moderate or low, which is critical for merging parties in evaluating their transactions. Regulation is a clear example. In the telecommunications sector, regulation can reduce barriers to entry by setting aside spectrum for new entrants or industry verticals, imposing spectrum sharing obligations, providing entrants with, *inter alia,* access to telecommunications infrastructure (European Electronic Communications Code – Directive 2018/1972 of 11 December 2018). The DMG recognise the impact of such regulation in assessing the merging firms' ability to foreclose but not its impact on barriers to entry (DMG, ¶227).

57. A correct assessment of the barriers to entry and expansion is also critical for assessing direct and dynamic effects (DMG, ¶114-115), including firms' ability and incentives to invest and innovate. Sectoral regulation is relevant because it affects the appropriability of investment and hence incentives to invest. For example, regulatory obligations such as mandated access to network infrastructure at regulated prices will typically weaken investment incentives by reducing firms' ability to retain the returns on their expenditure (BRG (2026), ¶¶92-93).

58. Accordingly, the DMG should provide guidance on the circumstances in which barriers to entry and expansion are considered low. DMG, ¶79(a) should, at a minimum, highlight that structural and technological characteristics (such as intellectual property rights) are often a pre-condition to the necessary scale to compete in the market and recover investment. Further, DMG, ¶79(d) should note that regulation may facilitate access to infrastructure and other assets and thereby reduce barriers to entry and expansion.

C. Dynamic competition potential can be indicative of both presence and lack of market power (Paras 80 – 83)

59. Connect Europe and the GSMA welcome the recognition that a static assessment of market power can fail to capture firms' *'competitive strengths and weaknesses from a dynamic perspective'* (DMG, ¶80). As already explained in ¶64 of the DMG, static concentration metrics can either overstate or understate a firm's true competitive significance over the long run. In a market in which dynamic dimensions of competition are an important source of long-term welfare gains for consumers, the existence of (and merger-induced changes in) market power should be assessed on the basis of firms' ability and incentive to invest and/or innovate.

60. In this context, the *'investment-related factors'* relevant to dynamic competitive assessment should not be limited to '*business models*' as currently framed. A firm's dynamic competitive potential and investment capacity are determined by its resources, capabilities, strategic position, and economies of scale — encompassing financial, human, technological, organisational, intellectual property, data, and relational assets — as well as its ability to develop, adapt, and deploy those assets and its access to the financial and operational resources needed to pursue growth and investment opportunities. These factors are in turn shaped by market conditions, competitive dynamics, technological developments, regulatory frameworks, macroeconomic conditions, and access to capital. The DMG, ¶¶82–83 should be expanded to reflect this broader set of factors.

61. The DMG should also make clear that a dynamic competitive assessment may confirm either the presence or absence of market power. This is particularly relevant where a firm's ability and incentive to invest are constrained by financial limitations or an absence of economies of scale or scope — in which case an increase in market power or scale may be pro-competitive, generating stronger incentives to invest over time.

D. Countervailing factors (Paras 84 – 110)

1. Two years is not an appropriate benchmark for all markets (Paras 96 – 97)

62. The DMG's *de facto* presumption that entry or expansion must occur *'within two years'* to constrain the merging parties (DMG, ¶96) has no basis and is ill-suited to markets with long investment, permitting, and deployment cycles. In such markets, credible entry can take longer yet still exert effective competitive discipline — for example through pre-committed spectrum acquisition, disclosed investment plans, or announced network sharing with independent parties. The DMG should therefore recognise that publicly announced and credibly funded entry can constrain firms before completion: the credible threat of entry, even where not yet materialised, is capable of disciplining competitive behaviour. The two-year horizon is in any event inconsistent with the DMG's own approach to potential competition, which provides that *'the relevant period … depends on the specific circumstances and market characteristics of each case'* (DMG, ¶203). The same principle should apply to entry and expansion.

2. Out-of-market constraints should not be discounted as relevant countervailing factors (Paras 101 – 103)

63. Connect Europe and the GSMA welcome the DMG's assessment of all competitive constraints (DMG, ¶101). However, the statement that out-of-market constraints *'often constrain the merged entity to a limited degree'* is unnecessary (DMG, ¶102). The degree of any constraint is a matter of evidence. It is also inconsistent with the section on potential competition (DMG, ¶¶193-207) which recognises the relevance of out-of-market constraints in specific circumstances. The Commission should accordingly refrain from binding itself and remove the relevant paragraph.

3. The Commission's statement vis-à-vis oligopolistic markets and reliance on market shares greater than 50% as evidence of dominance miscites the case law and EUMR (Paras 111 – 113)

64. The DMG states that a firm may possess substantial market power without being dominant, citing *'certain oligopolistic markets where a small number of competitors have substantial market power'* as an example (DMG, ¶113). The text references Recital 25 EUMR, which explicitly recognises that *'many oligopolistic markets'* can exhibit *'a healthy degree of competition'*. The same holds true of the text's reference to the Court of Justice's *CK Telecoms* judgment. DMG, ¶113 thus distorts the text of the EUMR. It can correct the asymmetry by including the statement that oligopolistic markets can frequently be highly competitive or delete the paragraph entirely to avoid any structural negative presumption for mergers in oligopolistic markets.

65. The presumption that shares above 50% are evidence of dominance should be removed. The AKZO presumption — that very large shares are, "save in exceptional circumstances", evidence of a dominant position (*AKZO Chemie*, ¶60) — originates in the context of Article 102 TFEU enforcement against an existing undertaking. Even there, the Courts have confirmed that a substantial market share '*is not an immutable factor*' whose significance '*varies from one market to another depending on their structure*' (*Ryanair 2*, ¶219; *Hoffmann-La Roche*, ¶40). In merger control, the position is stronger still: dominance must be established prospectively, on the specific facts of the transaction, through a multi-factor structural assessment (*Gencor*, ¶¶201–205). A share of 50% or more may be a starting indicator warranting further inquiry, consistent with HMG, ¶17, but it cannot substitute for that inquiry. Importing a rebuttable presumption from Article 102 enforcement into forward-looking merger appraisal is analytically unsound and risks converting what the case law treats as an evidential starting point into a structural trigger for intervention — precisely the asymmetric approach that the DMG must avoid.

II. Anticompetitive effects introduction (Paras 114 – 118)

66. The introduction of an effects-based, overall assessment of the facts and evidence in a specific case as emphasised in Part I of the DMG (DMG, ¶32) is welcome. The explicit recognition (DMG, ¶¶114-115) that

this analysis must be holistic covering both direct and dynamic effects (and the interplay between the two), represent meaningful steps towards outlining an analytical framework better suited to the realities of innovation- and investment-driven markets. This section should, however, be clear that it is limited to identifying potential anti-competitive effects/harm since the Commission cannot conclude on SIEC without an overall assessment, including the efficiencies put forward by the merging parties and later on balancing. DMG, ¶117, ¶119, ¶¶121, 123-124, ¶126-127, ¶130-131, ¶138 and similar should therefore make clear that identifying a theory of harm is not equivalent to establishing SIEC and replace any reference to a SIEC by harm.

67. The breadth of the theories of harm mean that the Guidelines could usefully provide guardrails for when the Commission will pursue one or more theories of harm. This would serve the Commission's simplification agenda as well as reducing the data and information the merging parties need to produce and the Commission needs to review. This could be achieved in DMG, ¶116 by specifying that the Commission will focus its assessment on those types of effects where there is a realistic prospect that such effects are likely. Such a clarification would also not restrict the Commission's room for manoeuvre as it remains free to investigate at any point if it emerges that a theory of harm becomes more likely (and to discount theories where it becomes clear they are less likely). The section would also benefit from a summary of the assessment framework, namely identifying the dimensions of competition relevant for the case (e.g. price, quality, innovation, investment and sustainability), assess any loss or gain on such dimensions and, subsequently, a conclusion following a balancing exercise between harm and benefits.

68. Finally, as drafted, the Anticompetitive Effects section gives greater weight to factors pointing to harm than to factors suggesting harm is less likely. This is inconsistent with a genuinely effects-based approach (*Bertelsmann*, ¶47-50: *Tetra Laval*, ¶42-44; *United Parcels Service*, ¶32) and risks a systematically biased assessment. A more balanced approach would move away from presumptions and accept market characteristics which may point away from harm – this approach is for example adopted in the theory of harm on network effects where the Commission recognises that market power arising from network effects may be mitigated by the degree of interoperability and data portability (¶156).This applies *mutatis mutandis* to DMG, ¶118 where an assessment of different anti-competitive effects may also illustrate why any potential harm is likely to be short-lived due to the dynamics of the market.

A. Loss of head-to-head competition (Paras 119 – 168)

1. Market share presumptions cannot substitute for a harm or a SIEC finding (Paras 119 – 129)

69. The DMG create implicit presumptions of harm or SIEC based on market shares or concentration levels (DMG, ¶121, ¶123 and ¶¶127-128). This is inconsistent with the Commission's obligation to carry out an effects-based, case-by-case assessment, based on a sufficiently cogent and consistent body of evidence, and to show that it is more likely than not that the concentration would significantly impede effective competition (*Thyssenkrupp*, ¶127; *CK Telecoms*, ¶87). Market shares and increments alone cannot establish market power or harm (let alone a SIEC). In line with case-law (*CK Telecoms*, ¶84; *Bertelsmann*, ¶¶47-50), a robust analytical framework should underpin each theory of harm. Therefore, the DMG should not create generic negative presumptions but must demonstrate likely negative effects rather than infer harm from market structure alone (*Ryanair 1,* ¶42).

70. Connect Europe and the GSMA welcome the reiteration that structural indicators are *'first indicators'* of potential harm but DMG, ¶123 should clarify that they are first indicators of potential anti-competitive effects (not of a SIEC). . The term '*typically*' should be removed from ¶126 as otherwise it implies that the Commission may find anti-competitive effects based on market shares and concentration metrics alone. Irrespective of the level of market shares or increment, such metrics cannot, by themselves, be sufficient to establish harm under a loss of head-to-head competition theory of harm, also SIEC shall be replaced by harm. The DMG also overstretch the case law on structural indicators (DMG, ¶124). *Sun Chemical Group* makes the point that higher HHI increments are more "indicative" of potential concerns, but not that

a larger HHI increment axiomatically means concerns are more likely. This depends on a range of factors. For the same reasons, the reference contained in DMG, footnote 185 should be amended since whether the merged entity will be able to profitably raise prices depends on significantly more than simply the size of the increment.

71. The Guidelines should also not create an evidentiary presumption of anti-competitive effects, let alone a SIEC, where the merged entity would have combined shares above 40% or an HHI above 2,000 combined with non-negligible increments (DMG, ¶127). This approach has no basis in case-law and risks false positives (BRG, executive summary and ¶218). Such a presumption undermines the DMG's positive developments on the greater acceptability of efficiencies, the symmetry of evidentiary standard for harm and efficiencies, and the balancing exercise required before concluding to a SIEC. If the Commission seeks to reflect a sliding scale principle – i.e., that the greater the market power, the more likely a loss of head-to-head competition may be harmful – this is already addressed in ¶124 and ¶125.

72. DMG, ¶128 should be similarly qualified. Where one merging firm already has significant market power, a limited market share increment cannot be presumed to give rise to concerns. This should only be in cases where additional supporting factors are present, as reflected in the precedent cited at DMG, footnote 189 (*Parker/Meggitt*). In that case, the Commission identified the following supporting factors before finding that a small increment was nevertheless problematic: (i) the inability of remaining competitors to effectively constrain the merged entity, including because of limited market presence or lack of relevant capabilities; (ii) customers' limited ability to credibly resort to alternative suppliers; and (iii) significant barriers to entry that render the emergence of new constraining players unlikely. The DMG should make explicit that the Commission must identify such supporting factors — it is not sufficient to rely on the market share increment alone.

2. Closeness of competition must be forward-looking and symmetrically assessed (Paras 130 – 137)

73. The closeness of competition framework is limited to a static snapshot of the parties' position at the time of notification (DMG, ¶¶130–136). This is too narrow. The framework should be forward looking (i.e. showing that closeness can be expected to remain, or not, over time), taking into account foreseeable changes in regulation and technology, investment trajectories and market structure, including the fact that post-merger firms may reposition to reduce cannibalisation and / or rivals may reposition (Gandhi et al. (2008)).The asymmetry at DMG, ¶131 should likewise be corrected: if closeness is treated as strong evidence of potential harm (rather than SIEC, under the current drafting, which should be modified), distance should carry equivalent evidential weight in the opposite direction.

74. The reference to internal documents in DMG, ¶132 should also be qualified. Internal documents showing that the parties monitor each other cannot, without more, establish closeness of competition, since such monitoring is frequently standard commercial practice. The Commission must be required to show that the documents reflect genuine competitive interaction specific to the parties, rather than routine market surveillance of all competitors in the market. Otherwise all the evidence shows is that firms take competitive decisions based on the competitive positioning of their rivals.

75. The Commission should apply a consistent and transparent methodology when selecting and weighing the factors used to assess closeness of competition (DMG, ¶¶133–135). DMG, ¶134 should also make clear that a highly concentrated or oligopolistic market does not, by default, mean that all firms are close competitors. Closeness must be assessed on the specific facts, including actual patterns of rivalry, substitution and likely future market developments.

76. DMG, ¶136 should be revised to remove the presumption that substantial market power can itself show an important competitive constraint even where products are not close substitutes. Closeness of competition must be established by evidence of substitutability and direct competitive interaction. Market power is a separate concept and cannot serve as a proxy for closeness. This would mean that on the sole basis of

market power the Commission would be able to conclude on harm which is not compliant with case law and the DMG itself.

77. DMG, ¶137 allows the Commission to use pricing-pressure tools such as GUPPI and CMCR as complementary evidence. However, these tools are based on strong assumptions on the mode of competition and closeness of competition, which might not always correspond to the industry in question. In addition, the metrics used to approximate diversion ratios (like portability data) are affected by switching that might be unrelated to price differences but rather be affected by quality differences and investment. Last, xUPP metrics only provide an order of magnitude of the best response of the merged entity, not of the equilibrium effect, and might not be suited to balance short term price effects with the merger effects on other dimensions of competition. Building on the BRG report, DMG, ¶137 should confirm: (i) that the assumptions underlying the relevance of xUPP measures will be explicitly assessed in light of the market characteristics; (ii) that they must be properly calibrated on direct measures of prices and use data that directly measure *price* diversion ratio that are unaffected by other dimensions of competition (iii), that they incorporate efficiency pass-through for short-term price effect where credibly substantiated. In addition, DMG, ¶137 should explicitly acknowledge the fact that, when firms compete along non-price parameters such as quality, price-focused measures such as xUPP may provide a distorted view of the merger effect. In such cases, the assessment should rely on other tools reflecting all relevant dimensions. These tools could for example be modified xUPP measures based e.g. on quality adjusted prices or merger simulations accounting for price and non-price factors.

3. Important competitive force concept must be rebalanced (Paras 138 – 142)

78. Connect Europe and the GSMA welcome the guidance on the ICF concept in line with *CK Telecoms*. However, as drafted, the concept operates exclusively as an aggravating factor: a merger involving an ICF '*may*' result in a SIEC (the text should refer to harm rather than SIEC), while neither the absence of ICF status in the merging parties nor the presence of ICFs post-merger is evidence of dispelling competition concerns. DMG, ¶139 should adopt a symmetric formulation providing: where ICF rivals remain active in the market post-merger, this should constitute strong evidence that competition concerns are limited, just as the elimination of an ICF may support concerns.

79. In the same vein, the DMG should also recognise that some firms may exert less influence on the competitive process than their market shares or other metrics suggest, including because they have limited capabilities or weaker ability or incentives to invest or innovate, especially when looking from dynamic perspective. The more limited the role of at least one merging party in competitive interactions, the less likely the merger is to cause harm. Future changes in market conditions and competitive dynamics should also be included in this assessment.

80. The definition of an ICF also needs to be sufficiently precise to be meaningful. The criteria at DMG, ¶140 for an ICF (e.g. '*a business model that challenge those of other[s]*', '*particular high quality*' or '*other characteristics valued by customers'* or '*increasingly demanded by customers'* are broad enough to capture almost any differentiated market participant. DMG, ¶140 should therefore require that the relevant characteristic be genuinely disruptive, novel or structurally distinct and their replication requiring significant investment, time, specific know-how or significant strategic changes. More generally, the ICF assessment also needs to be forward-looking.

81. DMG, ¶138 should require an assessment of each party's commercial sustainability and competitive trajectory, including its future contribution to investment and qualitative competitive position. For example, a firm pursuing an unsustainable short-term pricing strategy does not constitute a durable "important competitive force".

4. Capacity constraints, network effects, non-structural links and minority shareholdings require a balanced approach (Paras 143 – 168)

82. Non-structural links (including network-sharing, distribution and licensing agreements) are presented as a potential source of reduced competitive constraint, with the Commission potentially aggregating the market shares of linked firms (DMG, ¶¶167–168). The same logic applies symmetrically: where such links already exist between the merging parties, the merger may remove less rivalry than combined shares suggest. In such circumstances, the Commission must assess the actual incremental reduction in competition, rather than assume full pre-existing rivalry.

83. The treatment of non-controlling minority shareholdings should be recalibrated. Material influence must be established case-specifically, by reference to governance arrangements, board composition, information access and economic incentives — not inferred from a stake alone. The 5% safe-harbour threshold (DMG, ¶165) is too low and sits uneasily with the 10% disclosure threshold in Form CO. Nor should information flow concerns be treated as a standalone theory of harm (DMG, ¶163); the Commission should first assess whether appropriate safeguards are available before inferring competitive concerns.

B. Effect on investment competition must be assessed holistically, not presumptively negative (Paras 169 – 174)

84. This section of the DMG should clarify the distinction between the investment level and outcomes. Higher pre-merger levels of investment do not necessarily translate into better products, greater choice, or more valuable investment; conversely, a reduction in duplicative or fragmented investment may improve the effectiveness and allocation of resources, leading to stronger investment outcomes.

85. The Commission's assessment should focus on the likely impact of the transaction on competitive outcomes, not merely on whether the merger may lead to "*the discontinuation, downsizing, delay or redirection of investment projects*" (DMG, ¶170). Lower levels of investment (in value) post-merger should not be automatically interpreted as evidence of harm, as the rationalisation of investment may still result in better outcomes, for example, if the combination of merging parties resources and capabilities increases the probability of success, accelerates the completion of the investment and/or allows for the same investment to benefit a larger set of consumers. In other words, a merger may lead to less but better investments.

86. It should therefore be clarified in DMG, ¶170 that to establish harm, the Commission should examine whether, and through what mechanism, a potential reduction in aggregate investment is likely to translate into a deterioration of consumer welfare along the relevant parameters of competition, such as quality, choice, investment, innovation, or other non-price dimensions that are material in the specific case. Doing so would require the Commission to establish the extent to which consumers value the benefits that would, absent the merger, be generated through the investment. This requirement should be equivalent to the one imposed, under the "benefit to consumers criteria", on merging parties seeking to establish that the merger would result in dynamic efficiencies in the form of increased investment or innovation. It should symmetrically apply to the assessment of potential harm.

87. This section of the DMG should also recognize the fact that removing rivalry between merging parties does not necessarily result in worse outcomes. As BRG (2026) demonstrates, citing Denicolò and Polo (2018), Bourreau and Jullien (2018), and Jullien and Lefouili (2018), mergers can affect investment through multiple channels — including innovation diversion, margin expansion, demand expansion, spillovers and synergies — with no general presumption of harm. Firms are heterogeneous in their capabilities and financial capacity (BRG, citing Helfat et al, 2009). The DMG should therefore require a case-specific assessment of whether a party's investment capacity is impaired, whether its constraint would weaken over time, and whether the merger enables investment that would otherwise not occur. This is consistent with the DMG's own recognition that financially constrained firms may be unable to finance otherwise profitable and pro-competitive investment projects and that acquisition by a financially sound firm may increase the target's ability to invest and innovate (DMG, ¶325).

88. Against this background, the Commission should assess both risks to investment and reasons why harm may be unlikely. It should recognise that where one party's investment capacity is impaired in the counterfactual, the constraint removed may be limited and, on the contrary, the merger may strengthen future investment and expansion, in particular through scale (Section I.A). It should also recognise that mergers may enable firms to compete more effectively with well-resourced rivals. With this in mind, the DMG should include at ¶170 a wording similar to ¶175 on loss of innovation competition where the Commission recognises that such potential loss is weighed against evidence from the parties that the merged entity would have incentives to use liberated resources to pursue other promising innovation paths.

89. Greater precision is also needed over the factors for assessing loss of investment and expansion competition (DMG, ¶171), including the evidentiary standard. The reference to Section II.A.3 is insufficient because it focuses on business model rather than broader drivers of investment capabilities and incentives (see changes proposed to DMG, ¶¶81–82). The reference to Section II.B.2 should be removed because loss of investment competition cannot be assessed by the same framework as head-to-head competition – such a high level reference is too vague and creates uncertainty.

90. The draft should make clear that loss of investment competition must be assessed in light of rivals' investment capabilities and incentives. This should be a distinct inquiry, not part of the closeness of competition assessment as suggested in DMG, ¶174. This should for example assess the extent to which firms not involved in the merger will have the capacity and incentive to maintain, reduce or enhance investment and expansion pressure post-merger by investing in similar capabilities as the merging firm and thereby discipline the merged entity through timely and effective investment responses.

91. The Guidelines should clarify the key factors for the assessment of closeness of competition in DMG, ¶174. Such factors may include: whether the merger parties are undertaking comparable levels of investment in similar capabilities (or not), assessing the extent to which the parties' investment and expansion strategies constrain or respond to one another, comparing the characteristics of merging parties' investment strategies, their timing, sequencing, geographical scope, technological objectives and the target customer segments, proven track record of materialising investments and responding to technological progress, assessing access to financing and the impact of funding from capital markets on their long-term investment capacity.

92. A new paragraph should also be introduced after DMG, ¶174 to acknowledge investment hold-up: where high fixed costs and competitive duplication prevent any single operator from earning an adequate return, consolidation may be the only mechanism capable of unlocking socially valuable investment (BRG (2026), ¶139). As noted above, this could be part of criteria to assess dynamic competitive interaction and dynamic competitive potential with respect to investment competition.

C. Potential competition section requires symmetric evidentiary standard (Paras 193 – 207)

93. The potential competition section lowers the evidentiary threshold for establishing harm without imposing a corresponding standard on the Commission to prove anticompetitive effects. DMG, ¶195 should remove the presumption that oligopolistic markets have limited competition since it is contrary to EUMR recital 25 that states that many oligopolistic markets are competitive. DMG, ¶205 should also not imply that weak potential competitors become more relevant simply because the acquirer has market power. This is inconsistent with case law recognising that any reduction in potential competition may be offset by other factors, such that the competitive position of an already dominant undertaking remains unchanged (*Tetra Laval*, ¶127). The DMG should require robust evidence of a genuine constraint, not theoretical entry potential.

94. The same evidentiary standard must apply symmetrically to potential competition as a theory of harm as applies to potential competition as a countervailing factor. The Commission currently takes the position that potential competition is not a constraint for an actual loss of competition. But applies no such framework when assessing the loss of potential competition. Furthermore, as BRG explains, the credible threat of entry can discipline firms' behaviour even where entry does not materialise (BRG (2026), ¶200).

This contestability effect should be credited within the competitive assessment (DMG, ¶¶86-100).The DMG should apply a single framework for assessing potential competition – as a theory of harm or a countervailing factor – in the competitive assessment.

III. Efficiencies

A. Introduction (Paras 291 – 301) and general remarks

95. Connect Europe and the GSMA welcome the Commission's objective of giving efficiencies '*a key role*' in merger assessment (DMG, ¶291). Recognition of pro-competitive merger effects both in the assessment of harm and in the efficiencies analysis is critical to support investment, innovation and production growth. The efficiencies framework, as drafted, risks imposing a high bar creating risks for its full workability. The key problem is asymmetry. Although DMG, ¶21 states that the Commission considers both anticompetitive and procompetitive effects with the same standard in its SIEC assessment, Section II.C. still treats efficiencies as exceptional, less credible than theories of harm, and unlikely to offset substantial harm, especially for dynamic efficiencies or mergers involving larger firms. That asymmetry appears, in particular, in:

a. asymmetric standard of proof remaining within the 3-prong test;

b. temporal conditions on efficiency claims that have no counterpart in the harm assessment;

c. a tendency to treat certain categories of efficiency, in particular dynamic or non-quantifiable evidence, as less probative and a large margin of discretion for the Commission when assessing evidence proving benefits while harm does not have to be quantified; and

d. asymmetric treatment of harm and efficiencies through introduction of presumptions, including throughout the balancing exercise.

96. Further, the framing in the DMG of efficiencies as a mechanism to '*outweigh'* harm (DMG, ¶25, ¶35, ¶297, ¶304, ¶308, ¶316, ¶327, ¶328, ¶330 and similar) treats the balancing exercise as a sequential exercise in which harm is assessed and established first, and efficiencies are then used to challenge a finding already made. The EUMR requires the Commission to take into account merger harm and benefits in a holistic assessment (EUMR, Article 2(1)) to determine whether there is a significant impediment to effective competition. The process otherwise risks an approach in which the Commission confines itself to picking holes in the merging parties' efficiencies which it would not consider fatal to its own theories of harm (BRG, ¶¶230-231 (2026)).The approach also risks blurring the line between the Commission's roles as both prosecutor and adjudicator by tilting the balance in favour of the Commission's assessment of harm. Therefore, any such reference shall be modified to ensure a compliance with the balancing exercise where harm and benefits are measured in parallel to assess whether there is a SIEC.

97. The DMG should also correctly formulate the overarching test — namely that efficiencies must counteract harm for a concentration not to give rise to a SIEC — by separating the section on the assessment of efficiencies from the section on balancing. Merging parties cannot be required, at the stage of the theory of benefits, to show how efficiencies would counteract a merger's adverse effects on competition (¶308), whether expected benefits would equal or exceed harm (¶316), or that benefits materialising over a longer time horizon would be substantial enough to counteract anticompetitive effects (¶328). Those questions form part of the balancing exercise, which forms the final stage of the assessment. Even where benefits are not sufficient to outweigh harm, they must still be factored into the balancing exercise — this would also allow remedies to be calibrated to the established (reduced) harm.

98. Connect Europe and the GSMA also have a number of comments on the specific paragraphs in the Introductory section to efficiencies. First, consistent with the DMG's distinction between investment in assets and investment in innovation, DMG, ¶293 should recognise that scale is also relevant for

investment-heavy sectors and not only innovation-heavy sectors for the reasons addressed in our comments on the Introduction.

99. Second, while Connect Europe and the GSMA welcome the structured taxonomy distinguishing between direct and dynamic efficiencies (DMG, ¶¶294-296), the treatment of direct and dynamic efficiencies as categorically distinct does not reflect how efficiencies operate in practice. These categories form a continuum: integration-driven efficiencies frequently go hand-in-hand with, or create the incentive for, investment-driven dynamic efficiencies. Connect Europe and the GSMA propose that the Commission clarify that direct and dynamic efficiencies exist on a continuum, are often interrelated and that integration-driven efficiencies have the ability to drive dynamic efficiencies (BRG, ¶¶[181-183 (2026) / Padilla et al. (2026)).

100. Third, the phrase '*on a lasting basis*' in DMG, ¶297, ¶305, ¶327, 339 and similar imposes a freestanding temporal condition on efficiencies that has no counterpart in the theory of harm i.e., there is no requirement to show that harm will persist on a lasting basis. The Commission should remove '*on a lasting basis'* as a freestanding durability requirement. The same holds true for the references to '*durably*' counteract or not be temporary in the same paragraphs (and applies by the same token to DMG, ¶351). This does not compromise the overarching premise of the SIEC test that when balancing harm and efficiencies, the latter should outweigh harm for the merger not to result in a SIEC, but ensures symmetry in the standard of evidence required for merger harms and benefits. Fourth, the taxonomy chapters incorporate the NLAA ('*no less anticompetitive alternative*') limb of the merger specificity test — for example, ¶302(b) requires that the efficiency "cannot be achieved by growing organically". This is inconsistent with a genuinely symmetric approach, under which efficiencies should be measured against the same '*more likely than not*' counterfactual. The NLAA is an additional threshold that is not required by the EUMR or by ECJ case law (see also merger specificity, ¶102). The same NLAA requirement has been added to ¶302(c) and (e) and 325(b), and should be removed throughout.

101. Fifth, resilience may derive from any combination of assets that leads to increased security of supply, broader or reinforced infrastructure, or greater scale. Limiting resilience efficiencies to those arising from complementary assets is not justified: the reference to '*complementary*' should be deleted from DMG, ¶299. The DMG should also add, as a recognised category, resilience that results from increased scale — where greater scale improves both the ability and the incentive to invest in resilience.

102. Finally, granting the Commission a margin of discretion in weighing efficiencies and harm without clearly defined limiting principles creates an asymmetry between the assessment of harm and the assessment of benefits — particularly where incommensurable price and non-price parameters of competition are involved (¶300, ¶342). At a minimum, it should be clarified that the Commission cannot, when exercising its margin of discretion, give greater weight to evidence of harm than to evidence of benefits. It should equally be recognised that economic evidence is inherently assumption-dependent, whether adduced to establish harm or efficiencies. Where the principal assumptions underlying an economic model are supported by evidence and the conclusions are not materially sensitive to changes in those assumptions, the economic evidence should not be rejected on robustness grounds alone (see also response to DMG, ¶27 and footnote 45).

103. In practice, the same evidential threshold should be applied to both harms and efficiencies. For example, if the 3 criteria test were applied to harm (e.g. providing internal business documents to corroborate modelling conclusions that prices would be increased post-merger) then it would be harder for the Commission to reach a finding of harm. This means that if modelling - with supporting evidence for key parameters – is sufficient to establish potential harm then a similar evidential threshold should be applied to benefits. Similarly, if independent documentary evidence is required to complement modelling evidence for the benefits, then similar requirements should be imposed on the process of establishing potential harm or such a requirement should be removed. In practice, it should not be necessary to have independent documentary evidence to corroborate the conclusions of the modelling. This is unlikely to exist in most

cases and its absence should not be taken as evidence that the benefits are not verifiable (see DMG, footnote 61), as it is already not a condition for the harm.

B. Assessment of direct efficiencies (Paras 302 – 323)

1. Taxonomy of direct synergies

104. The DMG's structured taxonomy of direct and dynamic efficiencies is helpful as a starting point. However, because dynamic efficiencies can also be "direct" in their effects on market outcomes, the terminology could be improved. Referring instead to "static" efficiencies may provide greater conceptual clarity.

105. The key distinction is not whether efficiencies are direct or indirect, as all efficiencies directly result from the change in ownership brought by the merger, but rather whether they are static or dynamic in nature. On the one hand, static efficiencies improve outcomes within the existing structure of supply. These include, for example, reductions in production costs or improvements in quality for existing products. On the other hand, dynamic efficiencies improve outcomes by enhancing the ability or incentives of the merging parties to invest, innovate, or reconfigure production. These efficiencies operate through changes to the structure of supply itself, such as the development and launch of new products, process innovation, or entry into new markets.

106. The terminology and categorisation should better reflect that static and dynamic efficiencies form part of a continuum rather than mutually exclusive boxes. In practice, many efficiencies will exhibit both static and dynamic elements, and the boundaries between categories may be fluid. A more flexible framework would therefore acknowledge overlaps and focus on the underlying economic mechanisms and timing of the efficiencies, rather than assigning them rigidly to discrete labels.

107. Finally, the taxonomy chapters incorporate the NLAA ('*no less anticompetitive alternative*') limb of the merger specificity test — for example, ¶302(b) requires that the efficiency "cannot be achieved by growing organically". This is inconsistent with a genuinely symmetric approach, under which efficiencies should be measured against the same '*more likely than not*' counterfactual. The NLAA is an additional threshold that is not required by the EUMR or by ECJ case law The DMG's taxonomy of complementary asset efficiencies at DMG, ¶302(a) should not require parties to demonstrate that assets '*cannot be easily traded*' but rather *'whether the assets 'are not likely to be replicated absent the merger, taking into account regulatory, commercial, and practical constraints.'* Trading may be legally possible but unrealistic for a variety of reasons.

2. Verifiability

108. The verifiability test should only require the merging parties to evidence the magnitude of the relevant efficiencies (DMG, ¶¶304 and 329). It is for the Commission to decide whether efficiencies are substantial enough to counteract harm as part of the final balancing exercise. Nor should the DMG impose freestanding requirements that efficiencies *'enhance competition'* (DMG, ¶¶297, 305 and 327), or materialise within a short timeframe (DMG, ¶¶306). Efficiencies need only be sufficiently evidenced as to their nature and magnitude. Longer-term efficiencies may be verifiable where the evidence supports them, for example in sectors with long investment cycles. Their weight should therefore turn on the evidence, not on any presumption that dynamic or longer-term benefits are inherently less predictable or less quantifiable (DMG, ¶¶306 and 328).

109. The direct and dynamic efficiencies sections also risk creating an implicit hierarchy favouring quantitative over qualitative evidence, contrary to the symmetry principle in DMG, ¶31 (see DMG, ¶307, ¶316, ¶329 and 336). As with harm, the relevant standard should be whether the claimed efficiencies are more likely than not on the basis of a cogent and consistent body of evidence; quantification may strengthen that evidence but should not be a condition of verifiability. Requiring exact or precise quantification, or giving harm priority where harm and benefits appear comparable but benefits cannot be precisely quantified (DMG, footnote 395; ¶308, ¶316, ¶329), would impose an impossible and asymmetric standard (the

Commission does not have to specifically demonstrate or quantify harm (DMG, ¶22)). By the same logic, the Commission's inability to precisely quantify the price effects would have to weaken its non-price theories of harm. Finally, the DMG should explain the limiting principles for what constitutes a sufficiently robust methodology (DMG, ¶307), rather than leaving this to broad discretion (see also response to DMG, ¶27 and footnote 45).

DMG, ¶¶308-309, as well as the corresponding section in dynamic efficiencies (DMG, ¶¶329-330), should provide more guidance on the evidence and measurement methodology the Commission will accept to establish the nature and magnitude of efficiencies. This should include, for example, the following:

- types of documentary evidence that will be considered and the inferences that can be drawn from the absence of such evidence;
- business planning and simulation analysis of proposed restructuring or reorganisation that would take place following the merger;
- survey and other research evidence developed by the merging parties for the purposes of evaluating efficiencies;
- modelling and other types of analytical evidence, including cost modelling, business and financial modelling, engineering modelling, among others.

110. The DMG currently stress the importance of pre-merger evidence of efficiencies from independent external experts for both direct and dynamic efficiencies (see DMG, ¶¶309 and 330). This is impractical. It implies that merging parties would need an independent expert to have elected to assess the benefits of a merger before it was even in contemplation. This should be stroked from the DMG so as not to create impractical expectations. In practice all synergy assessments are conducted once the merger discussions have started and either internally or through external consultancy and often both. Moreover, it is unclear what independent in this context would mean and how can such an independent expert have sufficient business expertise to assess synergies. With respect to internal documents, the DMG note in the harm section that '*whereas internal documents addressing the theory of harm investigated have high probative value, the absence of such documents does not prove the absence of harm'* (DMG, footnote 61, emphasis added). A corresponding clarification should be included in the efficiencies section, to ensure symmetry, making clear that the absence of internal documents discussing the efficiencies advanced by the parties should not be taken to imply that such efficiencies do not exist or cannot be substantiated.

111. Generally, the DMG should make clear in DMG, ¶¶309 and 330 that economic modelling and business plans are relevant when evaluating the magnitude of efficiencies. In doing so, it should make a clear distinction between the *economic modelling* used to assess and quantify (direct/static and dynamic) efficiencies, and the *assumptions* on which such modelling rely on. Internal documents and third-party reports prepared outside of the merger context are unlikely to assess and quantify efficiencies at the level of granularity typically expected by the Commission, especially when it comes to dynamic efficiencies such as increased ability and incentive to invest. However, these documents may provide useful insights and evidence to substantiate the *assumptions* used in the modelling developed by the parties to assess efficiencies in the context of the notification. Accordingly, the DMG should make clear that efficiencies claim should be based (i) on sound and robust modelling and (ii) on assumptions which can be credibly substantiated using internal documents, industry reports or other similar sources. Reference should be made here to the staff working document on the submission of economic evidence, which elaborates on best practices for economic modelling.[5] This would ensure a symmetry between the assessment of harm and benefit: when assessing a risk of price increase using a GUPPI, the Commission does not typically expect to find in internal document or third party reports corroborating evidence that the parties would

(1) [5] Commission Staff Working Paper – Best Practices for the Submission of Economic Evidence and Data Collection in Cases Concerning the Application of Articles 101 and 102 TFEU and in Merger Cases.

increase prices post-merger. It would, however, use these documents to substantiate the assumptions used in the GUPPI analysis. The same logic should apply to the assessment of efficiencies[6].

3. Merger specificity

112. The DMG's NLAA standard for merger specificity imposes an additional bar for efficiencies, beyond a symmetrical assessment of efficiencies and harm effects of a merger against the more likely than not counterfactual. The NLAA test is not a legal requirement. The EUMR only stipulates simple causality: efficiencies are those which are *'brought about by the concentration'* (EUMR, Recital 29). There is also no basis for why the efficiencies test under the EUMR should be set by reference to a translation of the 'indispensability' condition in Article 101(3). The EUMR, as lex specialis, is not tied to Article 101 TFEU: its legal base is Articles 103 and 352 TFEU. The EUMR equally makes no reference to the indispensability criteria of Article 101(3) vis-à-vis the efficiencies test. This is particularly telling since Article 2(4) EUMR, which addresses spillover effects in merger control, explicitly references Art. 101 (1) and (3) TFEU.

113. Beyond that there is no CJEU precedents that would require the application of the adapted indispensability criteria. As such, the Commission has the freedom to set an appropriate standard for merger specificity (consistent with EUMR, Recital 29 which permits it to issue guidelines on the assessment of merger efficiencies). EUMR Recital 29 only refers to simple causation "benefits brough about by the concentration". For a symmetrical application of the standard of proof for merger specifity, in line with the EUMR and case law, would be a simple causation, ie that the efficiencies would not occure in the more likely than not scenario absent the merger.

114. The NLAA standard also does not fit with the logic of the DMG that negative and positive effects are assessed simultaneously. The NLAA logic derives from Art. 101 (3), which presupposes that harm has already been established. Furthermore, having the same more likely than not counterfactual for harm and efficiencies would also enable a symmetric balancing exercise between both for the SIEC assessment.. Otherwise, the balancing would rely on asymmetric pre-assessments, resulting in comparing apples with oranges. Therefore, to set a truly symmetric approach, as envisaged in the guiding principles chapter, the Commission should measure both harm and efficiencies against the more likely than not counterfactual.

115. Should the Commission nonetheless reject such a truly symmetric approach and want to have the additional hurdle of NLAA, which is not required by the law, it must ensure that this NLAA test is not used to give disproportionate weight to harm, by applying an excessive evidentiary standard. The DMG should apply the same standard of proof to efficiencies as for harm to adopt a workable standard for merger specificity:

    a) The NLAA should only require that merging parties prove they are unlikely to enter into less anti-competitive alternatives capable of delivering similar efficiencies as the merger. The DMG currently provide that merging parties prove that '*such arrangements would not be realistic and attainable'* (DMG, ¶311) which can, as an example, be evidenced by the relevant arrangements *'do not exist or are very uncommon in the market'* (DMG, ¶312). This goes far beyond 'but for' causality The Commission does not need to prove that a merger's harmful effects are very unlikely to occur in the counterfactual, therefore merging parties should have a symmetrical standard for efficiencies. As a practical matter, if such arrangements have already been assessed in parallel to a merger and have not been retained, this should be disregarded as likely scenario.

[6] In the recently published draft revised guidance on efficiencies, the CMA makes a similar point at paragraph 8: "*The CMA recognises that merger firms' internal documents may not address all aspects of the CMA's efficiencies framework. In some cases, there may therefore be scope for merger firms to supplement their evidence with bespoke analysis, e.g., regarding the impact of the merger on their ability and incentive to innovate, or on their incentive to pass through benefits to customers. In considering the weight to place on such evidence, the CMA will consider the extent to which it is supported by other evidence. Economic modelling, for example, should reflect commercial realities and be grounded in evidenced assumptions and parameters*."

b) The DMG must also avoid requiring merging parties to prove a negative. Once the merging parties have established a *prima facie* case that less anti-competitive alternatives are unlikely to deliver similar efficiencies, the Commission should bear the burden of demonstrating that a viable alternative would deliver similar efficiencies.

c) Finally, the DMG must apply a consistent evidential standard to efficiencies. The DMG currently provide that *'where part of the claimed efficiencies could be achieved through an alternative or is required to adhere to regulation*, *the Commission only recognises the incremental efficiencies'* (DMG, ¶314). This is impractical and unduly complex. The test needs to be simple and harm and benefits must be held to the same standard: the merging parties must be likely to enter into such NLAA.

116. These changes make sure that the NLAA test does not perpetuate the unduly low threshold for the Commission to dismiss efficiencies under the merger specificity test. The telecoms cases illustrate the consequences: in *Telefónica Deutschland/E Plus* (¶1098, ¶1101, ¶1104 and ¶1108), *Wind/Tre/JV* (¶1417 and ¶1422) and *Orange/MásMóvil* (¶1717 and ¶1718), network improvements were dismissed as not merger-specific because sharing agreements existed in the industry. This ignored whether the merging parties were likely to enter into network sharing agreements, evidence that showed network sharing arrangements frequently fail to deliver the expected benefits and theory which shows that contractual alternatives are frequently incapable of delivering similar benefits when efficiencies depend on adapting to changing, complex, or unforeseen circumstances for which contracts are ill-suited (*Aghion & Holden* (2011)).

117. Connect Europe and the GSMA submit that ¶314 should be refined to make clear that efficiencies can be taken into account where they mean the merged entity will achieve a high standard of compliance under regulation. Regulation is often framed broadly in terms of objectives and allows a significant degree of margin of discretion. The Commission should not discount efficiencies that would not have occurred in the counterfactual.

4. Benefits for consumers

118. Connect Europe and the GSMA recommend changes to the DMG's treatment of (A) out-of-market efficiencies (B) the assessment of pass through of efficiencies to consumers and (C) measuring improvements in quality.

(i) The DMG should take into account out-of-market efficiencies in full where appropriate

119. Connect Europe and the GSMA believe there is a structural flaw in the DMG's treatment of out-of-market efficiencies. The DMG stipulates efficiencies must *'benefit substantially the same consumers as those who would otherwise be harmed by the merger'* (DMG, ¶315 and 334) and harmed customers are fully compensated (DMG,¶357): in essence only allowing for out-of-market efficiencies where they are internalised by consumers in the relevant market. This formulation is not in line with the EUMR, which refers to consumers in general and does not, in practice, permit out-of-market efficiencies to be given any meaningful weight. More fundamentally, it creates a range of challenges:

a) It is incompatible with the EUMR test which requires the Commission to assess whether concentrations benefit the Internal Market, in particular by increasing competitiveness, growth and the standard of living in the Internal Market (EUMR, Recital 4). Where the Commission is faced with a concentration that will otherwise not take place and is beneficial in aggregate for the Internal Market, prohibition because it has a negative effect on some consumers runs contrary to the EUMR's purpose.

b) The requirement that the beneficiaries of efficiencies be "*substantially the same*" as the consumers allegedly harmed is not costless and should be abandoned. The Commission justifies

this condition on the basis that it should not make redistributive choices between different groups of consumers. However, this position is difficult to reconcile with the Commission's own acknowledgement that redistribution between customers within the same relevant market is not relevant for the assessment (DMG, ¶340). Whether redistribution is acceptable should not depend on the artificial boundaries of the relevant market. It should be addressed as a matter of principle. In addition, and more fundamentally, whenever a merger generates gains for some consumers and losses for others, any decision necessarily entails redistribution. Allowing the merger involves a trade-off between the welfare losses suffered by consumers adversely affected by the merger's impact on competition and the welfare gains accruing to consumers who benefit from merger-specific efficiencies. Prohibiting the merger reverses this distributional outcome. In either case, some consumers are made worse off and others better off relative to the counterfactual. This is unavoidable. The approach is particularly damaging for mergers which are beneficial for sustainability, resilience, European competitiveness, and productivity which may impact customers directly harmed by the merger but which may also felt beyond the individual group of consumers making decisions on purchasing services from the merging parties. By excluding any benefits that are felt beyond those consumers, the DMG are eliminating the possibility that such benefits are taken into consideration during the merger assessment process. This clearly contradicts statements elsewhere in the DMG which indicate that such considerations will be included in the assessment of benefits.

Against this background, the objective[7] "*substantially the same*" as the consumers allegedly harmed should therefore be removed. The assessment should instead focus on whether the merger leads to a net increase in aggregate consumer welfare. This broader interpretation must explicitly allow for out-of-market efficiencies including those with medium- to long-term gains (applying a relevant discount factor) to be factored into the balancing. The DMG should make clear that merger control is not aimed at preserving the *status quo*, but at promoting overall consumer welfare over time, even where the benefits and costs are distributed unevenly across consumer groups, markets, or periods.

120. The Commission's framework cannot coherently require consumers to internalise a benefit they are structurally unable to price at the point of contracting (DMG, para 340). The Commission should include external benefits that accrue over and above those that are take into account by individual consumers in their purchasing decisions.

121. While there can be some reticence to accept collective benefits due also to associated verification challenges, those are not unique to that category. The Commission regularly credits theories of harm with effects that are equally difficult to quantify and that extend across multiple customer groups and time periods. The Commission should be open to a broad range of methodologies for estimating the value of such collective benefits which are out-of-market. This could include, for example, conventional empirical approaches to measuring the societal benefit of externalities such as security and environmental sustainability. The DMG should also accept the potential of appropriate external institutions or organisations to place a value on such benefits that accrue to a country or region as a whole but lie outside individual consumer purchasing choices. As a general principle, the standard applied to out-of-market efficiencies should be no more demanding than the standard applied to the Commission's own theories of harm (BRG (2026); Padilla (2026)).

(ii) The DMG should take into account all efficiencies that are likely to be passed through to consumers (not just variable cost savings)

122. Connect Europe and the GSMA welcome the recognition that, in capital-intensive sectors, fixed cost savings including stepwise fixed costs can amount to relevant direct efficiencies (DMG, ¶317). However, footnote 390's ad 371's categorical statement that fixed costs do not affect pricing decisions is inconsistent

[7] The difference between the two decisions is that one results in a redistribution of existing welfare while the other results in the redistribution of potential welfare. Accepting the second type of redistribution while rejecting the first reflects a *status quo* bias, which favours customers that stand to lose from a merger at the expense of those that stand to gain.

with DMG, ¶317, footnote 391, and academic literature (see Section I.B.2 above). " In capital-intensive industries, including telecoms, energy and railways – sectors central to the Commission's EU growth and competitiveness agenda – spreading fixed costs through network integration is a core efficiency, and many nominally fixed costs affect = investment and hence medium-term pricing. (see also our input to ¶68-79) and footnote 390 and 371 should be modified in this sense.

123. In addition, the assessment should not be limited to focusing on benefits that will passed on to consumers only through lower prices, but should also include benefits related to increased investment capacity, or quality improvements or resilience, as they are equally parameters of competition as price. Limiting dynamic efficiency benefits only to lowering prices in the short term is not justified.

124. DMG, ¶315 conditions consumer benefits on conditions relating to '*market conditions and rivals' activities'*. This should be removed: efficiencies are specific to a merger and merging parties, and conditioning their recognition on improvements market-wide conditions imposes an asymmetric standard with no counterpart in the harm framework. Where a merger may stimulate a competitive response from other firms, this should be taken into account in the assessment of harm (e.g. if rivals are likely to invest more in response to the merger, this reduces, even eliminates any harm vis-à-vis loss of investment theory of harm).

(iii) Measuring efficiencies from quality improvements

125. According to the DMG, efficiencies stemming from quality improvements can be quantified by reference to customers' "willingness to pay" for the increase in quality (DMG, ¶¶320-322). This should be qualified.

126. First, this concept should be given a clear definition. Willingness to pay should be understood in this context as the utility derived from the quality improvement. In practice, customers' *stated* willingness to pay for additional future quality improvements may underestimate their true valuation because they fail to anticipate the benefits that will be derived from future quality improvement, as those will depend on the development of new services that are currently inaccessible.

127. Second, the DMG should elaborate on the various ways to develop a monetary estimate of consumers' valuation of quality. These would, for example, include the following:

a) *Consumer Surveys*. Consumer surveys are an important starting point for developing an understanding of consumers' valuation of quality metrics. These surveys need to be robust (e.g. using random probability-based methods) and should be designed in a way that elicit customers' true valuation of quality, recognising that consumers do not always have a good understanding of the value they place on different metrics. It is important to involve the merging parties in the survey design as they have the strongest understanding of their products and consumers.

b) *Datasets from the parties*. In some cases, the merging parties may already be collecting data on consumer switching related to quality and price. They may have data tracking responses to promotions (either price or volume related), data from surveys on churn due to quality issues. These can all be used to inform an assessment of consumer valuation of price versus quality.

c) *Public price, quality and consumer choice databases*. Depending on the market, there may be significant data already being publicly collected on consumer switching, quality and prices. Example datasets in telecom would include:

i. a regulator's data samples of subscribers and the tariffs they chose over time;

ii. commercial datasets showing the tariffs available on the market over time;

iii. data on signal strength for the different networks in different areas over time; and

iv. datasets with estimates of download and upload speeds in different areas over time.

National statistics can also be used to estimate consumer income and other characteristics if this is not included in the sector-specific data.

d) *Econometric modelling*. Econometric estimates of this data can provide evidence on how different variables impact consumer demand, including how different prices and quality variables affect consumer choices. This can be used to estimate consumers' willingness to pay for different quality features.

128. Finally, the claw-back mechanism is not anyhow justified (DMG, ¶323 and 338); the Commission cannot require the merging parties to increase quality while maintaining the same price. In any case, this is not anyhow relevant for the efficiency assessment. Price increase is only relevant if it is induced by the merger itself and not by the efficiencies. Dynamic efficiencies (Paras 324 – 338)

129. To support the EU's growth and competitiveness agenda, dynamic efficiencies must play an important role in the assessment of mergers. It is therefore important that theories of benefit based on dynamic efficiencies are given sufficient weight and are treated in a similar way to theories of harm.

5. Taxonomy of dynamic synergies

130. As previously mentioned, the DMG's structured taxonomy of direct and dynamic efficiencies is helpful.

131. The taxonomy should recognise that dynamic economies of scale differ in character from direct cost savings. Consolidation may make large investments viable by spreading cost across a larger customer base where minimum scale is needed to earn an adequate return, materially strengthening the commercial case for investment programmes that may be uneconomic to pursue organically in the prevailing market structure. In these circumstances, scale is not a static accounting concept but a structural prerequisite for investment viability (BRG (2026)).[8] This dynamic dimension should be expressly reflected in the taxonomy of dynamic economies of scale in DMG, ¶325b.

132. The DMG's treatment of the elimination of hold-up at DMG, ¶325(e) is too narrow in treating hold-up only in vertical settings. In capital-intensive network sectors, hold-up also arises in horizontal coordination and network-sharing arrangements. Where firms share network infrastructure under incomplete contracts, they may be unable to commit credibly to future access terms, overcome bargaining frictions, or align incentives over long investment horizons. This can lead to systematic under-investment relative to the socially optimal level. Structural integration eliminates these frictions entirely. By contrast, network sharing agreements, even where technically feasible, cannot be assumed to replicate this outcome: they are typically limited in scope, commercially complex, and exposed to renegotiation risk at the critical junctures when investment decisions must be made (BRG (2026)).[9] The DMG should expressly recognise that the elimination of hold-up includes horizontal and network-sharing settings, and is not confined to the vertical scenarios.

133. The suggestion in DMG, ¶325(h) and its associated footnote that efficiencies are more likely where parallel lines of research are maintained post-merger should be significantly qualified. This formulation risks embedding an unwarranted presumption that de-duplication of R&D effort is inherently harmful and that the preservation of parallel programmes is inherently more efficient. In practice, the opposite may be true. Two parallel but chronically under-resourced research programmes are not necessarily more innovative than a single, higher-scale, better-capitalised programme. The Commission should apply a case-by-case assessment, examining the actual funding levels, capabilities, and complementarity of the merging parties'

[8] BRG (2026) explain that, in telecoms, consolidation can enhance investment incentives by improving the economics of network upgrades and reducing duplicated fixed costs, and that scale disadvantages for smaller operators can intensify over time as technology evolves - making organic achievement of minimum efficient scale progressively less viable.

[9] BRG (2026) discuss the incomplete contracting and transaction-cost economics literature and confirm that, where long-term investment-intensive relationships cannot specify all contingencies in advance, integration can mitigate hold-up and economise on bargaining and renegotiation costs in a manner that contractual alternatives, including network sharing agreements, cannot replicate.

research activities, rather than applying a default assumption. Connect Europe and the GSMA recommends that the relevant passage and associated footnote in DMG, ¶325(h) be revised accordingly.

6. Verifiability

134. Connect Europe and the GSMA's comments on verifiability vis-à-vis direct efficiencies apply mutatis mutandis to the verifiability of dynamic efficiencies. Connect Europe and the GSMA have the following specific comments on verifiability for dynamic efficiencies.

135. First, the DMG have a bias towards the assessment of harm as compared to the assessment of efficiencies. For example (DMG, ¶327) explains that the merging parties cannot rely on the '*ability or the increase of incentives to invest or innovate in general but should explain as concretely as possible the nature of the investment or innovation in question*'. This can be contrasted with DMG, ¶175, which states that the loss of innovation competition – which may result in an SIEC – concerns '*whether the merger significantly impedes the process of innovation rivalry, which has the potential to generate innovation and therefore has competitive value in the present*'. The requirement for the merging parties to be concrete about expected benefits, whereas the Commission can rely on potential harms creates an unhelpful structural bias against accepting mergers based on efficiencies. This is all the more challenging when dynamic efficiencies require a long-term approach (hence evidencing concretely what the merging parties may do in the long-run is more challenging).

136. More fundamentally, the requirement is impractical since the DMG also want the merging parties to demonstrate that the dynamic benefits will continue (i.e., the dynamic efficiencies are not one-shot and the merging parties will have the incentive to continue to deliver such benefits in the longer run). In such circumstances, the merging parties will not be able to "concretely" detail the nature of all such investment. To impose such a requirement puts the merging parties in a "catch 22" situation of being asked to prove the impossible.

137. Second, Connect Europe and the GSMA welcome the acceptance that dynamic efficiencies may materialise over a longer time horizon (DMG, ¶328). However, the phrase '*shortly after closing*' and the statement that the sooner the investment is expected to materialise after closing, the more likely that investment is considered timely (DMG, ¶328) effectively imports the direct efficiency standard into the dynamic framework. The relevant test, drawn from DMG, ¶32, is whether efficiencies will arise to counteract anticompetitive effects such that the merger does not significantly impede effective competition. That test is not satisfied or defeated by reference to timing alone. Capital expenditure programmes are planned and delivered over several years; phased benefits do not diminish the certainty or merger-specificity of the underlying expected investment (BRG (2026)). . There should be a distinction between the moment when the incentives to invest materialise (which can be shortly after closing) and the moment when investments actually materialise (which is more long-term and progressive and depends on investment and deployment cycle of the sector, including phased integration and upgrade programmes in capital-intensive network industries).

138. The DMG imposes a higher standard on dynamic efficiencies compared to direct efficiencies and harm stating that the quality of evidence to substantiate dynamic efficiencies is particularly important and the more precise, concrete and consistent the evidence is, the more evidentiary value it will carry (DMG, ¶330). Such asymmetry is not justified. The same standard of evidence applies to harm and all efficiencies (DMG, ¶26).

7. Merger specificity

139. Connect Europe and the GSMA's comments on merger specificity vis-à-vis direct efficiencies apply mutatis mutandis to the verifiability of dynamic efficiencies.

8. Benefit to consumers

140. Connect Europe and the GSMA's comments on benefits to consumers vis-à-vis direct efficiencies apply mutatis mutandis to dynamic efficiencies. Connect Europe and the GSMA submit, however, that conditioning dynamic efficiencies on consumer willingness-to-pay risks making the framework unworkable (DMG, ¶336). Willingness to pay cannot be reliably measured ex ante for new technologies or products which are not yet known to the consumer. Consumer benefit in these contexts should be capable of being evidenced through reference to a broader set of evidence, including experience of consumer responses to comparable changes in other markets or comparable changes related to previous technologies or innovations, business customer demand, downstream productivity gains, and resilience and security metrics. A focus on quantifying willingness to pay for future innovations in products and services will impose an unworkable burden on merging parties given the inherent unpredictability concerning consumer demand.

141. A similar argument applies to benefits that are external to the purchasing decisions made by consumers in the directly affected market. This is particularly relevant for dynamic efficiencies since these reflect changes to firms' strategic incentives that take place over a period of time and affect decisions on investment and innovation. The Commission should evaluate the impact of such decisions on benefits accruing to all consumer groups (including those considered "out of market") and society as a whole. This is not necessarily reflected in consumer willingness to pay and therefore the DMG should not rely exclusively on measures relating to it.

142. In this context, considering that if firms and investors are wary about consumers' willingness to pay, this may indicate that the expected consumer benefits may be low at the time of merger and foreseeable future (DMG, ¶336) is an unduly narrow and strong presumption. There is a range of evidence vis-à-vis likely consumer behaviour that is relevant in these circumstances. If the Commission believes that it is nevertheless helpful to retain, the guidance should be made symmetrical: firms' and investors' confidence in future willingness to pay should be probative evidence of the likely benefits.

143. Finally, considering that dynamic efficiencies will only benefit consumers if the successful investment or innovation lowers costs that will be passed on in the form of lower prices (DMG, ¶335) heavily limits the benefits of dynamic efficiencies. This is not compliant with the mere nature of such benefits which may result not only in lower prices but also increased quality and new or improved products as also recognised in the DMG (see for example DMG, ¶334). Such a general and restrictive presumption shall be removed or be limited only to cost efficiencies (as it is the case for direct efficiencies - DMG, ¶317).

C. Balancing benefit and harm (Paras 339 – 357)

144. The balancing framework should be separated from the efficiencies chapter and set out as a standalone section of the competitive assessment. Balancing is a distinct step in the overall SIEC assessment, in which the Commission weighs all harms and benefits as a whole. Framing it as part of an efficiencies defence wrongly implies that harm is already established and efficiencies are a rebuttal. The Commission's task is to assess the aggregate impact of the transaction on European consumers, including those who gain and those who lose, as a neutral decision-maker, not as a party that has already established harm or has any "preference" regarding the existence or magnitude of harm (Padilla et al. (2026); BRG (2026)).

145. DMG, ¶¶340–346 should be revised to remove categorical or presumptive language such as *'unlikely'* or *'less likely'*. Those formulations pre-judge the balancing exercise before the evidence is assessed and risk creating structural presumptions against efficiencies. Statements such as DMG, ¶¶343–344 should therefore not suggest that efficiencies are inherently less capable of offsetting harm where market power increases or where the parties are close competitors. This is a case-by-case assessment. DMG, ¶344 is otherwise a statement of the obvious: small efficiency gains will not offset large harm. The correct question is whether, on the evidence, the merger's overall effect is more likely than not to amount to a SIEC.

146. For the same reason, DMG, ¶340 should not presume that benefits accruing to only some affected consumers are unlikely to offset harm. Consumer benefits are already assessed, qualitatively or quantitatively, in the efficiencies analysis. The balancing section should not add a further presumption that reduces their weight.

147. Similarly, DMG, ¶346 should not introduce a general presumption that reduced competitive constraints necessarily weaken long-term incentives to maintain or build efficiencies. This gives a large margin of discretion to the Commission to prohibit a merger – even when the net result is positive – based on such general considerations. Concretely, para 346 appears to add an additional step to the balancing exercise in which it is proposing further scrutiny in situations where the harms and benefits of a proposed merger are "substantial". The DMG justifies this additional step on the basis that benefits are less likely to be passed through in markets where competition is less effective. This additional step is unnecessary as these considerations would have been analysed in the assessment of harms and benefits.

148. The proposition that lower competitive constraints necessarily reduce incentives to maintain efficiencies is also not generally supported by economic theory. Many merger efficiencies—such as economies of scale, network integration, or the elimination of duplication—remain valuable irrespective of the degree of competition, giving firms strong incentives to preserve them (Williamson, 1968; Farrell & Shapiro, 2001). Moreover, in capital-intensive industries, a certain degree of scale and profitability may be necessary to support investment and innovation, which are key drivers of long-run consumer welfare (Schumpeter, 1942; Laffont & Tirole, 2000). Consequently, lower competitive pressure does not automatically imply weaker efficiency incentives or long-run consumer harm.

149. DMG, ¶349 should provide clearer guidance on how the Commission will balance harms and benefits affecting different parameters of competition. A statement that a *'careful assessment'* is required is too vague and risks leaving excessive discretion. The DMG should spell out in more detail the methodology that the Commission will follow to incorporate different parameters of competition into its analysis. In doing so, the Commission will need to assign a monetary value to any non-price benefits that result from the merger, including those that accrue to the consumers purchasing goods and services in the relevant market and those that are external to those purchasing decisions. Benefits that do not have a direct monetary value (e.g. improvements in quality or other product characteristics) will have to be included in the analysis through estimates of the value placed on them by consumers and/or society. This can then be included in the balancing analysis using a framework that takes account of the time profile of those benefits and the likelihood of them occurring.

150. DMG, ¶350 introduces a discounting framework that confounds different concepts and introduces prejudgements about timing and likelihood. The DMG should set out a framework for balancing harms and efficiencies that is conceptually clear and methodologically robust. Connect Europe and the GSMA accept that NPV analysis is a useful tool for comparing effects distributed across time. This should be clearly spelled out in the DMG and the timing of merger harms and benefits should be separated from the likelihood of those effects occurring. By separating out the two concepts in the balancing analysis, the Commission will need to clearly identify all of the key assumptions in a transparent way.

151. The Commission should develop a time profile for the harms and the efficiencies attributable to the merger and these should be evaluated relative to a comparable time profile for the counterfactual scenario. This allows an estimate of the present value of the net benefits compared with the situation that would arise if the merger did not take place, including the Commission's expectations about how they will evolve over a suitable period of time. For example, where the Commission finds that the merger is likely to result in a short-run increase in prices, it should also incorporate the possibility that such increases will fade over time as competitors respond. Such a scenario should be based on the evidence available from the market under consideration and - where appropriate – evidence from other markets. Similarly, if the Commission determines that there will be no efficiency gains in the short run but these are likely to materialise over the medium-term, this should be included in the discounting analysis in a consistent way.

152. The DMG should articulate how the Commission will integrate its evaluation of the probability that potential harms and efficiencies will occur into the balancing process. The probability weighting of specific harms and benefits should be supported – wherever possible – with evidence or reasoning to permit a transparent analysis of the expected net harm/efficiencies of a particular transaction. This should avoid combining timing and likelihood in an unstructured way.

153. In undertaking the balancing process, the Commission may use different modelling and calculation methodologies which are designed to focus on specific aspects of the particular transaction. For example, a merger simulation exercise is designed to capture market-wide equilibrium effects but typically does not capture the time dimension which would determine when those effects are expected to occur. In such circumstances, the Commission should assess all of the available evidence, including different modelling approaches, and consider them in the round to form a balanced view of the likely effects of the proposed transaction.

154. Against this background, Connect Europe and the GSMA recommend that DMG, ¶¶347 - 350 be amended to:

- confirm that NPV is an evidential and supportive tool, not a determinative standard;
- require any discounting methodology to be applied symmetrically to both harms and benefits, with the discount rate and methodology transparently explained and open to scrutiny;
- confirm that a short timeliness horizon and heavy discounting cannot operate simultaneously as a double constraint on dynamic efficiencies; and
- remove '*immediacy*' as a freestanding condition.

155. DMG, ¶351 should be deleted or substantially revised. The statement that temporary or declining benefits are less likely to counteract harm is asymmetric and unnecessary. The relevant question is not whether benefits are temporary as such, but whether the likely benefits, assessed over the relevant timeframe, are sufficient to prevent the merger from giving rise to a SIEC. The same logic applies to harm: short-lived harm may be outweighed by benefits that are larger, more durable or more significant for consumers. These issues are already captured by the assessment of harm, efficiencies and their balancing; no additional presumption is required.

156. Furthermore, it is also not the Commission's role to determine which generation of consumers benefit from a transaction (see in particular DMG, ¶357). The EUMR contains no such mandate. In *GlaxoSmithKline*, the Court of First Instance accepted that long-term R&D and investment benefits could be credited against short-term pricing effects. AG Emiliou in *RRC Sports* has confirmed that balancing is not '*pure arithmetic*' and that it would be inconsistent with the Treaties to disregard benefits that cannot be assigned a precise monetary value (Padilla et al. (2026)). This is also consistent with economic theory recognising that welfare effects may be intertemporal and not fully monetary. The introduction of '*immediacy*' as a freestanding condition in the balancing framework, without foundation in the relevant case law, including *Deutsche Börse/Euronext*, compounds this problem (The formulation '*immediacy*' does not appear in *Deutsche Börse/Euronext* as a freestanding condition for efficiency credit).

157. The '*same consumers*' condition on cross-market and cross-group efficiencies is also drawn too narrowly. Where the same investment generates benefits across multiple customer groups, all such benefits are relevant to the aggregate assessment. The Commission should not use the DMG to fetter its own discretion in cases it cannot yet anticipate (see also our comments to (DMG, ¶315 and 334). Connect Europe and the GSMA recommend that the '*same consumers*' condition be replaced with a requirement to assess aggregate consumer welfare effects. This should include benefits arising from broader consumer benefits such as resilience, competitiveness and sustainability. It should also express recognition that cross-group balancing is permissible.