Monopolkommission

POLICY BRIEF

AT A GLANCE

The Monopolies Commission recommends adjustments to EU competition law in relation to cartel and abuse proceedings as well as merger control.

- The European Commission's proceedings for infringements of competition law should be shortened and remedies made more effective. Moreover, Member States should retain the ability to apply stricter national rules on abuses of dominance.
- The European Commission should make greater use of dynamic theories of harm. It should complement its merger control guidelines with an analytical framework for digital ecosystems.

EU competition law: More speed, more impact!

For decades, EU competition law has been a cornerstone of an efficient and innovative European economy. By breaking up cartels, stopping abuses, and preventing anti-competitive mergers, it contributes to innovation and competitiveness of European companies, creates opportunities for small and medium-sized enterprises, and leads to low prices for consumers. The European Commission has now launched a review of key legislation—the EU Antitrust Regulation and the Merger Control Guidelines. The aim of this process should not be to lower the high level of protection of competition, but to maintain it.

Competitiveness is guaranteed, not hindered, by EU competition law

In economic policy discussions, there is an increasing concern that European companies are no longer internationally competitive. Competition law, and merger control in particular, is sometimes mentioned as a possible cause of this.[1] Upon closer inspection, however, this argument proves to be unconvincing. This is because it ignores key economic factors and underestimates the contribution of consistent merger control to ensuring long-term competitiveness.

EU competition law is a cornerstone of competitiveness, not an obstacle to it. Effective competition within the internal market is a key driver of the European economy's success.[2] To thrive globally, companies must first succeed in the domestic market by competing on the merit and focusing on efficiency and innovation.[3] Mergers often weaken such incentives by reducing competitive pressure and increasing market concentration as well as market power, which can ultimately hinder firms' ability to compete internationally. Furthermore, effective competition benefits consumers in Europe through better quality and lower prices. Therefore, weakening EU competition law would undermine these gains and harm consumers.

Nevertheless, it is worth considering targeted reforms to EU competition law. The European Commission is currently reviewing both its merger control guidelines[4] as well as Regulation 1/2003, which governs competition law proceedings. The Monopolies Commission is participating in these public consultations by publishing this policy brief. In its view, the area most in need of reform is the enforcement of competition law. What is required is a more precise, targeted, and consistent application of the existing legal framework. The European Commission has just started adopting dynamic theories of harm focusing on innovation, not least because they were only partially compatible with the existing – and now partly outdated – merger control guidelines. As a result, enforcement practice has at times relied on a static and somewhat simplified analytical framework.

EU regulation on competition law proceedings: Accelerating proceedings by setting deadlines with milestones and limiting evidentiary requirements

There is a broad consensus that both the European Commission's cartel and – even more so – its abuse proceedings take too long. Thorough investigations are important in order to accurately assess the often complex facts of the case. However, lengthy proceedings can lead to competitive deficits becoming entrenched and potentially irrevocable. Timely intervention is particularly important in fast-moving digital markets.

Last year, the European Commission presented draft guidelines on abusive exclusionary conduct under Article 102 TFEU.[5] In order to speed up enforcement, it relies more heavily on presumptions of conduct that is – to a greater or lesser extent – harmful to competition, rather than on an overly complex analysis of individual cases. The Digital Markets Act (Regulation 2022/1925 – DMA), adopted in 2022, already provide an opportunity to strengthening competition in digital markets. It simplifies the identification of the addressees of the regulations, sets out clear behavioural obligations, and it introduces procedural deadlines that support timely intervention.[6]

The duration of competition proceedings for violations of the cartels and abuses of dominance prohibitions (Articles 101 and 102 of the Treaty on the Functioning of the European Union, TFEU) should be limited through the introduction of a provision on time limits in the EU regulation on competition law proceedings (Regulation 1/2003). The time limit could be longer than that of the DMA, as cartel and abuse proceedings are regularly more complex in the absence of presumptions comparable to those in the DMA. It could be two years and structured by milestones to be reached within a certain period of time. The European Commission should retain the ability to extend the deadlines in exceptional cases without rendering the conduct in question unenforceable.[7] Accelerating proceedings would require the Commission to set clear enforcement priorities. It would also require stricter obligations for the companies concerned to cooperate in the proceedings. The ability to delay proceedings by extending deadlines or making new submissions should be limited.

However, a meaningful reduction in the duration of competition proceedings requires a reduction of the level of detail of evidence for establishing violations. Currently, especially in abuse of dominance cases, proceedings often devolve into 'paperwork battles', with some companies submitting vast volumes of data that are almost impossible to manage, a practice referred to as 'spamming the regulator'. At the same time, the European Commission frequently issues complex questionnaires and requests for information. Both practices should be curbed through appropriate procedural reforms. The Commission's proceedings should, at an early stage, focus on a few clearly structured rounds of written submissions and oral hearings and should concentrate on the key points.[8] The procedural rules, time limits, and milestones discussed above could also support this shift. Ultimately, such changes would lead to faster proceedings and shorter decisions that focus on the essential issues.

i **OVERVIEW OF RELEVANT LEGISLATION**

Regulation 1/2003

- regulates the enforcement of the prohibitions of cartels and abuses of dominance under Articles 101 and 102 TFEU
- contains provisions on the proceedings of the European Commission, including its powers of investigation and decision-making
- determines the relationship between competition law at EU and national level

Merger control guidelines

- European Commission explains its understanding of the provisions of the EU Merger Regulation on the competitive assessment of concentrations
- separate guidelines for horizontal mergers and vertical/conglomerate mergers
- provides important practical guidance for assessing the prospects of success under merger control law
- Explanations are not binding on either the EU courts or national courts or competition authorities

To ensure that the objectives of competition law can be effectively achieved, legislative action is necessary. Mere guidelines, such as those planned by the European Commission for exclusionary abuses, are insufficient as they lack 'genuine' binding effect on third parties. While amendments to the Treaties are politically unrealistic, meaningful reform could be pursued through targeted adjustments to Regulation 1/2003. Such changes would allow the EU courts to respond accordingly. Restructuring as well as limiting the scope of the proceedings can also be hoped to reduce coordination challenges between the Directorate-General for Competition and the European Commission's Legal Service. This, in turn, would streamline proceedings, for which the College of Commissioners holds formal responsibility under Article 250 TFEU, making enforcement more efficient and focused.

Facilitate interim measures in cases of cartel infringements and abuses of dominance

The adoption of interim measures is already provided for in EU competition law. Article 8 of Regulation 1/2003 empowers the European Commission to issue preliminary orders following a summary assessment of the facts. The requirement is 'the risk of serious and irreparable damage to competition' resulting from a 'prima facie finding of infringement'. While it is appropriate that the hurdles for regulatory intervention in summary proceedings are high, Article 8 of Regulation 1/2003 is applied not only in exceptional cases, but almost never.[9] This suggests that the threshold for intervention may be too high. To enable more effective and timely enforcement, the criteria for issuing interim measures should be recalibrated.[10]

The French Autorité de la concurrence, which frequently relies on such interventions, especially in the digital sector, serves as a role model.[11] Similarly, the German legislature has facilitated the enactment of interim measures by amending Section 32a(1) of the Act against Restraints of Competition (GWB) in the course of the 10th amendment of the GWB. This reform allows the competition authority to intervene not only to protect competition in general, but also to safeguard individual companies. Since then, the Federal Cartel Office has initiated at least one summary proceeding, which was ultimately terminated following an interim agreement between the companies concerned.[12]

Making remedies for cartel infringements and abuses of dominance more effective

Measures imposed by the European Commission in cartel and abuse proceedings to remedy infringements or address competition concerns are sometimes viewed as ineffective, even when fully implemented.[13] In contested proceedings, Article 7(1), sentence 1 of Regulation 1/2003 merely authorises the European Commission to 'bring such an infringement to an end'. The focus is therefore solely on ending the anti-competitive behaviour. Restoring competition that has been disrupted in the meantime – and may still be disrupted – plays a secondary role. In contrast, US law places greater emphasis on restorative remedies.[14]

However, the European Court of Justice also considers it the responsibility of the European Commission to eliminate the effects of anti-competitive behaviour.[15] In this regard, earlier intervention by the European Commission against dominant companies would be beneficial–ideally before they have reached virtually incontestable market positions.[16] For the sake of clarity, at least, the Commission should also be empowered in Article 7(1), sentence 1 of Regulation 1/2003 to '*bring such an infringement to an end and eliminate its effects*.'[17]

In practice, fully remedying the consequences of abusive conduct is likely to be challenging, particularly when competitors have been excluded from the market by the abusive practice of a dominant company.[18] However, the increased use of remedies with (at least partially) structural elements could open up new opportunities for competition. For example, forcing the separation of a service from a digital ecosystem would make it easier for new companies to enter the market. Under the current legal framework, however, structural remedies can only be considered if a behavioural remedy is deemed less effective or more burdensome for the companies concerned (cf. Article 7(1), sentence 3 of Regulation 1/2003). Therefore, the fundamental subsidiarity of structural remedies over behavioural remedies should be removed.[19] The general principle of proportionality would continue to apply and offer sufficient protection to the companies concerned.

Continue to allow stricter national rules on abuses of dominance alongside EU law

Currently, stricter national rules take precedence over EU law in the case of unilateral conduct, cf. Article 3(2) of Regulation 1/2003. This should be preserved. In the context of German law, the possibility of applying stricter national law on abusive conduct is of particular importance for Sections 19a and 20 GWB. Unlike the European prohibition of abuse of dominance (Article 102 TFEU), these provisions do not require a dominant market position, but also apply to companies with paramount significance for competition across markets (Section 19a GWB) or with relative or superior market power (Section 20 GWB). Both provisions have already proven their value in practice.[20]

Section 19a GWB has shaped Germany’s approach to regulating digital gatekeepers and continues to fill gaps left by the DMA. For example, the Federal Cartel Office has taken relatively swift action to open up competition in Google Automotive Services.[21]

Section 20 GWB plays an important role in protecting particularly small and medium-sized enterprises by addressing power asymmetries. The provision is applied in particular in private enforcement and is an important corrective measure to sustain competition. The numerous cases that are typically resolved through this provision, e.g., refusals to supply or provide access, exploitative abuses of buyer power or discrimination, cannot comprehensively be dealt with by public authorities alone.

Stricter national rules to address abuses by powerful companies should therefore remain permissible. When balancing national and European law, it is essential to recognise that antitrust enforcement is not only carried out by public authorities, but is also supported by civil law proceedings. The DMA in particular illustrates the importance of this dual approach: it can be crucial for safeguarding competition, especially when public enforcement lacks either the will or the capacity to act effectively. Despite concerns of legal fragmentation within the internal market,[22] national rules that diverge from EU Law should be accepted insofar as they contribute to effective competition protection. Within the network of European competition authorities, national provisions with lower thresholds for intervention play a crucial role in identifying problematic developments early. These can then be addressed at the EU level when necessary.

Opportunities and limitations of adapting merger control guidelines

The Monopolies Commission welcomes the European Commission's consultation on the merger control guidelines. The current guidelines, dating back to 2004 (horizontal guidelines) and 2008 (non-horizontal guidelines), still offer a solid framework for assessing most mergers. However, the merger control guidelines do not adequately address many issues that have only gained greater attention following their publication, such as the unique characteristics of the digital economy. A comprehensive revision of the guidelines is therefore urgently needed.

Currently, there are no plans to revise the EU Merger Regulation. The Monopolies Commission acknowledges the political hurdles such reform would entail. However, it is important to recognise that the guidelines cannot accommodate any kind of reforms in merger control law. As an instrument adopted solely by the European Commission, guidelines are not designed to introduce major political shifts or redefining strategic directions. Their primary function is to reflect the legal landscape as shaped by case law and enforcement practice. They serve to summarise and clarify decision-making practice in a comprehensible manner and, in some cases, outline it in more detail. The Commission cannot use the guidelines to implement a fully new approach to merger control without involving the other legislative bodies, namely the Parliament and the Council. Those expecting that a revision of the guidelines will pave the way for unrestricted approval of major European mergers misunderstand the legal nature of this instrument.

Further development of dynamic theories of harm

Much of the political debate surrounding merger control guidelines revolves around the question of whether other legitimate economic policy objectives, such as international competitiveness, the innovative capacity of European companies, or the transition to a sustainable economy, should be given greater consideration in the competitive assessment of mergers.

The Draghi report and other studies highlight that Europe is falling behind in the global innovation race, particularly in comparison with the US and China. To address this gap, the Draghi report proposes introducing an 'innovation defence' within merger control.[23] It criticises the European Commission's current approach to assessing efficiencies as 'sometimes too backward-looking', arguing that it focuses too heavily on existing market structures and fails to adequately account for the dynamics of future competition. According to the Draghi report, an innovation defence could be justified in cases where pooling resources in specific sectors is necessary to cover high fixed costs and achieve the scale required for global competitiveness.

The Monopolies Commission rejects the idea of an 'innovation defence' based solely on the argument that companies need to consolidate their research and development activities to better compete globally. Relaxing merger control in this way would not promote innovation, but rather harm competition to the detriment of consumers but ultimately also of competitiveness.

The relationship between competitive intensity, company size, and innovation activities is more complex. Mergers can both reduce and promote innovation incentives within a market.[24] While the coordination of companies associated with a merger can reduce incentives for innovation, for example, by discontinuing overlapping research projects, mergers can also promote synergies in research and development, for instance, through the joint use of resources or the sharing of innovation risks.

The complex effect of mergers on investment and, in particular, on innovation should be analysed more thoroughly from the outset and systematically integrated into the decision-making process—both in terms of competition assessment and in terms of the efficiency defence.

The European Commission has already begun to do this. However, its analysis still places excessive emphasis on existing market structures. In digital markets in particular, a static perspective of the markets is increasingly inadequate. Disruptive innovations can radically reshape the market environment, create entirely new markets, and destabilise established ones. At the same time, the costs of erroneously approving a merger are disproportionately higher in digital markets than in traditional ones due to their tendency to 'tip'. This is particularly concerning as in the digital sector markets are becoming increasingly fragmented while the market power of large tech companies continues to consolidate by creating ecosystems as discussed below. Several economists therefore argue that merger control has been too lenient rather than overly restrictive in the past.[25]

On the other side, the European Commission has also often dismissed the positive effects of a merger on investment and innovation as too uncertain. To enhance clarity and consistency in merger assessment, the European Commission should clarify in its new guidelines the degree of uncertainty it is willing to accept, for example with regard to the forecast period, and the type of evidence companies must provide to sustain their claims. This evidence should include robust investment plans, internal R&D budgets, technical development roadmaps, empirical evidence from comparable markets, and independent economic expert opinions. Such requirements would help prevent vague or speculative references to future innovation or sustainability improvements from being included in the assessment, while ensuring that realistic and well-documented efficiency gains receive appropriate consideration.

Moreover, the European Commission should also increase transparency by systematically evaluating how efficiency gains have been weighted in merger control decisions and publishing these assessments to promote institutional learning. Procedural improvements – such as best practice guidelines and the early integration of efficiency considerations into the competitive analysis – could further improve the quality and comparability of submitted evidence.

The European Commission should develop a structured approach to assessing dynamic effects in mergers. Mergers should be subject to a balanced, methodical review. To this end, dynamic innovation theories of harm that go beyond the previous static approach should first be developed and integrated into merger control. Economic research has provided valuable insights into this topic in recent years, which are summarised in the accompanying info box.[26]

Particular attention should be paid to mergers between significant innovators in concentrated markets characterised by substantial investment in research and development.

The European Commission should not focus solely on the negative effects. The revised guidelines should also emphasise that mergers can also foster innovation, especially where complementarities in joint research projects exists, resources are shared,[27] or technological spillover effects occur. The latter arise when the benefits of an innovation or technological development extend beyond its original innovator generating positive externalities for other companies. In these cases, a

DYNAMIC THEORIES OF HARM FOR MERGERS

Economic research identifies five key mechanisms through which mergers can damage innovation dynamics:

1. **Reduced incentives for innovation due to less competition**: Companies feel less pressure to differentiate themselves from the competition through better products or processes.
2. **Elimination of disruptive or potential innovators through acquisitions**: Established companies prevent companies with radically new products from attacking their market position.
3. **Abuse of market power to suppress innovation**: Established companies can hinder the development and dissemination of new technologies, e.g., by denying access to interfaces.
4. **Coordination effects with a reduced number of independent players**: A merger can reduce overall competitive pressure in the market, which also reduces the pressure to innovate.
5. **Pipeline effects in overlapping development projects**: If the parties to the merger are working on overlapping research projects, individual projects may be terminated in order to eliminate competition.

merger may help internalise these benefits, thereby increasing the incentives to innovate.[28] These positive effects should also be given greater consideration in the context of the efficiency defence.

The revised guidelines should then include concrete methodologies for balancing and evaluating the dynamic effects of mergers. This may include the development of scenario analyses, assessments of and lost innovation opportunities, and the introduction of early warning indicators for rising market concentration. Such indicators are particularly relevant because platform markets tend to tip in favour of a dominant provider once a critical level of market concentration is reached, potentially causing irreversibly harm to competition.

A structured assessment of dynamic effects is particularly relevant in the context of sustainability. Mergers can either hinder or enhance companies' efforts to invest in sustainable products or processes. In many cases, improvements in sustainability can be considered as efficiency gains. Companies' efforts to introduce more sustainable products or to produce more sustainably can regularly be regarded as a competitive parameter, as the Monopolies Commission noted in its biennial report 'Competition 2022'.[29] However, in some cases, efficiency gains can also be achieved when companies pool their expertise and resources, for example to leverage economies of scale in the joint production of sustainable products.[30]

Sustainability-related efficiencies often materialise only after a considerable delay and can have an impact far beyond traditional market boundaries. The guidelines should clarify how such efficiencies, which are difficult to quantify, can be better integrated into the assessment process. Economic research has already developed methods for assessing sustainability improvements, such as damage prevention cost approaches,[31] whose application should be examined in merger control proceedings.

Expand the merger control guidelines to include an analytical framework for digital ecosystems

Another key area of consultation on the merger control guidelines concerns the question of how to account for new competitive dynamics resulting from digitalisation, including non-traditional forms of harm such as data accumulation, interoperability restrictions, and self-preferencing.

The concept of 'digital ecosystems' describes a phenomenon that is becoming increasingly relevant to competition law in the context of digitalisation.[32] Digital ecosystems consists of interdependent networks of non-hierarchically organised economic actors who offer complementary (digital) products and/or services based on modular technologies.[33] These actors interact in business relationships that are based on joint value creation involving constellations of complementary digital products or services from third-party providers that revolve around a core platform. By defining design solutions and rules of conduct, the operator (who usually controls a core platform), known as the orchestrator, establishes a governance agreement that forms the basis for cooperation.

An ecosystem strategy cannot easily be classified within the traditional analytical frameworks of merger control, which distinguish between horizontal, vertical, and conglomerate mergers. The boundaries between related markets are becoming increasingly blurred. For example, in mergers involving companies with activities in several markets, the products often have to be interoperable or are offered as part of an ecosystem of related services. This challenges the traditional concept of 'relevant markets' in competition law analysis, as it becomes complex to define areas of substitutability in which competitive forces mutually restrict each other. Economic dependencies between complementary players and the orchestrator of a core platform are strengthened. In addition, the orchestrator gains the ability to unilaterally change the competitive conditions in various neighbouring markets. The European Commission's revised Market Definition Notice from 2024, explicitly addresses digital ecosystems as a form of 'system market' and introduces more flexible approaches to market definition, which reveal a clearer focus on these complex dynamics.[34]

In its latest biennial report, 'Competition 2024', the Monopolies Commission set out an economic analysis framework for digital ecosystems.[35] This concept outlines a three-stage process designed to provide the most accurate and comprehensive assessment of digital ecosystems that have gained systemic economic power and may therefore pose particular risks to competition and openness of digital markets. First, the systemic factors should be assessed, followed by the evaluation of the orchestrator's ecosystem power and, finally, the analysis of potential for discriminatory and leverage practices. Together, these three steps form an analytical framework for assessing digital ecosystems from an economic perspective.

The Monopolies Commission recommends such an analytical framework for digital ecosystems to expand the current analytical frameworks of the merger control guidelines. In cases involving mergers within such digital ecosystems, structural measures should be considered with particular care as part of the remedies.[36]

POLICY RECOMMENDATIONS

- Introduction of deadlines with milestones and limitation of evidentiary requirements in cartel and abuse proceedings in order to accelerate enforcement
- Facilitation of interim measures in cartel and abuse proceedings for timely interventions
- Introduction of remedies to restore competition following cartel infringements and abuses of dominance
- Retention of the possibility of stricter national rules for abuses of dominance alongside EU law
- Further development of dynamic theories of harm and rejection of an 'innovation defence' in merger control
- Addition of an analytical framework for digital ecosystems in the context of merger control

The **Monopolies Commission** is a permanent, independent body of experts that advises the Federal Government and legislative bodies in the fields of competition policy, competition law and regulation. The Monopolies Commission consists of five members that are appointed by the Federal President on the recommendation of the Federal Government. Prof. Dr. Tomaso Duso is the chairman of the Monopolies Commission.

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[1] Federal Ministry for Economic Affairs, Nationale Industriestrategie 2030, 2019, p. 8; von der Leyen, Political Guidelines for the next European Commission 2024–2029, 2024, p. 8.

[2] Buccirossi, P., Ciari, L., Duso, T., Spagnolo, G., Vitale, C., 2013, Competition policy and productivity growth: An empirical assessment, *Review of Economics and Statistics* 95(4), p. 1324-1336; Duso, T., Wettbewerb als Schlüssel für Europas Wettbewerbsfähigkeit, DIW Wochenbericht 30/2024, p. 492.

[3] EU Commission, Protecting competition in a changing world – Evidence on the evolution of competition in the EU during the past 25 years, 2024.

[4] EU Commission, Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31 of 5.2.2004, p. 5 (horizontal guidelines); Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 256 of 18.10.2008, p. 6 (non-horizontal guidelines).

[5] EU Commission, Guidelines on the application of Article 102 of the Treaty on the Functioning of the European Union to abusive exclusionary conduct by dominant undertakings, Draft, August 2024. See also Monopolies Commission, Biennial Report XXV, Competition 2024, paras. 294 ff.

[6] See e.g. Article 3(4) DMA (designation as a gatekeeper: 45 working days); Article 8(2) subpara. 2, Article 8(5) sentence 1 DMA (specification of measures to effectively comply with the obligations: 6 months; corresponding preliminary findings: 3 months); Article 29(2) DMA (finding of non-compliance with an obligation: 12 months).

[7] See ECJ, C-511/23, 30.1.2025, Caronte & Tourist – on the incompatibility of a national provision with EU law, under which the competition authority is required to initiate proceedings within 90 days from becoming aware of the conduct, failing which further prosecution is barred.

[8] In this vein Laitenberger, J., Kröger, J., Towards an "even more efficient" approach? – Reflections on the future of Regulation (EC) No 1/2003, ZEuP 2023, 621, 637.

[9] Podszun, R., Deuschle, A., Einstweilige Maßnahmen im Kartellrecht, WuW 2019, 613 ff. So far, the European Commission has adopted interim measures pursuant to Article 8 of Regulation 1/2003 in only one case; see 16.10.2019, AT.40608, Broadcom.

[10] See – opposing an amendment to Article 8(1) of Regulation 1/2003, though – Commission Competition Law 4.0, A New Competition Framework for the Digital Economy, 2019, pp. 74 ff.

[11] See also OECD, Interim measures in antitrust investigations, OECD Competition Policy Roundtable Background Note, 2022, in particular p. 19.

[12] Vgl. Federal Cartel Office, B9-21/21, 29.8.2022, Lufthansa/Condor, in particular para. 11; not final.

[13] EU Commission, Ex post evaluation of the implementation and effectiveness of EU antitrust remedies, 2025, paras. 105 ff., in particular 189 ff.

[14] See van den Boom, J., Scott Morton, F., Recalibrating Regulation 1/2003: how to restore proportionality in EU remedy design, 2025, pp. 12 ff., https://ssrn.com/abstract=5189659.

[15] ECJ, C-119/97 P, 4.3.1999, Ufex and others, para. 94: 'If anti-competitive effects continue after the practices which caused them have ceased, the Commission thus remains competent [...] to act with a view to eliminating or neutralising them.'

[16] See also Podszun, R., Scott Morton, F., Monopolization in Europe: Understanding Dominance as an Ability, 2025, https://ssrn.com/abstract=5186468.

[17] See also van den Boom, J., Scott Morton, F., Recalibrating Regulation 1/2003: how to restore proportionality in EU remedy design, 2025, p. 21.

[18] See Commission Competition Law 4.0, A New Competition Framework for the Digital Economy, 2019, pp. 74 f.

[19] See also van den Boom, J., Scott Morton, F., Recalibrating Regulation 1/2003: how to restore proportionality in EU remedy design, 2025, pp. 23 f.

[20] Nevertheless, the Monopolies Commission recommends aligning § 19a GWB more closely with digital ecosystems; see Biennial Report XXV, Competition 2024, chapter III. On digital ecosystems, see also pp. 7 f.

[21] Federal Cartel Office, B7-25/22, 9.4.2025.

[22] Monopolies Commission, 10th amendment to the Competition Act – meeting challenges in digital and regional markets!, Policy Brief Issue 4, January 2020, p. 3.

[23] Draghi, M., The future of European competitiveness (Part B), 2024, pp. 299 ff.

[24] Lefouili, Y., Madio, L., Merger and Investments: Where Do We Stand, Toulouse School of Economics, Working Papers No. 1617, 2025.

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[29] Monopolies Commission, Biennial Report XXIV, Competition 2022, para. 247; Biennial Report XXV, Competition 2024, paras. 409 ff.

[30] Haucap/Podszun et al., Competition and Sustainability, 2024, pp. 16 ff.

[31] For an overview see Inderst, R., Sartzetakis, S., Xepapadeas, A., Technical report on sustainability and competition: A report jointly commissioned by the Netherlands Authority for Consumers and Markets (ACM) and the Hellenic Competition Commission (HCC), 2022.

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[33] Monopolies Commission, Biennial Report XXV, Competition 2024, chapter III.

[34] EU Commission, Commission Notice on the definition of the relevant market for the purposes of Union competition law, OJ C/2024/1645 of 22.2.2024, p. 1, paras. 99 ff.

[35] Monopolies Commission, Biennial Report XXV, Competition 2024, chapter III.

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