

**Comments to the Public Consultation launched by the European Commission in  
the context of the review process of the Merger Guidelines**

**SUBMITTED BY IUS OMNIBUS**



**I. IUS OMNIBUS**

Ius Omnibus ("Ius"), with registered office at Second Home Lisboa, Mercado da Ribeira, Av. 24 de Julho, 1200-479 Lisbon, Portugal, is a non-profit association, created in March 2020, with the purpose of promoting and defending the rights and interests of consumers in the European Union. It is a consumer protection association registered with and recognized by the Portuguese Government, and by the European Commission as a Qualified Entity pursuant to Directive (EU) 2020/1828, having filed several class actions within the scope of consumer protection.

Ius Omnibus' interest in participating in this public consultation stems from its commitment to the effective defence of consumer rights. As an association that promotes fair and undistorted competition and the collective protection of consumer interests, Ius considers essential that merger control rules take into account not only the effects on prices, but also their impact on innovation, privacy, and service quality, among other things. In a context of digital transformation and increasing concentration in key sectors, it is crucial to adapt analytical tools to new market dynamics to ensure that mergers do not harm consumers or limit their rights directly or indirectly. Ius therefore considers it a priority to strengthen the assessment tools that enable structural damage to be prevented and ensure that merger control decisions contribute to a more equitable and innovative market.

Ius has already taken active positions in favor of consumers in the context of merger control. For example, the association participated in a public consultation launched in January 2025 by the Portuguese Competition Authority. This initiative reflects a growing global trend among competition authorities to examine smaller transactions for their potential anticompetitive impact, and seeks to extend the jurisdiction of the Portuguese

Competition Authority to transactions traditionally exempt from notification. Therefore, IUS considers it a priority to strengthen the assessment tools that prevent structural damage and ensure that merger control decisions contribute to a more equitable and innovative market.

## **II. The public consultation**

In the context of the review of the Guidelines on the assessment of horizontal mergers 2004/C 31/03 and the Guidelines on the assessment of non-horizontal mergers 2008/C 265/07, the European Commission launched, on 8 May 2025, a public consultation including technical questions, mainly for stakeholders with expertise in merger control.

The consultation covers seven specific topics that are relevant to the Commission's merger control assessments: 1) Competitiveness and resilience; 2) Assessing market power using structural features and other market indicators; 3) Innovation and other dynamic elements in merger control; 4) Sustainability and clean technologies; 5) Digitalisation; 6) Efficiencies; 7) Public policy, security, and labour market considerations.

Within the framework of this consultation, the contributions collected below focus in particular on topics 3 "Innovation and other dynamic elements in merger control" and 5 "Digitalisation", as these are considered particularly sensitive areas from a consumer perspective and because of their growing relevance in shaping competitive markets. Both aspects present specific challenges that cannot always be adequately assessed through traditional structural approaches, such as market shares or entry barriers. Digitalisation raises new forms of competition based on control of digital infrastructure, data accumulation, interoperability, and consumer dependence. Innovation, meanwhile, requires anticipating medium- and long-term impacts, including the prevention of acquisitions that eliminate potential disruptive alternatives or reduce incentives to innovate and create better products and services for consumers.

The observations presented are also supported by the principles set out in the Draghi Report, "The future of European competitiveness", published in 2024, which calls for an economic policy based on innovation, social cohesion and digital sovereignty. Specifically, the report calls for policies that strengthen innovation as a driver of competitiveness, reinforcing the need to review merger control rules to prevent acquisitions that eliminate innovative players or reduce incentives to innovate. In the area of digital transition, the report stresses the importance of establishing guarantees for citizens in terms of privacy, data use, and algorithmic control. These strategic priorities are in line with the need to adapt the Guidelines on the assessment of concentrations to current challenges.



### III. Comments

In the context of the review of the Merger Control Guidelines, Ius welcomes the European Commission's decision to launch a public consultation process to gather input on how to adapt the regulatory framework to the current market reality, particularly in sectors such as digital, technology, data markets, and other rapidly evolving sectors. This document addresses suggestions that could strengthen the merger assessment process from a consumer protection angle, as well as a specific response to certain questions raised by the Commission in the consultation.

#### **SUGGESTIONS FOR INCLUSION IN THE APPROVAL PROCESS:**

##### **1. INCLUDE CONSUMER ASSOCIATIONS IN THE APPROVAL PROCESS**

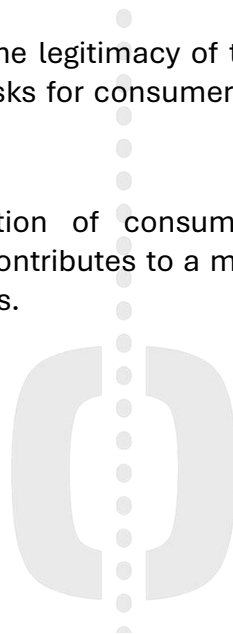
The review of merger control rules should strengthen the role of consumer associations as stakeholders in the assessment process. Given that the ultimate objective of merger control is to protect consumer welfare, it is logical and necessary to ensure that these organisations have a voice in the decision-making process.

In this regard, it is proposed that a formal channel be established to gather the views **of the most relevant consumer associations in the sector**, especially in mergers that may have a significant impact on prices, service quality, innovation, etc. to the detriment of consumers. To this end:

- The merger notification form or a summary of its main elements should be sent to consumer associations, specifically those recognised as Qualified Entities pursuant to Directive (EU) 2020/1828 by the European Commission. For this purpose, the European Commission's React platform may be consulted, which makes it possible to easily identify the relevant consumer organisations recognised as such.
- These entities should be given a reasonable period of time to submit reasoned comments on the possible impact of the operation from the consumer's point of view as other stakeholders have in market tests of merger control proceedings.

This measure not only strengthens the legitimacy of the procedure, but also provides relevant qualitative information on risks for consumers that may be difficult to identify through technical analysis alone.

In short, promoting the participation of consumer associations enhances the transparency of the procedure and contributes to a more balanced approach between business interests and public interests.



## **2. FROM THE DUTY TO INFORM TO GENUINE MONITORING: REWORDING OF ARTICLE 14 DMA AND INCLUSION IN THE GUIDELINES ON THE ASSESSMENT OF MERGERS**

Under Article 14 of the Digital Markets Act (DMA), gatekeepers are required to notify the European Commission of any merger in which they are involved, provided that it involves digital platform services or sectors or activities involving data collection, regardless of whether the transaction is notifiable under the Merger Regulation or national rules.

However, Article 14 of the DMA contains a significant loophole: It does not specify what the Commission should do with this information, as there is no clear procedure for the Commission to assess the impact of the merger or the consequences of the information, nor is there any mechanism for follow-up. This regulatory gap renders the notification obligation a purely formal instrument, with no guarantees of substantive effectiveness. In other words, the gatekeeper reports, but the Commission is not obliged to do anything with that information, except share it with the NCAs and publish it annually.

It would therefore be necessary for the revised Guidelines to provide for a system of *ex post* control by the Commission in such cases as well, especially where, despite not exceeding the notification thresholds, the concentration reported by the gatekeeper could have significant effects on competition and consumer rights.

However, given that even *ex post* control is insufficient to determine in advance which mergers are likely actually to harm consumers, we propose that, in addition to mandatory notification by gatekeepers, a control procedure be automatically triggered. This procedure should include a precautionary suspension of the transaction (so that it cannot be executed until the Commission has reviewed its impact), together with an abbreviated review period allowing the Commission to assess whether or not the transaction has anticompetitive effects quickly.

This preventive and automatic control would provide greater certainty that there will be no adverse effects on competition and consumer rights.

## **3. IMPROVING *EX POST* CONTROL OF MERGERS**

The current merger control system focuses mainly on *ex ante* assessment, based on analyses that anticipate the possible effects of the transaction on the market. Although the Commission does sometimes carry out post-approval monitoring, particularly when a merger is approved subject to certain conditions, this has been found to be insufficient to detect certain specific effects that are relevant to consumers and only become apparent over time. The Commission's initial assessment is based on hypothetical scenarios, but it cannot predict exactly how the dynamics of the merged company will evolve in the market, especially in sectors where the merged companies handle large amounts of data, such as the technology, digital, applications or social media sectors.

It is argued that sometimes certain concentrations that appear neutral or do not exceed the established thresholds<sup>1</sup> end up generating, in the medium or long term, situations that are contrary to competition:

- An unexpected dominant position based on the accumulation of data.
- A significant increase in data-related barriers to entry, especially in the case of mergers based on data or those aimed at expanding digital ecosystems. In these cases, the companies involved consolidate large volumes of information from different sources and uses, giving them a competitive advantage that is difficult for new entrants to replicate. This accumulation of data not only strengthens their ability to personalize services and segment users, but also creates network effects and economies of scale that make even more difficult for competitors to enter the market, even when they have comparable technological or financial resources.
- A gradual deterioration in service quality.
- The imposition of higher prices or more restrictive contractual conditions.
- Reduced interoperability between platforms.
- Increase risk of situations of economic dependence.

More intensive *ex post* controls are proposed. This reinforcement could include:

- Systematic post-merger monitoring mechanisms.
- Periodic assessments of the impact on prices, quality, levels of effective competition and barriers to entry.
- Review of the effects on interoperability, particularly relevant in digital and technological services, where technical decisions taken after a merger may block standards and restrict future competition.

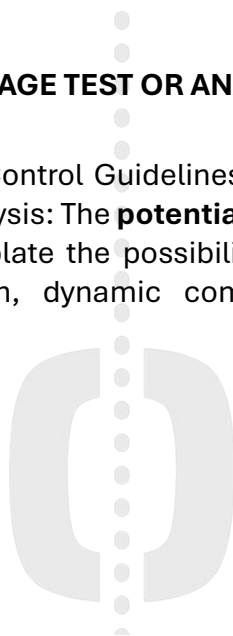
The introduction of these controls would not only make it possible to detect unforeseen adverse effects, but also to propose possible remedies, such as data sharing obligations, restrictions on certain practices, etc. In short, it is suggested that a mandatory *ex post* assessment framework be established, proportionate to the size, sector and risks arising from the transaction, to serve as a preventive and corrective tool against effects that only become apparent once the transaction has been completed and be included as a condition in merger decisions.

#### 4. INCORPORATE A POTENTIAL DAMAGE TEST OR ANALYSIS

As part of the review of the Merger Control Guidelines, it is proposed to incorporate a specific tool into the substantive analysis: The **potential harm test**. Although the current Guidelines already formally contemplate the possibility of assessing potential harm - especially in relation to innovation, dynamic competition, and so-called “killer

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<sup>1</sup> See above. Suggestion 2.



acquisitions”-, this analysis is currently applied in a fragmented and case-by-case manner. However, the potential harm test we propose is not intended to duplicate existing measures, but rather to reinforce and systematize them. We suggest including it as an express tool that allows the Commission to apply it uniformly in all mergers submitted to it, particularly in digital and dynamic sectors, where market transformations are rapid, business models do not follow traditional patterns, and anticompetitive effects are not manifested solely in terms of price.

This test aims to complement the traditional approach focused on prices, market shares, or market power with a broader view that anticipates structural effects. Although these effects may not be immediate or easily quantifiable, they may cause significant harm to consumers and the proper functioning of the market in the medium and long term.

The risks arising from a merger can be expressed in different ways:

- **Loss of pluralism or diversity of models:** the merger of two companies may lead to the elimination of an alternative value proposition with models that differ from the dominant one. This affects the variety of options available to consumers and reduces the market's ability to adapt to different needs or preferences.
- **Loss of innovation:** the merger may lead to the elimination of more innovative alternatives, thereby harming consumers.
- **Reduced service quality:** concentration can lead to less competitive pressure to maintain high standards of quality, security, privacy, etc., especially if competitors that excelled in any of these areas disappear.
- **Higher exit barriers or lock-in for consumers:** the reduction of options or the homogenisation of services can make it difficult for users to leave a platform or switch providers, affecting their freedom of choice.
- **Reduced interoperability:** one of the most visible risks in the digital sphere is that a merger will create closed or incompatible environments. This restricts future competition and limits consumers' ability to combine services or migrate between them without incurring costs.
- **Increase of data-related barriers to entry,** specially in the case of data-driven mergers, or ecosystem-expansion mergers.

Including this potential harm test would strengthen the dynamic approach to merger control, bringing it closer to the current challenges posed by digital markets, where negative effects are not always immediately apparent. Unlike the current provisions of the Guidelines -which are applied in a fragmented manner in some instances-, this test is conceived as an automatic and express instrument that would enable the Commission to act according to uniform criteria in all notified concentrations.

The Commission should consider these risks as factors to be taken into account in its prior control, ensuring, in a measurable way, what the potential damage may be. This

approach goes beyond a theoretical framework and turns it into a practical tool for application. Among the indicators to consider, the following could be highlighted, for example:

- The degree of multihoming, i.e., the percentage of users who use more than one platform simultaneously. Thus, a significant reduction in this indicator following a merger may reflect an increase in consumer dependence on a single provider.
- The estimated time and cost for a competitor to collect equivalent data, i.e., measuring the actual replicability of the database accumulated by the merged entity. If the costs and timeframes are excessive, the merger may create a virtually insurmountable barrier to entry.
- The ability of competitors to train algorithms with public data, assessing whether competitors can access sufficient public data to train their algorithms and provide a service of comparable quality. If public data is not valid, the advantage gained by the merged company through its private database may become a barrier to competition.
- Loss of linked services, i.e., when a consumer who wants to abandon a specific service (e.g., cloud storage, messaging, digital payments) is forced also to give up complementary or integrated services that depended on the same ecosystem.

## **5. LACK OF TRANSPARENCY: Impact of mergers on information available to consumers**

One of the most significant risks, especially in digital environments, is that mergers lead to a reduction in transparency for consumers. Following mergers, contractual conditions, terms of use of services, the functioning of algorithms that determine offers, personalised prices or suggested content, as well as privacy policies, may undergo substantial changes that are not always communicated in a clear, understandable and accessible manner to the end user.

When the merged company achieves a position of greater market power, it has fewer incentives to maintain transparency in its terms and conditions for users. It is also possible that the two companies' systems may be merged without clearly informing users of the policy change, the change in cookies and the rules governing their interactions on the platform. This lack of clear information to consumers can have direct negative effects on consumers' rights and freedom of choice, particularly in relation to their ability to choose and compare with other services. In many cases, this lack of transparency leads to situations of information asymmetry that weaken the consumer's position vis-à-vis the merged company.

It is therefore proposed that the transparency of merged companies be assessed and that explicit post-merger transparency commitments be required, such as policies obliging them to inform users about how they operate, information policies, and simple and

accessible information for consumers that does not lead to a situation of misinformation or incomprehensible information.

The Commission could require:

- Comprehensible explanations to consumers on how algorithms or other technologies, such as artificial intelligence used, work.
- Assess the transparency track record of the companies involved.
- Require any relevant changes to be communicated in a simple, understandable and prominent manner.
- Offering consumers a choice, allowing them to opt to maintain the pre-existing conditions of the company or to adhere to the new contractual regime, after being clearly informed of its implications.

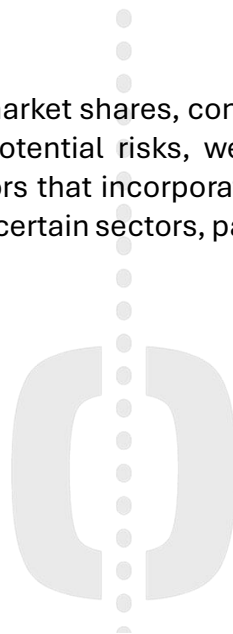
It is also proposed that the Commission assess the option of requiring companies to provide clear and accessible explanations of how their personalisation algorithms work, facilitating general understanding by consumers. This level of transparency would help to strengthen user control over their digital experience and mitigate risks related to loss of autonomy or algorithmic discrimination.

In short, transparency must be established as a structural principle in merger control and as an essential component of remedies when a transaction involves risks of asymmetry for consumers.

## **RESPONSE TO QUESTIONS RAISED BY THE COMMISSION IN THE PUBLIC CONSULTATION:**

**Question B.3.: What should be the structural indicators / market features used by the Commission to assess the likelihood of anticompetitive effects in horizontal mergers? Please provide your view on the role and level of market share and concentration levels, as well as other structural indicators / market features you consider relevant.**

While traditional indicators such as market shares, concentration ratios or entry barriers remain useful tools for identifying potential risks, we consider that these should be complemented by additional indicators that incorporate a more realistic perspective of the practical effects for consumers in certain sectors, particularly in digital environments.



Indeed, market share and the number of existing competitors can provide an initial indication of the risk of concentration, but they do not always accurately reflect the degree of competition, let alone the actual impact on consumer choice and behaviour.

The Commission states that its objective is to "*prevent distortions of effective competition and the creation or strengthening of market power leading to price increases that are harmful to consumers*". However, harm to consumers is not only manifested in the form of price increases, but also in the loss of previous real alternatives, the closure of access to other companies, especially in the world of technology, or the disappearance of pre-existing options with greater privacy, better experience or more favourable transparency conditions. Therefore, the effects that the merger will have on consumer choice when opting for other services must also be assessed, in particular the practical alternatives available to consumers and the substitutability of products or services.

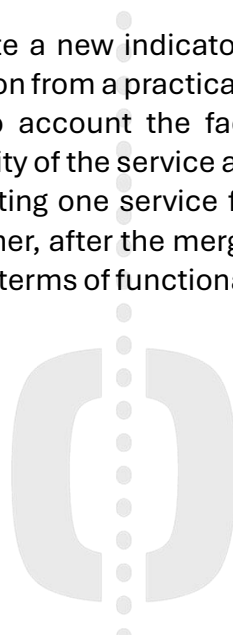
Although Topic B "Assessing market power using structural features and other market indicators" (§ 46) mentions that the Commission uses complementary analyses such as switching costs and entry barriers, profit margins or the degree of substitutability, this is done from a price-oriented perspective, without focusing on the harm that may be caused to consumers in the use or substitution of the service, not only before but also after the merger.

This approach is particularly necessary in digital markets, where the actual substitution of products or services may be limited by:

- Consumers may find it practically impossible to switch easily between providers, especially in digital sectors, due, for example, to a lack of interoperability, because products or services may not work properly with other operators.
- Behavioural or relational switching costs.
- Network effects mean that a consumer does not see value in switching suppliers if the majority of users remain with the dominant supplier.

In this context, traditional analysis focusing on prices and market structures does not adequately capture the risks arising from the loss of quality, privacy, or plurality options.

It is therefore proposed to incorporate a new indicator or test for merger analysis that assesses the actual ease of substitution from a practical and forward-looking perspective of an average consumer, taking into account the factors that may affect consumer behaviour. The degree of interoperability of the service after the merger and the estimated difficulties for consumers in substituting one service for another must be assessed. In this regard, it must be analysed whether, after the merger, there are any real alternatives that remain and are truly equivalent in terms of functionality and use for other consumers.



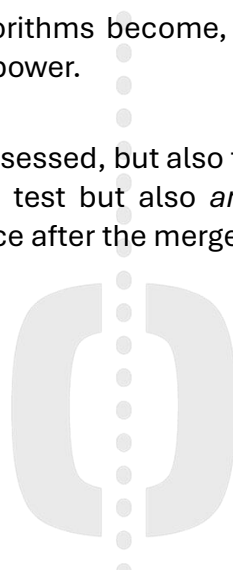
Control should not be limited to ensuring that there are several companies providing a similar service, but should guarantee that consumers have equivalent options when they consider switching to another service.

For example, even if there are formally multiple social networks or messaging apps on the market, a WhatsApp or Instagram user who leaves the platform may, in practice, find themselves isolated from their contacts, rendering the existence of real alternatives illusory.

For all these reasons, it is proposed that merger analyses include **a specific test of effective substitutability**, which takes into account:

- The average consumer has the ability to switch providers without a significant loss.
- The degree of interoperability after the merger.
- The existence of equivalent options in terms of accessibility, quality and transparency.
- The assessment of the risk of structural consumer dependence resulting from the strengthening of network effects.
- The possible creation or reinforcement of ecosystem-based market power or cross-market power, which allows a company to leverage its dominant position in one segment to extend its influence to other connected markets. This phenomenon is particularly relevant in digital environments, where large platforms operate simultaneously as service providers, intermediaries, and controllers of technological infrastructure. By integrating multiple services (such as search engines, operating systems, marketplaces, cloud services, etc.), a merger can consolidate a closed ecosystem that limits consumer's real ability to leave the platform without incurring significant functional, social, or economic costs.
- The extensive, cumulative, and exclusive use of data as an essential input for various digital services. Many large technology companies are present at all levels of the big data value chain—from collection, storage, and processing to commercial exploitation—giving them a competitive advantage that is difficult to replicate. Mergers that consolidate massive and diverse volumes of data can further strengthen their market position, making it difficult for competitors to access relevant data and raising barriers to entry. In addition, data network effects mean that the more users and interactions a company accumulates, the more accurate and valuable its algorithms become, reinforcing a feedback loop that deepens the concentration of power.

Not only is the effect on the market assessed, but also the effect on consumer choice. In this sense, it is not only an *ex ante* test but also an *ex post* test to check whether consumers have lost freedom of choice after the merger.



**Question C.6.: In what circumstances can the elimination of a (small) but particularly innovative player with a large competitive potential (e.g., in the case of nascent and emerging market or rapidly developing sectors) harm competition?**

The elimination of a small but highly innovative operator may pose a substantial risk to competition, especially in dynamic, emerging or technological markets where innovation, rather than current market share, is the main source of competitive pressure. Such situations are particularly relevant in the context of so-called '*killer acquisitions*', where a dominant company acquires a potential competitor at an early stage, especially with the help of venture capital, not to enhance its development, but to eliminate the threat it poses, when the innovative product or service has not yet been developed.

Although these acquired companies may not yet have a significant market share and, as a result, the merger may not need to be notified<sup>2</sup>, their competitive value lies in their ability to develop disruptive solutions, introduce alternative business models or generate substantial improvements in quality, sustainability or accessibility.

When an acquisition deliberately frustrates this potential, a possible avenue for future competition is eliminated. This harm is not immediate in terms of prices, but it is in terms of innovation, diversity of supply and long-term consumer welfare. This assessment must go beyond the analysis of current market shares or overlaps and consider factors such as:

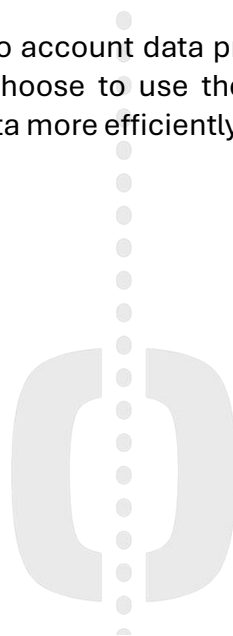
- The company's capacity for independent growth in the coming years.
- Its technological roadmap, product development plans and expansion strategy.
- Evidence of market interest (investor financing, patents, etc.).
- The degree of differentiation or disruption of the product or service under development compared to the current state of the market.

**Question E.10: How should the Commission assess competition risks linked to the merged entity's accumulation of data? Please consider also mergers outside of the digital and tech industries and explain in particular:  
E.10.a What theory or theories of harm could the Commission consider?**

The Commission's proposals take into account data protection, considering that it may affect competition if certain users choose to use the services of one company over another because they protect their data more efficiently, which constitutes a form of non-price competition.

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<sup>2</sup> See above. Suggestion 2.



However, the massive accumulation of data as a result of a merger can create significant risks to competition.

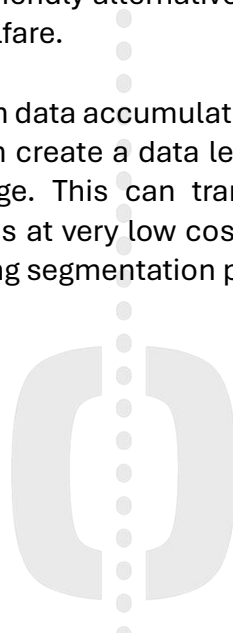
Although some of the effects of this accumulation —such as the ability to offer better products or services at a reduced cost— may represent legitimate advantages and form part of normal competitive dynamics, the structural risks posed by the consolidation of large volumes and types of data in the hands of a single entity should not be overlooked. In particular, this accumulation can translate into:

- An expanded ability to predict and influence the behavior of users and competitors, with a degree of accuracy inattainable by other operators.
- The possibility of gaining competitive advantages without the need to innovate, solely through the exclusive use of accumulated data.
- And, above all, the risk of creating or reinforcing extremely high barriers to entry for other operators, including those that are highly innovative or have technological capabilities. These new entrants may need access to a certain amount and variety of data that will not be available after a merger that strengthens the position of the incumbent. This severely limits effective competition and may lead to a concentration of market power in the long term, even if the initial market share does not exceed the traditional thresholds for notification to the Commission.

The Commission should therefore incorporate a detailed analysis of the strategic role of data in the relevant market, assessing not only its volume but also its quality, exclusivity and potential economic exploitation.

Among the theories of harm that the Commission could consider, the following stand out:

- **Loss of competition due to quality of data protection:** The way in which a company protects its users' personal data has become an essential dimension of non-price-based competition. Some consumers choose based on privacy policy or lower levels of intrusion. A merger that unifies two less stringent data protection policies, or eliminates a more privacy-friendly alternative, may restrict competition in that area and reduce consumer welfare.
- **Competitive advantage through data accumulation:** The merger of two companies with large volumes of data can create a data leverage effect, giving the resulting entity a competitive advantage. This can translate into: (i) greater ability to customise products or services at very low cost; (ii) improved prediction of user behaviour; (iii) better advertising segmentation practices.



- Raising barriers to entry: When data accumulation allows for the refinement of business models or the training of more powerful algorithms, new players are prevented from competing on reasonable terms, especially if they cannot access similar data or acquire it on the market.
- Risk of dominant position or exclusionary effects: In some cases, data accumulation not only translates into a commercial advantage, but also into a dominant position. From there, the merged company may: (i) engage in exclusionary practices; (ii) impose abusive contractual conditions; (iii) strengthen its bargaining power.
- Algorithmic discrimination: Extensive use of data in algorithmic models can enable extreme consumer segmentation, not only in terms of personalised advertising, but also in terms of unequal access to offers, content or services.

In short, the Commission should incorporate a "**data accumulation test**" into its assessment, which examines not only the volume of data, but also the impact it may have on competition: its potential for exclusion, strategic value and its effect on consumer choice, among other things. The Commission should also request information on the intended use of the data, the databases to be integrated or the expected synergies.

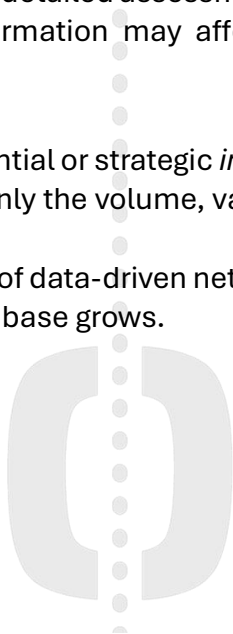
Finally, if necessary, the Commission should impose structural or behavioural remedies, such as the functional or technical separation of sensitive data; commitments not to cross-use databases; or interoperability requirements. The monitoring of these commitments should be continuous and keep pace with technological developments.

This analysis should also be extended to non-digital sectors, such as distribution, health, insurance, energy, etc., where data on consumer behaviour or geolocation may have significant effects.

### **E.10.c What are the elements, including evidence and metrics, that the Commission could use to assess competition risks linked to the accumulation of data.**

The Commission should incorporate a detailed assessment of how access to, control and exploitation of large volumes of information may affect effective competition in the market. In particular, it is proposed to:

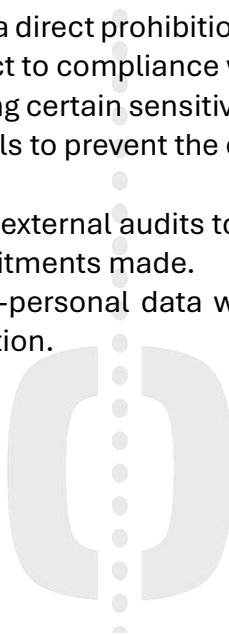
1. Assess whether data is an essential or strategic *input* for competing in that market. This involves considering not only the volume, variety, and timeliness of data, but also other key dimensions:
  - The existence and intensity of data-driven network effects, which can reinforce market position as the user base grows.



- The degree of possible multihoming (i.e., the ability of users to participate simultaneously on multiple platforms), which can mitigate or reinforce the risks arising from data accumulation.
- The importance of operators' analytical capabilities, which determines the extent to which they are able to transform data into tangible competitive advantages (e.g., through personalization algorithms or artificial intelligence).
- Vertical integration along the big data value chain, where a single company controls everything from data collection to analysis and commercial exploitation.
- The intrinsic characteristics of the data (its availability, replicability, granularity, and degree of updating), which directly affect the possibility of other competitors accessing equivalent inputs under reasonable conditions.

In the absence of such conditions of equivalent access, the accumulation of data can become a substantial barrier to entry, favoring the emergence or reinforcement of dominant positions.

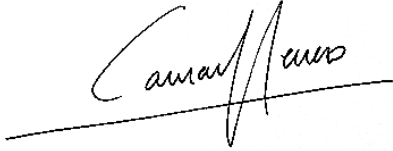
2. Assessment of compliance with data protection regulations. Beyond the competitive dimension, the Commission should consider whether the merger poses risks associated with the mass processing of personal data. In particular:
  - Examine whether the combination of databases complies with the principles of minimisation, limitation and proportionality under the GDPR.
  - Verify whether impact assessments have been carried out where necessary, and whether sufficient technical and organisational measures have been taken to ensure the security and lawfulness of the processing after the merger.
3. Possibility of replication by other competitors. In order to assess whether the accumulation of data leads to exclusionary effects, the Commission must analyse whether other market players could obtain data of similar competitive value in a reasonable time and without disproportionate costs. If this is not feasible, the transaction must be considered to have a market-closing exclusionary effect, restricting the ability of other operators to compete on equal terms, which ultimately harms consumers.
4. Imposition of structural/behavioural commitments or conditions: Where the concentration poses risks, but a direct prohibition is not justified, the Commission may approve the merger subject to compliance with certain measures:
  - The prohibition on combining certain sensitive databases between the parties.
  - The creation of Chinese walls to prevent the exchange of data between certain business units.
  - The performance of regular external audits to review the use of data and verify compliance with the commitments made.
  - An obligation to share non-personal data with third parties, in line with the principle of non-discrimination.



For Ius Omnibus,



Lena Hornkohl, President of Ius Omnibus



Carmen Herrero Suárez, Vice-President of Ius Omnibus



Carmen Estevan de Quesada, Member of Ius Omnibus