

Reflections on the European Commission's draft Merger Guidelines

The introduction of labour markets

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26 June 2026

The European Commission's draft Merger Guidelines introduce an explicit discussion of potential losses of competition in labour markets. **Elena** and **Michele** discuss the context behind this addition to the draft Guidelines, what could be clarified in the final Guidelines, and the implications for how future mergers will be assessed by the Commission.

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Introduction

The European Commission's current Horizontal Merger Guidelines do not explicitly mention the potential effects of mergers on labour markets. They only provide a brief and generic section on mergers that create or strengthen buyer power in upstream (purchasing) markets, without singling out labour markets for special consideration.²

After a consultation phase in 2025 and 2026, during which stakeholders were asked for their opinions on the inclusion of labour markets in the new Guidelines,³ the Commission's draft Merger Guidelines now present an explicit discussion of mergers with impacts on labour markets, as part of a larger subsection on purchasing markets.⁴

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² Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2004), paragraphs 61-63.

³ See https://competition-policy.ec.europa.eu/mergers/review-merger-guidelines_en#ref-4-past-activities, https://competition-policy.ec.europa.eu/document/download/3ebe19c4-4b33-4ae4-a2e0-dbff47916225_en?filename=Topic_G_Public_policy_security_and_labour_market_considerations.pdf, https://competition-policy.ec.europa.eu/about/reaching-out/review-eu-merger-guidelines-stakeholder-workshops_en#paragraph_1961 (last accessed on 26 June 2026).

⁴ Draft Commission Communication, Guidelines on the assessment of mergers under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings ("**Draft Guidelines**"), paragraphs 160 – 156, accessible at: https://competition-policy.ec.europa.eu/mergers/review-merger-guidelines_en.

While the addition is not strictly necessary – labour markets are particular cases of purchasing markets,⁵ and would theoretically be covered by the more generic discussion of upstream purchasing markets – labour markets are now recognised as relevant enough to warrant a separate, albeit brief discussion.

In this article, we discuss the changes to the economic thinking around labour markets – especially in the United States – which have influenced the new approach of the draft Merger Guidelines. We then examine the draft Guidelines’ new paragraphs on labour markets, highlighting aspects of the Commission’s thinking which could be clarified in the final Guidelines. We conclude by discussing what effects these three short – but potentially very consequential – paragraphs may have in the Commission’s assessment of mergers under the new Guidelines.

The (transatlantic) context behind the increased focus on labour markets

Many of the new topics included in the draft Merger Guidelines codify practices and debates that originate from recent, important mergers assessed by the Commission. For instance, the discussion of ecosystems⁶ originates from cases such as *Booking/eTraveli*, while the discussion of portfolio effects⁷ originates from cases such as *Mars/Kellanova*.

This is not the case for labour markets, as the Commission has rarely (if ever) analysed those markets as part of its merger assessments. The Commission has dealt with labour markets in prominent Article 101 cases – see for example the *Glovo/Delivery Hero* decision⁸ – but not in merger assessments. In this sense, the Commission’s practice has been consistent with the current Horizontal Merger Guidelines, which do not explicitly mention labour markets.

The approach in recent years has been markedly different in the United States, where academic and policy circles have paid increasing attention to employer market power in the form of *monopsony* or *oligopsony* in labour markets. This represents a significant departure from the traditional approach to merger assessments, even in the United States.⁹ Consistent with this shift, a growing empirical literature has examined the labour-market effects of mergers. Most

⁵ Employer firms can be considered as buyers of labour, and workers can be considered as sellers of labour. Similar conceptual treatment can apply to creators, for instance to book authors, who are not strictly employees of firms but sell their output to firms such as book publishers.

⁶ Draft Guidelines, pages 65-66.

⁷ Draft Guidelines, pages 73-74.

⁸ See Decision on case AT.40795 – Food Delivery Services, published on 2 June 2025.

⁹ See for instance Nobel Laureate David Card, who stated in 2022 that “*the time has come to recognize that many – or even most – firms have some wage-setting power.*” (Card, D. (2022), “Who Set Your Wage?”, *American Economic Review*, Vol. 112(4): 1075-1090). The US Department of Treasury published a review of the state of competition in labour markets in the same year, noting that “[*]ack of labor market competition contributes to high levels of income inequality, diminishes incentives for firms to invest, inhibits the creation and expansion of new firms, and reduces productivity growth through lower reallocation of labor across firms and industries.*” (U.S. Department of the Treasury (2022), “The State of Labor Market Competition”, page ii).

retrospective studies find that mergers leading to greater employer concentration are associated with lower wages and, in some cases, reduced employment through increased monopsony power.¹⁰

As a consequence, the DOJ and the FTC have challenged several mergers either partly or solely on the basis of their potential negative effects on wages, benefits and working conditions of certain categories of workers or creators. Examples include *Penguin Random House/Simon & Schuster*, which was successfully challenged based on the theory of harm that the mergers would affect the compensation of authors of top-selling books, *Kroger/Albertson*, and *Tapestry/Capri*.

The importance of analysing labour markets has also been recognised in the DOJ and FTC's 2023 revised merger guidelines (the "US Merger Guidelines"), which include very detailed explanations of:

- a. the theories of harm in labour markets and their most specific features – for instance, that competition concerns can arise at lower levels of concentration compared to product markets, and that labour markets can be relatively narrow;¹¹
- b. how the authorities would define labour markets (and, in particular, implement the hypothetical *monopsonist* test);¹² and
- c. what evidence on merger effects can be obtained from workers and representatives from labour organisations.¹³

Accordingly, unlike almost all other substantive changes in the draft Merger Guidelines, the explicit recognition of labour market considerations appears to be driven by the broad consensus that has emerged in the United States, rather than by the Commission's decisional practice.

The points made – and not made – in the draft Guidelines' discussion of labour markets

The draft Merger Guidelines spell out the potential negative effects of a merger on labour markets: lower wages, worse working conditions, or reduced incentives for workers to enter a given labour market.¹⁴ They also explain that negative effects are more likely to occur where workers have access to few alternative employment options that are comparable to those offered by the merging firms.¹⁵

The Commission further notes that, in its assessment of labour markets, it will consider countervailing factors that may limit the merging parties' employer market power, including collective bargaining agreements and relevant social and labour regulations.¹⁶ It will be interesting

¹⁰ Some references include Prager, E. and M. Schmitt (2021) "Employer Consolidation and Wages: Evidence from Hospitals," *American Economic Review*, 111 (2), 397–427 and Arnold, D. (2021) "Mergers and Acquisitions, Local Labor Market Concentration, and Worker Outcomes," working paper. However, these effects are context specific. In particular, case studies have shown that mergers may also increase wages where they generate product-market rents that are shared with workers or create efficiencies that strengthen the firms' ability to compete for labour. See for example Arnold, D. (2025) "The Labor-Market Impacts of a Major Merger: Evidence from the Security Guard Industry," working paper.

¹¹ US merger guidelines, pages 26-27.

¹² US merger guidelines, pages 41-44 and 48. The hypothetical monopsonist test is equivalent to the hypothetical monopolist test, but applied to purchasing markets.

¹³ US merger guidelines, page 34.

¹⁴ Draft Guidelines, paragraph 161.

¹⁵ Draft Guidelines, paragraph 162.

¹⁶ Draft Guidelines, paragraph 162.

to see if these institutional features – generally more developed in Europe than in the United States – will result in fewer labour-market competition concerns being identified than in the US merger enforcement.

The draft Guidelines also confirm, quite sensibly, that the Commission will not consider effects that may impact workers but that are unrelated to the loss of competition resulting from the merger, such as corporate restructuring following a merger.¹⁷

One important question left unanswered by the draft Guidelines is how the Commission would assess the (admittedly unlikely) situation in which a merger is found likely to result in lower wages for workers while at the same time leading to lower prices of the products or services offered by the merging parties. The US merger guidelines are explicit that a loss of competition in an upstream input market (such as labour) cannot be offset by benefits arising in a separate downstream product market.¹⁸ By contrast, the Commission's draft Merger Guidelines are less clear. They recognise that a merger can lead to loss of head-to-head competition in upstream markets (including labour markets) and result in a SIEC,¹⁹ but also appear to tie this loss of upstream competition to harm to downstream customers.²⁰ They do not explicitly address whether a finding of SIEC in a labour market could be outweighed by benefits accruing in downstream markets. This could be clarified in the final version of the Merger Guidelines.

More generally, the draft Merger Guidelines' treatment of labour markets is considerably less detailed than that of the US Merger Guidelines.²¹ In particular, they do not discuss in depth the specific economic features of labour markets (e.g., switching costs and search frictions when changing jobs), or potential sources of evidence that may be relevant to their assessment. They also do not mention specific aspects that affect market definition in labour markets (e.g., considerations on commuting options), although the principles set out in the Commission's market definition notice can still be applied, *mutatis mutandis*, to labour markets and other purchasing markets.²²

What can change in practice?

As with any aspect of any guidelines, the practical implications of the explicit recognition of labour markets in the Merger Guidelines is uncertain. It will depend on how the Guidelines are actually interpreted and implemented in practice. The paragraphs on labour markets in the draft Merger Guidelines leave open very different scenarios.

One possibility is that the Commission intends to assess competition in labour markets routinely in merger investigations, including those where concerns are ultimately unlikely to arise. Such an approach would substantially increase the burden on the Commission and on the merging parties.

¹⁷ Draft Guidelines, paragraph 160.

¹⁸ US merger guidelines, page 27: “[i]f the merger may substantially lessen competition or tend to create a monopoly in upstream markets, that loss of competition is not offset by purported benefits in a separate downstream product market”; “[...] a merger’s harm to competition among buyers is not saved by benefits to competition among sellers”.

¹⁹ Draft Guidelines, paragraph 158.

²⁰ Draft Guidelines, paragraph 161.

²¹ This is true in terms of absolute number of paragraphs/pages and even more in terms of percentage of paragraphs/pages dedicated to labour markets, given that the US merger guidelines are around half the length of the draft Merger Guidelines.

²² For instance, even if not explained explicitly as in the US merger guidelines, the logic behind the hypothetical monopolist test can be applied to labour markets to run the equivalent test for purchasing markets, the hypothetical *monopsonist* test.

For instance, the Form COs would need to cover all possibly affected labour markets, and those markets would need to be defined and assessed. Moreover, when assessing labour markets, the Commission would not be able to rely on precedent and convention as it often happens in product markets, given the lack of past merger cases dealing with labour markets.

At the opposite end of the spectrum, the relative brief treatment of labour markets may signal that the Commission intends to maintain its current practice of rarely (if ever) considering labour markets in merger cases, unlike the US agencies. In that scenario, the discussion of labour markets in the draft Merger Guidelines would be not much more than an acknowledgement of the debate that originated in the United States, without leading to any policy change in Europe.

The most plausible outcome may lie somewhere in between. Rather than assessing labour markets systematically, the Commission may do so only where the case-specific factors make merger impacts in labour markets more likely, such as merging parties that rely on a specialised workforce or hire workers with very specific features (e.g., particular locations). This would represent an important evolution of current practice, without imposing a disproportionate burden. Even under this more targeted approach, however, the Commission, the merging parties and their advisers would increasingly need to engage with novel questions of law and economics, such as defining labour markets, measuring employer market power, and assessing competitive effects in labour markets.