REPLY TO THE PUBLIC CONSULTATION

FROM THE FRENCH COMPETITION AUTHORITY

ON THE INTRODUCTION OF A MERGER CONTROL FRAMEWORK FOR ADDRESSING BELOW-THRESHOLD MERGERS

21 February 2025

INTRODUCTION

(1) On 14 January 2025, the French Competition Authority (the "**FCA**") launched a public consultation on the introduction of a merger control framework for addressing below-threshold mergers likely to harm competition (the "**Consultation**"). The FCA offered stakeholders the possibility to submit observations.

(2) In the European Union ("**EU**"), the main mechanism for the European Commission ("**EC**") and national competition authorities ("**NCAs**") to examine mergers has historically been the application of turnover thresholds, which ensure maximum legal certainty for merging parties.

(3) In recent years, however, the EC[1] and several NCAs, including the FCA, perceive turnover thresholds as no longer "fit for purpose" because they allegedly do not capture high-value acquisitions where the target has no or minimal turnover (*i.e.,* "below-threshold" transactions). The Consultation is designed to address this perceived issue.

(4) It discusses different approaches ("**Options**") that the FCA could take to address below-threshold transactions. One of these Options gives discretion to the FCA to call in transactions that it considers potentially problematic ("**Option 1**"). Another Option introduces asymmetric notification requirements for certain companies only ("**Option 2**"). Option 3 reflects the CJEU's *Towercast* judgment which allows NCAs to deal with below-threshold transactions through antitrust probes. The FCA dismissed other options, *e.g.,* deal-value thresholds, without discussing them in detail.

(5) Amazon welcomes the opportunity to present observations in this Consultation. As explained in more detail below, Amazon considers that any reform of the existing French merger control system should be based on a sound study evidencing the need for a change. The Consultation claims that there is an "enforcement gap" but does not provide any substantiated recent evidence or even an example to illustrate it. This lack of evidence should warrant caution before selecting an option that may increase regulatory burden and administrative costs for little results. In this context, Amazon takes the view that Option 3 is the most proportionate reaction and preserves the existing level of legal certainty for merging parties; alternatively, deal-value thresholds should be reconsidered; Option 1 is problematic because undermines legal certainty and Option 2 creates asymmetry in the treatment of different transacting parties.

(6) The remainder of this paper is structured as follows. Section 1 sets out our preliminary remarks on the Consultation including its inherent limitations. Section 2 summarizes Amazon's position on the three Options in the Consultation. Section 3 discusses each Option presented in the Consultation in more detail.

1. PRELIMINARY REMARKS

(7) While it remains unclear what enforcement gap the Consultation seeks to address (**1.1**), any option that the FCA considers for an update to French merger control should be further

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[1] At EU level, the EC initially sought to capture below-threshold acquisitions without passing new legislation. By repurposing Article 22 of the EU Merger Regulation ("**EUMR**"), the EC encouraged NCAs to refer transactions that threaten to impact competition in a Member State, even if the authority in that Member State did not have jurisdiction to review the transaction. The first case that the EC reviewed – and prohibited – under the repurposed Article 22 mechanism was *Illumina/GRAIL*, following a 2022 referral by the FCA, although the transaction fell below the French turnover thresholds. In a judgment of September 2024, however, the Court of Justice of the EU ("**CJEU**") found that the EC had no power to review this transaction as the FCA had not competence to review it in the first place.

detailed (**1.2**) and guided by the principle of legal certainty without augmenting the regulatory burden (**1.3**).

1.1 PREMISE OF THE CONSULTATION

(8) The Consultation is based on the premise that there is "*a steady increase in the number of mergers involving companies that play or are likely to play abro key competitive role in the markets concerned but escaping control due to the low turnover generated by the target at the time of the merger*". This premise is, however, not supported by any example or statistics related to France or other EU Member State illustrating that there are several deals below the turnover thresholds. The Consultation does not provide stakeholders with any evidence that below-threshold transactions increased in recent years or that they are more likely than other transactions to be anti-competitive. Recent academic research suggests the opposite.[2]

1.2 OPPORTUNITY TO DISCUSS EACH OPTION IN MORE DETAIL

(9) Amazon understands that the different options presented in the Consultation are not fully fledged legislative proposals. This was not the purpose of this Consultation. Yet, the high-level description of the content of each option makes it difficult to compare between them. Further consultations on the detailed options as well as on any accompanying guidelines would be welcome going forward.

(10) In addition, some options are excluded from the Consultation. For example, deal-value thresholds are discarded with limited discussion (see Section 2 below for more details). An additional consultation would be welcome to consider proposals that have not been put up for debate in this Consultation.

1.3 IMPORTANCE OF LEGAL CERTAINTY IN THE CHOICE OF OPTION

(11) As emphasized by the FCA in the Consultation, the new proposed merger control regime should "*balance the importance of legal certainty for companies and the need for an effective merger control system to prevent harm to competition*" in France and beyond.

(12) The reference to legal certainty in the Consultation is welcome. Legal certainty is an imperative for all businesses and one of the key objectives in the EUMR, as highlighted in the *Illumina/Grail* judgment[3]. The same is true for the French merger control system which, like the EUMR, is based today on turnover thresholds aiming at preserving the two public policy interests mentioned above, *i.e.,* effectiveness and legal certainty. All the Options in the Consultation involve a degree of legal uncertainty. The goal of the FCA going forward should be to limit this uncertainty to the minimum. At the same time, the chosen Option should not lead to regulatory overburden, whether for the merging companies, third-parties or for the FCA itself.

2. CHOICE OF OPTION

(13) As explained above, it is neither necessary nor proportionate to provide the FCA with a new merger control mechanism that would be cumbersome and create legal uncertainty for

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2 M. Ivadi, N. Petit, S. Uenekbas, "*Killer acquisitions in digital markets may be more hype than reality*", available at https://cepr.org/voxeu/columns/killer-acquisitions-digital-markets-may-be-more-hype-reality.

3 CJEU, 3 September 2024, *Illumina/Grail*, C-611/22 P and C-625/22 P, para. 210: "*the objective of"* Regulation 139/2004 is to take *"into consideration the need of undertakings for legal certainty*."

companies. We note that the Consultation itself does not evidence the enforcement gap it claims to address in the current legislation.

(14) Against this background, Option 3 seems to be the least damaging option to avoid additional legal uncertainty (**2.1**). Alternatively, the FCA should reconsider deal-value thresholds which have been ruled out without detailed discussion (**2.2**). Finally, were the FCA to choose Option 1 or Option 2, it should put in place all the necessary guardrails to reduce legal uncertainty – Amazon would be happy to discuss such guardrails in an additional consultation (**2.3**).

2.1 OPTION 3 IS THE LEAST DAMAGING OPTION

(15) Option 3 is the most proportionate way forward as the FCA can investigate below-threshold transactions under Articles 101 or 102 TFEU. This merely applies the *Towercast* judgment of the CJEU, and does not increase legal uncertainty for companies.

(16) *First*, Option 3 gives the FCA powers to pursue transactions it views as potentially problematic; it is therefore effective from the regulator's perspective. *Second*, it reflects the *Towercast* case law and does not introduce a new mechanism which would necessarily trigger difficulties of interpretation and implementation. *Third*, it has already been validated by the CJEU – at least when it comes to Article 102 TFEU.

2.2 A DEAL-VALUE THRESHOLD SHOULD BE CONSIDERED

(17) If the FCA discards Option 3, Amazon's view is that a deal-value threshold should be reconsidered as an option for the update of French merger control.

(18) *First*, assuming an "enforcement gap" exists, the FCA should address it by focusing on deals with significant value as a matter of priority. A deal-value threshold (in conjunction with the existing revenue-based thresholds) would allow the FCA to pursue most – if not all – transactions it considers as potentially harmful to competition in France. Indeed, while transactions involving large players are caught by revenue-based thresholds, transactions involving a small target with significant competitive potential would be caught by the deal-value threshold (because the competitive potential of the target is reflected in the purchase price). Only transactions involving small targets with little or no competitive potential would escape review.

(19) *Second,* deal-value thresholds are a well-known merger control mechanism that has been tried and tested by companies and agencies in many jurisdictions (*e.g.,* USA, Mexico, Germany, Austria). We do not share the Consultation's concern regarding the uncertainty such a threshold could create: a deal-value threshold would provide much more certainty *e.g.*, than the "call-in" of Option 1. We do not share the Consultation's concern regarding a so-called "threshold effect" either: the FCA will in any event retain the possibility of applying Articles 101 or 102 TFEU (or their equivalent under French law) to transactions falling below the deal-value threshold.

(20) *Third*, a deal-value threshold does not necessarily result in numerous additional notifications, contrary to what is stated in the Consultation: this of course depends on the level at which this threshold is set and on an appropriate nexus requirement being introduced. In particular, the recently introduced deal-value thresholds in German and Austrian merger control systems – which include a local nexus requirement – did not trigger a large increase in the number of notifications. Instead, in Germany and Austria which introduced deal-value thresholds in 2017, the annual number of mergers notified decreased between 2019 and 2023 (from 1400 to 805 in Germany and from 495 to 294 in Austria). In Austria, notifications based on the

deal-value threshold remained limited and did not increase significantly in recent years (15 in 2019 and 18 in 2023).[4]

2.3 IN ANY EVENT, OPTIONS 1 AND 2 SHOULD BE REJECTED

(21) Option 1 is highly problematic from a legal certainty perspective. If Option 1 were pursued, it should be made subject to strict guardrails (which are further detailed below in Section 3), including (i) guidelines that limit the discretion of the FCA and explain what types of cases should be called in and what should be their nexus with France and (ii) strict deadlines after which no call-in would be possible.

(22) Option 2 is not a viable option. The fact that a company's past merger has been prohibited or approved conditionally because of competition concerns in a specific market segment cannot reasonably be the basis for all future transactions of the same company to be notified or scrutinized, regardless of who the other party is and in which market(s) it is active. Similarly, effectively requiring a small set of named companies to notify every transaction regardless of competitive significance is both disproportionate and discriminatory. It is difficult to conceive guardrails that could make Option 2 operational.

3. ANALYSIS AND DISCUSSION OF EACH OPTION PRESENTED IN THE CONSULTATION

(1) The section below discusses in further detail Option 1 (**3.1**), Option 2, (**3.2**) and Option 3 (**3.3**), as presented in the Consultation. None of the comments below constitute an endorsement of either option.

3.1 OPTION 1

(23) As already mentioned above, Option 1 is problematic from a legal certainty perspective. It provides the FCA with a very wide discretion to determine which transactions to call in. Symmetrically, it leaves parties with considerable uncertainty as to whether their transaction is going to be reviewed and as to the consequences (in particular in terms of timing) an FCA's intervention would entail. Finally, Option 1 increases the scope of possible interventions from the EC, through Article 22 EUMR, compared to *status quo*, triggering a risk of potential additional delays and heavier information requirements for companies.

(24) There is already a very extensive and heterogeneous set of call-in powers within the EU, which in and of itself generates legal uncertainty for companies. *First*, several Member States apply lowered thresholds as part of their call-in powers (*e.g.,* in Norway, certain strategic companies must systematically notify any acquisition of more than 5% of a company's shares) while other countries apply totally different criteria (*e.g.,* in Ireland, it is sufficient that the transaction is likely to affect competition on the national market, without any additional threshold criteria). *Second*, while some countries set no time limit for exercising their call-in powers (*e.g.,* Sweden and Cyprus), others impose strict time limits (*e.g.,* Italy, Denmark and Hungary).[5] Adding a new call-in regime with its own criteria and deadlines can only increase this legal uncertainty within the EU.

(25) In any event, if it wants to follow Option 1, the FCA should wait for the outcome of the *Nvidia/Run:AI* litigation before the EU Courts. Indeed, following the EC's unconditional clearance of the acquisition of Run:AI by Nvidia on 20 December 2024, Nvidia recently

[4] *See* annual reports of the Federal Competition Authority (here) and of the Bundeskartellamt (here).

[5] In Italy, Denmark, and Hungary, the authorities have six months from the conclusion of the transaction to call-in.

lodged an appeal to the EU General Court challenging the EC's jurisdiction to review the transaction.[6] The outcome of this litigation will have an impact on the use of call-in systems in the EU, including in France.

(26) If the FCA nevertheless chose Option 1, it should introduce guardrails to prevent this Option's most significant undesirable consequences.

(27) *First*, the operational criteria should be further detailed as Option 1 is too broad and not specified enough.

(28) According to the Consultation, the FCA would only be able to "*call in mergers that exceed a certain threshold based on the parties' cumulative turnover in France*". A cumulative turnover threshold certainly brings a minimum of legal certainty. However, the FCA should clarify that a transaction falling below those thresholds can never be called-in (*i.e.,* not that it cannot "*in principle*" be called-in).

(29) In addition, the substantive part of the threshold (*i.e.,* mergers that "*threaten to significantly impact competition*") is not operational and should be specified. What is more, this substantive test makes approaching authorities self-incriminating. To maintain some level of legal certainty, the FCA should envisage defining further the types of transactions it will apprehend in priority and provide concrete examples as a benchmark. This could be done either in the legislation itself or through guidelines.

(30) Finally, Option 1 as it currently stands does not require a sufficient nexus with the French territory. Indeed, the proposed threshold could by definition be met by a transaction involving a target (or an acquirer) that has no activity at all on the French territory. What is more, the substantive part of the threshold refers to an impact on competition "*on the territory*", without even specifying that it refers to the "French" territory. A clear nexus requirement is indispensable to provide some level of legal certainty in particular for companies active in global markets. This would be achieved by requiring that the target is already active in France or that it has concrete and realistic plans of entering the French market segments in the short term.

(31) *Second*, given the uncertainty as to the substantive threshold, the FCA's call-in power should be subject to time limitations, after which no call-in would ever be possible. More specifically:

- The FCA's intervention should only intervene within a fixed deadline, not an open-ended period;
- The FCA's timeline for intervention should have a clear starting point, like the public announcement of the deal (*e.g.,* like in the draft revised Dutch merger control rules) or the conclusion of the deal (*e.g.,* like in Danish merger control rules);
- The FCA's timeline for intervention should have a clear cut-off point, to ensure that an intervention cannot take place past a reasonable time after the closing of the transaction (*e.g.,* 6 months, as is the case in Italian and Danish merger control rules);
- The FCA should clarify that a request for information sent just before the end of the deadline would not have any suspensory effect.

(32) *Third*, the Consultation specifies that the FCA would give companies the opportunity to consult it in case of doubt, which is a welcome proposition. To be fully effective, parties

[6] MLex, "*Nvidia goes to court over EU regulator's move to review Run:ai deal*", 15 January 2025 (see here). The Italian Competition Authority initially used its new call-in power, which allows it to scrutinize transactions that pose risks to competition even when they do not meet turnover thresholds, to refer the case to the EC.

should have clarity from the FCA as to the level of information required to trigger an information consultation and as to the deadline by which feedback may be obtained.

(33) *Fourth*, the proposition to provide guidelines is also welcome. In these guidelines, the FCA should provide guidance as to which types of transactions it will target in priority and how it plans on implementing this new call-in power. As to timing, these guidelines will have to be adopted *after* another public consultation on their content but *before* this new call-in power enters into force. Most importantly, it would not be reasonable that the FCA decides to first "*take stock*" on the first months or years of application of the new threshold and provide guidance later.

3.2 OPTION 2

(34) It should be noted that Option 2 is, as far as we know, unprecedented in any merger control system in the world. The Swiss merger control regime the Consultation refers to is much more tailored as it only applies to abuse of dominance decisions that have become definitive. As such, Option 2 should be analyzed with skepticism and the benefits it brings should be particularly clear for it to constitute a valid option.

(35) That is not the case in the Consultation. As presented, Option 2 is discriminatory as (i) it treats unequally comparably situated transactions, (ii) it introduces merger control thresholds disconnected from deal-specific competition concerns, and (iii) it lacks local and operational nexus. This holds true for all three criteria of Option 2.

(i) Option 2 is discriminatory as it treats unequally comparably situated transactions

(36) Option 2 sets an asymmetric threshold which is in and of itself problematic from an equality perspective. For example, a company found dominant under 102 TFEU or Article L. 420-2 of the French Commercial Code would have to report all its transactions even if they are below the turnover-based thresholds in France, whereas a dominant company that is being investigated, has the same stronghold on a market as the first one but has not yet been found dominant will be under no obligation to report any of its below-threshold transactions. The same applies to a company that has offered commitments in a completed antitrust investigation in comparison to a company that is solely in the process of doing so; their position on their respective markets is the same and their transactions may have similar market impact – yet they are treated entirely differently under Option 2.

(37) Option 2 is all the more unacceptable as all three underlying criteria (previous merger prohibition or conditional clearance, decisions involving fines or commitments under Article 102 TFEU or DMA gatekeeper designation) are based on discretionary decisions on the part of the relevant authority. Attaching drastic consequences (automatic notification of all concentrations) to these criteria is therefore discriminatory while being entirely unrelated to any potential concerns the underlying transaction may actually create.

(ii) The three criteria of Option 2 do not necessarily reflect possible competition concerns

a. On the first criterion (i.e., past merger cases involving a prohibition or conditional clearance decisions by the FCA or the EC)

(38) *First*, as currently drafted, this criterion would retroactively alter the implications of commitments agreed by a company in past merger cases. A company could be required to notify all its transactions simply on the basis of a conditional approval it obtained prior to the entry in force of Option 2, which is unreasonable. This criterion of Option 2 should therefore only reference decisions going forward and not past ones.

(39) *Second*, even if the point above is considered, this criterion of Option 2 will have chilling effects on commitments, in particular during Phase I merger investigations. Companies sometimes offer commitments simply because of timing issues, not because of genuine substantive issues. In particular, some companies are willing to offer remedies in Phase I to receive merger clearance more quickly, even though the transaction does not raise any competitive concerns. The perspective of mandatory notifications for all future transactions under Option 2 would chill companies' willingness to offer clear-cut remedies in Phase I and would thus impede the effectiveness of the remedy system.

(40) *Third*, the approach according to which any commitments case should be used as a possible notification trigger does not seem to be appropriate. Indeed, even in a Phase II commitments case, the FCA or the EC only send a statement of objections to the alleged dominant company with preliminary findings of dominance. However, the finding of dominance (and the definition of the relevant market) are not conclusively proven by the FCA or the EC. As the case never progresses to a final prohibition decision, the company is not conclusively considered as being dominant.

(41) *Fourth*, the prohibition or conditional clearance may be driven by competition concerns in market segments that are not affected in any way by the transaction that would be under review by the FCA. Some companies have multi-market presence with varying degrees of market power in the different markets. Therefore, this criterion of Option 2 may result in a large number of notified transactions that are unlikely to raise competition concerns (*e.g.,* because there is no horizontal overlap or non-horizontal relationship between the activities of the parties).

b. On the second criterion (i.e., in case of decisions involving fines or commitments under Article 102 TFEU or Article L. 420-2 of the French Commercial Code)

(42) *First*, contrary to what the Consultation suggests, any antitrust decision used as the basis for Option 2 would necessarily have to be a final decision, that is to say a decision which has not been appealed or which was definitively confirmed in appeal. Otherwise, if the antitrust decision that triggered a merger control notification obligation is annulled, the concentration which was notified (and possibly only conditionally approved or even prohibited) should not have been delayed, amended or blocked. This would create untenable legal uncertainty for companies as well as a liability risk for the FCA itself.

(43) *Second*, should a commitment case under Article 102 TFEU be used as notification trigger, it would chill companies' incentives to offer and agree to commitments before the EC or the FCA.

(44) *Third*, as for the first criterion, the decisions involving fines or commitments under Article 102 TFEU or Article L. 420-2 of the French Commercial Code may concern market segments that are not affected by the transaction that would be under review by the FCA. Therefore, this criterion of Option 2 may also result in a large number of notified transactions that are unlikely to raise competition concerns (because the reported transaction has no link to the market where dominance was found).

c. On the third criterion (i.e., in case of a DMA gatekeeper designation)

(45) *First*, this criterion would breach Article 1(5) DMA, which reads: "*in order to avoid the fragmentation of the internal market, Member States shall not impose further obligations on gatekeepers by way of laws, regulations or administrative measures for the purpose of ensuring contestable and fair markets*" (emphasis added). The EC takes Article 1(5) seriously. For example, in April 2024, the EC examined a draft Act proposed by the Hungarian authorities "*for the benefit of Hungarian consumers and businesses*" and found that it was in

conflict with Article 1(5) because it "*clearly and directly link[ed] a number of obligations exclusively to the status of a gatekeeper*".[7] Hungary ultimately dropped the proposed obligation for gatekeepers. However, just like the proposed Hungarian legislation, the third criterion of Option 2 clearly and directly links an obligation exclusively to the status of gatekeeper.

(46) *Second*, under the DMA, a company may be designated as a gatekeeper in relation to only one or a few of its services (*e.g.,* its search engine). Option 2 would require the gatekeeper to notify all its transactions to the FCA, even when the target does not relate in any way to the designated services, which is extremely broad and punitive. Similarly to the other notification triggers under Option 2, this criterion would result in a large number of notified transactions even if they are unlikely to raise competition concerns and even if they have in fact no connection with the gatekeeper services designated under the DMA.

(47) *Third*, DMA designation concerns companies that offer one of ten types of services (Article 2(2) DMA). Based on the third criterion of Option 2, the FCA would require notification of all transactions entered by these companies. There may be other companies who have the same or higher impact on the internal market and the same or higher numbers of users but they do not have to notify below-threshold transactions, because they offer different types of services or sell goods. This is an asymmetric and discriminatory outcome because comparably situated companies are treated differently in terms of their merger notification obligations – and without any objective justification.

(48) *Fourth,* by introducing a standalone notification obligation for all transactions entered by gatekeepers, Option 2 is distorting the logic of Article 14 DMA. Article 14 requires gatekeepers to inform the EC for a sub-set of their concentrations. The DMA specifies that it is then the role of the EC to "*inform Member States of* [the gatekeeper's] *information* [on the concentration]*, given the possibility of using the information for national merger control purposes*".[8] By introducing an additional, standalone notification requirement, Option 2 ignores the importance of Article 14, ultimately adding to the administrative burden companies have to bear in relation to their transactions.

(iii) Option 2 lacks local and operational nexus

(49) *First*, Option 2 fails to require the existence of a clear nexus with France in at least two respects:

- Option 2 does not require a clear nexus between the notification trigger (*i.e.,* merger intervention, antitrust fining or commitments decision, DMA designation, etc.) and the French territory: an EC decision finding a firm dominant in Portugal has no informative value for the FCA; and

- Option 2 does not require a clear nexus between the transaction and the French territory: the activities of the parties to the transaction need to relate to France under any legitimate merger control threshold criterion.

(50) *Second*, Option 2 does not establish a clear nexus between the notification trigger in question and the transaction. If the transaction is in a totally different market segment than the market segments affected by the notification trigger, this trigger has no informative value.

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7 Notification 2024/2/HU, 2024 (2273) final, Detailed opinion pursuant to Article 6(2) of Directive (EU) 2015/1535 of 9 September 2015 and Comments pursuant to Article 5(2) of Directive (EU) 2015/1535 of 9 September 2015, 3 April 2024 (see here), p. 7.

8 Recital 71 DMA.

(51) In fact, this nexus is explicitly required under the Swiss merger control regime that the Consultation refers to. Indeed, Article 9 of the Swiss Cartel Act provides for a mandatory notification if the dominant threshold is met and if the transaction concerns the relevant market of the antitrust decision or a neigh boring market.[9]

3.3 OPTION 3

(52) Option 3 reflects the *Towercast* case law of the CJEU of 16 March 2023, which allows NCAs to pursue transactions under abuse of dominance rules, even if they fall below EU and national jurisdictional thresholds.

(53) Option 3 has the merit of having already proven effective, as illustrated by the FCA's use of *Towercast* in the meat-cutting case.

(54) Furthermore, Option 3 enables the FCA to make use of powers that have not yet been exercised in France. Indeed, *Towercast* does not prevent NCAs to intervene also *before* the implementation of the transaction. For instance, the Belgium Competition Authority ("**BCA**") recently initiated a formal investigation of the acquisition by Dossche Mills of Ceres under Article 101 TFEU, right after the announcement of the transaction.[10]

(55) However, as Option 3 still brings legal uncertainty since the FCA can intervene years later after a transaction closed, the FCA should still issue guidelines as to:

- the types of cases it will prioritize under *Towercast*, to provide undertakings with a minimum level of legal certainty;
- the procedure that companies can use to approach the FCA to get comfort regarding its plans to investigate a transaction under antitrust rules.

(56) In any event, given the disruptions they entail, Option 3 and the *Towercast* precedent should be applied selectively to cases generating clear and real competitive risks and should not be used to test innovative theories of harm.

CONCLUSION

(57) In light of the above, Option 3 is the preferable option as it reflects the *Towercast* case law without adding more legal uncertainty. Should the FCA take the view that a new tool is strictly necessary, a deal-value threshold would be the best option to strike an appropriate balance between efficiency and legal certainty. Finally, both Option 1 and 2 trigger significant issues: while Option 1 maximizes legal uncertainty, Option 2 is entirely unprecedented and likely illegal, as it breaches Article 1(5) DMA and contravenes the principles of equality and proportionality by introducing discriminatory criteria that are unrelated to any potential competition concerns.

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[9] Swiss Cartel Act, Article 9: "*Notwithstanding anything set out in paragraphs 1 to 3 above, notification is mandatory if one of the undertakings concerned has in proceedings under this Act in a final and non-appealable decision been held to be dominant in a market in Switzerland, and if the concentration concerns either that market or an adjacent market or a market upstream or downstream thereof.*" The Federal Administrative Court specified, in a decision in April 2014, that such a neighboring market includes (i) markets concerning products that are to some extent substitutes or (ii) markets concerning products with parallel demand.

[10] Belgian Competition Authority, January 22, 2025, *Dossche Mills/Ceres* (*see* press release here).