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United States Senate

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ARMED SERVICES
JOINT ECONOMIC COMMITTEE
JUDICIARY
SELECT COMMITTEE ON INTELLIGENCE

November 21, 2022

Mr. Guenther Salzmann
Chargé d'Affaires, a.i.
Embassy of Austria
3524 International Court, NW
Washington, D.C. 20008

Dear Mr. Salzmann,

I am deeply troubled by the European Commission's new interpretation of Article 22 of the European Union Merger Regulations, allowing the Commission to interfere in acquisitions where there is no European dimension. Under this new standard, there are no identifiable thresholds that a large "foreign-to-foreign" merger must meet for the Commission to assert jurisdiction. The Commission merely needs a member state to *claim* that the transaction would affect trade between member states and competition within its own borders and to ask the Commission to review the merger. This new approach is a breathtaking expansion of jurisdictional authority that is already interfering with American business.

The Commission's decision to use Article 22 to assert jurisdiction over the Illumina/Grail deal last spring is alarming. Neither France, nor Greece, Belgium, the Netherlands, Norway, or Iceland were entitled to investigate the deal under their own laws because the acquisition did not meet any merger control thresholds. Illumina has some EU operations; Grail, however, has none and generates no revenue in the EU. Both are U.S. companies. Instead of leaving U.S. business in the hands of U.S. regulators, the Commission sent a letter asking member states to refer the deal to it. France, Greece, Belgium, the Netherlands, Norway, and Iceland all did. Then, the Commission published new "guidance" in March of 2021 so it could review the transaction despite Illumina and Grail's not having conducted sufficient business to be investigated by *any* of the referring members under their own national laws.

The EU General Court recently upheld the Commission's actions despite the highly speculative claims the Commission made about the deal's impact on member states. If the European Commission wishes to assert jurisdiction over such a merger, it should be able to identify a concrete, substantial harm to European consumers. A theory of generic prejudice to innovation doesn't cut it.

The consequences of this new approach are indefensible and would permit the EU to continue to interfere in U.S. business without justification based on nebulous standards of harm. The European Commission should not position itself to harm U.S. consumers by depriving them of procompetitive deals. American regulators do not need European assistance to police America's free market.

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I kindly request that you intervene in the upcoming review by the European Court of Justice so this misstep may be corrected. I will continue to monitor developments and will consider further actions as necessary.

Sincerely,

Tom Cotton
United States Senator

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