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Minority Shareholding and Co-ordinated Effects - Background Note

- by the Secretariat -

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Abstract

This paper examines whether, and under what circumstances, minority shareholdings may facilitate co-ordination among competitors. It considers how incentives, information and influence may affect firms' ability to reach, monitor or sustain a co-ordinated outcome. Drawing on economic theory, empirical research and enforcement experience, the paper assesses how the effects of minority shareholdings on co-ordination depend on ownership arrangements and market conditions, including whether the shareholding strengthens competitive constraints. The evidence identifies plausible concerns but supports general caution in inferring a broader issue with tacit co-ordination. The paper examines enforcement across different jurisdictions, such as the use of merger control to assess whether acquisitions of minority shareholdings may harm competition, and rules on anti-competitive conduct to address unlawful co-ordination facilitated by such minority holdings. It distinguishes prospective assessment from findings of infringement, and considers the effectiveness of remedies, as well as alternative policies related to financial governance. Overall, the findings suggest that minority shareholdings need to be assessed on a case-by-case basis, comparing market conditions with and without the investment. This approach can help authorities focus on ownership links that may weaken competition while preserving the potential benefits of minority investment.

Keywords: Minority shareholding, cross-ownership, co-ordinated effects, tacit co-ordination, deviation, maverick firms, common ownership, information exchange, corporate governance, merger control

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Table of contents

Abstract 2

Acknowledgements 3

Executive summary 5

1 Introduction 7

2 Minority shareholdings: Relationships, rights and rationales 9
2.1. Minority shareholding, control and influence 9
2.2. Investment rationales 11

3 How may minority shareholdings affect the conditions for co-ordination? 13
3.1. Analytical framework for co-ordinated effects 13
3.2. Incentives: How minority shareholdings may alter competitive rewards 15
3.3. Information and strategic uncertainty 17
3.4. Influence and governance 19
3.5. From ownership links to co-ordinated outcomes 20

4 From ownership link to enforcement: Jurisdiction, evidence and remedies 22
4.1. Available legal routes 22
4.2. Evidence and inference 27
4.3. Remedies and wider policy options 31

5 Conclusion 35

References 37

Notes 46

TABLES

Table 1. Analytical framework for assessing co-ordinated effects from minority shareholdings 30

BOXES

Box 1. The Delivery Hero/Glovo case 18
Box 2. The European Commission's 2026 Draft Merger Guidelines 23
Box 3. Assessing influence in AI partnerships 25
Box 4. Analytical tools for assessing minority shareholdings 29

Executive summary

Minority shareholdings, common and reciprocal ownership, and associated governance links are a common feature of modern capital markets and corporate organisation. Minority investments can support diversification, financing, innovation and commercial collaboration. Growth in institutional ownership has renewed interest in the competition implications of minority investments. Holdings of similar size may confer different combinations of economic exposure, information access and governance and voting rights. This paper examines whether such structural links between firms may facilitate co-ordination among competitors. It focusses on situations in which firms remain separately controlled, but where ownership or governance links may nevertheless affect competitive incentives or behaviour.

Minority shareholdings may affect competition through three principal mechanisms: incentives, information and influence. Their effects depend on the ownership arrangement and market conditions. In theoretical models, a financial interest can reduce the gain from undercutting a rival, but may also weaken the competitive response that deters deviation. The latter effect can destabilise co-ordination. Access to strategic information may assist monitoring, while influence over expansion may weaken a competitor capable of disrupting co-ordination.

Laboratory experiments find more collusive behaviour under some ownership arrangements. Evidence from operating markets remains less conclusive about tacit co-ordination; higher prices or explicit cartel findings do not, by themselves, establish such effects. The assessment also considers whether entry, expansion or customer responses could undermine the proposed co-ordination. The paper finds that incentives, information and influence are often most relevant when considered together. The competitive significance of an ownership link depends not only on the existence of a particular mechanism, but also on how those mechanisms interact in the market concerned.

A review across jurisdictions shows important differences in which minority acquisitions enter merger review. Some systems require a change of control; others also capture lesser influence or specified shareholding levels, while some permit substantive review without requiring control. These approaches remain subject to the applicable jurisdictional requirements. The paper also reviews other legal routes that may be relevant to minority shareholdings, including conduct enforcement, preventive interlock rules, market-inquiry powers and broader governance frameworks.

The analysis distinguishes jurisdiction, competitive effects and infringement. Establishing that a minority shareholding falls within the scope of review does not establish whether it harms competition. Authorities and courts assess the evidence under the applicable legal route. Prospective merger assessment can address future risks without proof of past infringement. Conduct enforcement, preventive interlock rules and market-inquiry powers each have their own statutory requirements. The paper therefore emphasises the importance of connecting the ownership arrangement to a plausible mechanism, supporting evidence and an appropriate counterfactual, rather than inferring competitive effects from ownership links alone.

Three questions can help organise the assessment:

- What ownership or governance relationship exists, and what rights and financial interests does it create?
- Which mechanisms could affect competitive conduct: incentives, information or influence, or two or three of them combined?
- How would the relationship change firms' ability to reach, monitor or sustain co-ordination compared with the likely situation without it?

Where intervention is justified, its scope depends on the identified concern and the applicable legal powers. Reducing a holding, restricting governance rights and limiting information access address different aspects of a relationship; removing one channel may leave others intact. Remedy choice involves effectiveness and proportionality, including practical implementation, monitoring costs and any substantiated customer benefits that would be lost, under the applicable framework. Broader governance or disclosure reforms require separate justification and may fall within the remit of financial regulators or legislators. The suitability of any intervention depends on the theory of harm identified and on whether it addresses the mechanism through which competition may be affected.

Further evidence on how financial interests affect company decisions, and on the competitive effects of remedies after implementation, would strengthen assessment. Sharing experience across jurisdictions could help distinguish recurring concerns from those specific to particular markets or ownership arrangements. The diversity of ownership structures, legal frameworks and market settings examined in this paper suggests that minority shareholdings do not lend themselves to simple presumptions. Similar investments may raise different competition concerns depending on the rights they confer, the incentives they create and the extent to which they affect information flows or influence over competitive decisions.

The practical objective is to focus scrutiny on links that may make co-ordination more likely or sustainable while preserving investment that strengthens independent competition. A case-by-case assessment therefore remains essential, both for identifying ownership links that may materially affect competition and for avoiding unnecessary restrictions on investments that support rivalry, innovation, financing or market entry.

1 Introduction

1. Structural links between firms are a regular feature of modern capital markets and corporate organisation. Portfolio holdings allow investors to diversify firm-specific risk and allocate savings across productive uses, while strategic stakes can provide capital, share risk, support research and development and innovation, provide access to technology or markets, and underpin longer-term commercial relationships (OECD, 2026[1]; Fee, Hadlock and Thomas, 2006[2]).[1] While minority investments serve legitimate financing and governance purposes (OECD, 2023[3]), competition authorities must assess whether they alter incentives, information flows or competitive independence in ways that affect market outcomes.

2. The policy relevance of these structural links has increased alongside broader changes in corporate ownership. Institutional investors now hold substantial shares of listed equity in many OECD economies, and ownership structures have become increasingly interconnected through institutional holdings, strategic investments and other forms of partial ownership (Bas et al., 2023[4]; OECD, 2025[5]). These developments have intensified interest in the potential competition implications of structural links such as minority shareholdings, common ownership and related governance links.

3. Minority shareholdings may raise competition concerns because even relatively small ownership interests can create economic, informational or governance links between firms active in the same or related markets (OECD, 2009[6]). Rather than referring to a specific ownership threshold, this paper uses the term *minority shareholding* to describe shareholdings that do not confer sole or joint control over a firm. Such shareholdings can nevertheless provide varying degrees of influence, depending on the rights attached to them and the surrounding ownership and governance structure, and/or access to competitively sensitive information that would not otherwise be available to the investor. As a result, the significance of a minority shareholding depends not only on the percentage of equity held, but also on the rights attached to it, including voting rights, board representation, contractual arrangements, the distribution of other shareholdings and the applicable legal framework (Medina, de la Cruz and Tang, 2022[7]).

4. Recent enforcement activity and policy debates in OECD jurisdictions demonstrate renewed interest in the competition implications of minority shareholdings and associated governance links. This paper examines whether, and under what circumstances, structural links such as a minority shareholding may make co-ordination among independent competitors more likely, durable or effective than under the relevant counterfactual. The assessment considers how minority shareholdings and associated ownership and governance links, including common ownership and interlocking directorates, may contribute to the existence of co-ordinated effects and how they may affect incentives to compete independently, create opportunities to exchange competitively sensitive information or confer influence over strategic decisions.

5. Co-ordinated effects occur where firms are able to align or accommodate their conduct in a manner that reduces competitive pressure without necessarily entering into an explicit agreement (OECD, 2015[8]; European Commission, 2004[9]). Sustainable co-ordinated effects require firms to reach a common understanding on the terms of the co-ordination, monitor adherence to them and maintain incentives to follow it or punish deviations from it, without being undermined by competition from outside the co-ordinating group. Each firm may also arrive at this common understanding independently, by anticipating its rivals' behaviour and likely reactions, without any agreement or communication between them. Minority shareholdings may also give rise to unilateral effects, which arise where a firm's competitive

incentives change independently of any tacit or explicit co-ordination with rivals. For example, a firm holding a stake in a competitor may have weaker incentives to compete aggressively because it internalises part of the effect of its actions on the rival's profits (O'Brien and Salop, 2000[10]; OECD, 2009[6]). Incentive and information mechanisms discussed in this paper may be relevant to both types of effects. The primary focus of this paper, however, is not on unilateral effects or on explicit co-ordination, but on whether minority shareholdings may affect the conditions under which tacit co-ordination emerges or is maintained.

6. In merger control, co-ordinated effects arise where an acquisition enables or strengthens co-ordination between firms (CMA, 2026[11]). Tacit co-ordination may sustain prices above competitive levels and harm consumers without itself amounting to an unlawful agreement or concerted practice. Merger control can therefore prevent acquisitions that make future co-ordination more likely, stable or effective, where the applicable jurisdictional and substantive tests are met (European Commission, 2004[9]; US DOJ and FTC, 2023[12]). For minority shareholdings, the relevant question is whether and how the acquisition changes firms' ability or incentives to reach or sustain co-ordination, compared with the situation without it (CMA, 2026[11]).

7. A minority shareholding should not be considered a single, homogeneous form of economic integration. Stakes of the same nominal size may confer very different combinations of cash-flow, voting and governance rights, and access to information. Relatively small holdings may be competitively significant where ownership is generally dispersed, the minority holding carries enhanced voting rights, or the investment is accompanied by board representation, veto rights, shareholder agreements or other channels of influence. Ownership percentage alone therefore provides only a limited indication of a minority shareholding's potential competitive significance (OECD, 2023[3]). The analysis in this paper is therefore organised around the mechanisms through which a minority shareholding may affect competition rather than on ownership thresholds or formal classifications such as "active" or "passive" investment, since investors described as passive may still possess voting, governance or information rights.

8. Drawing on earlier OECD work on minority shareholdings, common ownership, oligopolistic markets and information exchange, this paper distinguishes between effects arising from incentives, information and influence, while emphasising that the ownership link alone does not necessarily establish influence over management or competitive conduct (OECD, 2009[6]; 2011[13]; 2012[14]; 2015[8]; 2017[15]). Similar distinctions appear in contemporary enforcement guidance across OECD jurisdictions. The 2023 United States (US) Merger Guidelines identify influence over the target's conduct, altered competitive incentives and access to competitively sensitive information as principal effects of partial acquisitions (US DOJ and FTC, 2023[12]). Comparable themes also appear in Canadian merger guidance, UK merger guidance and the European Commission's ongoing review of its Merger Guidelines, all of which recognise that minority shareholdings may affect competition through governance links, information access and changes to firms' incentives (Competition Bureau Canada, 2011[16]; CMA, 2026[11]; European Commission, 2026[17]).

9. The rest of this paper is structured as follows. Section 2 examines ownership arrangements, associated rights and investment rationales. Section 3 considers the way in which minority shareholdings may affect the conditions for co-ordination through incentives, information and influence, drawing on theory, empirical studies and cases, especially against a backdrop of oligopolistic markets. Section 4 examines legal routes, evidence and remedies available to competition authorities and courts, alongside wider policy options, such as financial governance rules. Section 5 summarises the findings and their implications for competition policy.

2 Minority shareholdings: Relationships, rights and rationales

10. Investors acquire minority shareholdings to participate in a firm's returns, acquire knowledge, support innovation or gain influence over its decisions, without obtaining sole or joint control of the undertaking. Corporations may also acquire minority stakes in competitors, allowing them to share in the rival's financial performance without obtaining control (O'Brien and Salop, 2000[10]). Some minority shareholdings are primarily financial investments held for return and diversification purposes, while others form part of broader commercial, technological or governance strategies (Çelik and Isaksson, 2014[18]). Minority investments differ significantly in their structure, associated rights and commercial objectives. Understanding these differences is an important first step before assessing how such investments may affect competition. This section examines the nature and rights associated with minority shareholding, before considering their rationale.

2.1. Minority shareholding, control and influence

11. For the purposes of this discussion, a minority shareholding refers to an ownership interest below the majority that does not confer sole or joint control over an undertaking, regardless of the percentage of equity held (OECD, 2009[6]; 2017[15]; Pini, 2012[19]). The defining characteristic is therefore the absence of control, rather than any particular ownership threshold (OECD, 2009[6]; Tzanaki, 2015[20]).

12. The functional aspect of minority shareholding covers a wide range of financial instruments, such as ordinary voting shares, non-voting and preference shares, options, convertible securities, and warrants, as well as indirect holdings through funds, affiliates or ownership chains.[2] The relevant economic relationship may therefore differ significantly from what a simple shareholding percentage suggests. Various rights attached to the investment or equity, or an option to increase the stake over time, may materially change the relationship, even when the initial voting percentage is relatively small.[3] The competitive significance of an investment therefore depends on the rights and economic exposure it creates, rather than on its legal form alone (O'Brien and Salop, 2000[10]; Tzanaki, 2015[20]; 2023[21]).

13. Economic ownership and corporate control should also be treated as distinct concepts. O'Brien and Salop distinguish between a shareholder's financial interest in a firm and their ability to influence that firm's decisions. This distinction is central to the economics of partial ownership because a shareholder may possess financial incentives, governance rights and information rights in different combinations (O'Brien and Salop, 2000[10]). A financial interest gives the investor an economic stake in the performance of the investee and may therefore be relevant even where the investor cannot affect the investee's conduct. Ownership, economic exposure and the capacity to influence decision making need not coincide. Depending on the rights attached to the shareholding, investors with similar ownership stakes may possess materially different abilities to influence corporate strategy, governance or competitive conduct (Tzanaki, 2022[22]; 2023[21]).

14. Control or influence concerns the ability to affect corporate decision making. A minority shareholding may confer control where it allows the holder to exercise decisive influence over the undertaking's commercial policy, for instance if ownership is otherwise diluted.[4] The percentage of share

capital alone is insufficient to establish whether control exists. Information rights constitute a third, distinct dimension because access to non-public information may be relevant even in the absence of control. Minority shareholdings may therefore confer three broad categories of rights: economic rights, which determine exposure to profits and losses; governance rights, which affect participation in corporate decision making; and information rights, which provide access to non-public information about the investee.

15. As opposed to control, which generally refers to the possibility of exercising decisive influence over an undertaking, influence may arise when a minority shareholder is able to affect, shape or constrain corporate decisions without determining them. Influence might derive from voting rights, board representation, veto rights, shareholder agreements, reputational authority, or repeated interactions between the parties, even in the absence of sole or joint control (OECD, 2009[6]; Tzanaki, 2022[22]; 2023[21]). Concepts such as "decisive influence", "significant influence" and "material influence" originate in different legal and regulatory contexts and are not used consistently across jurisdictions.[5] For the purpose of this paper, "influence" refers broadly to the ability of a minority shareholder to affect a firm's decision making or competitive conduct.

16. Competition law and financial regulation often use different concepts because the two fields ask different questions. Financial reporting, prudential and securities-disclosure regimes use concepts such as control, significant influence, beneficial ownership and reportable holdings to determine reporting, supervisory or disclosure obligations. For example, International Accounting Standard, IAS 28[6] applies a rebuttable presumption of significant influence at 20% of voting rights, while securities-disclosure regimes frequently use lower reporting thresholds.[7] These classifications may provide useful evidence regarding the nature of a shareholding, but they do not determine whether control, influence or competitive significance exist. Conversely, a holding that is non-controlling or falls below a financial disclosure threshold may still be relevant if it creates material economic exposure, information access or governance rights (OECD, 2009[6]; 2025[23]).

2.1.1. Minority shareholding categories

17. Minority shareholdings differ not only in the rights they confer, but also in the relationships they create among firms. Some establish direct ownership links between competitors, some create overlaps through a common investor, and others are accompanied by governance connections such as interlocking directorates. Establishing a typology of minority shareholding arrangements can help identify how firms are linked and through what ownership or governance route. This paper proposes to classify minority shareholdings by the relationship they create among competitors: a one-way interest, reciprocal interests, and common ownership by a third party. The firms may be actual competitors or potential competitors, or in vertical relationships, such as between supplier and customer. These are ownership configurations; they do not constitute a legal test of influence. A transaction may involve more than one investor or shareholder, including through indirect holdings. This distinction follows the OECD's treatment of direct and reciprocal links and its separation of cross-ownership from common ownership (OECD, 2009[6]; 2017[15]).

18. One-way minority shareholding arises when a competitor acquires an interest in another firm without that firm acquiring an interest in return. The ownership relationship may range from a purely financial investment to a stake accompanied by governance, information or other contractual rights. The structure establishes a direct connection between competitors, although the significance of that connection depends on the rights attached to the investment and the surrounding market context.

19. Reciprocal minority shareholdings (or cross-shareholdings) arise when each competitor holds a minority interest in the other. Unlike one-way ownership links, reciprocal arrangements create ownership connections in both directions, although the interests held by each party need not be equal and may confer different rights (i.e. asymmetric shareholdings). Reciprocity is not necessary for an ownership link to be economically significant, but it creates direct financial connections in both directions between competitors. Reciprocity changes the structure of the relationship between firms, but its significance depends on the

rights attached to the investment and the commercial context. Minority shareholdings may also arise in vertical relationships, such as where a supplier acquires an interest in a customer or a customer acquires an interest in a supplier.[8] These arrangements do not constitute a separate ownership category, but apply the same ownership structures to firms operating at different levels of the supply chain (OECD, 2009[6]).

20. Common ownership arises where a third party (usually a mere financial investor and not a market player) holds minority interests in two or more competing firms. That party may be an institutional investor, but the institutional status is not the only sort of common ownership; what matters is the overlap between holdings (OECD, 2017[15]; Azar, Schmalz and Tecu, 2021[24]). Unlike direct cross-ownership, neither competitor needs to own shares in the other.

21. Interlocking directorates are separate from financial stakes; they refer to governance links rather than another form of shareholding: a person serves on the boards of two or several competing firms. An interlock may result from a minority investor's appointment right but may also exist without equity ownership (OECD, 2009[6]). Its relevance may lie in participation in decisions or access to information from both firms; having a common director does not itself establish that sensitive information was exchanged.

22. The categories above describe ownership structures rather than competitive effects and should not substitute for the underlying facts. Their significance depends on the shareholder's economic exposure and the rights attached to the share (OECD, 2009[6]; 2017[15]). A nominally passive stake may still confer meaningful economic exposure or ordinary shareholder rights, while a strategically motivated investor may possess little practical ability to influence commercial decisions. Governance rights may protect an investor from dilution or fundamental corporate changes without extending to prices, output, capacity, entry or innovation. Conversely, rights described as protective may, in practice, affect strategically significant decisions. Rights and their exercise should therefore be recorded separately, and the investor's description of its role should be tested against the underlying agreements and conduct.

2.2. Investment rationales

23. Investment rationales help explain why a particular security, rights package and commercial arrangement were chosen. They inform the counterfactual and may identify benefits that would be lost if the structure changed. They do not determine competitive effects. A legitimate rationale can coexist with a competition concern, and a strategic purpose does not establish one. The relevant evidence includes contemporaneous investment papers, valuation models, financing alternatives, negotiations over rights, board approvals and the parties' conduct after closing, rather than a stated purpose considered in isolation.

24. In many if not most cases, the primary objectives for acquiring a minority share are financial return and diversification. Diversification spreads exposure across firms, sectors and asset classes so that firm-specific losses have less effect on the portfolio. Pooled funds can provide that service at lower transaction and information costs than many savers could achieve directly. Public equity markets facilitate both the allocation of capital to firms and the provision of liquidity to investors (OECD, 2026[1]).

25. For institutional investors, it is often useful to distinguish between asset owners, who receive the economic return from an investment, and asset managers who exercise investment and governance decisions on their behalf. Stewardship refers to the oversight and engagement undertaken by investors to protect or enhance the value of their investments. It may include voting, engagement with boards or management, and other forms of shareholder participation. Importantly, engagement should not be equated with control, and the use of common advisers or service providers does not in itself establish co-ordination between portfolio companies (OECD, 2023[3]; 2025[5]; 2026[25]). The relevant question is therefore who ultimately bears the economic return, who exercises governance and voting rights, and how those rights are used (OECD, 2017[15]; Çelik and Isaksson, 2014[18]; OECD, 2026[1]).

26. Industrial and financial investors may also use a minority stake to fund a constrained firm, certify its quality to other investors, and share the risk of a project without bearing the costs of full integration (Allen and Phillips, 2000[26]; Fee, Hadlock and Thomas, 2006[2]). Partial ownership can mitigate hold-up in joint investment, support market entry, or permit collaboration in research and development (OECD, 2009[6]; Ouimet, 2013[27]; Schmalz and Reyntjens, 2026[28]). Economic models also suggest that overlapping ownership may strengthen incentives for innovation where technological spillovers between firms are substantial (López and Vives, 2019[29]; Vives, 2020[30]). In these settings, investors may seek governance or information rights to protect their investment, monitor the use of capital or foster collaboration. Thus, such rights should be assessed in light of the commercial purpose of the investment.

27. Minority shareholdings may fulfil legitimate commercial and governance functions independent of any competition concern. Operating companies may acquire minority stakes as part of a continuing commercial relationship. Such investments frequently arise vertically between suppliers and customers, firms participating in a common value chain, or parties engaged in long-term contractual, technological or distribution relationships. A producer may invest in a supplier to secure capacity or quality; a supplier may invest in a customer to strengthen distribution; or firms may wish to stabilise an alliance or joint venture. The minority holding may support relationship-specific investments, facilitate sharing of risk, or improve co-ordination between complementary activities. Empirical studies find that minority investments may support longer-term commercial relationships, investment and collaboration, particularly where contracting problems or financing constraints are present, and in research-intensive industries (Allen and Phillips, 2000[26]; Fee, Hadlock and Thomas, 2006[2]). Where the parties also compete, the same ownership relationship, associated rights and repeated interactions may create additional channels through which incentives, information or influence operate, and are considered later in the paper.

28. A further rationale is strategic learning. A minority investor may use the relationship to obtain information about a technology, business model or geographic market, assess potential synergies and preserve an option for later acquisition to reduce uncertainty and fund innovation (Ouimet, 2013[27]; Schmalz and Reyntjens, 2026[28]). Indeed, overlapping ownership may increase incentives for innovation where technological spillovers between firms are significant (Vives, 2020[30]). It can also give an incumbent visibility over a potential entrant's technology, strategy or future expansion plans. The distinction between information required to evaluate or monitor an investment and access to current or forward-looking competitive information may be particularly important in practice.

29. Capital provision can itself be the central rationale. A young, distressed or capital-intensive firm may accept a minority investor because debt is unavailable, too costly or poorly suited to uncertain returns. The commitment of a knowledgeable or reputable investor may also perform a certification function by signalling due diligence and attracting other finance, customers or employees. Monitoring, information and consent rights may be requested as conditions of funding. The relevance of these explanations depends on the contemporaneous evidence and circumstances of the investment (Ouimet, 2013[27]).

30. The possible benefits of a minority relationship therefore extend beyond the immediate financial return. They may include access to capital, risk-sharing, improved monitoring, technology transfer, complementary assets and closer commercial relationships. Such potential benefits should be assessed on the basis of evidence rather than assumption, and it is important to identify the mechanism through which any claimed benefit is expected to arise (OECD, 2017[15]).

31. This section has identified the relevant ownership interests, actors, structures and rights without assigning them a competitive effect. These factors provide the factual foundation for the next stage of the analysis: whether a specific ownership link affects incentives, information or influence in a way that alters the conditions necessary for co-ordination, relative to the counterfactual. The distinctions developed here between economic interest and control, rights and exercise, access and transmission, and investment rationale and market effect are important points to keep in mind for a competitive assessment of minority shareholding and its impact on co-ordinated effects.

3 How may minority shareholdings affect the conditions for co-ordination?

32. This section examines whether minority shareholdings may affect firms' ability to reach terms of co-ordination, monitor adherence and sustain co-ordination over time. Co-ordinated effects arise where firms are able to align or accommodate their conduct in a manner that reduces competitive pressure without necessarily entering into an explicit agreement. Such conduct may relate to prices, capacity, output, innovation, quality, territories, or customers. Competition authorities typically assess whether firms are able to reach a common understanding regarding the terms of co-ordination, monitor adherence to that understanding and sustain co-ordination over time through credible deterrence of deviation, without being undermined by non-participating rivals, customers, entry or innovation (European Commission, 2004[9]; CMA, 2026[11]).

33. An ownership link does not itself establish co-ordinated effects, nor does it remove the need to identify a credible mechanism connecting the ownership arrangement to firms' competitive conduct. This section therefore examines three mechanisms through which minority shareholdings may affect co-ordinated outcomes: incentives, information and influence, drawing on the economic literature on partial ownership and the broader competition-law literature on co-ordinated effects (O'Brien and Salop, 2000[10]; OECD, 2009[6]; Tzanaki, 2015[20]; 2022[22]).

3.1. Analytical framework for co-ordinated effects

34. Unilateral effects arise where an acquisition, ownership interest or other structural link changes a firm's incentives without requiring tacit or explicit co-ordination with rivals, for example because it internalises a share of another firm's profits (O'Brien and Salop, 2000[10]; OECD, 2009[6]). Co-ordinated effects additionally require firms to form expectations regarding rivals' behaviour and to sustain a common course of conduct over time (European Commission, 2004[9]). Some mechanisms, such as partial profit internalisation or access to strategic information, may be relevant to both theories of harm. However, evidence that minority shareholdings alter unilateral incentives does not by itself demonstrate an increased likelihood of co-ordination.

3.1.1. Oligopolistic market conditions

35. Co-ordinated effects are generally most plausible in oligopolistic markets, where a limited number of firms interact repeatedly and recognise their mutual interdependence (OECD, 2015[8]). In such markets, firms may have incentives to accommodate one another's conduct rather than compete aggressively (Gilo, Moshe and Spiegel, 2006[31]). Minority shareholdings become relevant in this context because they may alter firms' incentives, expectations, access to information and ability to influence rivals' conduct (Gilo, 2000[32];

OECD, 2009[6]). The ownership link may reinforce their potential to affect how firms respond to one another within a market where co-ordination may already be feasible (Gilo, 2000[32]; Merlone and Salleo, 2003[33]).

36. Several authors have argued that partial ownership links may soften competition by reducing the incentives to deviate from a co-ordinated outcome (Gilo, 2000[32]; Gilo, Moshe and Spiegel, 2006[31]; Tzanaki, 2022[22]). Others have highlighted the role that ownership links may play in reducing strategic uncertainty, facilitating information acquisition or shaping expectations regarding rivals' behaviour, in particular in situations of repeated interaction. Market characteristics such as concentration, product homogeneity, relative symmetry among competitors, barriers to entry and expansion, repeated interaction and transparency may therefore facilitate co-ordinated effects, while entry, buyer power, innovation and disruptive rivals (mavericks) may on the contrary limit co-operation (OECD, 2015[8]).

3.1.2. Conditions for tacit co-ordination

37. The conditions outlined below form part of a widely used analytical framework for assessing co-ordination, both tacit and explicit, although their precise formulation and legal status vary across jurisdictions (OECD, 2015[8]; CMA, 2026[11]; Competition Bureau Canada, 2011[16]). In EU merger control, *Airtours* provides an established formulation of these conditions. They must be assessed together, by reference to the overall economic mechanisms of tacit co-ordination as emphasised in *Bertelsmann and Sony v Impala* (*Airtours*; *Bertelsmann and Sony v Impala*).[9]

38. The first condition concerns the ability to reach terms of co-ordination. Firms must understand the conduct to be followed, such as the prices to maintain, capacity to supply or markets to serve. This need not involve an explicit agreement but requires sufficient predictability for firms to organise their behaviour around an identifiable course of conduct. This may be facilitated by repeated interaction, stable market conditions, product homogeneity, transparency or other market features that reduce strategic uncertainty (OECD, 2015[8]). A minority shareholding may matter if the ownership link changes the information or expectations on which that understanding depends (European Commission, 2004[9]).

39. Secondly, firms must be able to monitor and detect departures from the expected course of conduct. Firms need sufficiently reliable indications of deviation despite demand shocks or other market fluctuations. Greater transparency can make deviations easier to detect in time for an effective response, strengthening the conditions for co-ordination (Court of First Instance of the European Communities, 2002[34]; OECD, 2015[8]). Imperfect observability may undermine co-ordination by weakening firms' ability to infer rivals' actions and respond appropriately to deviations (Merlone and Salleo, 2003[33]).

40. Thirdly, adherence must remain more attractive than deviation. This requires a credible deterrent mechanism that can be activated if deviation is detected, with consequences sufficiently timely and severe to offset the short-term gains from deviating (European Commission, 2004[9]; European Court of Justice, 2008[35]). In repeated interaction, firms compare the immediate returns from departing from the common course of conduct with the expected loss of future profits. This condition must hold for each participating firm. In repeated-game models, this depends on firms' expectations regarding future interaction, the likelihood that deviations will be detected and the credibility of competitive responses, including a breakdown of co-ordination (Baker, 2002[36]; Gilo, Moshe and Spiegel, 2006[31]).

41. Finally, co-ordination must be capable of withstanding responses from outside of the co-ordinating group and from customers. Entry, expansion, innovation or buyer responses may defeat an otherwise sustainable understanding (Baker, 2002[36]).

42. The discussion that follows examines how minority shareholdings may affect each of these conditions through changes in incentives, information and influence, and thereby alter firms' ability to reach, monitor or sustain co-ordinated outcomes.

3.2. Incentives: How minority shareholdings may alter competitive rewards

43. Holding minority shareholdings may change the incentives firms face when deciding to compete aggressively or accommodate rivals.

3.2.1. Internalisation of rivals' profits

44. A minority shareholding may induce a firm to take account of part of a rival's profits when making its own competitive decisions. Consider Firm A's investment in Firm B. A price cut that diverts sales from B may increase A's operating profits while reducing the return on its stake in B. If A's decision makers take account of both effects, the investment can reduce the attraction of that price cut, even without control over B (Flath, 1991[37]; O'Brien and Salop, 2000[10]; OECD, 2009[6]). This mechanism can produce unilateral effects, meaning a softening of competition without explicit co-ordination. The link to co-ordinated effects arises where the price cut represents a deviation from a common course of conduct: A's financial interest in B may reduce the gain from deviating (Gilo, Moshe and Spiegel, 2006[31]).

45. The magnitude of the effect depends on the ownership configurations. With a one-way minority shareholding, the financial interest directly changes the investing competitor's returns; it does not, by itself, change the investee's objectives. Reciprocal minority holdings create financial exposure in both directions, so that each firm bears part of the harm its actions impose on its rival, although the size and distribution of these interests may differ (Gilo, Moshe and Spiegel, 2006[31]). Under common ownership, a third-party investor benefits from competing firms' returns. The question is then how that investor's interests enter the objectives of the operating firms' decision makers.

46. For co-ordination to be sustainable, each participating firm must have an incentive to adhere, taking account of the expected response to deviation. Minority shareholdings may also soften competition following a breakdown of co-ordination, weakening deterrence and potentially offsetting the reduced gain from deviation (de Haas and Paha, 2021[38]). Ownership links may consequently affect not only the profitability of competing aggressively, but also the incentives to deviate from, monitor or sustain a co-ordinated outcome. The balance of these effects is examined in Section 3.2.2.

3.2.2. Effects on the sustainability of co-ordination

47. Minority shareholdings can affect the sustainability of co-ordination by changing the relative rewards from adherence, deviation and subsequent competition. For instance, a minority holding may reduce the immediate gain from undercutting a linked rival, but may also make competition less severe following a breakdown of co-ordination (Baker, 2002[36]; Malueg, 1992[39]; de Haas and Paha, 2021[38]). In repeated interaction, these changes affect whether the threat of future competitive retaliation is sufficient to deter deviation (Baker, 2002[36]). Gilo, Moshe and Spiegel (2006[31]) identify ownership configurations that facilitate tacit collusion in repeated price competition with homogeneous products. Increasing a shareholding while keeping the other inter-firm holdings unchanged does not hinder collusion in their model, but need not facilitate it either.

48. A different result can arise when partial ownership softens competition after co-ordination breaks down. The prospect of losing future co-ordinated profits then becomes a weaker deterrent to deviation, even if the stake also reduces the immediate gains from undercutting a rival. Malueg (1992[39]) identifies these opposing effects in quantity competition. De Haas and Paha (2021[38]) show that the destabilising effect can arise under a wider range of assumptions, including an extension allowing a competition authority to detect and fine collusive agreements. The relevant comparison is therefore between the change in deviation gains and the change in the losses following deviation, under the assumptions of the model concerned.

49. The ownership structure matters because it may alter firms' incentives within a particular market setting (OECD, 2009[6]). Co-ordination must remain at least as profitable as deviation for the firm most inclined to deviate. Maverick firms have stronger incentives than their rivals to compete aggressively, expand output, innovate or depart from prevailing market behaviour. Such firms may destabilise accommodative outcomes by increasing the likelihood of deviation and reducing the sustainability of co-ordination (Baker, 2002[36]). Asymmetric ownership structures may also alter incentives unevenly across competitors, changing which firm has the strongest incentive to deviate. Such asymmetries may complicate the formation of co-operation. In Gilo, Moshe and Spiegel's (2006[31]) initially symmetric ownership network, transferring a share between rival shareholders (creating asymmetry) can weaken co-ordination by increasing the seller's incentive to deviate.

3.2.3. Empirical evidence on minority shareholdings and incentives

50. Empirical evidence provides some support for the proposition that ownership links may alter competitive incentives. However, the evidence is considerably less conclusive regarding whether such changes result in observable reductions in competition or facilitate co-ordinated outcomes. This distinction is important. Evidence that ownership structures are capable of affecting incentives is not equivalent to evidence that they lead to anti-competitive conduct (Backus, Conlon and Sinkinson, 2021[40]).

51. Laboratory experiments help distinguish changes in unilateral incentives from changes in repeated interactions. Benndorf and Odenkirchen (2021[41]) examine symmetric, non-controlling cross-ownership in a laboratory experiment involving price competition. They compare settings in which participants face changing competitors with settings in which the same competitors interact repeatedly. Prices increase with cross-ownership in both settings, while repeated interaction between the same participants produces additional tacitly collusive behaviour. Their comparison helps distinguish changes in unilateral incentives from effects arising through repeated interaction.

52. Hariskos, Königstein and Papadopoulos (2022[42]) examine a quantity-setting duopoly with symmetric passive cross-ownership. Increasing the holding from 10% to 40% raises prices, and the authors attribute part of that increase to more co-operation between the firms, rather than solely to unilateral incentive effects. Together, these experiments provide evidence that cross-ownership can affect co-ordinated behaviour in controlled settings. They do not establish the magnitude or prevalence of those effects in real markets, where ownership arrangements and competitive conditions may differ.

53. Evidence from actual markets (as opposed to laboratory experiments) is more contested. The airline studies by Azar, Schmalz and Tecu (2018[43]; 2021[24]) reported a positive association between common ownership and airfares, and played a significant role in bringing competition concerns relating to common ownership to the attention of antitrust authorities and scholars. Subsequent work has debated both the magnitude and the interpretation of those findings (Backus, Conlon and Sinkinson, 2021[40]), while other studies have questioned whether similar effects can be detected more broadly across industries (Koch, Panayides and Thomas, 2021[44]). Lewellen and Lowry (2021[45]) reassess empirical approaches to institutional common ownership and find little robust evidence of effects on firm behaviour. These studies address different settings and empirical questions. They should not be treated as equivalent tests of tacit co-ordination: evidence of higher prices identifies a possible competitive effect, but does not by itself show whether the mechanism is unilateral profit internalisation, tacit co-ordination, or some other channel.

54. Some more direct evidence concerning collusive conduct comes from Abraham, Ederer and Marvão (2026[46]) who combine ownership data with registered Swedish cartels in a period when those cartels were legal. High firm-pair profit-internalisation weights are associated with cartel participation and longer duration. However, the relationship is concentrated in pairs where the firm internalising the rival's profits participates in a cartel and the linked rival does not. The study therefore does not generally show commonly owned rivals joining the same cartel. Its observational findings concern explicit arrangements

and do not identify a causal effect on tacit co-ordination or establish how shareholder preferences reached managers.[10]

55. Heim et al. (2022[47]) provide indirect evidence from 63 countries. Domestic acquisitions of minority shares in competitors increased following the introduction of leniency programmes considered effective, while comparable effects were not found for non-horizontal or cross-border acquisitions. The authors interpret this as consistent with stabilising collusive agreements or softening competition after their breakdown. The study identifies an acquisition response to a change in enforcement, but it does not establish which of the three mechanisms operated, nor does it demonstrate that the acquisitions subsequently sustained tacit co-ordination.

56. As seen here, laboratory and theoretical studies broadly support the theories under which minority shareholdings may soften competition either through unilateral incentive effects or through greater tacit co-ordination. Empirical studies reporting higher prices are generally consistent with both mechanisms, but the observed price increases alone cannot distinguish which mechanism was at play. The evidence concerning explicit collusion is more limited. While studies such as Abraham, Ederer and Marvão (2026[46]) and Heim *et al*. (2022[47]) find relationships between ownership links and conduct associated with cartel participation or cartel stability, they do not establish that minority shareholdings cause tacit co-ordination in actual markets or identify the precise channels through which ownership affects firms' behaviour.

3.3. Information and strategic uncertainty

57. Information can affect both firms' identification of a common course of conduct and the detection of departures from it. A minority shareholding matters where it supplies information that changes these possibilities relative to the information otherwise available. The issue is therefore the additional strategic visibility created by the relationship, including its scope and timeliness, rather than the existence of a reporting right alone (OECD, 2011[13]; 2012[14]).

3.3.1. Information requirements for co-ordination

58. Competition concerns are greatest where ownership structures provide access to information that reduces uncertainty regarding competitors' current or future behaviour (OECD, 2011[13]; 2012[14]; 2026[48]). Non-public, forward-looking information concerning prices, capacity, investment plans, bidding strategies, product launches or other commercially significant decisions may help firms anticipate rivals' conduct. Information about current transactions or output may help them detect departures from expected behaviour. Historical or aggregated information may be less informative, but its value depends on the market and the conduct being monitored. A useful channel must help firms distinguish deviation from ordinary market fluctuations. Greater transparency may not be enough to solve that problem if the market is complex or experiences rapid changes (OECD, 2011[13]; 2012[14]; 2015[8]). Consistent with *Airtours* and the broader literature on co-ordinated effects, observability is therefore a key factor in assessing whether a co-ordinated outcome can be sustained (Court of First Instance of the European Communities, 2002[34]; Baker, 2002[36]; OECD, 2015[8]).

3.3.2. Minority shareholdings as information channels

59. Information may become available through board representation, observer rights, shareholder reporting, governance processes, investor engagement or related financing discussions. Access by an investor or director must be distinguished from onward transmission to a competitor or another relevant decision maker. A one-way flow can reduce strategic uncertainty; it is not necessary to have a reciprocal exchange for that mechanism to operate. Its competitive, strategic significance nevertheless depends on

which firms receive the information and whether the resulting visibility assists a plausible form of co-ordination (OECD, 2017[15]).

60. Information obtained through a shareholding may serve legitimate commercial purposes, including monitoring the value of an investment and exercising shareholder rights, as discussed in 2.2. Where the investment provides board representation, access to information also supports directors in fulfilling their duty of care (OECD, 2023[3]).[11] The competition question concerns the additional information made available through the investment, its recipients and its relevance to competitive decisions. In a prospective assessment, the concern is whether the arrangement is likely to create a useful channel. A proof that information has already been transmitted is not a prerequisite to identifying a future risk.[12] The evidential distinction between available rights and their actual use is examined in Section 4.3.

61. *Tianqi/SQM* illustrates a prospective information concern assessed under Chile's general conduct rules, rather than merger control. Chile's Fiscalía Nacional Económica (FNE) concluded that Tianqi's acquisition of a minority share in Sociedad Química y Minera de Chile (SQM) would create a new information channel between lithium competitors and make the relevant markets more prone to co-operation. Its assessment also considered Tianqi and Albemarle's joint control of Talison. On 2 March 2023, the Chilean authority rejected Tianqi's request to lift the safeguards agreed in 2018, including restrictions concerning board representation and commercially sensitive information. This was a decision to maintain preventive measures, rather than a finding that tacit co-ordination had occurred (Fiscalía Nacional Económica, 2023[49]).

62. *Delivery Hero/Glovo* provides evidence of actual use of a shareholder information channel: board documents containing commercially sensitive information were forwarded to Delivery Hero managers. The infringement also involved direct contacts and explicit market sharing, so it does not establish that board access alone produced tacit co-ordination. The case nevertheless shows how a potential information channel can become a functioning route between competitors (Box 1) (European Commission, 2025[50]).

Box 1. The Delivery Hero/Glovo case

A minority shareholding used to facilitate explicit co-ordination

Delivery Hero and Glovo were competitors in online delivery services when Delivery Hero acquired a non-controlling 15% stake in Glovo in July 2018. Its holding rose to 37.4% on a fully diluted basis by the end of 2021, before it acquired sole control on 22 July 2022. The European Commission found that the minority shareholding formed part of a broader relationship through which the parties exchanged information, implemented no-poach arrangements and ultimately engaged in market-sharing conduct over a period stretching from 2018 to 2022. Shareholder agreements contained no-poach clauses; a Delivery Hero representative on Glovo's board forwarded board documents containing commercially sensitive information to Delivery Hero managers; and Delivery Hero used the channels available through its shareholder relationship, including approval rights and board-level interactions, to seek to influence Glovo's geographic strategy. Managers of the two companies also communicated directly (European Commission, 2025[50]).

The conduct developed over time, with Glovo initially resisting Delivery Hero's proposals concerning geographic expansion. In January 2020, the companies reached an understanding on market division: they subsequently refrained from entering EEA countries where the other was present, co-ordinated entry into countries where neither operated, and removed existing overlaps when Delivery Hero sold its operations in Bulgaria, Croatia and Romania to Glovo in May 2021.

In its settlement decision of 2 June 2025, the Commission found no-poach arrangements, information exchanges and market sharing contrary to Article 101 TFEU and Article 53(1) of the EEA Agreement. Both companies acknowledged liability in the settlement procedure; the Commission attributed direct

participation to Delivery Hero SE and Glovoapp23 SA separately and fined them EUR 223.285 million and EUR 105.732 million, respectively.

Relevance to minority shareholdings

The Commission expressly stated that a cross-shareholding between competitors is not unlawful in itself. The period during which Glovo resisted Delivery Hero's geographic proposals is instructive because it illustrates that ownership links and board access do not in themselves establish influence over commercial conduct. The finding concerned documented explicit conduct but is not evidence of observed tacit co-ordination.

Source: European Commission (2025), *Commission Decision of 2 June 2025 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (Case AT.40795 – Food Delivery Services)*, C(2025) 3304 final, Brussels, [full non-confidential decision], https://ec.europa.eu/competition/antitrust/cases1/202530/AT_40795_1262.pdf.

3.4. Influence and governance

63. Influence concerns a minority shareholder's ability to affect the investee's strategic choices. For co-ordinated effects, the question is whether this influence makes a common course of conduct easier to establish or sustain, or weakens competitive responses that could disrupt it. The analysis must therefore connect the decisions in question to the conditions for co-ordination. A reduction in rivalry between investor and investee does not in itself establish that connection (OECD, 2009[6]; Pini, 2012[19]; US DOJ and FTC, 2023[12]).

64. Voting and veto rights, board appointments, consent rights and financing relationships may provide means of influencing investment, capacity or market entry. Their significance depends on the shareholder's practical ability and incentives to affect these decisions, and on the investee's alternatives. Rights concerning dilution or constitutional changes differ from rights that can block financing, capacity expansion or entry (OECD, 2026[48]). Whether such influence exists depends on the minority shareholder's practical leverage and the alternatives available to the investee (OECD, 2023[3]). These channels should be distinguished from a financial interest that changes the investor's own incentives without affecting the investee's decisions (Rock and Rubinfeld, 2018[51]; Sokol, 2022[52]; OECD, 2009[6]). For example, blocking financing could restrain expansion where the investee cannot readily obtain funding elsewhere. A prospective assessment need not establish that a veto has already been exercised, but must explain which decision the shareholder could affect and how this would assist co-ordination. Ryanair/Aer Lingus (2015[53]) illustrates how a minority shareholding can constrain an investee's strategic development; the Competition Commission separately examined co-ordinated effects and found them unlikely.[13]

65. Reciprocal shareholdings, through which competitors hold stakes in one another, may extend these channels of influence in both directions. Where each holding confers practical influence over strategic decisions, the assessment should take this relationship into account. The examination could then investigate whether the associated rights could constrain or influence departures from a common course of conduct, such as a planned capacity expansion that would undermine a co-ordinated restriction of output. This governance mechanism is distinct from the financial incentive effects of reciprocal holdings discussed in Section 3.2 (Pini, 2012[19]).

66. Whether influence operates in one direction or both, its significance for co-ordinated effects depends on how the affected firms would compete without the shareholding links. The investee may have stronger incentives than its rivals to cut prices, expand capacity or pursue a different competitive strategy. Where these characteristics enable it to prevent or disrupt co-ordination, it may be described as a maverick. A minority shareholder's ability to discourage such conduct, for example by blocking financing for expansion, could make co-ordination easier to establish or sustain. This concern can arise whether the investee is a firm that might otherwise participate in co-ordination but has strong incentives to depart from

it, or a competitor that consistently challenges the co-ordinating firms (Baker, 2002[36]; OECD, 2015[8]; European Commission, 2004[9]). These effects on external competitive constraints should be considered alongside any changes in incentives and information among the firms expected to co-ordinate, as analysed in Sections 3.2 and 3.3.

67. Influence over a competitor or potential entrant outside the co-ordinating group could weaken an external constraint. If the group sought to restrict capacity, for example, an outsider's expansion might make that restriction unprofitable. Using a minority position to impede that expansion could help sustain the co-ordinated outcome. Conversely, financing, expertise or market access provided by the investment may strengthen the outsider's competitive constraint. A minority shareholding may weaken such a constraint through influence over a challenger or strengthen it by financial expansion. These effects must be considered alongside changes in incentives and information of the firms expected to co-ordinate (Court of First Instance of the European Communities, 2002[34]). The assessment therefore depends on the investee's likely conduct and financing alternatives without the investment (OECD, 2015[8]).

68. *Delivery Hero/Glovo* provides evidence of shareholder influence contributing to explicit collusion (Box 1). The Commission found that Delivery Hero exercised, or threatened to exercise, approval rights and influenced other shareholders to convince Glovo to share markets. Glovo initially resisted Delivery Hero's proposals concerning its geographic expansion before the parties aligned on market division. The case connects the use of shareholder influence to an identified, co-ordinated outcome. It concerns explicit collusion and does not establish that comparable rights would facilitate tacit co-ordination. It supports examining the decisions affected through the relationship, while remaining evidence of explicit collusion rather than a test of tacit co-ordination (European Commission, 2025[50]).

3.5. From ownership links to co-ordinated outcomes

69. The mechanisms examined above, incentives, information and influence, can affect different conditions for co-ordination, sometimes in opposing directions. Their interaction matters because firms must identify a common course of conduct, detect and deter departures, and withstand responses from competitors and customers outside the co-ordinating group.[14] A minority shareholding therefore cannot be assessed by examining each mechanism in isolation. The relevant question is whether the ownership link, viewed as a whole, changes the conditions for co-ordination sufficiently to make a co-ordinated outcome more likely. The distinction is between identifying a mechanism capable of operating, and establishing its significance in the market concerned (European Commission, 2004[9]). This would require an assessment of how the mechanisms interact in the specific market context (CMA, 2026[11]).

70. To reach a common understanding, access to information and ability to influence can make particular strategic choices more predictable, while financial interests may make accommodation more attractive. The mechanisms are often complementary. Incentives may increase firms' willingness to accommodate one another, but information may be needed to identify focal points for co-ordination and influence may increase confidence that expected conduct will occur. The significance of any one mechanism therefore depends partly on the presence of the others. Also, these channels reinforce one another only if the proposed restraint is attractive to the firms expected to co-ordinate (Pini, 2012[19]). The analysis must also connect the ownership link to the conduct, including whether the information is sufficiently informative and the affected decisions sufficiently relevant to support a common expectation.

71. For monitoring, the distinctive contribution of ownership is the additional visibility it may provide over conduct relevant to the understanding. Board representation or reporting rights may reveal price cuts, capacity additions or entry inconsistent with that understanding. The information's usefulness depends on whether its timing and detail allow firms to distinguish deviations from changes in demand or costs. Its contribution to deterrence then depends on whether it enables a response soon enough to offset the gains from deviation. Better information can thus reinforce financial incentives by increasing the likelihood and

speed of an effective response (European Commission, 2004[9]). Information may therefore operate less as an independent concern than as a mechanism through which altered incentives become actionable.

72. For sustainability, financial interests may reduce the gain from winning a market at a rival's expense. They may also reduce the loss resulting from deviation and a subsequent breakdown of co-operation; the net effect depends on which effect dominates (de Haas and Paha, 2021[38]). Influence can provide an additional response to deviation, such as withholding financing, but a credible threat requires both practical leverage and willingness to bear its costs (European Commission, 2004[9]; Dewaele et al., 2026[54]). Even where incentives, information and influence support co-operation among the firms connected by the ownership link, the arrangement may remain unstable if competitors or customers outside that group can defeat the attempted restraint. Restraining a challenger through governance rights could weaken that external constraint, while financing its expansion could strengthen it (CMA, 2026[11]).

73. *Naspers/Just Eat Takeaway* illustrates the interaction of the mechanisms in a prospective assessment. Naspers' acquisition of Just Eat Takeaway would also connect it to Delivery Hero, in which Naspers already held a minority stake. The staff account identified aligned financial incentives, a channel for information exchange to help detect departures, alongside financial leverage that could make a response to deviation credible. Clearance required a substantial reduction in the stake and restrictions on voting and board appointments (European Commission, 2025[55]; Dewaele et al., 2026[54]). The case illustrates how mechanisms may complement one another; it is not evidence of observed tacit co-ordination. It nevertheless illustrates the type of forward-looking assessment that competition authorities must undertake when evaluating minority shareholdings.

74. The central question is not whether a minority shareholding creates incentives, provides information, or confers influence viewed separately, but whether those mechanisms collectively alter the conditions for co-ordination in a way that is likely to affect competitive outcomes. Section 4 examines how authorities may assess that connection through the available legal routes and evidence.

4 From ownership link to enforcement: Jurisdiction, evidence and remedies

75. Section 3 examined the mechanisms through which minority shareholdings may affect competition. This section considers how competition law assesses such concerns in practice, focusing on jurisdiction, evidence and remedies. Minority shareholdings are a structural link between competitors, but their competitive significance depends on the economic exposure, rights, information channels and market context associated with the holding.

76. Jurisdiction, competitive effects and infringement are distinct analytical questions. A competition authority or court first identifies whether the ownership relationship falls within the applicable legal framework. A merger assessment then considers competitive effects against the relevant counterfactual. Conduct enforcement requires evidence satisfying the applicable prohibition; preventive interlock rules and market-investigation powers have different statutory requirements. The following sections distinguish these routes before examining evidence and remedies.

4.1. Available legal routes

77. Competition authorities may address concerns arising from minority shareholdings through several distinct legal routes. The same ownership relationship may therefore be reviewable under one route but not another.

4.1.1. Merger review and its jurisdictional reach

78. Where a minority acquisition falls within merger jurisdiction, the competition authority assesses its competitive effects against the applicable substantive test and counterfactual, including where the acquisition has already been completed (European Commission, 2004[9]; OECD, 2015[8]; European Commission, 2008[56]). For co-ordinated effects, the question is whether the transaction changes conditions for reaching, monitoring or sustaining co-ordination. This prospective assessment does not require proof of a past infringement (US DOJ and FTC, 2023[12]; CMA, 2026[11]).

79. Jurisdictions differ in how and whether acquisitions of minority shares enter merger review. Control-based frameworks are used among a majority of OECD jurisdictions.[15] OECD (2017[15]) identifies control as the principal filter determining which acquisitions enter merger review. Other frameworks permit review without control or extend jurisdiction to lesser influence and specified shareholding thresholds. These differences determine whether a minority acquisition can be assessed, separately from whether it harms competition (Tzanaki, 2015[20]; 2022[22]; 2023[21]).

80. Under the European Union (EU) Merger Regulation, a concentration generally requires a lasting change of control, including joint control. Control concerns the possibility of exercising decisive influence

through rights, contracts or other means, rather than a particular shareholding percentage (Council of the European Union, 2004[57]).[16] France and Chile, among others, likewise apply decisive-influence tests, under which minority shareholding may confer control through its associated rights or the surrounding circumstances. A non-controlling minority acquisition may therefore fall outside this framework. Nevertheless, a pre-existing minority interest can be assessed as part of a later transaction that constitutes a concentration, as in *Siemens/VA Tech*[17] (European Commission, 2004[9]; Tzanaki, 2015[20]; OECD, 2026[58]).

81. The European Commission's 2014 White Paper proposed extending review to non-controlling acquisitions that created a "competitively significant link". However, the proposal was not adopted (European Commission, 2014[59]). Its 2026 draft Merger Guidelines instead address competitive assessment within the existing jurisdictional framework, including links through minority shareholdings and common ownership (Box 2) (European Commission, 2014[59]; 2026[17]). The draft guidelines propose substantive guidance, rather than an extension of the transactions subject to notification.

Box 2. The European Commission's 2026 Draft Merger Guidelines

Minority shareholdings, common ownership and co-ordinated effects

The European Commission published draft revised Merger Guidelines on 30 April 2026, proposing a single text to replace its 2004 Horizontal and 2008 Non-Horizontal Merger Guidelines. The published text remains a draft and does not itself extend merger jurisdiction.[1]

In its discussion of loss of head-to-head competition, the draft considers minority financial interests, associated rights and information links, and common ownership as a contributing factor to a significant impediment to effective competition. It also recognises that concentration measures may require adjustment. Paragraph 165 indicates that, in principle, minority holdings below 5% are not relevant as a potential stand-alone theory of harm unless accompanied by additional rights or links. This is a limited draft provision, not a general exemption from co-ordinated effects. The draft recognises that a non-controlling financial interest can matter even without additional rights or influence; the rights package is therefore relevant without being a universal prerequisite to a concern.

The draft's separate discussion of co-ordination considers how structural and commercial links may facilitate information exchange, monitoring or deterrence of deviation. Minority interests can be relevant where they change those conditions. Their significance remains dependent on the ownership arrangement and the proposed co-ordinated outcome, rather than the presence of a link alone.

1. The text checked on 26 October 2026 remains a draft. It states that it has not been adopted or endorsed by the European Commission and expresses preliminary views of the Commission services.
Source: European Commission (2026[17]), Review of the Merger Guidelines, Directorate-General for Competition, European Commission, Brussels, https://competition-policy.ec.europa.eu/mergers/review-merger-guidelines_en (accessed 26 October 2026); European Commission (2004[9]), Horizontal Merger Guidelines, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52004XC0205(02).

82. A second group of merger regimes consider the effect of a proposed acquisition alongside other substantive tests, including for minority shares. In the United States, acquisition of control is not a condition for applying Section 7 of the Clayton Act. The provision reaches acquisitions of part of another firm's stock where their effect may be substantially to lessen competition or tend to create a monopoly (15 U.S. Code §18[60]). The 2023 Merger Guidelines (US DOJ and FTC, 2023[12]) accordingly examine how minority shareholdings may change incentives, information access or influence, including whether they facilitate co-ordination.[18] The assessment concerns the particular interest acquired and the applicable effects test, including where it falls short of control. Notification is a separate question: the Hart-Scott-Rodino notification exemption for certain acquisitions of 10% or less of voting securities does not preclude a

challenge when Section 7's substantive requirements are met (15 U.S. Code §18[60]; US DOJ and FTC, 2023[12]; 16 CFR 802.9[61]).[19]

83. Under Australia's merger control regime, acquisitions that fall below the mandatory notification thresholds remain subject to the substantive prohibition in Section 50 of the *Competition and Consumer Act 2010*, which prohibits acquisitions that have the effect or likely effect of substantially lessening competition (ACCC, 2026[62]; Federal Register of Legislation, Australia, 2010[63]). The notification regime introduced in 2026 separately employs concepts of control and specified voting-power thresholds, including certain notification triggers that apply to share acquisitions even where no change of control occurs, making the distinction particularly relevant for minority shareholdings (ACCC, 2026[64]).[20]

84. A third group of frameworks extends merger review to assessing influence below decisive influence or to specified shareholding levels. In the United Kingdom, "material influence" is the lowest level of control recognised under merger law. The CMA (2025[65]) assesses the whole relationship, including voting rights, board representation and commercial links. Establishing material influence brings an acquisition within review, subject to the other jurisdictional requirements. The CMA must separately assess whether the transaction has resulted, or may be expected to result, in a substantial lessening of competition.

85. Canada provides a comparable approach. Its merger definition includes acquisition of control over, or a "significant interest" in, a business. The Bureau interprets significant interest by reference to the ability materially to influence economic behaviour. Its guidance[21] also identifies incentive, influence and information effects of partial acquisitions, distinguishing the jurisdictional inquiry from the assessment of competitive effects (Competition Bureau Canada, 2011[16]).[22]

86. Germany's framework can be considered a hybrid form, as it combines statutory shareholding thresholds with an influence test. A concentration can arise through acquisition of 25% or 50% of capital or voting rights under Section 37(1)(3) of the Competition Act. Acquisitions below those thresholds may qualify through competitively significant influence under Section 37(1)(4), subject to the other jurisdictional requirements. Review therefore does not depend solely on control or proof of influence: the statutory shareholding trigger can itself be relevant (Bundeskartellamt, 2014[66]). [23]

87. Japan, on the other hand, uses a distinct relationship-based approach. The Japan Fair Trade Commission (JFTC) first examines whether a shareholding forms, maintains or strengthens a joint relationship, taking account of voting positions, board links and other relationships, before assessing a possible substantial restraint of competition (JFTC, 2019[67]). This approach extends beyond control in the EU sense, without constituting an unrestricted effects test.[24]

88. The broader triggers under the third group permit different substantive outcomes. *Amazon/Deliveroo* was cleared after a finding of material influence (CMA, 2020[68]).[25] The ability to influence the competitor's policy therefore did not predetermine either competitive harm or a finding of co-ordinated effects. *Ryanair/Aer Lingus* reached a different substantive outcome. The then Competition Commission required a reduction of the holding to 5% because of constraints on Aer Lingus's commercial options, although the co-ordinated effects theory was rejected (Competition Commission, 2013[69]). Jurisdiction over a minority holding therefore establishes an opportunity to assess its effects, without predetermining harm or co-ordination.

89. For the three mechanisms examined in Section 3, the practical difference is whether financial interests or information links can be assessed independently of influence, or only once an influence or shareholding trigger is met. Box 3 illustrates the assessment of influence across wider commercial relationships.

Box 3. Assessing influence in AI partnerships

Artificial intelligence (AI) partnerships can combine minority investments with broader technological and commercial relationships, including cloud-computing services, licensing, data access, financing arrangements and distribution agreements. Their competitive significance may derive from the interaction between ownership, governance and technical dependence (OECD, 2025[70]). Such arrangements can provide funding, computing resources, technical expertise and routes to market, while also creating information access or influence over development and expansion (Autorité de la concurrence, 2024[71]; OECD, 2025[70]). The US Federal Trade Commission (FTC) documents combinations of investment and commercial rights in its staff study. This is a sector study rather than a merger or infringement determination (FTC, 2025[72]). For this paper, the relevant connection is how a term changes strategic visibility or a competitive decision. A partnership's funding benefits and its possible restrictive channels can coexist and require assessment against the available alternatives (OECD, 2025[70]).

In Microsoft/Mistral, the UK's Competition and Markets Authority (CMA) examined computing and distribution arrangements, possible technical collaboration and a EUR 15 million convertible investment which, if converted, was expected to confer an equity interest below 1%. It found that the arrangements did not confer material influence and therefore did not create a relevant merger situation (CMA, 2024[73]). In Microsoft/OpenAI, the CMA considered a broader and evolving relationship involving investments, cloud services, technology integration and governance links. The CMA found that Microsoft had acquired material influence in 2019 but had not subsequently acquired de facto control. As no new relevant merger situation arose, the CMA did not determine whether the partnership resulted in a substantial lessening of competition (CMA, 2025[74]).

These inquiries illustrate why influence may need to be assessed across the whole relationship. A small equity stake can have different significance when accompanied by contractual rights or economic dependencies. The jurisdictional decisions did not establish that the partnerships facilitated co-ordination.

Note: The case conclusions concern the arrangements examined in the 2024 and 2025 decisions. The US and French sector work supplies wider context, rather than additional merger or infringement findings.
Source: CMA (2024[75]), Microsoft/Mistral AI partnership, https://www.gov.uk/cma-cases/microsoft-slash-mistral-ai-partnership-merger-inquiry; CMA (2024[73]), Microsoft Corporation's partnership with OpenAI, Inc., https://assets.publishing.service.gov.uk/media/664c6cfd993111924d9d389f/Full_text_decision.pdf; FTC (2025[72]), Partnerships Between Cloud Service Providers and AI Developers, www.ftc.gov/system/files/ftc_gov/pdf/p246201_aipartnerships6breport_redacted_0.pdf; Autorité de la concurrence (2024[71]), Competition and Generative AI opinion, https://www.autoritedelaconcurrence.fr/en/press-release/generative-artificial-intelligence-autorite-issues-its-opinion-competitive.

4.1.2. Conduct rules and preventive interlock prohibitions

90. Conduct rules may apply to co-operation associated with a minority investment, whether or not the acquisition was subject to merger review. Their reach depends on how the ownership relationship affects conduct. For instance, Article 101 of the Treaty on the Functioning of the European Union (TFEU) and the UK Chapter I prohibition require an agreement, concerted practice or association decision; Section 1 of the US Sherman Act requires concerted action. A minority shareholding can change competitive incentives without establishing those elements (OECD, 2015[8]). *Suiker Unie* (1975[76]) distinguishes independent adaptation to competitors' existing or anticipated behaviour from direct or indirect contact whose object or effect is to influence an actual or potential competitor's market conduct or reveal to that competitor the conduct a firm has decided to pursue or is considering adopting.[26]

91. Ownership links can also affect how an agreement is proved. Kovacic *et al*. (2011[77]) distinguish parallel conduct, which may arise independently, from circumstantial evidence that is sufficiently probative to support an inference that competitors have reached an agreement. A small number of jurisdictions, such as South Africa, employ statutory presumptions under which specified ownership or governance links may contribute to a rebuttable inference that an agreement exists. A minority interest alone is insufficient (South Africa, 1998[78]). The effect of an ownership link therefore depends on the particular prohibition and its evidential rules. Section 4.2 examines the evidence relevant to minority relationships.

92. The investment agreement itself, or its implementation, may provide the conduct to be assessed. Rock and Rubinfeld (2018[51]) explain how common shareholders could facilitate the transmission of information between competitors, or assist the monitoring of deviations from a co-ordinated outcome. To assess the competitive harm, however, those activities must then be connected to the applicable legal prohibition. Under Article 101, the European Commission distinguishes restrictions by object, for which anti-competitive effects need not be demonstrated, from arrangements requiring assessment of restrictive effects. For the latter, the analysis should explain how the investment changes competition relative to the counterfactual, including through reduced strategic uncertainty or weaker incentives to deviate. In *Delivery Hero/Glovo,* the Commission found no-poach arrangements, information exchanges and market sharing based on documented conduct and the parties' direct participation. The shareholder relationship provided channels through which the conduct occurred, but ownership interest was not itself the infringement (European Commission, 2025[50]).

93. An investor's own participation in co-operation also needs to be distinguished from the attribution of an investee's infringement. Canada's Competition Bureau recognises that parties that are not competitors may incur liability for participating in a conspiracy (Competition Bureau Canada, 2021[79]). In the United States, the Court of Appeals for the Second Circuit confirmed that a firm operating at a different level of the market may be liable where it knowingly participates in a horizontal price-fixing conspiracy (US Court of Appeals for the Second Circuit, 2015[80]). Under EU law, a third party may likewise participate in unlawful co-operation without competing in the affected market. The relevant questions are the party's contribution to the conduct and its awareness of the common objective; control of the investee is not a prerequisite for responsibility for its own participation (see *AC-Treuhand AG v Commission*, *Court of Justice of the European Union* (2015[81])).[27] For a minority investor, these approaches direct attention to its own involvement and to the applicable requirements concerning knowledge and intention. Control over the investee is not a prerequisite for responsibility on that basis.

94. *In Goldman Sachs/Prysmian*, liability rested on decisive influence: before flotation, control of all voting rights supported a presumption; after flotation, when the holding fell below 50%, the Commission relied on evidence including board appointments, reporting arrangements and other links (Court of Justice of the European Union, 2021[82]). The case illustrates attribution of an established infringement. It does not establish that an ordinary non-controlling minority investment facilitated co-ordination. Evidence about an investor's role must therefore be assessed against the relevant legal basis for responsibility.

95. Preventive interlock prohibitions have a different basis. Only a small number of OECD Member countries, most notably the United States, have an explicit statutory prohibition, whereas most jurisdictions analyse them through general competition law doctrines related to co-ordination, information exchange and influence. In the United States, Section 8 of the Clayton Act prohibits certain interlocks between competing corporations without requiring proof that co-ordination has occurred, subject to its statutory limits and exceptions.[28] The scope of such prohibitions should nevertheless correspond to the relationships giving rise to the competitive risk. Van Loo, Lemley and Miles (2025[83]) argue that board appointments by a common investor may create channels of influence or information exchange even where no individual serves simultaneously on the boards of competing firms, illustrating the limitations of an approach focused solely on conventional interlocks. Whether such connections fall within a particular interlock prohibition depends on the scope of the relevant legal rule and the relevant appointment arrangements. Broader restrictions also require consideration of the benefits of expertise and investor monitoring.

96. These distinctions define the remaining limits of conduct enforcement. Agreement and interlock prohibitions do not automatically extend to a financial interest that affects incentives alone. Other conduct rules have separate requirements: Article 102 TFEU, for example, requires dominance and abuse, as discussed by the OECD (2015[8]). Where neither merger jurisdiction nor an applicable conduct prohibition addresses the concern, assessment may turn to the inquiry and structural powers considered in the next section.

4.1.3. Sector inquiries and structural tools

97. Market inquiries can examine structural or behavioural features affecting competition without necessarily requiring a reviewable acquisition or proof of unlawful conduct. Their consequences depend on the relevant national statutory framework. A market study may support recommendations or advocacy, while some market-investigation or structural regimes can lead to binding remedies. This makes such tools potentially relevant to minority shareholdings, which may raise competition concerns even where no transaction is reviewable under merger rules and no infringement can be established. Depending on the statutory framework, market or sector inquiries may therefore provide a means of examining ownership structures and their competitive effects outside conventional enforcement proceedings.

98. The United Kingdom provides one example. Under Part 4 of the Enterprise Act 2002, the CMA can investigate market features that prevent, restrict or distort competition and, following an adverse-effect-on-competition finding, impose remedies within that statutory framework. Its 2026 guidance identifies common ownership of competing assets as a possible structural feature and distinguishes co-ordinated market outcomes from the communication required for a Chapter I infringement (Enterprise Act 2002[84]; CMA, 2026[11]). This establishes a possible legal route, rather than a minority-shareholding remedy precedent.

99. Italy supplies an example of inquiry and advocacy. The Autorità Garante della Concorrenza e del Mercato (AGCM) examined ownership links and interlocking directorates in its banking and insurance corporate-governance inquiry, IC36, and advocated governance reform (AGCM, 2009[85]). The example shows how a market inquiry can inform institutional changes using advocacy, without establishing an infringement or itself requiring divestment. Hence, where available, market inquiries can improve understanding of ownership structures and inform policy responses even where the authority lacks a basis for enforcement action against a particular investment.

4.2. Evidence and inference

100. Evidence may inform whether the particular minority shareholding changes competitive decisions or the conditions supporting co-ordination. Relevant considerations include the rights and financial interests created, the competitive decisions they may affect, and the likely outcome without the investment. The evidence required for prospective merger assessment differs from that used to establish an infringement because merger control evaluates likely future effects, whereas conduct enforcement concerns conduct that has already occurred (see for instance the merger guidelines published by the United States, the United Kingdom, the Canadian Bureau or European authorities as examples of this). The following considerations aim to propose ways to organise the inquiry without prescribing a universal sequence or hierarchy of evidence.

101. An inquiry may begin with building an ownership map which can identify the relevant shareholdings, voting rights, cash-flow interests and associated rights at the relevant dates. A change in those features may alter both exposure and effective voting power. Shareholder agreements, financing terms, and governance documents help establish what rights existed, while board records and other evidence may indicate how they were exercised. For jurisdictional purposes, such a map identifies the

relevant ownership link; for competitive assessment, it helps identify the channels through which that link may operate.[29] Those features inform the assessment of influence alongside the distribution of other holdings and practical governance arrangements (CMA, 2025[65]). It may also help identify which ownership relationships would remain under the relevant counterfactual.

102. The relevant evidence will depend on how the ownership relationship is alleged to facilitate co-ordination. Where the concern involves influence over investment or capacity, consent rights, financing alternatives, board discussions and successive budgets may help establish whether the shareholder could constrain expansion. For an information theory of harm, the issue may be the scope of likely access and onward transmission, or actual sharing where the legal route requires it. Access by a shareholder would normally be treated as distinct from information reaching a competitor's relevant decision-makers (European Commission, 2004[9]; US DOJ and FTC, 2023[12]). The relevant evidence should establish a credible connection between the ownership arrangement and the competitive choice, assessed against the likely counterfactual (O'Brien and Salop, 2000[10]).

103. For a financial-incentive theory, the investing competitor's own return differs from the objective that a common investor might wish several portfolio companies to pursue. Ownership structures may indicate possible financial incentives without establishing how managers actually make competitive decisions. Evidence concerning decision rules, investor engagement and the practical exercise of rights may help an authority assess whether the hypothesised effects are plausible in the relationship concerned (O'Brien and Salop, 2000[10]; OECD, 2017[15]). Portfolio overlap may identify a potential incentive mechanism, but it does not by itself establish that managers take portfolio-wide interests into account when making competitive decisions (Backus, Conlon and Sinkinson, 2021[40]; OECD, 2017[15]).

104. Any assessment of co-ordinated effects should ultimately be anchored in a credible counterfactual. The key question is whether the ownership link changes the conditions for co-ordination relative to the likely counterfactual. The evidence should support the proposition that the ownership link materially affects the likelihood or sustainability of co-operation relative to the counterfactual (OECD, 2015[8]; European Commission, 2004[9]). The assessment can therefore ask what additional strategic visibility, incentive change or influence the investment creates relative to the likely position without it. Market features such as concentration, transparency or repeated interaction may facilitate co-ordination, but do not by themselves provide proof of co-ordination.

105. Different sources bear on different parts of the proposed mechanism. Investment papers may explain the acquisition rationale, while agreements establish rights and communications or conduct may illuminate their use. A right that has not yet been exercised can still be relevant to future effects; its significance depends on its practical reach and the available evidence (CMA, 2026[11]). In conduct enforcement, the ownership structure cannot substitute for the facts needed under the applicable prohibition. *Delivery Hero/Glovo* supplies evidence of actual communications and conduct, alongside the shareholder arrangements that enabled them (European Commission, 2025[50]; OECD, 2026[48]).

106. Timing alone seldom establishes causation. The existence of an ownership link before a change in conduct does not establish that the ownership link caused the change unless a credible mechanism linking ownership, decision makers and conduct can be shown. Before-and-after comparisons may be informative, but conduct may also reflect changes in demand, costs, regulation, entry or other market developments (Rock and Rubinfeld, 2018[51]). A good counterfactual should therefore consider selection effects, reverse causality and alternative explanations, such as changes in market prices or demand. Event studies can reveal market responses without identifying which feature of the ownership relationship generated them; their interpretation depends on the research design and competing explanations (Kennedy et al., 2017[86]). Evidence from comparable unaffected firms or markets may help distinguish a general market development from a relationship-specific change (OECD, 2015[8]; Rock and Rubinfeld, 2018[51]; Kennedy et al., 2017[86]).

107. Analytical tools can help assess a proposed mechanism's significance. Ownership-adjusted concentration measures and profit-internalisation weights combine observed holdings with assumptions about objectives and control. They may identify relationships for further examination or provide inputs into simulations, but the resulting measure does not itself establish co-ordinated effects (O'Brien and Salop, 2000[10]). See also Box 4 for an overview of analytical tools. A model's evidential contribution depends on its assumptions and its fit with the alleged mechanism. A model of financial incentives need not represent every governance or information channel, but its conclusions cannot establish effects outside the mechanisms it captures.

Box 4. Analytical tools for assessing minority shareholdings

Several analytical tools have been developed to try and assess the way in which minority shareholdings may alter firms' competitive incentives. The Modified Herfindahl-Hirschman Index (MHHI) extends the traditional Herfindahl-Hirschman Index (HHI), which measures concentration using market shares, to incorporate ownership links between competitors. The MHHI allows for firms placing a positive weight on rivals' profits under specified assumptions about financial interest, profit internalisation and control: firms may partially internalise rivals' profits through minority ownership. The additional ownership component, often denoted ΔMHHI ("MHHI-delta"), should be distinguished from the transaction-induced changes in the whole HHI index (Bresnahan and Salop, 1986[87]; OECD, 2017[15]). The index's interpretation therefore depends on how ownership and decision making are represented.

Profit-internalisation weights represent, under specified assumptions, the weight placed on another firm's profits. They provide inputs into merger simulations and other partial-ownership models (O'Brien and Salop, 2000[10]; OECD, 2017[15]). They should be distinguished from direct observations of managerial objectives. For co-ordinated effects, the consequences also depend on how ownership changes deviation gains and competition following a breakdown, as discussed in Section 3.2.2. The implications of a profit internalisation weight for sustainability cannot be read directly from its sign or size without considering the competitive interaction represented by the model (OECD, 2017[15]).

More recent empirical studies have used such ownership-based indicators designed to quantify overlapping shareholder interests. For example, Abraham, Ederer and Marvão use a firm-pair weight (κ) to summarise the extent to which ownership structures could induce one firm to take account of another firm's profits when making competitive decisions (Abraham, Ederer and Marvão, 2026[46]). Such measures operationalise theories of profit internalisation, but rely on assumptions about shareholder influence and how those affect managerial decision making.

These tools can serve as screens or model inputs, particularly for complex ownership structures. The measure alone does not demonstrate changed managerial conduct, information transmission or an effect on co-ordination. Its analytical role is distinct from the causal interpretation of a wider empirical study using it; that interpretation depends on the research design, assumptions and evidence (Backus, Conlon and Sinkinson, 2021[40]; Koch, Panayides and Thomas, 2021[44]).

Source: Bresnahan, T.F. and S.C. Salop (1986[87]), Quantifying the Competitive Effects of Production Joint Ventures; OECD (2017[15]), Common Ownership by Institutional Investors and its Impact on Competition, https://doi.org/10.1787/40c7872a-en; O'Brien and Salop (2000[10]), Competitive Effects of Partial Ownership: Financial Interest and Corporate Control, Antitrust Law Journal, Vol. 67, No. 3. https://scholarship.law.georgetown.edu/facpub/209/; Backus, M., C. Conlon and M. Sinkinson (2021[40]), Common Ownership in America: 1980–2017, American Economic Journal: Microeconomics, Vol. 13, No. 3, pp. 273–308; https://doi.org/10.1257/mic.20190389; Koch, A., M. Panayides and S. Thomas (2021[44]), Common Ownership and Competition in Product Markets, Journal of Financial Economics, Vol. 139, No. 1, pp. 109–137, https://doi.org/10.1016/j.jfineco.2020.07.007.

108. Attribution is central to establishing liability and combines evidence about an actor's role with the legal basis for responsibility discussed in Section 4.1.2. The relevant capacity, information available and subsequent communications may distinguish an investor's participation from an investee's conduct. *Delivery Hero/Glovo* illustrates direct participation and *Goldman Sachs/Prysmian* illustrates responsibility

based on decisive influence (European Commission, 2025[50]; Court of Justice of the European Union, 2021[82]). Where parties rely on information safeguards, the assessment may examine what information was withheld and from whom. An information firewall consists of organisational and technical controls limiting access to, and onward transmission of, specified information. Recusal means a director taking no part in a specified discussion or decision; an information restriction may also need to cover the related papers. Evidence concerning the implementation of such safeguards, including records of access restrictions, recusal arrangements or subsequent communications, may help assess whether the information channel relevant to the competition concern was effectively constrained. Written safeguards alone may not resolve concerns if they are not implemented in practice (CMA, 2025[88]).

109. In conduct enforcement, a minority shareholding can provide context for communications or arrangements concerning competitive behaviour, but it cannot replace the elements of the applicable prohibition. In the United States, analyses of agreements use additional circumstantial facts, commonly called "plus factors", to distinguish agreement from independent conduct. In a minority-shareholding setting, relevant facts might include communications about intended behaviour, onward transmission of detailed non-public information or arrangements to monitor adherence. Their significance depends on the applicable law and plausible alternative explanations; neither a minority holding nor parallel conduct alone establishes concertation. Such facts must be assessed against a plausible counterfactual: a minority stake or an opportunity for contact does not itself prove concertation.

Table 1. Analytical framework for assessing co-ordinated effects from minority shareholdings

Issue	Relevant evidence	Qualification or alternative explanation
Ownership and counterfactual	Dated financial interests, voting rights, governance and commercial links; likely ownership and financing without the investment. Shareholder agreements and financing terms can distinguish financial exposure from formal and practical voting power.	A similar relationship would exist anyway; the relevant rights have limited practical significance.
Financial incentives	Effect on returns from adherence, deviation and competition after a breakdown. The ownership configuration and the objectives assumed for each firm matter, including whether the link is direct, reciprocal or through a common investor.	The model does not fit decision making; offsetting interests or weaker punishment reduce the proposed stabilising effect.
Information	Scope, timing and recipients of non-public information, including likely or actual onward transmission relevant to the theory.	Information does not materially improve strategic visibility or detection of departures; effective safeguards restrict the relevant channel. Delay or aggregation is informative only in the market context; an apparently historical item may still reveal a relevant strategy.
Influence	Ability to affect the particular competitive decision, including financing, expansion or entry; available alternatives for the investee. Contemporaneous expansion plans and the investees' financing alternatives may show the decisions on which a right could bear.	Rights do not reach that decision, practical leverage is limited, or the investment strengthens an independent challenger.
Effect on co-ordination	How the link changes reaching terms, monitoring or sustainability, assessed together with outside constraints. Monitoring includes distinguishing deviation from demand or other shocks. Sustainability includes both deviation gains and the credibility of responses.	No plausible common course of conduct, insufficient observability, unstable incentives, or effective entry, expansion or buyer responses. A weaker response after deviation can destabilise co-ordination even where financial interests also reduce the gain from undercutting.
Benefits and competing explanations	Evidence of financing, innovation or other claimed benefits and alternative explanations for observed conduct. Benefits and competing explanations can be tested against contemporaneous documents and feasible alternatives, rather than asserted from the investment's stated purpose.	Benefits may strengthen rivalry but require support; timing and ownership overlap alone do not identify causation.

Note: This table summarises relevant considerations, rather than a legal test. The conditions for co-ordination are assessed together under the applicable framework; indicators may point in different directions. A prospective assessment need not show that a right has already been exercised. Facts, assumptions and inferences should be distinguished (see Sections 3.1.2 and 4.2).
Source: Author's synthesis of Section 3 and the guidance cited in this section.

4.3. Remedies and wider policy options

110. Available responses to the role of minority shareholdings for co-ordinated effects depend on the applicable legal powers and on whether the measure would effectively address the identified concern. Removing financial exposure, restricting governance rights and limiting information access can have different effects. The suitability of a remedy therefore depends on its connection to the concern, its implementation risks and proportionality (CMA, 2025[88]). The cases below illustrate responses to particular findings or prospective concerns; broader proposals for common ownership are considered separately.

4.3.1. Economic exposure

111. Where the concern arises from participation in a competitor's profits, divestment or a reduction in the holding can reduce that financial exposure. A voting restriction leaves the financial interest in place and therefore addresses a different mechanism (OECD, 2017[15]). Where the concern is that a shareholder may internalise a rival's profits, reducing governance rights alone may leave the underlying economic incentives unchanged. In South Africa's *AB InBev/SABMiller* merger, among the conditions for clearance was the requirement for AB InBev to sell the Distell minority shareholding that AB InBev inherited from SABMiller. This followed concerns relating to information flows and the possible effect of the ownership link on competitive interaction and tacit collusion (Competition Tribunal of South Africa, 2016[89]).[30] This was a preventive remedy, not a finding of an observed cartel.

112. *Naspers/Just Eat Takeaway* remedies combined a substantial reduction of the Delivery Hero shareholding with voting and board-appointment restrictions, limits on reacquisition and trustee monitoring (European Commission, 2025[55]). The remedy package addressed financial and governance links together. The combination illustrates that authorities may sometimes address several mechanisms simultaneously where concerns arise from the interaction of ownership, influence and information channels. The public clearance account specifies the commitments, including disposal within 12 months; it does not establish that disposal had already occurred. The final permitted percentage was not disclosed. These qualifications distinguish the design of the remedy from evidence of its implementation or subsequent competitive effect.

113. A broader scholarly debate concerns the use of competition law to address common ownership across competing firms. Elhauge (2016[90]), for instance, argues for applying Section 7 of the Clayton Act to anti-competitive horizontal shareholding, so that acquisitions creating common ownership of competing firms could be challenged where they may substantially lessen competition, even without conferring control over those firms. Posner, Scott Morton and Weyl (2017[91]) propose a public enforcement policy providing a safe harbour for institutional investors that limit their industry exposure, invest in one effective firm, or meet specified conditions of pure passivity. These are scholarly proposals whose merits remain contested. Rock and Rubinfeld (2018[51]) question the evidence for broad restrictions and identify possible costs to investors' governance role. The 2017 roundtable discussion at the Competition Committee presented proposals and criticisms but did not establish a general ownership threshold or cap (OECD, 2017[15]).

114. Assessment therefore depends on the proposed instrument, supporting evidence and governance or investment trade-offs; the existence of overlapping holdings alone does not resolve that debate. Where broader structural reforms would require changes to investment or corporate-governance rules outside competition authorities' powers, their adoption would be a matter for the relevant financial regulators or legislators. Competition authorities can contribute to that wider policy choice by assessing the competitive effects of common ownership and the competition implications of proposed reforms (OECD, 2017[15]).

4.3.2. Influence and governance rights

115. Where a concern arises from a minority shareholder's ability to influence a competitor's strategy, a remedy may restrict the governance mechanisms through which influence is exercised, such as board participation, director appointment rights or voting/veto rights. The appropriate restriction depends on the decisions the shareholder could influence and the applicable legal framework. Restricting voting rights may reduce influence while allowing the shareholder to receive dividends and benefit from increases in the value of its holding (OECD, 2017[15]). The shareholder may therefore still benefit financially if competition between the firms weakens. Such remedies address the ability to influence decisions, but may not eliminate the incentive effects associated with continued ownership. The assessment should consider whether the retained stake, remaining rights or commercial relationships could still facilitate the form of co-ordination identified as a concern (US DOJ and FTC, 2023[12]).

116. Existing cases illustrate the variety of possible governance responses. In *Kinder Morgan*, the FTC addressed Carlyle and Riverstone's overlapping interests by requiring withdrawal from Magellan's governance, relinquishment of control and safeguards against sharing sensitive information. A passive financial interest remained (FTC, 2007[92]).[31] The consent remedy addressed prospective unilateral and co-ordination concerns; it did not establish that the investment had caused collusion. Ryanair/Aer Lingus required a reduction in the ownership share with associated governance restrictions (Competition Commission, 2013[69]). The US Department of Justice's intervention concerning Tencent and Epic resulted in the removal of director-appointment rights and future appointment rights from the minority investment under Section 8 (US DOJ, 2024[93]). As the earlier discussion shows, these outcomes cannot be inferred from a finding of jurisdictional influence alone.

4.3.3. Information channels

117. Where the concern arises from access to sensitive information, such as the movement of future bids or capacity plans, the objective is to interrupt the information channel identified in the analysis. This may involve either removing access altogether or allowing the ownership link to remain while imposing safeguards. The appropriate approach depends on whether the concern arises from the existence of the ownership link itself or from the flow of information enabled by that link. The relevant considerations include access, onward transmission and whether retained rights undermine the restriction.

118. Information safeguards may restrict who receives commercially sensitive information and prohibit its onward transmission. Their design may also need to address information obtained through shareholder representatives or associated commercial arrangements, so that restricting board access does not leave another route open. Their suitability depends on practical implementation, monitoring and enforceability (FTC, 2007[92]; CMA, 2025[88]). In *Siemens/VA Tech*, Siemens's representatives on SMS Demag's shareholder bodies were replaced by trustees pending transfer of the minority share which Siemens had already committed to sell by exercising a put option (European Commission, 2005[94]). This was an interim arrangement alongside disposal, rather than evidence that information restrictions alone justified an indefinite financial link.

119. Monitoring of information rights has to reach the channel giving rise to concern: a restriction on formal board access may have limited relevance if an associated commercial arrangement supplies the same sensitive information. Such questions are directly related to the effectiveness of the remedy package (CMA, 2025[88]).

120. On 7 October 2026, Brazil's Conselho Administrativo de Defesa Econômica (CADE) conditionally approved American Airlines' investment of approximately 8% in Azul S.A., a major Brazilian airline. The approval of the transaction followed review by the Tribunal, subject to a Merger Control Agreement that strengthened governance and information safeguards, and required notification of relevant future changes. CADE considered that the remaining competition concerns were residual and behavioural in nature, and

concluded that they could be addressed through the agreed safeguards. The Tribunal considered the evidence insufficient to show that co-ordination across the market was likely to be sustainable (CADE, 2026[95]). The decision therefore illustrates the use of behavioural safeguards where concerns were considered limited and capable of being addressed through conditions.

121. The treatment of United/Azul provides a useful comparison. In February 2026, CADE cleared United's proposed increase to approximately 8%, taking account of governance provisions, information safeguards in the transaction documents and the parties' commitments (CADE, 2026[96]). The authority's account describes clearance without additional remedies, while identifying governance arrangements, information safeguards and commitments that informed the competitive assessment, as well as the need to submit relevant future changes. The assessment therefore turned on the overall package of rights, safeguards and commitments rather than the percentage shareholding alone. The fact that an approximately 8% stake was cleared in that case does not establish a safe harbour for other investments involving different rights or market circumstances.

4.3.4. Broader governance, disclosure and policy frameworks

122. Disclosure and corporate-governance regimes are not competition-law remedies in themselves. For instance, rules on shareholders "acting in concert" may require their voting rights to be aggregated for takeover purposes, if they agree to vote together. However, that classification does not itself establish anti-competitive co-ordination (OECD, 2023[3]). The European Securities and Markets Authority's (ESMA) so-called "White List" identifies forms of shareholder co-operation that do not, by themselves, establish acting in concert under takeover rules. The List does not provide a competition-law safe harbour (ESMA, 2013[97]). Such rules may however affect authorities' ability to identify, assess and monitor ownership links between competitors by clarifying shareholders' relationships. They can also shape how minority shareholders exercise voting, governance and information rights. For that reason, broader governance and disclosure frameworks are sometimes discussed alongside competition-law responses to minority shareholdings, even though they generally pursue different policy objectives (OECD, 2023[3]).

123. Disclosure of beneficial ownership (that is, the ultimate ownership or control of shares), voting rights and significant holdings may make ownership links more transparent, while corporate-governance rules may influence board participation, conflicts of interest and information access (Medina, de la Cruz and Tang, 2022[7]; OECD, 2019[98]; 2023[3]). Their thresholds and reporting obligations should not, however, be interpreted as indicators of competitive significance, nor as safe harbours. Competition concerns depend on the rights, incentives, information channels and competitive decisions associated with the minority shareholding, rather than on the existence of a particular reporting obligation or ownership threshold.

124. Remedy design may also require consideration of the wider commercial relationship rather than the equity stake in isolation. AI partnerships provide a useful illustration. Investments or funding agreements may be accompanied by cloud-computing services, licensing arrangements, distribution agreements, data access or other contractual rights (OECD, 2025[70]; FTC, 2025[72]). Where several arrangements contribute to the identified concern, removing a particular shareholding or governance link may leave other channels unchanged. The implication is not that additional regulation is necessarily required, but that authorities may need to assess whether a proposed remedy addresses the full set of mechanisms giving rise to the concern. Box 3 explains the evidential scope of those sources.

125. Corporate-governance frameworks may also influence the practical significance of minority shareholdings. Rules concerning director duties, board independence and conflicts of interest can affect access to information and the exercise of governance rights (OECD, 2023[3]). Their objectives nevertheless differ from competition-law concepts such as co-ordination, interlocks or information exchange. Governance rules may reduce certain risks associated with information access or influence, but they do not substitute for competition-law assessment of the relationship concerned. Some OECD work has also considered whether

actors such as proxy advisers, environmental, social and governance rating providers, and index providers can influence how ownership interests are exercised across firms (OECD, 2026[25]). The relevance of those issues to minority shareholding concerns depends on the alleged mechanism, and remains distinct from the ownership link itself. Restrictions on board-level links may be particularly relevant where concerns relate to information exchange or influence rather than economic exposure (OECD, 2026[1]).

126. Some governance proposals seek to address concerns associated with common ownership through changes to shareholder-governance arrangements rather than through competition-law intervention. Examples include stewardship requirements, voting reforms and pass-through voting mechanisms under which underlying investors direct voting decisions themselves (OECD, 2023[3]). Such measures may alter how shareholder rights are exercised, but they do not change the underlying ownership structure (OECD, 2025[5]; 2025[99]). Their relevance therefore depends on the theory of harm. Where concerns arise from influence exercised through voting rights, such reforms may be pertinent. Where concerns stem from financial incentives or portfolio overlap, their effect may be more limited. The available evidence does not establish that governance reforms of this kind provide a general solution to concerns regarding co-ordinated effects (OECD, 2017[15]).

127. If intervention is justified, authorities would need to separately assess whether a remedy is likely to address the identified concern and whether it is proportionate. The relevant question is not simply whether a measure restricts ownership, voting rights or information access, but whether it effectively targets the mechanism through which competition may be harmed. Consistent with the CMA's remedies framework, authorities may consider the measure's effectiveness, implementation risks, monitoring costs and whether a less burdensome alternative would address the concern equally well (CMA, 2025[88]). Claimed benefits associated with financing, innovation or commercial collaboration may also need to be considered under the applicable legal framework.

128. A few Brazilian decisions illustrate the importance of the evidential setting. In CSN/Usiminas, CADE conditioned approval of a minority acquisition in a rival steelmaker on a reduction in the holding, with voting and appointment restrictions pending divestment (CADE, 2014[100]). In its 2014 cement-cartel decision, CADE ordered the unwinding of cross-shareholdings and the disposal of minority interests alongside other sanctions, having identified ownership links among the arrangements used to support the cartel and facilitate information exchange (Souza and Resende, 2019[101]). The latter intervention responded to established collusive conduct, a different evidential setting from prospective assessment of a minority acquisition.

129. Remedies may also need periodic review as market conditions evolve. In *Tianqi/SQM*, the safeguards concerning governance and information agreed with Chile's FNE (discussed in Section 3.3.2) expired in December 2024 and April 2025 under the agreed timetable (Chile, 2026[102]). The authority considered developments including changing market shares, entry and expansion by competitors before concluding its monitoring process and subsequently closed its compliance investigation without detecting breaches. Among other factors, the FNE identified declining combined market shares of SQM, Tianqi and Albemarle, together with entry and expansion by competitors (Fiscalía Nacional Económica, 2025[103]). The case illustrates the point that restrictions that were justified at one point in time may warrant re-examination as competitive conditions change, including market developments and changes in firms' circumstances. When imposing remedies, it would therefore be useful if authorities would explain both why a restriction is needed and why or how its scope and duration would remain appropriate as market conditions evolve.

5 Conclusion

130. Minority shareholdings can affect competition between firms that remain separately controlled by creating a structural link between them. For co-ordinated effects, their significance depends on whether the ownership relationship makes a common course of conduct easier to reach, monitor or sustain. Changes in financial incentives, access to strategic information and influence over competitive decisions may each contribute to reaching a co-ordinated outcome, but their combined effect depends on the market and the constraints imposed by other rivals and customers (OECD, 2015[8]; 2017[15]). The same investment may also finance entry or expansion that would instead help disrupt co-ordination. The competitive significance of a minority shareholding therefore depends not on the existence of an ownership link alone, but on how that link affects market incentives and constraints in the circumstances of the case.

131. The evidence warrants a qualified assessment of these possibilities. Theory identifies ownership configurations that can facilitate tacit collusion (Gilo, Moshe and Spiegel, 2006[31]) but it also identifies circumstances in which weaker competition following a breakdown of the co-ordinated conduct makes deviation more attractive (de Haas and Paha, 2021[38]; Malueg, 1992[39]). The renewed policy interest in common ownership was influenced in part by empirical studies reporting associations between overlapping ownership and competitive outcomes (Azar, Schmalz and Tecu, 2018[43]; 2021[24]), although the interpretation and generalisability of those findings remain debated. Laboratory experiments find some support for the underlying mechanisms, with experiments finding more collusive behaviour under some ownership arrangements (Hariskos, Königstein and Papadopoulos, 2022[42]). Evidence from operating markets is less conclusive (Lewellen and Lowry, 2021[45]), while evidence concerning explicit cartels cannot, by itself, establish effects on tacit co-ordination (Abraham, Ederer and Marvão, 2026[46]). Overall, the empirical literature provides support for the existence of plausible mechanisms through which minority shareholdings may facilitate co-operation, but more limited evidence regarding the prevalence, magnitude and significance of those effects across markets.

132. For competition authorities and courts, the practical implication is that the competitive assessment should focus on what the particular minority shareholding changes relative to the likely competitive conditions without the investment. Evidence gathered about governance rights, financing incentives and information flows can help identify the competitive choices affected and test alternative explanations. Ownership-adjusted indicators can support that inquiry when their assumptions reflect the relationship concerned and take account of the particular shareholdings and the financial interests and rights they generate (OECD, 2017[15]; O'Brien and Salop, 2000[10]). Such an approach can help focus investigations and explain why holdings of similar size may warrant different assessments, and why the ownership percentage alone is often an imperfect guide to the competitive significance.

133. Those assessments also depend on the legal route available. Jurisdictional differences can determine which minority acquisitions fall within the scope of merger review. Prospective assessment of competitive risks can address future co-ordination risks without establishing a past infringement (US DOJ and FTC, 2023[12]). Conduct enforcement, preventive interlock rules and market inquiries have distinct statutory requirements and powers that differ across jurisdictions. Comparative case experience is therefore most informative when the basis for each decision is clear. A clearance, a preventive remedy and an infringement finding answer different questions and provide different kinds of evidence about

competitive effects. This is also true of empirical findings: the evidential value of a study depends in part on whether the question being examined corresponds to the theory of harm under consideration.

134. Where intervention is justified, remedy design should take into account both the concern or theory of harm being addressed and the minority shareholding links that are left in place. Restricting voting or board participation may reduce influence while leaving the investor's financial interest unchanged (OECD, 2017[15]). The choice of remedy involves assessing its effectiveness and practical implementation, together with its proportionality and any substantiated customer benefits that would otherwise be lost, under the applicable framework (CMA, 2025[88]). Review can also consider whether restrictions remain appropriate as market conditions change over time (Fiscalía Nacional Económica, 2025[103]; CMA, 2025[88]).

135. Further evidence on how financial interests, including minority ones, affect company decisions, and on the competitive effects of remedies, especially behavioural ones, after their implementation, would strengthen both case assessment and debates about wider policy changes. Exchange of experience across jurisdictions could help identify which competitive concerns recur and which depend more closely on particular ownership arrangements or market conditions.

136. The diversity of ownership structures, legal frameworks and market settings examined in this paper suggests that minority shareholdings do not lend themselves to simple presumptions. Similar shareholdings may raise different competition concerns depending on the rights they confer, the incentives they create, and the extent to which they affect information flows or influence over competitive decisions. A case-by-case assessment therefore remains essential, focussing on the specific mechanisms through which the ownership link may affect competition and the evidence available in the circumstances of the case. The practical objective is to identify ownership links that materially increase the likelihood or sustainability of anti-competitive co-ordination, while preserving forms of investment that support financing, innovation and independent competition.

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Notes

[1] The corporate investor may provide industry knowledge, technology or customers that an independent investor cannot supply, and empirical evidence has associated corporate venture capital (CVC) investment with innovation benefits in some settings (López and Vives, 2019[29]).

[2] Debt and commercial arrangements fall outside a strict definition of shareholding, but can also be considered with the equity interest where they affect the holder's returns, information or influence as highlighted by Sokol (2022[52]).

[3] In *United States v. E. I. du Pont de Nemours & Co.* (Supreme Court of the United States, 1957[110]), concerning du Pont's 23% shareholding in General Motors, the US Supreme Court held that Section 7 of the Clayton Act could be applied decades after the acquisition of a minority shareholding. The case illustrates that the competitive significance of a shareholding may evolve over time and that legality may be assessed at the time of suit rather than solely at the time of acquisition.

[4] Controlling minority shareholdings are however not the focus of this paper.

[5] The meaning of influence varies across legal and regulatory frameworks. These concepts serve different legal purposes and should not be treated as equivalent. Under EU merger control, control generally refers to the possibility of exercising decisive influence over an undertaking through rights, contracts or other means. See Council Regulation (EC) No 139/2004, Art. 3 and Recital 16, available at: https://eur-lex.europa.eu/eli/reg/2004/139/oj/eng. In financial reporting, IAS 28 uses the concept of significant influence, defined as the power to participate in the financial and operating policy decisions of an investee without exercising control or joint control. IAS 28 establishes a rebuttable presumption of significant influence where an investor holds 20% or more of the voting rights. See Commission Regulation (EU) 2023/1803 adopting international accounting standards, https://eur-lex.europa.eu/eli/reg/2023/1803/oj/eng; and IAS 28, https://www.ifrs.org/issued-standards/list-of-standards/ias-28-investments-in-associates-and-joint-ventures/. In the United Kingdom, merger control uses the concept of material influence, which may be found at substantially lower shareholding levels where the acquirer is able materially to influence the target's policy or strategic direction, even without legal control. See Competition and Markets Authority (CMA), Mergers: Guidance on the CMA's Jurisdiction and Procedure, available at: https://www.gov.uk/government/publications/mergers-guidance-on-the-cmas-jurisdiction-and-procedure. See also Anna Tzanaki: (2022[22]; 2023[21]).

[6] IAS 28 is the International Accounting Standard titled "Investments in Associates and Joint Ventures". Its objective is to prescribe the accounting treatment for investments in associates and joint ventures and to set out the requirements for applying the equity method of accounting. Key definitions under IAS 28 include:

- Associate: an entity over which the investor has significant influence, but neither control nor joint control.
- Significant influence: the power to participate in the financial and operating policy decisions of the investee, without controlling those decisions.

- Joint venture: a joint arrangement in which the parties with joint control have rights to the net assets of the arrangement.

[7] Under IAS 28, a holding of 20% or more of an investee's voting power gives rise to a rebuttable presumption of significant influence for accounting purposes; a holding below 20% does not rule out such influence. See: European Commission (2023), *Commission Regulation (EU) 2023/1803 adopting certain international accounting standards*, Annex, IAS 28, para. 5, *Official Journal of the European Union*, L 237, 26 September, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02023R1803-20260308.

[8] This paper focusses primarily on minority shareholdings involving competitors. Minority shareholdings may also arise between firms at different levels of the supply chain, such as suppliers and customers. The analytical framework developed in later sections of this paper may be relevant in such settings, subject to the specific characteristics of vertical relationships (OECD, 2009[6]).

[9] *Airtours*: Airtours plc v Commission of the European Communities, Case T-342/99, Judgment of the Court of First Instance, 6 June 2002. EUR-Lex: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61999TJ0342.

Impala: Bertelsmann AG and Sony Corporation of America v Independent Music Publishers and Labels Association (Impala), Case C-413/06 P, Judgment of the Court of Justice, 10 July 2008. EUR-Lex: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62006CJ0413.

[10] Abraham, Ederer and Marvão (2026) construct a firm-pair ownership measure (κ) using Swedish ownership data and compare it against a registry of lawful historical cartels. They find that higher values of κ are associated with a greater likelihood of cartel participation and, in some specifications, longer cartel duration. However, κ is a model-based estimate of profit internalisation rather than an observation of managerial conduct, and the authors explicitly distinguish predictive associations from causal identification. The study therefore provides evidence consistent with ownership-related incentive effects, while leaving open the mechanisms through which such effects may influence competitive behaviour (Abraham, Ederer and Marvão, 2026[46]).

[11] Directors nominated by a shareholder need information to fulfil their duty of care and should act loyally towards the company and treat all shareholders fairly (OECD, 2023[3]).

[12] Bourveau, She and Žaldokas (2020[106]) find evidence consistent with common institutional investors facilitating information flows across portfolio firms. They find that firms increase detailed financial disclosures following stronger cartel enforcement and interpret the pattern as consistent with tacit co-operation. The study concerns public disclosure rather than information transmitted through a minority shareholding. It provides context for the information mechanism, suggesting that ownership structures may reduce informational frictions and operate through informational channels in addition to incentive effects. The study does not provide evidence that common institutional investors transmitted information between portfolio firms.

[13] In *Ryanair/Aer Lingus*, Ryanair held approximately 29.8% of Aer Lingus's shares, making it the airline's largest shareholder. The UK Competition Commission concluded that the shareholding gave Ryanair the ability to exercise material influence over Aer Lingus despite the absence of control. Among other factors, the Commission observed that Ryanair could block special resolutions requiring a 75% majority and, in certain circumstances, could influence the outcome of ordinary resolutions. More broadly, the Commission considered that Ryanair had both the ability and the incentive, as Aer Lingus's principal competitor on routes between Great Britain and Ireland, to weaken Aer Lingus as a competitive constraint. These concerns ultimately led the Commission to require Ryanair to reduce its shareholding from 29.8% to 5%.

The Competition Commission found that Ryanair's minority shareholding could impede Aer Lingus's strategic development and weaken its effectiveness as a competitor. However, it separately examined co-ordinated effects and found them unlikely. The case therefore illustrates practical influence over competitive strategy, while also demonstrating the need for a separate assessment of co-ordination (OECD, 2009[6]; Competition Commission, 2013[69]).

[14] Those same channels may also provide opportunities for explicit co-ordination where competitors communicate, exchange commercially sensitive information or otherwise align their conduct. The question would then become whether the relationship may also provide channels through which competitors engage in explicit co-ordination, information exchange or other conduct prohibited by competition law. However, this is not the focus of this paper.

[15] A rough estimate by the author of this paper finds around 28 OECD jurisdictions with control-based merger regimes.

[16] According to the European Commission Consolidated Jurisdictional Notice (2008[56]), a minority shareholder may acquire joint control if it receives veto rights over matters such as the budget; the firm's business plan; major investments; or the appointment of senior management. Such rights need not amount to day-to-day management powers. The relevant question is whether they allow the shareholder to block decisions determining the undertaking's market strategy. Where such rights exist, the transaction may be notifiable despite the acquisition involving considerably less than 50% of the shares.

[17] *Siemens/VA Tech* illustrates the relevance of a pre-existing minority interest to a subsequent acquisition of control. Siemens already held 28% of SMS Demag, a principal competitor of VA Tech in steel production plants. The transaction under review was its acquisition of VA Tech. Siemens had exercised a put option to sell the SMS stake, but a valuation dispute delayed the transfer. The continuing link raised concerns about competitive independence and access to sensitive information (European Commission, 2005[94]). The interim safeguards in the case are discussed in Section 4.3.3.

[18] Guideline 11.

[19] *Dairy Farmers of America/Southern Belle* illustrates this reach. The US Department of Justice challenged a completed partial acquisition and, following litigation, filed a proposed settlement requiring divestment (US DOJ, 2006[109]). The case establishes review after completion, without establishing that the investment facilitated tacit co-ordination.

[20] Historically, the ACCC took no action against Qantas's 19.9% interest in Alliance but opposed its subsequent full acquisition, illustrating that the extent of the acquisition matters to the assessment.

[21] The Bureau held a public consultation on proposed Merger Enforcement Guidelines from 13 November 2025 to 11 February 2026, https://competition-bureau.canada.ca/en/how-we-foster-competition/consultations/proposed-merger-enforcement-guidelines. The Bureau is reviewing the proposed guidelines which will eventually replace the 2011 Merger Enforcement Guidelines.

[22] Reviews of Fairmont Hotels and Bell Globemedia/Torstar examined minority interests and interlocking directorships without finding a likely substantial lessening of competition, as reported by the OECD (2009, p. 102[6]). These accounts do not establish a general safe harbour.

[23] In the 2024 restructuring of Scandinavian Airlines (SAS), Air France-KLM acquired a 19.9% interest in SAS (Air France-KLM Group, 2024[104]; SAS, 2024[105]). The Bundeskartellamt reviewed investments by Air France-KLM, Castlelake and the Danish State and concluded that sufficient competition would remain

on the affected routes. Lind Invest's acquisition was not subject to German merger control (Bundeskartellamt, 2024[108]). This example thus distinguishes which investments were captured, from the substantive clearance of those reviewed. The public account does not establish whether the authority assessed and rejected a particular co-ordinated-effects theory.

[24] The JFTC's consultation on revised guidelines in July 2026 should be distinguished from the published guidance (JFTC, 2026[107]).

[25] The CMA examined Amazon's proposed 16% investment together with board representation, observer rights and associated governance arrangements and found that the transaction qualified for review. Its subsequent substantive assessment did not identify a substantial lessening of competition.

[26] In *Philip Morris*, the Court of Justice explained that an equity acquisition in a competitor could serve as an instrument for restricting competition where associated arrangements conferred control, provided for commercial co-operation or created a structure likely to support such co-operation. The assessment therefore requires examination of the arrangements and their economic context, rather than treating the acquisition itself as an infringement (Court of Justice of the European Union, 1987[111]).

[27] The Court of Justice of the European Union held in Case C-194/14 P, *AC-Treuhand AG v Commission*, that a consultancy firm can be held liable as a cartel facilitator under Article 101 TFEU even if it does not operate on the affected, upstream, downstream, or neighbouring market. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=ecli:ECLI%3AEU%3AC%3A2015%3A717.

[28] In December 2024, two Tencent-appointed directors resigned from the board of Epic Games Inc., following Department of Justice scrutiny, and Tencent relinquished unilateral future director and observer appointment rights. Tencent held a minority interest in Epic and controlled its competitor, Riot Games Inc. (US DOJ, 2024[93]). The minority relationship mattered because it carried appointment rights connecting competing businesses. The intervention concerned those governance links, rather than any finding that co-ordination had occurred, and the public account records no admission of liability.

[29] Ryanair/Aer Lingus illustrates the importance of voting power and the ability to block particular decisions (Competition Commission, 2013[69]).

[30] AB InBev acquired the interest indirectly through its acquisition of SABMiller, which held a minority stake in Distell, an important competitor in South African alcoholic beverage markets. The remedy therefore addressed concerns arising from the continued ownership link following the merger rather than an existing finding of anti-competitive conduct.

[31] In 2007, private equity firms Carlyle and Riverstone proposed to acquire stakes in Kinder Morgan while already holding governance rights in Magellan, a competing petroleum terminal operator. The US Federal Trade Commission (FTC) was concerned that these overlapping interests could weaken competition and facilitate co-ordination in eleven local markets. The settlement required them to relinquish control and board representation in Magellan and introduce safeguards against sharing sensitive information, while permitting them to retain a passive financial investment. See (FTC, 2007[92]) and https://www.ftc.gov/news-events/news/press-releases/2007/01/ftc-challenges-acquisition-interests-kinder-morgan-inc-carlyle-group-riverstone-holdings.