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National Security Considerations in Competition Enforcement – Background Note

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National security considerations in competition enforcement

National security considerations are becoming increasingly prominent in economic policymaking, reflecting geopolitical developments, technological change and growing attention to economic security, resilience and technological capability. As these considerations extend beyond traditional defence-related domains, they are intersecting more frequently with competition enforcement across a widening range of sectors, such as energy, telecommunications, and advanced technologies. This paper examines the implications for competition authorities. It develops an analytical framework to distinguish between concerns that can be assessed using established competition law tools, where they can be expressed as competition-relevant effects, and those that fall outside the analytical remit of competition authorities and require assessment by governments or specialised bodies. Drawing on cross-jurisdictional experience, the paper analyses how national security considerations arise in the assessment of competitive constraints, merger control, co-ordinated conduct, unilateral conduct and remedy design. It identifies key considerations for preserving analytical boundaries, institutional roles, legal predictability and effective enforcement in an evolving policy environment.

Keywords: competition enforcement, competition policy, national security, supply chain resilience, sovereignty, strategic autonomy, self-reliance, defence capabilities.

JEL codes: F5, F52, F6, F68, H5, H56, K21, L1, L4, L5, L78, L98, D4, D47, F1.

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Executive summary

1. National security considerations are becoming increasingly prominent in economic policymaking, expanding beyond defence to include economic security, security of supply, resilience, technological capability, sovereignty and strategic autonomy.[1] They are therefore arising more frequently in competition enforcement across a widening range of sectors.

2. This raises a central question for competition authorities: under what conditions can national security concerns be assessed within competition law frameworks? The analysis points to several key considerations:

- **Competition can support national security objectives.** Competitive and diversified markets may strengthen resilience, reduce dependency on single suppliers, support innovation and enhance long-term productivity and adaptability in strategically significant sectors.
- **Many security-related concerns can be addressed using existing competition tools.** Where issues such as dependency, reduced supplier diversity, barriers to entry, foreclosure or diminished innovation can be expressed as competition-relevant effects, they fall within established analytical frameworks.
- **National security considerations may arise across different stages of competition analysis.** They may affect the assessment of competitive constraints, competitive effects, efficiencies and remedies, where they can be expressed as competition-relevant effects, across merger control, co-ordinated conduct and unilateral conduct, without altering the underlying legal standards.
- **A boundary exists between competition-relevant effects and broader strategic considerations.** Where concerns rely on geopolitical assessments, intelligence inputs or broader policy objectives, they cannot be meaningfully assessed within competition analysis and instead fall within the remit of governments or specialised bodies with the relevant expertise and accountability.
- **National security arguments may be invoked strategically in enforcement.** Authorities may face pressure to accommodate claims that fall outside their analytical remit or are not supported by verifiable efficiencies, with potential implications for the consistency and effectiveness of enforcement.
- **Maintaining analytical discipline is essential to effective and predictable enforcement.** A consistent focus on economically assessable effects supports legal predictability and preserves the coherence of competition analysis. Beyond enforcement, authorities can also contribute through enforcement discretion, advocacy, guidance and institutional co-ordination, helping achieve security objectives while minimising distortions to competition.

1 National security and implications for competition enforcement

1.1 The evolving scope of national security and long-term objectives

3. National security has long been central to public policy, rooted in the raison d'être of sovereign states and their core protective function (Krause and Williams, 2018[1]; Hobbes, 1651[2]). While the concept varies across jurisdictions, it has traditionally been associated with the protection of citizens, territorial integrity and essential strategic interests from serious threats (Wu, 2025[3]). This core conception emphasises sovereignty, defence capabilities and the capacity to safeguard fundamental interests against external aggression or destabilisation .

4. National security concepts have evolved alongside changes in the international system. Greater global economic integration, digitalisation and technological interdependence create and reshape vulnerabilities. Whereas earlier approaches focussed primarily on military threats, policy discourse now recognises that interdependence and global supply chains can create new forms of strategic exposure (Wu, 2025[3]). These risks arise not only from direct threats such as conflict, but also from structural vulnerabilities, including dependencies in critical sectors, cyber exposure and erosion of domestic capabilities, all of which can undermine long-term strategic resilience (Martyniszyn, 2025[4]).

5. Economic security has gained prominence within this evolving framework. It refers to a nation's ability to sustain economic stability and growth by strengthening resilience to shocks, including safeguarding key assets, maintaining critical infrastructure and ensuring access to essential resources such as energy, food, critical raw materials and advanced technologies. It may also extend to maintaining viable strategic industries and supply chains, maintaining trade and investment flows, and managing cyber risks. Economic security is closely related to broader national security considerations and is increasingly addressed through interconnected policy frameworks (OECD, 2025[5]; Ciuriak and Goff, 2021[6]).

6. Recent events have brought concerns related to economic resilience, competitiveness and strategic autonomy to the forefront of policy debate. Disruptions to global supply chains during the COVID-19 pandemic exposed vulnerabilities in access to pharmaceuticals, medical equipment and other essential goods. Volatility in energy and agricultural markets following Russia's war of aggression against Ukraine further underscored these vulnerabilities. Similar disruptions affecting critical minerals, semiconductors and other key inputs have highlighted how such dependencies affect economic performance, essential services and industrial capacity (OECD, 2025[7]).

7. Against this backdrop, policy discourse in a number of jurisdictions links national security with long-term economic competitiveness (OECD, 2025[5]). Competitiveness in strategically significant sectors is increasingly treated as both an economic objective and a component of national security. Longer-term structural transitions, including digitalisation and advances in AI and advanced manufacturing, have reinforced the strategic importance of these sectors. Policy discussions emphasise control over critical technologies, the preservation of domestic research and development (R&D) capabilities and sustained

technological leadership as elements of national security (OECD, 2025[5]). Policies aimed at maintaining domestic production capacity, securing access to critical inputs and strengthening innovation may therefore serve both economic and national security goals. In this context, digital sovereignty and resilience refer to the capacity to absorb shocks, adapt and maintain essential functions over time.

8. These dynamics are reflected in concrete policy initiatives across jurisdictions, particularly in relation to AI and enabling technologies (see Box 1).

Box 1. AI, competitiveness and national security policy frameworks

AI has emerged as a central axis of the relationship between competitiveness and national security. As a general-purpose technology with applications across defence, intelligence, industrial production and digital infrastructure, AI is widely understood as a potential source of long-term strategic advantage. Policy frameworks across jurisdictions increasingly frame leadership in AI not only as an economic objective, but as a core component of national security.

This shift is often articulated in terms of technological leadership. In the United States (US), policy initiatives explicitly link AI development to strategic positioning, including efforts to expand domestic computing capacity, secure access to advanced chips and align export controls with national security objectives. These measures are frequently framed in terms of "winning the AI race".

In the European Union (EU), similar dynamics are expressed through the lens of competitiveness, resilience and strategic autonomy. The Draghi Report situates Europe's economic challenges within a context of geopolitical instability and technological transformation, noting that the spread of AI creates a "window" to restore innovation, productivity and manufacturing capacity. It operationalises this shift through a dedicated focus on increasing security and reducing dependencies, identifying external reliance in areas such as energy, critical raw materials and key technologies as structural risks. In this framing, competitiveness, technological leadership and security are treated as mutually reinforcing objectives.

Other jurisdictions have adopted related approaches. Policy frameworks in Japan and the People's Republic of China (hereafter 'China'), among others, emphasise technological capability, supply chain resilience and domestic innovation capacity as central to economic security and long-term strategic positioning, including in AI and advanced computing.

Across these approaches, national security is increasingly understood to depend not only on protection from external threats but also on the capacity to develop, control and deploy critical technologies. This includes securing access to enabling inputs, sustaining innovation ecosystems and maintaining resilience in the face of technological and geopolitical uncertainty. As a result, competitiveness and technological leadership are no longer treated as adjacent economic goals, but as integral components of contemporary national security policy.

Note: AI systems depend on a broader technological ecosystem, including high-performance computing, data infrastructure and advanced semiconductors. Semiconductor policies, such as the US CHIPS and Science Act and the European Chips Act, illustrate how control over these enabling inputs is increasingly linked to both economic and national security objectives.
Source: White House (2025[8]), Winning the Race: America's AI Action Plan, https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf; Draghi, M (2024[9]), The future of European competitiveness,https://commission.europa.eu/topics/competitiveness/draghi-report_en; EC (2025[10]), The AI Continent Action Plan, https://digital-strategy.ec.europa.eu/en/library/ai-continent-action-plan; Japan Commerce and Information Policy Bureau, Ministry of Economy, Trade and Industry (2024[11]), Outline of Semiconductor Revitalization Strategy in Japan, https://www.meti.go.jp/english/policy/0704_001.pdf; Ma, T; Wang, T; Zhang, J (2026[12]), China's Semiconductor Industry Strategy, https://link.springer.com/book/10.1007/978-981-95-3332-9.

9. This expanded framing reflects a broader shift in which economic resilience and technological capability are treated as core components of national security. While jurisdictions continue to diverge in

how they define national security and its boundaries, the overall direction of change is clear: national security is increasingly central to economic policymaking. This shift defines the context for understanding its growing interaction with competition enforcement across a widening set of sectors (Martyniszyn, 2025[4]).

1.2 Competition and national security: Complementarities and tensions

10. The relationship between competition and national security can be understood along two dimensions: complementarities, where competitive markets support prosperous and secure economies, and tensions, where security objectives may require difficult trade-offs and may justify departures from competition in some cases.

11. Competitive markets can support national security by enhancing resilience and adaptability in the face of shocks. By sustaining supply diversity, competition enables firms to adjust production and sourcing in response to shocks (Coscelli and Thomson, 2024[13]; OECD, 2025[5]; 2025[7]). Conversely, weaker competitive pressure may lead to more brittle outcomes, with fewer alternative capabilities and reduced capacity to respond to disruption.

12. In addition, competition contributes to national security by fostering innovation, productivity and dynamic efficiency. While the relationship between competition and innovation is complex, evidence suggests that preserving rivalry is, on balance, more conducive to sustained technological progress than insulating firms from competitive pressure (OECD, 2023[14]; Griffith and Van Reenen, 2021[15]). More broadly, competition improves resource allocation, strengthening the economic base that supports investment and long-term performance in strategic sectors (OECD, 2014[16]).

13. Competitive conditions influence not only the pace of innovation but also its diffusion across firms and sectors. Technology adoption often follows an S-shaped curve, with slow initial uptake, rapid acceleration as technologies scale, and a plateau as markets mature. Competition is particularly important during the acceleration phase, where diffusion determines whether new technologies become widely adopted or remain confined to early adopters. In the absence of sufficient rivalry, incumbents may delay transitions toward more efficient technologies to preserve existing business models, increasing the risk of a "low-technology trap" (Cœuré, 2026[17]). Historical experience illustrates this risk, including in cases such as IBM and AT&T, where innovations emerged only once competitive constraints were restored (FTC, 2024[18]).

14. Notwithstanding these complementarities, important tensions arise where national security objectives require trade-offs between competition, resilience and control over strategic capabilities. These tensions reflect both conflicts between policy objectives and the use of different institutional mechanisms, including regulation, procurement and state ownership. Competition and state intervention are distinct instruments that may operate in parallel and address different constraints. Recent work has examined how industrial policy can support these objectives while preserving competition, highlighting the broader policy toolkit available to governments (OECD, 2024[19]). Accordingly, the interaction between competition and national security is best understood as a question of institutional design rather than a binary choice.

15. In strategically significant sectors, policymakers may prioritise scale, co-ordination and long-term investment to ensure reliability and strategic capability, particularly where coordination failures or resilience risks are present. In contexts characterised by high fixed costs, long development cycles or significant uncertainty, larger firms or more concentrated market structures may be better positioned to mobilise resources, absorb risk and sustain investment (OECD, 2025[5]). Governments may pursue these objectives through procurement, industrial policy or state ownership, particularly where competitive dynamics alone may not deliver sufficient continuity of supply, or where strategic capabilities must be developed or retained domestically.

16. State-owned enterprises (SOEs) and procurement frameworks are established instruments for operationalising such objectives. Across jurisdictions, they are used to pursue public policy goals, including

safeguarding national security, ensuring the availability of essential goods and services, supporting strategic sectors, and addressing market failures. Country practices illustrate how these rationales translate into institutional arrangements. For example, state ownership in energy and defence sectors in countries such as France and Finland reflects the objective of maintaining control over strategic infrastructure and capabilities. In other cases, such as Mexico's national oil company, ownership is linked to ensuring continuity and security of supply. By contrast, in Korea, state ownership has been used to support competitiveness and industrial upgrading in technology sectors (OECD, 2026[20]). In this sense, public ownership and directed market structures can facilitate coordination, risk-sharing and long-term investment, particularly where private incentives are insufficient or where policy objectives extend beyond efficiency to include security or sovereignty.

17. However, these approaches involve trade-offs. Scale and concentration are not equivalent, and scale can often be achieved without reducing rivalry.[2] Where consolidation reduces competition, it may weaken incentives to innovate, limit alternative technological pathways and reinforce incumbent advantages. Evidence indicates that weakening rivalry often undermines, rather than strengthens, innovation outcomes (Aghion et al., 2018[21]). In addition, investment constraints may arise at different stages of the firm lifecycle, suggesting that, in some contexts, addressing financing constraints or enabling co-operation may be more effective than reducing rivalry (CMA, 2025[22]). The central policy question is therefore how to preserve the benefits of both scale and competition over time, in light of sector-specific conditions and policy objectives.

18. These trade-offs are most visible in debates around "national champion" strategies. Such approaches are often justified on the basis that concentration of resources supports technological leadership, strategic autonomy and geopolitical leverage (Baer, 2025[23]; Zhang, 2024[24]). These arguments are closely linked to national security considerations, including maintenance or development of critical capabilities and supply chain resilience, particularly where governments seek to ensure that key technologies or industrial capacities are developed and retained domestically.[3]

19. This reflects a difference in policy perspective rather than a direct contradiction. Competition policy focusses on market performance and dynamic efficiency, while national security policy emphasises control, resilience and the location of strategic capabilities. As a result, competition alone does not determine which firms or jurisdictions capture strategic advantages. At the same time, preferential treatment or reduced rivalry may weaken incentives to innovate and reduce efficiency, potentially undermining long-term competitiveness, including in sectors critical to national security (OECD, 2009[25]).

20. A related issue arises under the principle of competitive neutrality. Governments may assign public policy objectives to firms, particularly SOEs, including ensuring resilient service provision or safeguarding critical infrastructure. Such mandates may justify deviations from strict neutrality where they are clearly defined, transparent and proportionate (OECD, 2026[20]). However, such interventions may influence resource allocation and market outcomes, with implications for efficiency, innovation and resilience. The challenge is to ensure that these interventions remain targeted, periodically reviewed, and do not distort competition beyond what is necessary, particularly where such distortions may have lasting effects on market structure or dynamic competitive processes (OECD, 2024[26]).

21. A further dimension concerns asymmetric global competition. Domestic firms may face competitors benefiting from state support or more permissive regulatory environments (OECD, 2024[27]). Addressing such asymmetries requires distinguishing between addressing external distortions and weakening competition. Policy responses targeting the source of distortions, such as international co-operation or targeted instruments, may be more effective than relaxing domestic competition rules (Cœuré, 2025[28]).[4]

22. The relationship between competition and national security does not reflect a simple trade-off. Different institutional arrangements, including competition, regulation, procurement and state ownership, can support security objectives under different conditions. In certain contexts, particularly where large-scale coordination or rapid capability development is required, state-directed approaches have contributed

to significant technological advances, as illustrated historically in early space exploration programmes (NASA, 2020[29]). However, such models do not provide a general basis for sustained innovation or efficiency over time.

23. Effective policy requires calibrating these instruments to sector-specific conditions, ensuring that interventions addressing national security concerns do not undermine the competitive dynamics that support long-term innovation, resilience and capability. Across contexts, evidence suggests that sustained rivalry remains a central foundation for these outcomes, even where complementary tools are required to address specific market failures or security constraints.

1.3 How legal frameworks address national security in the context of competition enforcement

24. In a limited number of jurisdictions, national security considerations are addressed directly through legal mechanisms that allow for derogations from, or disapplication of, competition law. These mechanisms are distinct from broader public interest provisions and are specifically designed to protect such interests. As such, they provide a clear legal basis for national security to prevail over competition law in defined circumstances. This reflects the recognition that, in exceptional cases, competition objectives may be subordinated to core state interests (see Box 2).

Box 2. National security derogations and exemptions from competition law

European Union (EU). Article 346 of the Treaty on the Functioning of the European Union (TFEU) allows Member States to take measures necessary to protect essential security interests relating to the production or trade in arms, munitions and war material, including by disapplying EU competition rules. Article 346 TFEU is limited specifically to military purposes. In merger control, Article 21(4) of the EU Merger Regulation allows Member States to take measures to protect legitimate interests such as public security, even where a concentration falls within EU jurisdiction. The draft EU Merger Guidelines suggest that public security measures coordinated through EU-level merger or FDI review mechanisms may benefit from a presumption of compatibility with EU law.

India. Section 54 of the Competition Act 2002 allows the government to exempt enterprises or conduct from the application of the Act in the interests of national security or public interest. This power applies across competition enforcement.

Israel. Section 52 of the Economic Competition Law allows the Minister of the Economy to exempt restrictive arrangements (referring to mergers and conduct) from competition law where this is required for reasons of foreign policy or state security, subject to consultation requirements.

Source: EU (2004[30]), Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32004R0139; EU (2012[31]), Consolidated version of the Treaty on the Functioning of the European Union, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E346; EC (2026[32]), Draft Communication from the Commission: Guidelines on the assessment of mergers under Council Regulation, https://competition-policy.ec.europa.eu/document/download/46dde10f-85c1-4590-a3f4-2b71f85685ef_en?filename=Merger%20Guidelines%20-%; Agrawal, A (2025[33]), Power to Exempt under Section 54 of Competition Act, 2002, https://lawbhoomi.com/power-to-exempt-under-Section-54-of-competition-act-2002/; Israel Government (2026[34]), Economic Competition Law, https://www.gov.il/BlobFolder/legalinfo/competitionlaw/en/englishsite_Economic%20Competition%20Law.pdf.

25. These mechanisms reflect the particular status of national security within the broader set of policy objectives that may intersect with competition law. Unlike other considerations, national security is closely

linked to core state functions, including sovereignty, defence and the protection of essential capabilities (Wehrlé and Pohl, 2016[35]). It may rely on geopolitical assessments, intelligence inputs and strategic risk evaluation. For this reason, jurisdictions that provide for such derogations typically assign decision making responsibility to governments, reflecting the nature of the assessment and its institutional implications, including the need for political accountability in balancing security and economic objectives (OECD, 2016[36]; 2022[37]).

26. Evidence from jurisdictions with such mechanisms suggests they are invoked only rarely. The EU framework illustrates a narrowly defined approach. The scope of Article 346 TFEU is confined to defence-related activities and has been interpreted restrictively by the Court of Justice of the European Union (CJEU), subject to strict necessity and proportionality requirements (Cunha Rodrigues, 2024[38]). This limits its application, particularly in sectors characterised by dual-use technologies.[5] As a result, the EU framework remains closely anchored to a defence-specific conception of national security, even as broader policy discussions increasingly extend to economic resilience, technological capabilities and strategic dependencies, creating a degree of tension between legal doctrine and evolving policy concerns (Scandola, 2025[39]).

27. By contrast, Israel illustrates a broader application of national security derogations in practice. In 2015, the government invoked Section 52 of the Economic Competition Law in relation to arrangements concerning offshore gas fields central to domestic energy supply, notwithstanding identified competition concerns. This remains the only known instance to date of its use. The Israeli Supreme Court upheld the use of the exemption, while emphasising that restrictions on competition must be balanced against state and security interests and justified by correspondingly weighty considerations. In this context, the Court accepted that ensuring the development and reliability of domestic energy supply constituted a significant security interest, notwithstanding the acknowledged harm to competition (Supreme Court of Israel, 2016[40]). The case reflects the broader expansion of national security considerations beyond traditional defence sectors.

28. These examples, drawn from a limited number of jurisdictions, suggest that while these exceptional legal frameworks differ significantly in scope, their use has to date remained cautious.[6] The contrast between narrowly defined derogations (EU) and more flexible government-led exemption powers (Israel) illustrates how institutional design shapes both the availability and practical use of these powers. As national security considerations expand to encompass economic resilience, technological capabilities and supply chain dependencies, these differences may become more consequential in determining how frequently such mechanisms are invoked and under what conditions.

29. In contrast to such competition law derogations, the US provides statutory exemptions or immunities that permit limited co-ordination among market participants in defined national security contexts. Unlike derogations, which allow competition law to be set aside in specific cases, these mechanisms are established in legislation ex ante and typically include procedural safeguards, government oversight and periodic review. They can therefore be understood as a distinct category of legal mechanism at the intersection of competition law and national security (see Box 3).[7]

Box 3. Statutory exemptions and immunities for co-ordination in the public interest

United States. Antitrust law applies broadly, but Congress has enacted statutory exceptions to advance specific public interest objectives. In the national security context, the Defense Production Act (DPA) allows firms to enter into voluntary agreements to meet national defence requirements after a Presidential finding of conditions that pose a direct threat to the national defence or its preparedness programs. Firms who are participants in such voluntary agreements can benefit from a limited antitrust defence for actions taken in furtherance of the agreement. This limited antitrust defence applies only to

conduct undertaken pursuant to an approved agreement, following review by the DOJ, in consultation with the FTC, and subject to oversight and reporting requirements. The limited antitrust defence covers both federal and state antitrust claims, whether brought by public enforcers or private parties, though not foreign antitrust law claims.

The National Cooperative Research and Production Act (NCRPA) provides limited antitrust protections for joint research and production ventures, reflecting a legislative judgment that certain forms of co-operation may promote innovation while maintaining safeguards against anticompetitive effects.

Source: US Congress (1950[41]), Defense Production Act, 50 U.S.C. §§ 4557; US Congress (1993[42]), National Cooperative Research and Production Act, 15 U.S.C. § 4305.

30. In the US, a concrete example is the Voluntary Intermodal Sealift Agreement (VISA), established under Section 708 of the Defence Production Act and most recently renewed through 2029. The agreement allows participating ocean carriers to co-ordinate the provision of sealift capacity and share operational information to support US military deployment requirements. While such coordination could ordinarily raise concerns under Section 1 of the Sherman Act, it benefits from conditional antitrust immunity when conducted pursuant to an approved voluntary agreement. Approval requires review by the DOJ, in consultation with the FTC, and is subject to oversight, transparency requirements and periodic renewal. In successive reviews, the authorities have concluded that any restriction of competition is limited in scope and justified by the need to ensure reliable access to commercial sealift capacity for national security purposes (Federal Register, 2024[43]).[8]

31. Beyond these national security-specific derogations, some jurisdictions provide broader mechanisms that allow governments to intervene in competition enforcement on public interest grounds. These frameworks typically arise in merger control and permit decision makers to take into account a wider set of policy considerations, which may include national security alongside other objectives such as financial stability, employment or environmental protection (OECD, 2016[36]). Unlike the mechanisms described above, they do not establish national security as a distinct legal basis for disapplying competition law but instead incorporate it within a broader set of public interest considerations (see Box 4).

Box 4. Public interest intervention mechanisms in merger control

Cyprus[1]. The Minister of Energy, Commerce and Industry may "call in" a concentration by declaring it to be of major importance, in which case the merger control rules apply even if the usual jurisdictional thresholds are not met. The Minister may also declare a concentration to be of major public interest and refer it to the Council of Ministers, which may approve or reject the transaction notwithstanding the competition authority's assessment. Public-interest grounds include effects on public security.

France. The Minister of the Economy may "call in" a merger case after the competition authority has issued its initial decision and issue a final decision based on broader public interest grounds. These include industrial development; the competitiveness of the undertakings concerned in international competition and employment considerations. This mechanism reallocates final decision making authority to the Minister.

Germany. The Federal Minister for Economic Affairs may grant ministerial authorisation for a merger that has been prohibited by the Bundeskartellamt if the restriction of competition is outweighed by advantages to the economy as a whole or justified by overriding public interests.

Spain. The Minister for Economic Affairs may refer a merger decision to the Council of Ministers for reasons of general interest when the competition authority has prohibited the merger or authorised it

subject to commitments. The Council of Ministers may then confirm the competition authority's decision or authorise the merger, with or without conditions, provided the decision is based on general-interest considerations other than the protection of competition. These may include defence and national security, public security or health, environmental protection, technological development, or the maintenance of sectoral regulatory objectives.

1. Note by the Republic of Türkiye: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Türkiye recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Türkiye shall preserve its position concerning the "Cyprus issue".
Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Türkiye. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Source: Georgiades & Pelides (2025[44]), Law and Practice in Cyprus, https://practiceguides.chambers.com/practice-guides/comparison/935/16517/25912-25913-25914-25915-25916-25917-25918-25919-25920; French Commercial Code (2015[45]), Article L430-7-1, https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000031013097/; French Competition Authority (2026[46]), Call-in by the French Minister of the Economy, https://www.autoritedelaconcurrence.fr/en/merger-control; German Competition Act (2023[47]), Section 42 Ministerial Authorisation, https://www.gesetze-im-internet.de/englisch_gwb/englisch_gwb.html; GCR (2023[48]), National Authority for Markets and Competition (CNMC),https://globalcompetitionreview.com/insight/enforcer-hub/2023/organization-profile/spain-national-authority-markets-and-competition-cnmc.

32. Within these broader frameworks, national security is typically treated as one among several public interest considerations. However, both legal design and practice suggest that it may carry particular weight relative to other public interest objectives. In the United Kingdom (UK), for example, national security was the original, and for a period the sole, public interest ground for ministerial intervention under the Enterprise Act 2002. Although subsequent amendments expanded this list, national security has remained a central basis for intervention, reflecting its connection to core state functions and its capacity to justify departures from competition in exceptional circumstances (Kokkoris, 2021[49]).

33. These public interest mechanisms should be distinguished from national security screening regimes that operate under separate legal frameworks. In most OECD jurisdictions, national security concerns regarding foreign ownership or control of strategic assets are assessed through specialised mechanisms, such as foreign direct investment (FDI) screening regimes, rather than through competition law (OECD, 2022[37]). These frameworks operate independently, although they may run in parallel with merger control.

34. The UK provides a clear illustration of this distinction. While national security has historically served as a public interest ground for intervention under the Enterprise Act 2002, the National Security and Investment Act 2021 established a separate statutory regime for national security screening, administered by the Investment Security Unit, while the Competition and Markets Authority (CMA) continues to assess mergers under competition law (UK Cabinet Office, 2023[50]). Recent reforms in some jurisdictions further reinforce this separation. In Poland, responsibilities for national security review have been reassigned from the competition authority to government ministries (Braksator, Kolasinska and Sendrowicz, 2025[51]).

35. In a limited number of jurisdictions, public interest considerations are assessed directly by competition authorities as part of merger control. For example, in Kenya and South Africa, competition authorities are required to evaluate specified public interest factors alongside competition effects, including employment and the competitiveness of national industries (Eveleigh, 2024[52]; CompCom, 2018[53]). Such approaches remain relatively uncommon. In most jurisdictions, public interest and national security assessments are undertaken by governments rather than competition authorities (OECD, 2016[36]).

36. In sum, institutional frameworks differ not only in whether broader considerations may be taken into account, but also in when and by whom they are assessed. Some approaches seek to address trade-

offs ex ante, by specifying how resilience, investment, innovation, scale or other considerations may be assessed within the competition analysis, where they can be translated into competition-relevant effects. The EC's draft Merger Guidelines illustrate this approach (2026[32]). Other jurisdictions address such trade-offs ex post, by allowing governments to intervene, typically after the competition authority has completed its assessment. This distinction can affect institutional accountability and the role of competition authorities.

1.4 The role of competition authorities in an evolving national security context

1.4.1 The boundary of competition enforcement

37. As the scope of national security expands, national security concerns are increasingly likely to arise in competition cases. This trend is not without precedent. Similar debates have appeared during earlier periods of technological change or geopolitical transition (USDOJ, 2025[54]; OECD, 2024[27]). However, as the scope of national security expands across a wide range sectors; it raises a central question for competition authorities: which national security concerns can be assessed within competition law and which fall outside its scope?

38. The central analytical test is whether the concern can be articulated as competition-relevant effects. Where national security arguments can be expressed in terms of market structure, firm behaviour or competitive dynamics, including reduced rivalry, barriers to entry or expansion, supply dependency or diminished innovation, they fall within the scope of competition law and can be assessed using established analytical frameworks for competitive effects (EC, 2025[55]; Coscelli and Thomson, 2024[13]).

39. This may arise, for example, where concerns about resilience or security of supply reflect increased concentration, reduced supplier diversity or reliance on a limited number of critical inputs. Similarly, claims that a merger is necessary to sustain industrial capacity or technological development may be advanced as efficiency arguments, subject to standard requirements such as verifiability, necessity and merger specificity (OECD, 2009[25]; FTC, 2024[18]). Thus, competition law already provides a framework for analysing a subset of concerns that are increasingly framed in security terms.

40. By contrast, some national security concerns cannot be meaningfully translated into competition-relevant effects. Where arguments rest on geopolitical assessments, intelligence inputs, preferences over domestic control, or distinctions between firms based on nationality, ownership or foreign influence, they fall outside the analytical reach of competition law.[9] In these cases, the issue is not evidentiary but institutional: such assessments require political judgement and are more appropriately addressed by governments or specialised bodies (Wehrlé and Pohl, 2016[35]; Martyniszyn, 2025[4]).

41. This institutional distinction also reflects considerations of democratic legitimacy, accountability and institutional competence. Assessments involving trade-offs between national security, economic efficiency, geopolitical risk and broader societal objectives often entail inherently political judgements. Competition authorities, whose role is grounded in legally defined economic criteria, are not generally the bodies best placed to balance such considerations or to prioritise among competing national security objectives. Assigning these decisions to elected governments or designated authorities helps ensure that such trade-offs are made within the appropriate institutional framework, while also preserving the independence, analytical coherence and predictability of competition enforcement (Ezrachi, 2025[56]).

42. In practice, however, the boundary between competition-relevant effects and broader strategic considerations may be difficult to draw. Some objectives commonly framed as national security, such as resilience or innovation capacity, may often have an economic dimension and may be relevant to market functioning. Where national security claims are material to the factual context of a case, authorities may need structured input from defence, security, procurement, investment screening, sectoral regulators, or other government bodies. Such consultation should inform the factual assessment of constraints, feasibility

and remedies, but should not transfer responsibility for geopolitical or intelligence-based balancing to the competition authority.

43. In addition, some legal frameworks expressly provide for public-interest considerations to ministers, government bodies, or competition authorities, while in other areas, governments may lack clearly actionable instruments. These gaps may create pressure on competition authorities to absorb concerns that sit at the edge of, or outside, competition analysis. The degree of this pressure may depend on the level of independence the authorities have, based on the relevant legal framework.

44. As discussed further in Section 2, in practice, these distinctions arise across different forms of competition enforcement. National security considerations may be reflected directly in the assessment of theories of harm and competitive effects, including in relation to market structure, resilience or innovation. They may also be advanced by parties as justifications for mergers and co-ordinated or unilateral conduct, thereby shaping both offensive and defensive arguments in competition proceedings.

45. The increasing prominence of national security in economic policy creates a risk that such considerations may be invoked opportunistically or strategically in competition enforcement. Firms subject to investigation may frame mergers or conduct in terms of security, resilience or strategic necessity, including where such claims cannot be substantiated within competition law frameworks or supported by verifiable evidence. Governments may also introduce national security considerations into competition enforcement. In some cases, national security concerns may overlap with, or obscure, other policy objectives, including preferences for domestic ownership, national champions or local consolidation. This does not make security concerns illegitimate, but it underscores the need to distinguish genuine competition-relevant effects from broader policy choices.

46. Beyond the statutory mechanisms discussed in Section 1.3, such considerations may arise through formal and informal channels. Government agencies may raise national security concerns through procedural avenues, including statements of interest, amicus curiae briefs or observations in judicial proceedings. They may also do so informally, including through policy engagement or public intervention. While such interventions do not alter the applicable legal standards under competition law, they may place pressure on competition authorities and courts to consider matters outside their analytical scope. Maintaining this distinction is essential to preserving the integrity and predictability of competition enforcement (OECD, 2016[36]; 2022[37]; Martyniszyn, 2025[4]; Ezrachi, 2025[56]).

1.4.2 Enforcement discretion, advocacy, guidance and institutional co-ordination

47. Even where national security considerations fall outside competition enforcement, competition authorities may still play an important role through enforcement discretion, advocacy, guidance and institutional co-ordination. National security concerns increasingly shape the policy environment in which they operate, particularly in sectors linked to resilience, critical inputs and technological capabilities. Although such considerations do not alter legal standards, they may affect prioritisation decisions and how authorities engage with governments and firms (Martyniszyn, 2025[4]; Ezrachi, 2025[56]).

48. A first role arises in the exercise of enforcement discretion (OECD, 2026[57]). While legal standards remain unchanged, competition authorities typically retain discretion in how they prioritise cases, allocate resources and sequence enforcement activities. In an evolving national security context, this may involve giving greater attention to sectors or conduct considered strategically significant. Such discretion does not relax competition rules but affects how and where they are applied. That said, the exercise of discretion must remain grounded in transparent and objective criteria to avoid undermining legal certainty, equal treatment and the credibility of competition enforcement.[10]

49. A second role is advocacy toward governments and policymakers. Competition authorities can contribute economic and legal expertise to broader policy debates by explaining how competitive market structures support resilience, innovation and long-term performance, and by identifying policy options that

achieve security objectives with the least distortion to competition (Coscelli and Thomson, 2024[13]). This function is particularly important where governments consider measures in strategically significant sectors. In such contexts, advocacy can help ensure that competition considerations are incorporated into policy design early and that security measures do not unnecessarily entrench concentration, dependency or barriers to entry or expansion (OECD, 2019[58]).[11] This type of advocacy can help governments design measures that pursue national security objectives while limiting unnecessary restrictions on competition (see Box 5).

Box 5. Competition advocacy and national security: exclusive rights in defence-related services

The French competition authority examined a draft decree granting exclusive and special rights to operators supporting the Ministry of Armed Forces in international military co-operation activities. It noted the public-interest rationale of the project, while identifying competition risks relating to the scope and duration of exclusive rights, operator selection and remuneration, subcontracting arrangements, and the possible leveraging of exclusive rights into competitive markets.

Source: French Competition Authority (2025[59]), *Avis 25-A-07 du 14 mai 2025*, https://www.autoritedelaconcurrence.fr/fr/avis/portant-sur-un-projet-de-decret-relatif-lattribution-de-droits-exclusifs-et-speciaux-des-0.

50. This role may also involve formal and informal institutional co-ordination with other public bodies, particularly in sectors such as defence, energy and advanced technologies, where competition issues intersect with procurement, industrial policy, trade and national security. Through such co-ordination, competition authorities can contribute expertise on market structure and competitive effects and help identify solutions that preserve competition as far as possible (Martyniszyn, 2025[4]). While engaging in these processes, it remains important to preserve clear institutional boundaries. Competition authorities should not assume responsibility for geopolitical or intelligence-based assessments, and such trade-offs should remain with governments or other designated bodies. Maintaining this distinction supports analytical clarity, institutional independence and legal predictability.[12]

51. A third role is guidance to businesses and other stakeholders. As security and resilience concerns become more prominent, firms may seek to adapt their conduct through mergers, co-operation, information exchange, supply arrangements or other conduct considered necessary to address strategic risks. Competition authorities can reduce legal uncertainty by clarifying how existing competition rules apply in such settings and by distinguishing conduct that may be compatible with competition law from conduct that remains prohibited. This can help avoid both unlawful overreach and unnecessary chilling effects on legitimate business responses. Recent guidance issued by the Japan Fair Trade Commission (JFTC) on the relationship between economic security initiatives and competition law demonstrates this approach (Government of Japan, 2025[60]).[13]

2 The analytical boundaries of competition enforcement in a national security context

52. This section examines how national security considerations may arise within competition analysis across merger control, co-ordinated conduct and unilateral conduct. The same question arises across these forms of enforcement: whether, and if so how, national security considerations affect competition-relevant facts that can be assessed within established legal frameworks. The focus is not on national security as a free-standing objective within competition law, but on the circumstances in which it affects the competitive conditions that competition authorities must assess. In practice, this may occur at different stages of the analysis, including the identification of relevant competitive constraints, the assessment of competitive effects, the evaluation of efficiency or justification claims, and the design of remedies.

2.1 National security as a constraint on competitors

53. A first way in which national security considerations may arise within competition analysis is by shaping the set of firms that can constrain one another in practice. This issue is not confined to any single form of enforcement. It may arise in merger control, where authorities assess existing and potential competitive constraints; in unilateral conduct cases, where market power and rivals' positions must be evaluated; and in cases involving co-ordinated conduct, where the structure of participation and the availability of alternatives may also be relevant. The same considerations also arise outside of enforcement, including in market studies and advocacy, and thus across competition analysis more generally. The analytical question is the same throughout, whether firms that appear relevant in the abstract are, in fact, able to compete under the legal, regulatory and policy conditions that govern the market.

54. In some sectors, competitive constraints are shaped not only by prices, quality, innovation or other economic factors, but also by procurement rules, export controls, investment screening, security clearances, vendor restrictions or other national security-related measures. These measures may affect whether particular firms can bid, supply, expand, remain active, or be treated as credible suppliers by customers. Where they do, competition authorities must assess competitive constraints on the basis of market realities rather than the mere existence of firms elsewhere (OECD, 2022[37]).

55. This issue is especially important in sectors where participation depends on regulatory approval, long-term procurement relationships, technical certification or government trust. In such settings, the relevant question is not simply whether a firm has the technical capacity to supply, or competes in other jurisdictions, but whether it can exert a sufficiently credible and timely constraint in the market under investigation. National security-related restrictions are thus relevant not because they redefine the legal test, but because they affect which firms actually constrain the parties or conduct at issue. The Siemens/Alstom case illustrates the point (see Box 6).

Box 6. National security and the assessment of credible competitive constraints: Siemens/Alstom

The 2019 Siemens/Alstom merger in the EU concerned the supply of signalling systems and high-speed rolling stock. The EC identified competition concerns in markets for very high-speed trains and railway signalling systems. The parties argued that the merger should be assessed in light of global competition, including from large Chinese suppliers. The EC instead examined whether those suppliers imposed a credible and timely competitive constraint in the EEA. In relation to signalling, it found that entry by certain Asian suppliers was unlikely in the foreseeable future. The decision referred to the absence of contracts in the EEA, limited contact with customers, and market-investigation evidence indicating that these suppliers would not become credible bidders within five years. It also recorded evidence that awarding major signalling contracts to a Chinese supplier could raise national security concerns for certain infrastructure managers, making procurement less likely. In that context, the EC concluded that such firms were unlikely to constrain the merged entity within the relevant period. The case illustrates that the existence of suppliers at a global level does not by itself establish a competitive constraint where regulatory, procurement or security-related conditions limit their ability to compete in practice.

Source: EC (2019[61]), Commission prohibits Siemens' proposed acquisition of Alstom, https://ec.europa.eu/commission/presscorner/detail/en/ip_19_881; EC (2019[62]), Case M.8677 - Siemens/Alstom, https://ec.europa.eu/competition/mergers/cases1/20219/m8677_9376_7.pdf.

56. The significance of the case extends beyond merger control. It shows that where competition depends on regulatory feasibility, procurement access and customer acceptance, national security considerations may affect whether a firm constitutes an actual or potential constraint. This is a competition question, not because the authority assesses the merits of the underlying security policy, but because those conditions shape the market's competitive structure. Related policy debates also illustrate a broader institutional point: concerns about foreign subsidies, strategic autonomy or global competitiveness may shape the policy context and the development of complementary instruments, such as the EU Foreign Subsidies Regulation, without displacing the core competition analysis in individual cases (Torres Méndez, 2024[63]).

57. Comparative practice confirms this approach. In some cases, authorities find that foreign suppliers constrain domestic firms, including where customers source globally and switching is feasible. In others, competitive conditions are narrower because supply depends on regulatory approval, certification, procurement access or other conditions that limit participation. The key issue is not whether competition is global in the abstract, but whether firms can compete effectively under the conditions relevant to the case. This distinction is reflected, for example, in the EC's treatment of imports in Tata Steel/Thyssenkrupp and the JFTC's finding in Imabari Shipbuilding/Japan Marine United that shipowners procure vessels globally (EC, 2025[55]; JFTC, 2025[64]).

58. The issue is particularly salient in telecommunications infrastructure. A number of jurisdictions have adopted measures that prohibit, phase out or otherwise restrict Huawei and other designated vendors from participation in 5G networks on national security grounds. Although those measures are adopted outside competition law, they may materially affect the set of firms that can supply network equipment and therefore the competitive constraints available in practice (see Box 7).

Box 7. National security restrictions and the set of feasible competitors: 5G infrastructure

A number of jurisdictions have adopted measures restricting or excluding Huawei and ZTE from participation in 5G telecommunications networks on national security grounds. In the US, the Federal Communications Commission designated Huawei and ZTE equipment and services as posing an unacceptable national security risk and prohibited their authorisation and use in domestic

telecommunications networks. Other jurisdictions adopted comparable measures. The UK prohibited the use of new Huawei and ZTE equipment in 5G networks from 2021 and required its removal by 2027. Canada prohibited Huawei and ZTE equipment in 5G networks and imposed removal timelines. Australia adopted security-based restrictions that effectively exclude certain high-risk vendors from 5G deployment. Germany has introduced phased removal requirements for Huawei and ZTE components in critical parts of its networks.

Source: US Congress (2020[65]), H.R.4998 - Secure and Trusted Communications Networks Act of 2019, https://www.congress.gov/bill/116th-congress/house-bill/4998; FCC (2026[66]), List of Equipment and Services Covered By Section 2 of The Secure Networks Act, https://www.fcc.gov/supplychain/coveredlist; UK Government (2020[67]), Huawei to be removed from UK 5G networks by 2027, https://www.gov.uk/government/news/huawei-to-be-removed-from-uk-5g-networks-by-2027; Government of Canada (2022[68]), Policy Statement – Securing Canada's Telecommunications System, https://www.canada.ca/en/innovation-science-economic-development/news/2022/05/policy-statement--securing-canadas-telecommunications-system.html; BBC (2018[69]), Huawei and ZTE handed 5G network ban in Australia, https://www.bbc.com/news/technology-45281495; German Federal Ministry of the Interior (2024[70]), Greater security and technological sovereignty for the German 5G mobile network: The Federal Government concludes contracts with telecommunications companies, https://www.bmi.bund.de/SharedDocs/pressemitteilungen/EN/2024/07/5g-en.html.

59. From a competition perspective, the relevant question is not in the merits of such national security measures, but how they affect competitive constraints.[14] A supplier that is technically substitutable under normal conditions may cease to be a relevant constraint where legal or policy restrictions prevent it from supplying, expanding or being considered a viable procurement option. In such cases, the reduction in competitive pressure arises not from product characteristics but from a binding constraint on participation. This may be relevant across merger analysis, dominance assessment and other settings in which authorities must determine which firms meaningfully constrain one another.

60. Similar issues may arise in digital markets (see Box 8). National security-related restrictions may alter the competitive landscape not by changing user preferences or technical substitutability, but by affecting whether a platform can remain available, operate in its existing form, or continue to compete independently.

Box 8. National security measures and competitive constraints: TikTok

India banned TikTok and other Chinese-origin apps in 2020 on grounds including sovereignty, security of the state and public order. In the United States, measures targeting TikTok have focussed on data security and foreign control, including legislation requiring divestiture or otherwise permitting restrictions on availability. These measures illustrate how national security decisions may affect whether a digital platform remains part of the competitive set.

Source: Hindustan Times (2025[71]), Why TikTok remains banned in India despite thaw in China ties, https://www.hindustantimes.com/india-news/explained-why-tiktok-remains-banned-in-india-despite-thaw-in-china-ties-101755921080333.html; White House (2020[72]), Executive Order on Addressing the Threat Posed by TikTok, https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-addressing-threat-posed-tiktok/; US Congress (2024[73]), H.R.8038 - 21st Century Peace through Strength Act, https://www.congress.gov/bill/118th-congress/house-bill/8038; NPR (2026[74]), TikTok finalises deal to form new American entity, https://www.npr.org/2026/01/22/nx-s1-5685456/tiktok-finalizes-deal-to-form-new-american-entity.

61. The relevance of these developments is that government action taken on national security grounds may affect whether a platform remains part of the competitive set. This was reflected in the FTC's monopolisation case against Meta, where TikTok's competitive significance formed part of the assessment of market power. Evidence that user attention shifted toward Facebook, Instagram and YouTube when TikTok became unavailable is relevant because it shows how such restrictions may affect competitive constraints in practice, not because competition authorities assess the underlying security rationale (D.D.C, 2025[75]).[15]

62. The implications for competition analysis are therefore fact specific. They depend on the timing, scope and durability of the restriction, as well as observed substitution patterns, switching behaviour and the likelihood that the affected firm can continue to operate, expand or compete independently. Temporary disruption, permanent exclusion and restructuring through divestiture may each have different implications for the assessment of competitive constraints.

63. These examples show that national security considerations may enter competition analysis at an early stage by affecting which firms constrain one another in practice. This requires authorities to assess competitive constraints realistically, taking into account binding legal, regulatory and policy conditions that shape market participation.

2.2. Merger control

64. Merger control is one of the principal contexts in which national security considerations arise in competition enforcement. Mergers involving firms active in strategically significant sectors, such as defence systems, advanced technologies, energy infrastructure, or critical raw materials, may trigger arguments that consolidation supports industrial resilience, technological capability or control over strategic assets. These arguments often emphasise industrial capacity and international competitiveness (Kovacic, 2022[76]; FTC, 2006[77]). At the same time, reduced rivalry may itself generate vulnerabilities. Consolidation that eliminates independent competitors, reduces supplier diversity, or diminishes incentives to innovate may increase reliance on a limited number of firms, thereby increasing exposure to disruption (FTC, 2006[77]; EC, 2025[55]; JFTC, 2026[78]).

65. From an analytical perspective, national security considerations may enter merger review through two main channels: the assessment of competitive effects and efficiency or justification claims advanced by the parties. These considerations do not modify the legal test but may affect how evidence is interpreted within that framework. Where concerns cannot be expressed as competition-relevant effects, they fall outside merger control. As discussed in Section 1, they may instead be addressed through parallel regimes, including FDI screening, public-interest interventions, trade, procurement, subsidy control or industrial policy.

2.2.1 National security-related anticompetitive effects in mergers

66. National security considerations may be relevant where they correspond to established anticompetitive effects, including (i) concentration, reduced rivalry and entrenchment; (ii) foreclosure and raising rivals' costs; and (iii) innovation and capability effects. Best practices on assessing these effects are highlighted in the OECD Recommendation on Merger Review (2025[79]). In strategically significant sectors, such effects may be particularly consequential where demand is concentrated among public authorities or critical industries and where alternative suppliers are limited (EC, 2025[55]; US DoD, 2022[80]).

67. This assessment is typically informed by structural indicators of concentration, particularly in horizontal mergers. Measures such as market shares and Herfindahl–Hirschman Index (HHI) thresholds provide initial indicators. Higher concentration levels may signal reduced rivalry and, in some cases, entrenchment. At the same time, concentration may in some cases reflect the scale required to support investment or innovation. Where such considerations are advanced by the parties, they may be assessed within the framework for efficiencies or justifications. Higher concentration may also indicate increased reliance on a limited number of suppliers, a concern often framed in policy terms as dependency or vulnerability (US DoD, 2022[80]; EC, 2025[81]). The supply-chain resilience literature also uses concentration metrics to assess disruption risks, confirming that standard merger tools already capture some dimensions of dependency and vulnerability (Carter, Rogers and Choi, 2015[82]).[16]

68. Mergers that eliminate independent suppliers of critical inputs or technologies may increase reliance on a limited number of firms, reduce sourcing flexibility and increase exposure to disruption. This is particularly relevant in sectors with high entry barriers or specialised capabilities. Concerns framed in terms of resilience or security of supply often reflect reduced substitutability, increased supplier concentration and entrenchment risks within standard competition analysis (Deutscher, 2022[83]; EC, 2025[55]; US DoD, 2022[80]). They may also arise through the weakening of non-price dimensions of competition, such as reliability, delivery times or continuity of supply, especially where supply failures affect downstream production or critical infrastructure.[17] Supply-chain resilience literature may complement this analysis by identifying factors such as supplier criticality, geographic exposure and substitutability (Berry and Waldfogel, 2001[84]; Argentesi et al., 2021[85]).

69. Economic analysis may also draw on insights from network theory, which can help identify firms that function as critical nodes in supply chains.[18] Where a merger increases reliance on such a firm, it may heighten vulnerability to disruption, particularly where switching is difficult or alternatives are limited. These tools do not replace traditional merger analysis but may complement the assessment of supplier importance and substitutability.

70. A second channel concerns foreclosure or raising rivals' costs, particularly where a merger confers control over critical inputs, infrastructure or technologies. Where a transaction enables the merged entity to restrict, degrade or discriminate in access to key inputs, it may reduce downstream competition while limiting independent supply options (Coscelli and Thomson, 2024[13]).[19] These dynamics are illustrated in NVIDIA/Arm (see Box 9).

Box 9. Foreclosure and access to critical inputs: NVIDIA/Arm

In 2021, NVIDIA's proposed acquisition of Arm Holdings was reviewed by the UK CMA under competition law, while the government separately issued a public interest intervention notice on national security grounds. Competition concerns centred on whether NVIDIA could restrict or degrade access to Arm's semiconductor architecture and intellectual property, which are widely licensed to firms competing with NVIDIA in downstream semiconductor markets. Because Arm's technology is a critical input for many chip manufacturers and for applications including AI, the CMA was concerned that the merged entity could have the ability and incentive to disadvantage rivals. NVIDIA ultimately abandoned the merger.

Note: The FTC also challenged the NVIDIA/Arm merger. A public interest intervention notice allows the government to require a report from the CMA and to take account of specified public-interest considerations alongside the competition assessment. In the UK, national security is now primarily assessed under a separate statutory regime established by the National Security and Investment Act, as discussed in Section 1.

Source: CMA (2022[86]), NVIDIA abandons takeover of Arm during CMA investigation, https://www.gov.uk/government/news/nvidia-abandons-takeover-of-arm-during-cma-investigation; UK Government (2021[87]), NVIDIA – Arm: Summary of the CMA's report to the Secretary of State for Digital, Culture, Media & Sport on the anticipated acquisition by NVIDIA Corporation of Arm Limited, https://www.gov.uk/government/publications/summary-of-the-cm.

71. A third set of effects concerns innovation and technological capability. In strategically significant sectors, competition may take place through R&D, bidding processes or competing technological trajectories rather than current sales. Mergers that eliminate innovation rivals, reduce technological diversity or weaken incentives to invest may reduce innovation rivalry and long-term capability development, particularly where innovation is central to competition (EC, 2025[55]; US DoD, 2022[80]).

72. These issues have long been recognised in defence markets, where capable suppliers are often limited and entry barriers are high. In such contexts, the loss of an independent supplier may affect current competition, future procurement options, technological diversity and independent capability. Historical defence mergers illustrate how reduced supplier diversity and diminished innovation rivalry can affect both.[20]

2.2.2 National security arguments, justifications and efficiency claims in mergers

73. Mergers may generate efficiencies including cost savings, improved products or services, and enhanced innovation or investment, which may be passed on to consumers. National security considerations may arise through efficiency or justification claims advanced by merging parties. Firms may argue that consolidation enables investment in critical technologies, combines complementary assets, preserves production capabilities, improves supply-chain resilience, secures access to critical inputs, or creates scale needed to compete globally. Such claims may be relevant where they are substantiated and correspond to recognised efficiencies (Micheletti, 2026[88]).[21] In defence and advanced-technology sectors, they often concern scale, integration of complementary assets and investment incentives (see Box 10) (FTC, 2020[89]).

Box 10. Efficiencies and remedies in naval defence: Hanwha/DSME

In 2023, the KFTC in Korea conditionally approved Hanwha Group's acquisition of Daewoo Shipbuilding & Marine Engineering, despite identifying risks of vertical foreclosure in naval defence markets. The parties argued that the transaction would generate efficiencies by strengthening Korea's naval defence industry through vertical integration, and that foreclosure risks were limited given the Defence Acquisition Program Administration's role as a monopsony buyer overseeing pricing and technical specifications. The KFTC concluded that competition concerns remained and imposed behavioural remedies, including non-discrimination obligations and information firewalls, rather than prohibiting the transaction.

Note: The merger was also reviewed and cleared by multiple other jurisdictions, including the EC and JFTC.
Source: Jung, S (2023[90]), KFTC Gives Conditional Approval for Hanwha's Takeover of DSME, https://www.businesskorea.co.kr/news/articleView.html?idxno=113727; Shipbuilding (2023[91]), KFTC Gives Conditional Approval for Hanwha's Takeover of DSME, https://www.hellenicshippingnews.com/kftc-gives-conditional-approval-for-hanwhas-takeover-of-dsme/.

74. Such arguments also arise outside defence, where scale, integration and investment may be presented as necessary to compete globally or ensure strategic autonomy. Recent policy debates emphasise that mergers may facilitate large-scale investment, support the combination of complementary capabilities, or enable innovation projects that would be difficult to undertake independently.[22] They may also generate efficiencies through vertical integration, including improved coordination or elimination of double marginalisation. However, these effects are case-specific and cannot be presumed. When advanced as efficiencies, they must satisfy established evidentiary standards: they must be merger-specific, verifiable and likely to benefit consumers. In T-Mobile/Sprint, for example, the parties argued that the transaction would accelerate 5G deployment and strengthen technological leadership. The case illustrates how efficiency arguments may be framed in strategic terms while remaining subject to standard efficiency analysis (T-Mobile, 2018[92]).

75. National security considerations may also intersect with established merger defences, such as the failing firm defence. However, they do not alter the strict legal conditions of such defences, which remain grounded in counterfactual analysis. Arguments relating to the preservation of industrial capability or strategic assets cannot substitute for evidence that those conditions are met.[23]

76. Several principles follow. National security considerations can be assessed within the ordinary merger-control framework, where they can be expressed in terms of competition-relevant effects. They do not introduce new theories of harm, but may influence how established concerns, including concentration, foreclosure, raising rivals' costs and reduced innovation, are evidenced in strategically significant sectors. At the same time, mergers may generate efficiencies, including in relation to scale, investment, innovation, resilience, or access to critical inputs. Where such claims are advanced and correspond to recognised efficiencies, they may be assessed within the merger-control framework. Claims relating to resilience, technological capability, scale or strategic autonomy must satisfy the same evidentiary standards as

efficiencies and be supported by clear, verifiable and merger-specific evidence demonstrating benefits likely to be passed on to consumers. Where considerations instead reflect broader geopolitical or industrial policy objectives, they fall outside merger control and should be addressed through separate institutional mechanisms.

2.3 Co-ordinated conduct

77. In strategically significant sectors, co-ordination among competitors may arise in ways that are closely linked to national security considerations. In industries such as defence, energy infrastructure and advanced technologies, governments often act simultaneously as regulators, funders, owners or dominant purchasers. State ownership is particularly relevant in this context: OECD evidence from across 56 jurisdictions shows that governments frequently justify continued ownership by reference to national security or strategic interests (84%) and industrial policy objectives in sectors considered vital for long-term competitiveness or technological development (79%) (OECD, 2026[93]). This institutional configuration may shape market structure by standardising technical requirements, influencing investment incentives, concentrating demand, or facilitating industry co-operation. As a result, it may increase the opportunities for repeated interaction among a limited number of suppliers, which may increase the risk of anticompetitive outcomes (Anderson and Luiz, 2025[94]).

78. In this context, co-ordination is often framed by firms and policymakers as a response to security-related objectives, including ensuring continuity of supply, interoperability of complex systems, or the development of critical technological capabilities. Such arguments are increasingly articulated in terms of competitiveness, strategic autonomy, or technological leadership. The central analytical question is whether the conduct falls within ordinary competition-law analysis, including as efficiency-enhancing co-operation, or instead reflects a broader policy choice for governments or specialised bodies.

79. At the most restrictive end of the spectrum, horizontal agreements on prices, output, customers, or territories remain among the most serious infringements of competition law. Such conduct replaces independent decision making with co-ordinated outcomes and is treated as inherently harmful. The invocation of national security, resilience, or strategic necessity does not alter this assessment. Claims that co-ordination is required to ensure supply stability, technological capability, or industrial strength cannot justify price fixing, bid rigging, or market allocation within the competition law framework.

80. Beyond these clearly anticompetitive forms of conduct, co-ordination may in some cases generate efficiencies, particularly in sectors characterised by high fixed costs, technological complexity and interdependence among firms. This may include technical collaboration, standard-setting, joint R&D, or co-ordination necessary for system integration. In such cases, the analytical task is to assess whether the co-operation is necessary and proportionate to achieve identifiable efficiencies and whether it preserves meaningful scope for independent competition across relevant parameters, including price, quality, innovation and capacity.

81. For example, the development of common technical standards in telecommunications has enabled interoperability across networks and devices, supporting competition among multiple suppliers within a shared technological framework. 3GPP provides a relevant example: organised through regional standards bodies, its technical specifications are developed through contributions from participating companies, including operators, equipment vendors and technology suppliers. In strategically significant sectors, such arrangements may also contribute to system compatibility, supply continuity and technological development (3GPP, 2024[95]; OECD, 2025[96]).

82. However, these efficiencies do not eliminate competition concerns. Co-ordination may reduce incentives for independent innovation, limit alternative technological pathways, or facilitate alignment of market behaviour, including through governance arrangements or information exchange, particularly where participation is restricted or governance structures are opaque. National security considerations do

not alter this analysis but may affect how necessity and proportionality are assessed in practice, as illustrated by the United Launch Alliance joint venture (see Box 11).

Box 11. United Launch Alliance: National security, efficiencies and safeguards

In 2006, Boeing and Lockheed Martin combined their launch operations to form the United Launch Alliance (ULA), merging the only two providers of medium-to-heavy launch services to the US Government. The transaction eliminated direct rivalry in a highly concentrated market and raised concerns about reduced competitive pressure and potential spillovers into adjacent spacecraft markets through the exchange of sensitive information.

The US DoD supported the joint venture on national security grounds, arguing that consolidation would improve reliability, quality and efficiency in a context of declining demand and high fixed costs. The FTC recognised these efficiencies as credible and substantial, but also emphasised the long-term risks of eliminating rivalry, including weaker incentives to maintain performance over time.

The FTC cleared the transaction subject to safeguards limiting the exchange of competitively sensitive information and addressing vertical foreclosure risks. The decision also rested on an expectation, supported by discussions with the DoD and NASA, that government purchasers would facilitate future entry into launch services.

Subsequent developments illustrate the significance of this approach. ULA achieved reliability improvements, while SpaceX later emerged as a major supplier of launch services for NASA and US national security agencies. The case highlights how, in exceptional circumstances, competition authorities may permit co-operation linked to national security objectives where efficiencies are credible, safeguards are imposed and complementary government action supports future competition.

Note: The FTC's decision was shaped by the broader institutional context: challenging the merger in court without DoD support would have been difficult, and government purchasers retained the ability to influence market outcomes through procurement policy.
Source: FTC (2006[97]), FTC Intervenes in Formation of ULA Joint Venture by Boeing and Lockheed Martin, https://www.ftc.gov/news-events/news/press-releases/2006/10/ftc-intervenes-formation-ula-joint-venture-boeing-lockheed-martin; Kovacic, W (2020[98]), Competition Policy Retrospective: the Formation of the United Launch Alliance and the Ascent of SpaceX, https://ssrn.com/abstract=3670742; FTC (2006[99]), Concurring Statement of Commissioner Pamela Jones Harbour, https://www.ftc.gov/sites/default/files/documents/cases/2006/10/0510165concurringstatementcommharbour.pdf.

83. In practice, co-ordination justified on security or resilience grounds may carry particular risks in concentrated and high-barrier sectors, including where such co-operation is permitted or facilitated by public authorities. Where co-operation extends beyond what is strictly necessary, it may entrench market power, heighten barriers to entry or expansion and weaken incentives to innovate or diversify supply. Over time, such arrangements may increase dependency on a limited number of suppliers or platforms, thereby reinforcing both market power and the conditions for co-ordinated outcomes, potentially weakening the resilience they were intended to support (Kovacic, 2022[76]; Monopolkommission, 2025[100]; US DoD, 2022[80]).

84. These concerns are increasingly relevant in AI and other technology-intensive ecosystems, where national security debates already emphasise technological leadership, compute capacity and strategic rivalry, as discussed in Box 1. In competition terms, the relevant issue is not the geopolitical importance of AI as such, but whether partnerships among cloud providers, model developers, infrastructure providers and downstream firms reduce strategic independence, facilitate information exchange, or align incentives in ways that weaken competition. Such arrangements may also raise national security concerns where access to critical inputs, including compute, data, chips or energy, becomes concentrated among a small number of firms, increasing strategic dependencies and narrowing technological development pathways (Sandoval et al., 2026[101]).

85. In some cases, co-ordination in strategically significant sectors arises not from firm-led initiatives but from government-directed frameworks, including defence procurement programmes or industrial policy initiatives. Governments may facilitate co-operation through statutory exceptions, as discussed in Section 1, procurement design, funding conditions, standard-setting mandates, SOE ownership or crisis-response mechanisms. Competition law in some jurisdictions provides mechanisms to permit co-ordination on a case-specific basis, subject to conditions and oversight (see Box 12).[24] Where such co-ordination reflects broader policy choices, such as ensuring domestic capability, managing strategic dependencies, or responding to geopolitical risks, it may fall outside the scope of competition law analysis.

Box 12. Authorised co-ordination in response to supply disruption: The Australian fuel sector

In 2026, the Australian Competition and Consumer Commission (ACCC) granted urgent interim authorisation to the Australian Institute of Petroleum, its members and other industry participants to co-ordinate in managing disruptions to Australia's fuel supply chain linked to the conflict in the Middle East.

The authorisation permits co-ordination on fuel supply logistics, including information exchange and operational co-ordination to alleviate shortages, but does not allow co-ordination on prices. It is subject to conditions, including requirements to support independent distributors and align conduct with government priorities in maintaining supply continuity.

Note: Under Australian competition law, authorisation provides statutory protection from legal action for conduct that might otherwise breach competition rules, where the ACCC is satisfied that the likely public benefits outweigh the likely public detriment. The case highlights that, even where co-ordination is permitted, its scope, duration and governance remain central to limiting risks to competition.
This case also illustrates a distinct competition-law mechanism through which co-ordination may be temporarily permitted in response to supply disruptions. Unlike statutory exemptions or immunities discussed in Section 1, which are established ex ante in legislation, authorisation is granted ex post by the competition authority, based on a public-benefit assessment and subject to conditions, monitoring and potential revocation.
Source: ACCC (2026[102]), ACCC authorises fuel majors to coordinate to ensure fuel supplies, with conditions, https://www.accc.gov.au/media-release/accc-authorises-fuel-majors-to-coordinate-to-ensure-fuel-supplies-with-conditions; ACCC (2026[103]), Authorisation, https://www.accc.gov.au/business/competition-and-exemptions/exemptions-from-competition-law/authorisation.

86. Caution is warranted because historical experience also shows how co-ordination mechanisms introduced for stability or security-related reasons may become entrenched. In the liner shipping sector, conference agreements were long permitted on the basis that co-ordination was necessary to ensure reliable maritime transport. Over time, however, these arrangements facilitated persistent price co-ordination and reduced competitive pressure, leading several jurisdictions, including the European Union, to abolish such exemptions (EC, 2008[104]). This experience underscores the importance of limiting the duration and scope of authorised co-operation.

87. Several principles emerge. Co-ordinated conduct remains subject to the ordinary competition law framework, and national security does not alter the prohibition of hardcore restrictions. Where co-operation generates efficiencies, these must be necessary, proportionate and verifiable. Where co-operation is permitted through competition-law mechanisms, including authorisation, it should be limited to what is strictly necessary, subject to clear conditions, and capable of review or withdrawal. Where co-ordination reflects broader policy choices, including government-facilitated industry co-operation, procurement, or SOE-led arrangements that pursue public policy mandates, it should be addressed through appropriate institutional mechanisms rather than by stretching competition-law analysis. Particular caution is required to ensure that arrangements introduced on security or resilience grounds do not become entrenched and ultimately weaken competition, resilience and long-term capability.

2.4 Unilateral conduct

88. National security considerations do not alter the legal framework in unilateral conduct cases but may affect how competitive conditions are assessed in practice. Such considerations may arise in the assessment of anticompetitive effects and the evaluation of pro-competitive justifications or efficiencies, particularly where conduct affects access to critical inputs, infrastructure or technologies relevant to security, resilience or technological capability.

2.4.1 National security-related anticompetitive effects

89. National security considerations enter unilateral conduct analysis where they correspond to established theories of exclusionary harm. In practice, this may occur where conduct by a dominant firm restricts access to critical inputs, infrastructure, interfaces or technologies; entrenches market power; raises rivals' costs; or steers innovation toward the dominant firm's preferred path. In strategically significant sectors the same conduct may raise national security concerns by increasing dependence on the dominant firm, limiting alternative sources of supply or reducing the development of competing technological pathways. They do not give rise to distinct legal standards but may affect how existing theories of harm are evidenced and assessed.

90. Exclusionary practices, including exclusive dealing, refusal to supply, or discriminatory access to inputs, may limit rivals' ability to compete. Where such conduct concerns a critical input or infrastructure controlled by a dominant firm, it may entrench market power and reduce supply diversification. In sectors linked to national security, this may translate into reduced resilience and increased exposure to disruption, particularly where switching suppliers is costly, slow or subject to regulatory constraints.

91. In markets characterised by control over infrastructure, interfaces or technological ecosystems, conduct that restricts interoperability, limits access to essential inputs, or degrades compatibility may foreclose rivals or raise their costs (Motta, 2023[105]). In digital and telecommunications markets, such practices may also constrain the development of alternative technologies, reducing both competition and the diversity of innovation pathways, which may be relevant where technological diversity is linked to resilience or strategic autonomy.

92. These effects may extend beyond price and output to non-price dimensions of competition, including reliability, continuity of supply, system integrity and innovation. Where exclusionary conduct limits access to key inputs or constrains technological development, it may reduce the ability of customers and downstream firms to switch, multi-source or adopt alternative technical solutions. In this sense, concerns framed in terms of resilience or technological sovereignty may correspond to reduced competition across both static and dynamic dimensions. Enforcement practice illustrates these dynamics (see Box 13).

Box 13. Unilateral conduct in critical infrastructure and strategic sectors

Brazil. CADE approved a cease-and-desist agreement requiring Petrobras to divest refineries and related infrastructure to facilitate entry into fuel markets following investigations into exclusionary conduct, including predatory pricing.

EU. The EC accepted commitments from Gazprom after concerns that its conduct restricted cross-border gas sales and contributed to market segmentation in Central and Eastern Europe.

Israel. ICA found that Bezeq had abused its control over passive telecommunications infrastructure by obstructing competitors seeking access to deploy competing networks.

South Africa. The Competition Tribunal found that Telkom abused its dominant position by refusing to supply essential facilities and discriminating against downstream internet service providers.

Source: Brazil Justice Ministry (2025[106]), *Cade e Petrobras celebram acordo para venda de refinarias de petróleo*, https://www.gov.br/cade/pt-br/assuntos/noticias/cade-e-petrobras-celebram-acordo-para-venda-de-refinarias-de-petroleo; EC (2018[107]), Antitrust: Commission imposes binding obligations on Gazprom to enable free flow of gas at competitive prices in Central and Eastern European gas markets, https://ec.europa.eu/commission/presscorner/detail/en/ip_18_3921; ICA (2019[108]), The Antitrust Authority announces its intention to impose financial sanctions totalling around NIS 30 million on Bezeq, https://www.gov.il/en/pages/bezeqnotic; South African Competition Tribunal (2012[109]), Competition Tribunal imposes R449 million penalty on Telkom for 'bullying' its Competitors, https://www.compcom.co.za/wp-content/uploads/2014/09/Tribunal-imposes-R449M-on-Telkom.pdf.

93. These examples do not establish separate national security theories of harm. Their relevance is that they show how unilateral conduct analysis can capture security-relevant concerns where conduct by a dominant firm in critical sectors restricts access to essential infrastructure, deepens dependency, limits interoperability or reduces alternative technological pathways in strategically significant sectors.

2.4.2 National security arguments, justifications and efficiency claims

94. The efficiency analysis raises a different question: whether conduct that appears exclusionary is nevertheless competition on the merits or generates cognisable benefits under the applicable legal framework. In national security-related cases, this requires authorities to distinguish between benefits that can be assessed as part of unilateral conduct analysis and broader national security claims that fall outside its scope.

95. Firms investigated for unilateral conduct may argue that their conduct is justified by efficiencies or other pro-competitive benefits. In strategically significant sectors, those arguments may be framed in national security terms, for example, by claiming that the conduct is necessary to protect cybersecurity, preserve critical infrastructure, maintain system integrity or sustain investment in domestic technological capabilities. Such claims may be advanced by the firm itself or supported by public authorities.

96. Legal tests differ across jurisdictions, and the assessment depends on the conduct at issue. However, competition law frameworks generally require a clear connection between the conduct and a competition-relevant benefit, evidence that the benefit is likely, and an assessment of whether the same objective could be achieved through less restrictive means. Three recurring analytical lenses are useful, without assuming that each applies in the same way across jurisdictions:

- Under a market-failure approach, the firm must (i) identify a specific market failure, (ii) demonstrate that the market exhibits that failure absent the restraint and (iii) show that the challenged conduct materially alleviates it.
- Under a competitive-process approach, the focus is on whether the conduct enhances or impairs the functioning of the competitive process itself, rather than on welfare outcomes alone; conduct that plausibly strengthens rivalry may therefore be treated as justified.
- A third approach focusses on effects-based indicators of market performance, assessing whether the conduct results in verifiable improvements such as increased output, lower prices, higher quality, or enhanced innovation.

97. These approaches are not mutually exclusive and may overlap in practice. Their value in national security-related cases is that they structure and discipline the analysis: the claimed benefit must be identified precisely, translated into a competition-relevant effect, and tested against the scope and necessity of the restriction (Newman, 2019[110]; OECD, 2021[111]). This is especially important when security-related claims are advanced, because such claims may be difficult to verify and may overlap with broader policy objectives beyond competition legal frameworks.

98. For enforcement purposes, three questions are useful. First, what precise risk or efficiency, such as cybersecurity, investment incentives or supply continuity, does the conduct address? Second, how does the restriction materially address that risk in a way that improves competition-relevant outcomes? Third, is the restriction no broader than necessary, in scope, duration and affected counterparties?

99. The nature of the claimed benefit will depend on the conduct. Exclusive dealing may, in some circumstances, protect relationship-specific investment, address free-riding or support quality assurance. Restrictions on access or interoperability may, in some settings, protect cybersecurity, prevent fraud or preserve system integrity. Tying, bundling or integrated supply may generate efficiencies where products or services are technically complementary. But these benefits cannot be presumed. Authorities should test whether the restriction protects a legitimate investment or security function, or instead entrenches the dominant firm's control over customers, inputs or complementary markets (OECD, 2021[111]).

100. The analytical task is therefore not to determine whether a national security objective is desirable in the abstract, but whether the conduct at issue is necessary to achieve a verifiable competition-relevant benefit and whether less restrictive alternatives are available. Where the asserted benefit concerns product security, network integrity, investment incentives or innovation, it may be possible to assess the claim using ordinary competition tools. Where the claim rests primarily on geopolitical strategy, industrial policy or broader state interests that cannot be operationalised as market effects, it generally lies outside unilateral conduct analysis.

101. At the same time, national security arguments may be invoked strategically to defend conduct that is in substance exclusionary. Competition authorities should therefore distinguish carefully between claims that can be tested within established analytical frameworks and broader policy arguments that are not susceptible to competition-law verification. Otherwise, unilateral conduct analysis may be stretched beyond its legal function and used to resolve policy choices that belong to governments or specialised security bodies.

102. These issues arise frequently in digital and communications markets, where dominant firms may invoke privacy, security, or system integrity to justify restricting interoperability, limiting access to interfaces, or maintaining closed ecosystems (FTC, 2023[112]). Such claims are not inherently implausible. In some settings, tighter control over access may reduce operational vulnerabilities. The competition-law question, however, remains whether the restriction is technically necessary and proportionate, or whether it unnecessarily excludes rivals or complementary services.

103. The same logic applies to innovation-based arguments. Dominant firms in sectors such as telecommunications, semiconductors, AI and digital platforms may contend that scale, integration, or control over key technologies is needed to sustain R&D and compete globally (ICN, 2023[113]; FTC, 2020[89]; USDOJ, 2025[54]). Where those arguments are advanced to defend exclusionary conduct, however, the relevant question is whether the conduct genuinely protects innovation incentives or instead shields the incumbent from competitive pressure. Restrictions on interoperability, distribution, or access to essential inputs may weaken current competition and future innovation by limiting entry, experimentation and alternative technological pathways (OECD, 2023[14]).

104. The FTC v Qualcomm litigation illustrates how national security arguments can arise in unilateral conduct cases. They may be framed as claims about innovation incentives and technological leadership, advanced by public authorities outside the competition agency, and considered by courts while the dispute is ultimately resolved on conventional antitrust grounds (see Box 14).

Box 14. FTC v. Qualcomm: Unilateral conduct, innovation and national security

In 2017, the FTC filed a complaint against Qualcomm, alleging monopolisation in modem-chip markets through its licensing and chip-supply practices. After trial concluded in 2019, the DOJ filed a Statement of Interest urging the district court, if liability were found, to hold a remedies hearing and consider the implications of any remedy. The district court found liability without conducting a remedies hearing and imposed a broad injunction requiring changes to Qualcomm's global licensing practices.

On appeal, Qualcomm requested a stay of the injunction. It argued that the district court had mischaracterised its business model and condemned conduct that reflected competition on the merits rather than exclusion. It also argued that its licensing and chip-supply practices promoted innovation and sustained R&D investment. In parallel, national security concerns were raised through DOJ filings and supported by declarations from the DoD and the Department of Energy. Those declarations stated that weakening Qualcomm's position in 5G innovation and standard setting could adversely affect US national security.

When the Ninth Circuit granted a stay, it emphasised that the case was unusual because the US Government itself was divided on the judgment and its public-interest implications. The DOJ later argued that the remedy should be vacated and remanded because the district court had failed to consider national security, which it described as a public interest of "the highest order."

The FTC responded that such arguments were not cognisable within modern economics-focussed antitrust analysis. It argued that even if preserving Qualcomm's profitability or technological position served broader national interests, such objectives should be pursued through other policy instruments rather than by permitting conduct that violates the Sherman Act.

The Ninth Circuit ultimately reversed the district court's finding of liability and vacated the injunction on antitrust grounds, without relying on national security arguments. It held, among other things, that the FTC had not adequately shown that Qualcomm's challenged practices impaired rivals' opportunities.

Note: Pursuant to 28 U.S.C. § 517, the DOJ may file a Statement of Interest to attend to the interests of the United States in pending litigation. Such a filing does not make the United States a party to the proceeding. An amicus curiae brief is likewise a submission by a non-party that provides legal arguments or policy perspectives for the court's consideration.
Source: FTC (2019[114]), Brief of the Fed. Trade Comm'n, FTC v. Qualcomm, Inc., No. 19-16122 (9th Cir.), https://www.ftc.gov/system/files/documents/cases/144_2019_11_22_ftc_answering_brief.pdf; Ninth Circuit (2019[115]), FTC. v. Qualcomm Inc., No. 19-16122, https://cdn.ca9.uscourts.gov/datastore/opinions/2019/08/23/19-16122%20%282%29.pdf; Ninth Circuit (2020[116]), FTC. v. Qualcomm Inc., No. 19-16122 (9th Cir.), https://cdn.ca9.uscourts.gov/datastore/opinions/2020/08/11/19-16122.pdf; DOJ (2019[117]), Brief of the United States of America as Amicus Curiae in Support of Appellant, FTC v. Qualcomm Inc., No. 19-16122 (9th Cir.); https://www.justice.gov/atr/case-document/file/1199191/dll; DOJ (2019[118]), Statement of Interest of the United States of America, No. 5:17-cv-00220 (NDCA), https://www.justice.gov/atr/case-document/file/1236026/dl, DOJ (2019[119]), United States' Statement of Interest Concerning Qualcomm's Motion for Partial Stay of Injunction Pending Appeal, No. 19-16122 (9th Cir.),https://www.justice.gov/atr/case-document/file/1183936/dl.

105. Several analytical points follow from this case. National security claims may be framed in terms of innovation capacity, particularly in industries where technological leadership is seen as strategically significant. Such claims may be advanced not only by the firm but also by public authorities external to the competition authority, reflecting broader policy considerations. Courts and authorities may be required to engage with such arguments, including at interim stages, while ultimately resolving the case within established competition-law frameworks.

106. Taken together, several principles follow. National security considerations can be assessed within the existing framework for unilateral conduct wherever they can be expressed as competition-relevant effects. They do not create distinct theories of harm, but may reinforce established concerns relating to foreclosure, raising rivals' costs, dependency on a dominant firm and reduced innovation, including along

non-price dimensions such as resilience and technological diversity. Claims based on security, resilience, or technological capability must satisfy the ordinary evidentiary standards applicable to objective justification or efficiencies and require careful scrutiny where they cannot be substantiated or are disproportionate. Where such claims instead reflect broader geopolitical or industrial policy objectives that cannot be expressed in competition-relevant terms, they fall outside the scope of unilateral conduct analysis and should be addressed through separate institutional mechanisms.

2.5 Remedy design

107. National security considerations may also arise at the remedy stage across different areas of competition enforcement. At this stage, the focus shifts to designing remedies capable of restoring competitive conditions. Effective remedies address the source of harm, restore competition and remain proportionate and implementable.[25] Remedies, whether structural, behavioural, or hybrid, may be argued to affect national security by altering the organisation of critical industries, reshaping control over strategic assets, or weakening domestic firms in global competition. Such claims may be advanced to resist, shape, or limit the scope of remedies (see Box 15).

Box 15. Remedy design and national security: US v AT&T

United States v AT&T

In 1974, the US Department of Justice filed a monopolisation case against AT&T, which controlled local and long-distance telecommunications services as well as equipment manufacturing through the vertically integrated Bell System. During the proceedings, AT&T and government stakeholders, including officials from the Departments of Defence and Commerce, argued that structural separation could undermine the integrity of the US communications network and harm national security in the context of Cold War geopolitical competition. A task force representing several Cabinet departments formally recommended that the case be abandoned. Despite these arguments, the DOJ pursued the case. The 1982 Modified Final Judgment imposed a structural divestiture separating local exchange operations from long-distance and equipment markets.

Ex post evidence indicates that the remedy did not weaken network resilience or national security. Instead, it facilitated entry and innovation across telecommunications markets, including long-distance services, mobile communications and data networks. The AT&T case remains a central example of effective remedy design in a strategically important sector, illustrating both the prominence of national security arguments in opposing structural remedies and the importance of testing such claims against evidence.

Note: In a pivotal opinion denying AT&T's motion to dismiss, Judge Greene concluded that the government had presented substantial evidence supporting its monopolisation theory, thereby narrowing the path toward trial and strengthening the government's bargaining position in the negotiations that culminated in the Modified Final Judgment. Earlier antitrust enforcement against AT&T, including the 1956 consent decree, required licensing of key patents (including semiconductor technologies), contributing to the diffusion of computing technologies and the emergence of downstream industries.
Source: USDOJ (1974[120]), The Department of Justice today filed a civil antitrust suit charging American Telephone and Telegraph Company,https://www.justice.gov/archive/atr/public/press_releases/1974/338834.pdf; D.D.C (1981[121]), United States v. AT&T, https://law.justia.com/cases/federal/district-courts/FSupp/524/1336/1430246/; D.D.C (1983[122]), United States v. AT&T, https://law.justia.com/cases/federal/district-courts/FSupp/552/131/1525975/; D.D.C (1974[123]), United States v. American Telephone & Telegraph Co., Western Electric Co., Inc. and Bell Telephone Laboratories, Inc., Civil Action No. 74-1698, https://www.justice.gov/jmd/media/1237211/dl.

108. Other jurisdictions have also experienced national security considerations in remedy design, including in cases involving key energy infrastructure (see Box 16).

Box 16. Remedy design and national security: EC's ENI commitment decision

From 2006 until its commitment decision, the EC investigated ENI, a vertically integrated and state-controlled company controlling key pipeline infrastructure necessary to import gas into Italy, for a potential abuse of dominance in gas transmission markets. To address concerns relating to capacity hoarding, degradation and underinvestment, ENI committed to divest shareholdings in major international pipelines (TAG, TENP, Transitgas). The structural remedy aimed to eliminate foreclosure incentives arising from vertical integration.

Issues relating to the security of gas supply and the strategic importance of infrastructure were raised, including the involvement of a state-controlled purchaser for certain assets. In particular, the Italian Ministry of Economy and Finance emphasised the strategic importance of the TAG pipeline for national security. The purchaser was deemed to meet the Commission's criteria (independence, capability and absence of competition concerns), although its links to ENI raised questions regarding effective independence. Ex post evaluation indicates that while the divestitures were implemented effectively, their impact on competition depended in part on broader regulatory developments (e.g. EU energy market integration) and was partly limited by contractual arrangements such as long-term capacity bookings. The EC's evaluation suggests that a combination of structural and behavioural measures may have improved effectiveness, highlighting the potential importance of a combination of structural and behavioural remedies to ensure effectiveness.

Source: EC (2025[124]), Ex post evaluation of the implementation and effectiveness of EU antitrust remedies, https://competition-policy.ec.europa.eu/document/download/53e9348d-4f11-46ef-9098-526e24313ee8_en?filename=kd0125000enn_ex-post_evaluation_antitrust_remedies_study_e-version.pdf.

109. The ENI case demonstrates that national security considerations may affect not only the design of remedies but also their feasibility and implementation in practice. In particular, in national security-sensitive sectors, identifying a suitable divestiture buyer may require coordination with parallel review mechanisms (e.g. FDI) and may constrain the set of viable purchasers. This highlights that remedy effectiveness depends not only on design, but also on practical constraints relating to ownership, governance and regulatory approval.

110. Related implementation constraints can also arise in sectors characterised by state ownership and vertically integrated infrastructure. In such settings, remedy design and execution may be constrained by ownership structures, asset indivisibilities and a limited pool of viable purchasers. These constraints may affect both the feasibility of structural remedies and their effectiveness over time, as illustrated by the Petrobras case in Brazil (see Box 17).

Box 17. Remedy design, implementation and revision: CADE's Petrobras divestment remedy

As discussed in Box 12, in 2019, Brazil's Administrative Council for Economic Defence (CADE) concluded agreements with Petrobras, the state-controlled oil and gas company, requiring the divestment of refineries and associated infrastructure to address concerns about dominance in refining and gas markets and to facilitate entry. Implementation proved complex. CADE extended divestment deadlines, reflecting challenges in executing transactions involving large, integrated infrastructure assets and identifying suitable purchasers capable of operating them independently. In 2024, CADE revised aspects of the commitments, allowing Petrobras to retain certain assets and relying more on behavioural and governance measures.

Source: Brazil Justice Ministry (2025[106]), Cade e Petrobras celebram acordo para venda de refinarias de petróleo, https://www.gov.br/cade/pt-br/assuntos/noticias/cade-e-petrobras-celebram-acordo-para-venda-de-refinarias-de-petroleo.

111. The case illustrates how, in sectors characterised by state ownership and strategic infrastructure, remedy feasibility and effectiveness may depend on implementation constraints and may require adjustment over time. Subsequent analysis has also linked Petrobras' downstream restructuring to broader concerns relating to energy security and national sovereignty (Leal and Gallo, 2026[125]). This highlights that remedies affecting strategic infrastructure may have wider policy implications, even where the competition authority's legal assessment should remain focussed on competition effects.

112. More broadly, remedy design may benefit from structured co-operation between competition authorities and relevant national security bodies. Such co-operation is particularly relevant where remedies affect assets subject to national security constraints, including ownership restrictions, foreign investment screening, or security clearances. In these cases, national security frameworks may constrain the set of feasible remedy options, including the pool of eligible purchasers or governance arrangements. Compared to other forms of regulatory co-ordination, these constraints may operate as binding conditions on remedy design, requiring alignment between competition remedies and parallel national security review processes. Box 10, Section 2.3, illustrates how such constraints may arise in practice, including where government purchasers retain the ability to influence market outcomes through procurement policy. Early integration of these considerations can reduce the risk that remedies later prove infeasible or inconsistent with binding national security requirements.

113. From an analytical perspective, such co-operation can improve remedy design in two main respects. First, it may improve the identification and specification of risks relevant to both competition and national security, including security of supply, resilience, and control over critical inputs or infrastructure. Second, it may improve feasibility and implementation by ensuring that remedies are compatible with binding national security constraints, including restrictions on ownership, governance or access. Co-operation may also facilitate the design of remedies that are both competition-effective and operationally viable, including by combining structural and behavioural measures where appropriate. However, co-operation should not displace competition-based analysis. National security considerations can therefore be incorporated within established analytical frameworks and cannot justify remedies that are ineffective, disproportionate, or misaligned with the theory of harm.

114. Several principles follow for remedy design. Remedies must remain grounded in the objectives of competition law, addressing the source of harm, restoring competitive constraints, and preventing recurrence. Authorities should distinguish between firm-level protection and system-level resilience: remedies that diversify supply may strengthen both competition and security. In national security-sensitive sectors, effectiveness depends on implementation constraints, including the availability of suitable purchasers and interaction with national security frameworks. Structured co-operation with national security authorities can improve both feasibility and precision, particularly where it occurs early, but does not displace competition-based analysis. Finally, ex post evaluation remains essential: experience shows that predicted harms to national security may not materialise and that well-designed remedies can enhance both competition and resilience.

Conclusion

115. National security considerations are increasingly shaping the economic and regulatory environment in which competition authorities operate. As their scope expands across sectors and policy domains, their interaction with competition enforcement is likely to become more frequent and complex. This does not require a redefinition of competition law, but it does require clarity about its boundaries and application. Several conclusions emerge from this analysis:

- **The central analytical test is whether national security concerns can be operationalised within competition law.** Where such concerns can be expressed as competition-relevant effects, they can be assessed within established frameworks; where they cannot, they fall outside the scope of competition enforcement and should be addressed through appropriate institutional mechanisms.
- **Maintaining clear institutional boundaries and analytical discipline is essential.** Competition authorities are best placed to assess conduct and competitive effects using economically grounded, evidence-based analysis, while broader geopolitical and security trade-offs are more appropriately addressed by governments and specialised bodies.
- **National security considerations may affect the assessment of competitive constraints.** This assessment must remain grounded in market realities, including legal, regulatory and policy conditions that shape which firms can compete in practice, rather than on abstract or global notions of competition.
- **National security considerations can also be reflected in the assessment of anticompetitive effects.** Concerns relating to concentration, foreclosure, reduced supplier diversity, dependency and diminished innovation can be assessed within established competition frameworks, including across price and non-price dimensions such as resilience, reliability and technological diversity.
- **Efficiency and pro-competitive justification claims require rigorous and verifiable evidence.** Arguments framed in terms of resilience, technological capability, or strategic autonomy must be demonstrated to be necessary, proportionate and causally linked to competition-relevant benefits and should be treated with caution, particularly where such claims risk being invoked strategically.
- **Remedy design must remain anchored in restoring competition.** While national security considerations may affect feasibility and implementation, including in relation to ownership, control and regulatory approval, they do not alter the objective of preserving or restoring effective competition and must be assessed within the same evidence-based analytical framework and, where relevant, in coordination with parallel national security processes.

References

3GPP (2024), *About 3GPP*, https://www.3gpp.org/about-us. [95]

3GPP (2022), *5G System Overview*, https://www.3gpp.org/technologies/5g-system-overview. [144]

ACCC (2026), *ACCC authorises fuel majors to coordinate to ensure fuel supplies, with conditions*, https://www.accc.gov.au/media-release/accc-authorises-fuel-majors-to-coordinate-to-ensure-fuel-supplies-with-conditions. [102]

ACCC (2026), *Authorisations*, https://www.accc.gov.au/business/competition-and-exemptions/exemptions-from-competition-law/authorisation. [103]

Aghion, P. et al. (2018), "The Causal Effects of Competition on Innovation: Experimental Evidence", *The Journal of Law, Economics, and Organization*, Vol. 34/2, pp. 162-195, https://doi.org/10.1093/jleo/ewy004. [21]

Agrawal, A. (2025), *Power to Exempt under Section 54 of Competition Act, 2002*, https://lawbhoomi.com/power-to-exempt-under-Section-54-of-competition-act-2002/. [33]

Anderson, G. and J. Luiz (2025), "The development of emerging market defence enterprises: late industrialisation, catching-up, and the challenge of moving beyond linking and leveraging", *Research Policy*, Vol. 54/8, p. 105283, https://doi.org/10.1016/j.respol.2025.105283. [94]

Argentesi, E. et al. (2021), "The effect of mergers on variety in grocery retailing", *International Journal of Industrial Organization*, Vol. 79, p. 102789, https://doi.org/10.1016/j.ijindorg.2021.102789. [85]

Baer, B. (2025), *What the US Learned and the EU Should Consider About National Champions*, https://www.promarket.org/2025/01/07/what-the-us-learned-and-the-eu-should-consider-about-national-champions/. [23]

BBC (2018), *Huawei and ZTE handed 5G network ban in Australia*, https://www.bbc.com/news/technology-45281495. [69]

Berry, S. and J. Waldfogel (2001), "Do Mergers Increase Product Variety? Evidence from Radio Broadcasting", *The Quarterly Journal of Economics*, Vol. 116/3, pp. 1009-1025, https://doi.org/10.1162/00335530152466296. [84]

Braksator, A., A. Kolasinska and M. Sendrowicz (2025), *Changes to foreign investment control in Poland signal a shift in approach*, https://www.jdsupra.com/legalnews/changes-to-foreign-investment-control-8576815/. [51]

Brazil Justice Ministry (2025), *Cade e Petrobras celebram acordo para venda de refinarias de petróleo*, https://www.gov.br/cade/pt-br/assuntos/noticias/cade-e-petrobras-celebram-acordo-para-venda-de-refinarias-de-petroleo. [106]

Carter, C., D. Rogers and T. Choi (2015), "Toward the Theory of the Supply Chain", *Journal of Supply Chain Management*, Vol. 51/2, pp. 89-97, https://doi.org/10.1111/jscm.12073. [82]

Ciuriak, D. and P. Goff (2021), *Economic Security and the Changing Global Economy*, Centre for International Governance Innovation, https://www.cigionline.org/static/documents/NSS_Report8_sS8s9ak.pdf. [6]

CJEU (2024), *CASE C-581/22 P Thyssenkrupp v Commission*, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62022CJ0581. [130]

CMA (2026), *Reimagining competition: the role of modern competition policy in an uncertain world competition policy in an uncertain world; A speech by Sarah Cardell, the CMA's Chief Executive, delivered at The Economist's Antitrust Summit 2026.*, https://www.gov.uk/government/speeches/the-role-of-modern-competition-policy-in-an-uncertain-world. [133]

CMA (2025), *Investment and competition over the business lifecycle*, https://assets.publishing.service.gov.uk/media/68c3e881efd87ef102c87645/Investment_and_competition_over_the_business_lifecycle_.pdf. [22]

CMA (2022), *NVIDIA abandons takeover of Arm during CMA investigation*, https://www.gov.uk/government/news/nvidia-abandons-takeover-of-arm-during-cma-investigation. [86]

Cœuré, B. (2026), *Digital money: making the right choices for the future: Opening remarks at the IESE Banking Initiative 8th Conference*, https://www.autoritedelaconcurrence.fr/sites/default/files/2026-03/Barcelona_Speech_BC_ADLC.pdf. [17]

Cœuré, B. (2025), *CRA Conference Panel on: Competition and Trade: Partners for Growth in a Global Economy?*, https://www.autoritedelaconcurrence.fr/sites/default/files/2026-01/CRA%20Conference%209.12.2025.pdf. [28]

CompCom (2018), *Competition Act, amended 2018*, https://www.compcom.co.za/wp-content/uploads/2021/03/Competition-Act-A6.pdf. [53]

Coscelli, A. and G. Thomson (2024), *Resilience and Competition Policy*, https://assets.publishing.service.gov.uk/media/62447a30d3bf7f32aa54d6fe/Resilience_and_competition_policy_-_AC.pdf. [13]

Cunha Rodrigues, N. (2024), *A globalização do poder regulatório da União Europeia*, https://infoeuropa.mne.gov.pt/Nyron/Library/Catalog//winlibsrch.aspx?pesq=5&thes0=1784&doc=56637. [38]

D.D.C (2025), *FTC v Meta 1:20-cv-03590-JEB*, https://storage.courtlistener.com/recap/gov.uscourts.dcd.224921/gov.uscourts.dcd.224921.693.0_4.pdf#page=85. [75]

D.D.C. (1983), *United States v. AT&T, 552 F. Supp. 131*, https://law.justia.com/cases/federal/district-courts/FSupp/552/131/1525975/. [122]

D.D.C. (1981), *United States v. AT&T, 524 F. Supp. 1336, 1364*, https://law.justia.com/cases/federal/district-courts/FSupp/524/1336/1430246/. [121]

D.D.C. (1974), *United States v. American Telephone & Telegraph Co., Western Electric Co., Inc. and Bell Telephone Laboratories, Inc., Civil Action No. 74-1698*, https://www.justice.gov/jmd/media/1237211/dl. [123]

Dell'Oro Group (2026), *Market Research Reports on Mobile Radio Access Network (RAN)*, https://www.delloro.com/news/ran-market-stabilized-in-2025/. [141]

Deutscher, E. (2022), "Competition Law and Supply Chain Resilience", *SSRN Electronic Journal*, https://doi.org/10.2139/ssrn.4142856. [83]

DOJ (2019), *Brief of the United States of America as Amicus Curiae in Support of Appellant, FTC v. Qualcomm Inc., No. 19-16122 (9th Cir.)*, https://www.justice.gov/atr/case-document/file/1199191/dll. [117]

DOJ (2019), *Statement of Interest of the United States of America, No. 5:17-cv-00220 (NDCA)*, https://www.justice.gov/atr/case-document/file/1236026/dl. [118]

DOJ (2019), *United States' Statement of Interest Concerning Qualcomm's Motion for Partial Stay of Injunction Pending Appeal, No. 19-16122 (9th Cir.)*, https://www.justice.gov/atr/case-document/file/1183936/dl. [119]

Draghi, M. (2024), *The future of European competitiveness*, https://commission.europa.eu/topics/competitiveness/draghi-report_en. [9]

EC (2026), *Draft Communication from the Commission: Guidelines on the assessment of mergers under Council Regulation (EC) No 139/2004*, https://competition-policy.ec.europa.eu/document/download/46dde10f-85c1-4590-a3f4-2b71f85685ef_en?filename=Merger%20Guidelines%20-%20final%20for%20public%20consultation.pdf. [32]

EC (2025), *Commission opens in-depth investigation into the proposed acquisition of Anglo American's nickel business by MMG*, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_25_2566/IP_25_2566_EN.pdf. [132]

EC (2025), *Competitiveness and Resilience*, https://competition-policy.ec.europa.eu/document/download/c491dea5-2cf5-4b63-8933-b8f5ae5c3554_en?filename=Topic_A_Competitiveness_and_resilience.pd. [55]

EC (2025), *Ex post evaluation of the implementation and effectiveness of EU antitrust remedies*, https://competition-policy.ec.europa.eu/document/download/53e9348d-4f11-46ef-9098-526e24313ee8_en?filename=kd0125000enn_ex-post_evaluation_antitrust_remedies_s. [124]

EC (2025), *Review of the Merger Guidelines*, https://competition-policy.ec.europa.eu/mergers/review-merger-guidelines_en. [81]

EC (2025), *The AI Continent Action Plan*, https://digital-strategy.ec.europa.eu/en/library/ai-continent-action-plan. [10]

EC (2019), *Case M.8677 - Siemens/Alstom*, https://ec.europa.eu/competition/mergers/cases1/20219/m8677_9376_7.pdf. [62]

EC (2019), *Commission prohibits Siemens' proposed acquisition of Alstom*, https://ec.europa.eu/commission/presscorner/detail/en/ip_19_881. [61]

EC (2018), *Antitrust: Commission imposes binding obligations on Gazprom to enable free flow of gas at competitive prices in Central and Eastern European gas markets*, https://ec.europa.eu/commission/presscorner/detail/en/ip_18_3921. [107]

EC (2008), *Antitrust: Commission adopts Guidelines on application of competition rules to maritime transport services*, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_08_1063/IP_08_1063_EN.pdf. [104]

ECN (2020), *Antitrust: Joint statement by the European Competition Network (ECN) on application of competition law during the Corona crisis*, https://competition-policy.ec.europa.eu/system/files/2021-03/202003_joint-statement_ecn_corona-crisis.pdf. [139]

EU (2012), *Consolidated version of the Treaty on the Functioning of the European Union*, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E346. [31]

EU (2004), *Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)*, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32004R0139. [30]

Eveleigh, J. (2024), *Whose interest is it anyway? CAK stresses 'public interest' in merger control*, https://africanantitrust.com/2024/01/29/whose-interest-is-it-anyway-cak-stresses-public-interest-in-merger-control/. [52]

Ezrachi, A. (2025), "The Political Instrumentalization of Competition and Antitrust Enforcement", https://www.promarket.org/2025/10/31/the-political-instrumentalization-of-competition-and-antitrust-enforcement/. [56]

FCA (2026), *Call-in by the French Minister of the Economy*, https://www.autoritedelaconcurrence.fr/en/merger-control. [46]

FCC (2026), *List of Equipment and Services Covered By Section 2 of The Secure Networks Act*, https://www.fcc.gov/supplychain/coveredlist. [66]

FCC (2022), *Secure and Trusted Communications Networks Reimbursement Program*, https://www.fcc.gov/supplychain/reimbursement. [143]

Federal Register (2024), *Voluntary Intermodal Sealift Agreement; Extension and Modification*, https://www.federalregister.gov/documents/2024/10/18/2024-23974/voluntary-intermodal-sealift-agreement-extension-and-modification. [43]

FNE (2021), *FNE clears State Grid's acquisition of CGE without conditions*, https://www.fne.gob.cl/en/fne-aprueba-sin-condiciones-la-compra-de-cge-por-parte-de-state-grid/. [128]

French Commercial Code (2015), *Article L430-7-1*, https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000031013097/. [45]

French Competition Authority (2025), *Avis 25-A-07 du 14 mai 2025*, https://www.autoritedelaconcurrence.fr/fr/avis/portant-sur-un-projet-de-decret-relatif-lattribution-de-droits-exclusifs-et-speciaux-des-0. [59]

FTC (2024), *Remarks by Chair Lina M. Khan As Prepared for Delivery Carnegie Endowment for International Peace*, https://www.ftc.gov/system/files/ftc_gov/pdf/2024.03.13-chair-khan-remarks-at-the-carnegie-endowment-for-intl-peace.pdf. [18]

FTC (2023), *Interoperability, Privacy, & Security*, https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2023/12/interoperability-privacy-security. [112]

FTC (2020), *Championing Competition: The Role of National Security in Antitrust Enforcement, Prepared Remarks of Commissioner Noah Joshua Phillips at The Hudson Institute Virtual Event*, https://www.ftc.gov/news-events/news/speeches/championing-competition-role-national-security-antitrust-enforcement. [89]

FTC (2019), *Brief of the Fed. Trade Comm'n, FTC v. Qualcomm, Inc., No. 19-16122 (9th Cir.)*, https://www.ftc.gov/system/files/documents/cases/144_2019_11_22_ftc_answering_brief.pdf. [114]

FTC (2013), *FTC Closes its Investigation into GenCorp's Proposed Purchase of Pratt & Whitney Rocketdyne*, https://www.ftc.gov/news-events/news/press-releases/2013/06/ftc-closes-its-investigation-gencorps-proposed-purchase-pratt-whitney-rocketdyne. [127]

FTC (2006), *Concurring Statement of Commissioner Pamela Jones Harbour*, https://www.ftc.gov/sites/default/files/documents/cases/2006/10/0510165concurringstatementcommharbour.pdf. [99]

FTC (2006), *FTC Intervenes in Formation of ULA Joint Venture by Boeing and Lockheed Martin*, https://www.ftc.gov/news-events/news/press-releases/2006/10/ftc-intervenes-formation-ula-joint-venture-boeing-lockheed-martin. [97]

FTC (2006), *Statement of Commissioner William E. Kovacic, with whom Chairman Deborah Platt Majoras and Commissioner J. Thomas Rosch Join: In the Matter of Lockheed Martin Corporation, The Boeing Company, and United Launch Alliance, L.L.C.*, https://www.ftc.gov/sites/default/files/documents/public_statements/statement-commissioner-william-e.kovacic-whom-chairman-deborah-platt-majoras-and-commissioner-j.thomas-rosch-join/0510165kovacicmajorasrosch.pdf. [77]

FTC (1997), *FTC Allows Merger of the Boeing Company and McDonnell Douglas Corporation*, https://www.ftc.gov/news-events/news/press-releases/1997/07/ftc-allows-merger-boeing-company-mcdonnell-douglas-corporation. [149]

FTC and DOJ (2020), *Joint Antitrust Statement regarding COVID-19 (2020), f*, https://www.ftc.gov/system/files/documents/public_statements/1569593/statement_on_coronavirus_ftc-doj_3-24-20.pd. [140]

GCR (2023), *National Authority for Markets and Competition (CNMC)*, https://globalcompetitionreview.com/insight/enforcer-hub/2023/organization-profile/spain-national-authority-markets-and-competition-cnmc. [48]

Georgiades & Pelides (2025), *Law and Practice in Cyprus*, https://practiceguides.chambers.com/practice-guides/comparison/935/16517/25912-25913-25914-25915-25916-25917-25918-25919-25920. [44]

German Competition Act (2023), *Section 42 Ministerial Authorisation*, https://www.gesetze-im-internet.de/englisch_gwb/englisch_gwb.htm. [47]

German Federal Ministry of the Interior (2024), *Greater security and technological sovereignty for the German 5G mobile network: The Federal Government concludes contracts with telecommunications companies*, https://www.bmi.bund.de/SharedDocs/pressemitteil. [70]

Government of Canada (2022), *Policy Statement – Securing Canada's Telecommunications System*, https://www.canada.ca/en/innovation-science-economic-development/news/2022/05/policy-statement--securing-canadas-telecommunications-system.html. [68]

Government of Japan (2025), *Compendium of Cases and Basic Concepts on Economic Security and Antimonopoly Act*, https://www.jftc.go.jp/houdou/pressrelease/2025/nov/251120_economicsecurity_jireisyuu.pdf, https://www.jftc.go.jp/houdou/pressrelease/2025/nov/25. [60]

Griffith, R. and J. Van Reenen (2021), *Product market competition, creative destruction and innovation*, https://cep.lse.ac.uk/pubs/download/dp1818.pdf. [15]

Hemphill, S. and T. Wu (2020), *Nascent Competitors*, https://scholarship.law.columbia.edu/faculty_scholarship/2661/. [131]

Hindustan Times (2025), *Why TikTok remains banned in India despite thaw in China ties*, https://www.hindustantimes.com/india-news/explained-why-tiktok-remains-banned-in-india-despite-thaw-in-china-ties-101755921080333.html. [71]

Hobbes, T. (1651), *Leviathan*, https://www.gutenberg.org/files/3207/3207-h/3207-h. [2]

ICA (2019), *The Antitrust Authority announces its intention to impose financial sanctions totalling around NIS 30 million on Bezeq*, https://www.gov.il/en/pages/bezeqnotic. [108]

ICN (2023), *Report on the Results of the ICN Survey on the Analysis of Theories of Harm and the Design of Remedies Concerning Unilateral Conduct With Dominance/Substantial Market Power in Digital Markets*, https://www.jftc.go.jp/en/int_relations/icnucws_files/ICN%20UCWG%20Report%20on%20theories%20of%20harm%20and%20remedies.pdf. [113]

Irarrázabal, F. (2022), *What should a competition agency do in a country that has a mandatory merger control but lacks FDI screening?: The caseof Chile and Latin America*, https://centrocompetencia.com/wp-content/uploads/2022/11/Felipe-Irarra%CC%81zabal-What-should-a-competition-agency-do-in-a-country-that-has-a-mandatory-merger-control-but-lacks-FDI-screening.-The-case-of-Chile-1.pdf. [129]

Israel Government (2026), *Economic Competition Law*, https://www.gov.il/BlobFolder/legalinfo/competitionlaw/en/englishsite_Economic%20Competition%20Law.pdf. [34]

Japan Commerce and Information Policy Bureau, Ministry of Economy, Trade and Industry (2024), *Outline of Semiconductor Revitalization Strategy in Japan*, https://www.meti.go.jp/english/policy/0704_001.pdf. [11]

JFTC (2026), *Regulation of Antimonopoly Act*, https://www.jftc.go.jp/en/about_jftc/MessagefromChairma/index_2_1.html. [147]

JFTC (2026), *Statement on the Proactive Development and Implementation of Competition Policy to Promote Innovation*, https://www.jftc.go.jp/soshiki/profile/promotion_of_innovation2/promotion_of_innovation2_files/promotion_of_innovation2.pdf. [78]

JFTC (2025), *JFTC Reviews the Proposed Acquisition of Shares of Japan Marine United Corporation by Imabari Shipbuilding Co., LTD.*, https://www.jftc.go.jp/file/251118.pdf, , https://www.jftc.go.jp/houdou/pressrelease/2025/nor/251118_kiketsu_ij_gairyaku.pdf. [64]

JFTC (2020), *Japan Fair Trade Commission's response to initiatives by businesses related to COVID-19*, https://www.jftc.go.jp/houdou/pressrelease/2020/apr/200428.html. [138]

Jung, S. (2023), *KFTC Gives Conditional Approval for Hanwha's Takeover of DSME*, https://www.businesskorea.co.kr/news/articleView.html?idxno=113727. [90]

Kokkoris, I. (2021), "National Security as a Public Interest Consideration in UK Merger Control", https://www.jstor.org/stable/27026633. [49]

Kovacic, W. (2022), *Competition Policy, Industrial Policy, and Public Procurement: The Formation of the United Launch Alliance and the Emergence of SpaceX*, https://www.eui.eu/Documents/DepartmentsCentres/Law/ResearchTeaching/WorkshopsAndConferences/Kovacic-Competition-Policy.pdf. [76]

Kovacic, W. (2020), *Competition Policy Retrospective: the Formation of the United Launch Alliance and the Ascent of SpaceX*, https://ssrn.com/abstract=3670742. [98]

Krause, K. and M. Williams (2018), "Security and "Security Studies"", in *The Oxford Handbook of International Security*, Oxford University Press, https://doi.org/10.1093/oxfordhb/9780198777854.013.2. [1]

Leal, A. and W. Gallo (2026), "Petrobras and the abandonment of the downstream sector in Brazil", *The Extractive Industries and Society*, Vol. 25, p. 101766, https://doi.org/10.1016/j.exis.2025.101766. [125]

LexisNexisIP (2025), *Who is Leading the 5G Patent Race?*, https://www.lexisnexisip.com/wp-content/uploads/2025/01/2025-LexisNexis-5G-SEP-Report.pdf. [145]

Library of Congress (2025), *Federal District Court Rejects the FTC's Monopolization Case Against Meta Platforms*, https://www.congress.gov/crs-product/LSB11379. [146]

Li, Y. et al. (2020), "Network characteristics and supply chain resilience under conditions of risk propagation", *International Journal of Production Economics*, Vol. 223, p. 107529, https://doi.org/10.1016/j.ijpe.2019.107529. [134]

Martyniszyn, M. (2025), "Competition law and policy in crisis and the rise of the expansive state", *Journal of Antitrust Enforcement*, https://doi.org/10.1093/jaenfo/jnaf020. [4]

Ma, T., T. Wang and J. Zhang (2026), *China's Semiconductor Industry Strategy*, https://link.springer.com/book/10.1007/978-981-95-3332-9. [12]

Micheletti, F. (2026), *Von der Leyen's plan for more corporate megadeals sparks competition jitters*, https://www.politico.eu/article/ursula-von-der-leyen-eu-resilience-mergers-competition-concerns/. [88]

Monopolkommission (2025), *Statement: Why Competition Matters for Defence Spending*, https://www.monopolkommission.de/images/PDF/Presse/Full%20Statement_Monopolies%20Commission.pdf. [100]

Motta, M. (2023), "Self-preferencing and foreclosure in digital markets: Theories of harm for abuse cases", *International Journal of Industrial Organization*, Vol. 90, p. 102974, https://doi.org/10.1016/j.ijindorg.2023.102974. [105]

NASA (2020), *NASA History: The Dawn of the Space Age*, https://www.nasa.gov/history/dawn-of-the-space-age/. [29]

Newman, J. (2019), *Procompetitive Justifications in Antitust Law*, https://www.repository.law.indiana.edu/ilj/vol94/iss2/4/. [110]

Ninth Circuit (2020), *FTC. v. Qualcomm Inc., No. 19-16122*, https://cdn.ca9.uscourts.gov/datastore/opinions/2020/08/11/19-16122.pdf. [116]

Ninth Circuit (2019), *FTC. v. Qualcomm Inc., No. 19-16122*, https://cdn.ca9.uscourts.gov/datastore/opinions/2019/08/23/19-16122%20%282%29.pd. [115]

NPR (2026), *TikTok finalises deal to form new American entity*, https://www.npr.org/2026/01/22/nx-s1-5685456/tiktok-finalizes-deal-to-form-new-american-entity. [74]

OECD (2026), *Case prioritisation and prosecutorial discretion by competition authorities*, https://one.oecd.org/document/DAF/COMP(2026)3/en/pdf. [57]

OECD (2026), *Ownership and Governance of State-Owned Enterprises: 2026*, https://one.oecd.org/document/DAF/CA/SOPP(2026)2/en/pdf. [93]

OECD (2026), *Public Policy Objectives of State-Owned Enterprises (SOEs)*, https://one.oecd.org/document/DAF/CA/SOPP(2025)4/REV2/en/pdf. [20]

OECD (2025), *Economic Security in a Changing World*, New Approaches to Economic Challenges, OECD Publishing, Paris, https://doi.org/10.1787/4eac89c7-en. [5]

OECD (2025), *OECD Supply Chain Resilience Review: Navigating Risks*, OECD Publishing, Paris, https://doi.org/10.1787/94e3a8ea-en. [7]

OECD (2025), *OECD, Recommendation of the Council on Merger Review, OECD/LEGAL/0333*, https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0333. [79]

OECD (2025), *Reinforcing Regulatory Frameworks through Standards, Measurements and Assurance: Making Better Use of Quality Infrastructure in Policymaking*, OECD Publishing, Paris, https://doi.org/10.1787/f398be90-en. [96]

OECD (2024), *Competitive Neutrality Toolkit: Promoting a Level Playing Field*, OECD Publishing, Paris, https://doi.org/10.1787/3247ba44-en. [26]

OECD (2024), "Pro-competitive industrial policy", *OECD Roundtables on Competition Policy Papers*, No. 309, OECD Publishing, Paris, https://doi.org/10.1787/7c6b4708-en. [19]

OECD (2024), *The Contribution of Competition Agencies to Formulating Industrial Policy – Note by William E. Kovacic*, https://one.oecd.org/document/DAF/COMP/WD(2024)50/en/pdf. [27]

OECD (2023), "Competition and Innovation: A Theoretical Perspective", *OECD Roundtables on Competition Policy Papers*, No. 294, OECD Publishing, Paris, https://doi.org/10.1787/4632227c-en. [14]

OECD (2023), "Out-of-Market Efficiencies in Competition Enforcement", *OECD Roundtables on Competition Policy Papers*, No. 305, OECD Publishing, Paris, https://doi.org/10.1787/2f181e49-en. [150]

OECD (2022), "The Relationship between FDI Screening and Merger Control Reviews", *OECD Roundtables on Competition Policy Papers*, No. 287, OECD Publishing, Paris, https://doi.org/10.1787/8bcc96f0-en. [37]

OECD (2021), "Economic Analysis and Evidence in Abuse Cases", *OECD Roundtables on Competition Policy Papers*, No. 269, OECD Publishing, Paris, https://doi.org/10.1787/63e6d5f0-en. [111]

OECD (2020), *Recommendation of the Council on Guidelines for Recipient Country Investment Policies relating to National Security, OECD/LEGAL/0372*, https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0372. [151]

OECD (2019), *Competition Assessment Toolkit: Principles. Version 4.0 (Volume I)*, OECD Publishing, Paris, https://doi.org/10.1787/5f9fa6ca-en. [58]

OECD (2016), "Public Interest Considerations in Merger Control", *OECD Roundtables on Competition Policy Papers*, No. 187, OECD Publishing, Paris, https://doi.org/10.1787/21950340-en. [36]

OECD (2014), *Factsheet on competition and macro-economic outcomes*, OECD Publishing, Paris, https://doi.org/10.1787/660b93ab-en. [16]

OECD (2009), "Competition Policy, Industrial Policy and National Champions: Key findings, summary and notes", *OECD Roundtables on Competition Policy Papers*, No. 96, OECD Publishing, Paris, https://doi.org/10.1787/c22d258d-en. [25]

Porter, M. (1990), *The Competitive Advantage of Nations*, https://hbr.org/1990/03/the-competitive-advantage-of-nations. [126]

Sandoval, J. et al. (2026), *How middle powers can weather US and Chinese AI dominance*, https://www.chathamhouse.org/sites/default/files/2026-02/2026-02-13-sovereign-ai-strategies-sandoval-et-al.pdf. [101]

Scandola, S. (2025), *National security and EU merger control: the role of articles 346 TFEU and 21(4) EUMR in EU defence concentrations*, https://doaj.org/article/626bb60d875040569121436427f307ab. [39]

SCOTUS (1950), *United States v. United States Gypsum Co., 340 U.S. 76, 88-89 (1950) (citing authorities; fns. omitted)*.. [136]

SCOTUS (1947), *International Salt Co. v. United States, 332 U.S. 392, 400 (1947)*. [135]

Shipbuilding (2023), *KFTC Gives Conditional Approval for Hanwha's Takeover of DSME*, https://www.hellenicshippingnews.com/kftc-gives-conditional-approval-for-hanwhas-takeover-of-dsme/. [91]

South African Competition Tribunal (2012), *Competition Tribunal imposes R449 million penalty on Telkom for 'bullying' its Competitors*, https://www.compcom.co.za/wp-content/uploads/2014/09/Tribunal-imposes-R449M-on-Telkom.pdf. [109]

Supreme Court of Israel (2016), *Movement for Quality Government v. Prime Minister*, http://ttps://versa.cardozo.yu.edu/opinions/movement-quality-government-v-prime-minister. [40]

T-Mobile (2018), *T-Mobile and Sprint to Combine, Accelerating 5G Innovation & Increasing Competition*, https://www.t-mobile.com/news/press/5gforall?msockid=3ea070130de5603e14cc651f0c0e61ab. [92]

Torres Méndez, P. (2024), *The Comeback of the China Railway Rolling Stock Corporation and the FSR*, https://legalblogs.wolterskluwer.com/competition-blog/the-comeback-of-the-china-railway-rolling-stock-corporation-and-the-fsr/. [63]

UK Cabinet Office (2023), *The National Security and Investment Act alongside regulatory requirements*, https://www.gov.uk/government/publications/the-national-security-and-investment-act-alongside-regulatory-requirements/the-national-security-and-investment. [50]

UK Department for Science, I. (2024), *Telecoms supply chain diversification: independent report and recommendations*, https://www.gov.uk/government/publications/telecoms-supply-chain-diversification-report-and-recommendations/telecoms-supply-and-diversification-independent-report-and-recommendations. [142]

UK Government (2025), *Strategic steer to the Competition and Markets Authority*, https://www.gov.uk/government/publications/strategic-steer-to-the-competition-and-markets-authorit. [137]

UK Government (2021), *NVIDIA – Arm: Summary of the CMA's report to the Secretary of State for Digital, Culture, Media & Sport on the anticipated acquisition by NVIDIA Corporation of Arm Limited*, https://www.gov.uk/government/publications/summary-of-the-cm. [87]

UK Government (2020), *Huawei to be removed from UK 5G networks by 2027*, https://www.gov.uk/government/news/huawei-to-be-removed-from-uk-5g-networks-by-2027. [67]

US Congress (2024), *H.R.8038 - 21st Century Peace through Strength Act*, https://www.congress.gov/bill/118th-congress/house-bill/8038. [73]

US Congress (2020), *H.R.4998 - Secure and Trusted Communications Networks Act of 2019*, https://www.congress.gov/bill/116th-congress/house-bill/4998. [65]

US Congress (1993), *National Cooperative Research and Production Act, 15 U.S.C. § 4305*, https://www.law.cornell.edu/uscode/text/15/4305. [42]

US Congress (1950), *Defensce Production Act, 50 U.S.C. §§ 4557*, https://www.govinfo.gov/content/pkg/COMPS-8323/pdf/COMPS-8323.pdf. [41]

US DoD (2022), *Department of Defense Report: State of Competition within the Defense Industrial Base*, https://media.defense.gov/2022/Feb/15/2002939087/-1/-1/1/STATE-OF-COMPETITION-WITHIN-THE-DEFENSE-INDUSTRIAL-BASE.PDF. [80]

USDOJ (2025), *Assistant Attorney General Gail Slater Delivers Keynote Address at the 2025 Georgetown Law Global Antitrust Enforcement Symposium*, https://www.justice.gov/opa/speech/assistant-attorney-general-gail-slater-delivers-keynote-address-2025-georgetown-law. [54]

USDOJ (1998), *United States v Lockheed Martin and Northrop Grumman*, https://www.justice.gov/atr/case-document/file/501456/d. [148]

USDOJ (1974), *The Department of Justice today filed a civil antitrust suit charging American Telephone and Telegraph Company*, https://www.justice.gov/archive/atr/public/press_releases/1974/338834.pdf. [120]

USDOJ and FTC (2026), *Agencies Launch Joint Public Inquiry for Consideration of Guidance on Collaborations Among Competitors to Promote Certainty and Competition*, https://www.justice.gov/opa/pr/justice-department-and-federal-trade-commission-seek-public-comment-guidance-business. [152]

USDOJ and FTC (2016), *Preserving Competition in the Defense Industry*, https://www.justice.gov/opa/file/863246/dl?inline. [153]

Wehrlé, F. and J. Pohl (2016), "Investment Policies Related to National Security: A Survey of Country Practices"*, OECD Working Papers on International Investment*, No. 2016/2, OECD Publishing, Paris, https://doi.org/10.1787/5jlwrrf038nx-en. [35]

White House (2025), *Winning the Race: America's AI Action Plan*, https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf. [8]

White House (2020), *Executive Order on Addressing the Threat Posed by TikTok*, https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-addressing-threat-posed-tiktok/. [72]

Wu, C. (2025), "Redefining concepts of nation and national security and establishing their models for the new era", *Journal of Safety and Sustainability*, Vol. 2/1, pp. 45-58, https://doi.org/10.1016/j.jsasus.2024.12.002. [3]

Zhang, K. (2024), "Geoeconomics of US-China tech rivalry and industrial policy", *Asia and the Global Economy*, Vol. 4/2, p. 100098, https://doi.org/10.1016/j.aglobe.2024.100098. [24]

Notes

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[2] This trade-off may be easier to manage in larger or more integrated markets, where firms can achieve scale through access to a broader customer base rather than through consolidation among close competitors. This is consistent with the Draghi Report's emphasis on completing the EU Single Market: deeper market integration can support scale while preserving rivalry (Draghi, 2024[9]).

[3] The European context is distinctive because the geographic scope of commerce and national security is not fully congruent. Unlike sovereign jurisdictions, the EU combines an integrated market and EU-level competition enforcement with national responsibility for many security, defence and strategic-control decisions. This makes national champion arguments more complex: consolidation may be justified by reference to European scale, while the relevant security interests may remain national.

[4] Historical experience across jurisdictions suggests that strong domestic rivalry can underpin international competitiveness. For example, competition among multiple pharmaceutical firms in Switzerland has been associated with sustained innovation and global competitiveness in life sciences, while intense domestic rivalry in the United States software and computing industries has coincided with rapid technological advancement and market leadership (Porter, 1990[126]).

[5] Dual-use goods and services exhibit a porous boundary between defence, national security and ordinary commercial markets. Technologies such as GPS, networking technologies, semiconductors, satellites, drones, advanced computing, cybersecurity tools and AI systems may originate in, be funded by, or be accelerated through defence or security-related programmes, and later become central to civilian and commercial markets. Contemporary security concerns are therefore more likely to arise in relation to dual-use goods and services. However, their dual-use character should not by itself displace competition law or justify treating national security as a free-standing objective within competition analysis. Competition authorities should instead ask whether security-related legal, regulatory or policy conditions affect competition-relevant facts, such as procurement eligibility, export-control restrictions, security clearances, customer acceptance, credible entry, substitutability, access to critical inputs or remedy feasibility. Broader concerns relating to strategic control, intelligence risk, foreign influence or geopolitical dependency remain for governments or specialised bodies.

[6] India provides a further point of comparison. Although the legal framework allows broad exemptions, like in Israel, available evidence suggests that practice has favoured targeted and case-specific responses, namely limited to crisis situations such as access to essential supplies during COVID-19, rather than formal disapplication of competition law (Agrawal, 2025[33]). This practice during COVID-19 was broadly aligned with approaches in other jurisdictions, including the EU, Japan and the US, which issued guidance indicating that exceptional circumstances would be taken into account in competition enforcement (JFTC, 2020[138]; ECN, 2020[139]; FTC and DOJ, 2020[140]).

[7] This differs from general competition law provisions allowing exemptions based on efficiency considerations, such as Article 101(3) TFEU, which permits restrictive agreements where they generate sufficient consumer benefits. Such provisions operate within competition law and are not designed to address national security objectives as such.

[8] Co-operation frameworks in other jurisdictions are limited and rarely framed explicitly in national security terms. While some jurisdictions provide mechanisms to exempt or authorise co-ordination among competitors, these are typically grounded in broader public-interest or sectoral policy objectives. For example, in Australia, the competition authority may grant authorisation for conduct that would otherwise breach competition law where it delivers a net public benefit, thereby conferring immunity from legal action (ACCC, 2026[103]). In Japan, the Antimonopoly Act allows certain forms of coordination to be exempt where authorised under other legislation for specific policy objectives, including sectoral arrangements (JFTC, 2026[147]). However, unlike the US framework under the DPA, these systems are generally sector-specific and do not constitute horizontal, national security-driven regimes providing ex ante antitrust immunity.

[9] National security assessments may require distinctions between firms based on nationality, place of incorporation, ownership, control, foreign influence or links to particular states. Competition authorities do not ordinarily discriminate between firms on this basis; their analysis generally focusses on market behaviour, competitive constraints, and effects. Such nationality or control-based distinctions may be relevant to competition analysis only where they affect competition-relevant facts, such as whether a firm can bid, supply, expand, obtain security clearances, access critical inputs, or be treated by customers as a credible alternative.

[10] Recent policy developments in some jurisdictions, including the UK, illustrate how broader strategic priorities may shape the environment in which competition authorities operate, while leaving their legal enforcement framework unchanged (CMA, 2026[133]; UK Government, 2025[137]).

[11] Even where security objectives are prioritised, competition impact assessments remain relevant to assess proportionality and identify less distortive means of achieving policy goals. OECD work on pro-competitive industrial policy highlights that strategic interventions can be designed to preserve rivalry rather than entrench dominance (OECD, 2024[19]). Consistent with the OECD Competitive Neutrality framework, such measures should be transparent, proportionate, subject to periodic review and, where appropriate, time-bound, so that security-justified interventions do not entrench distortions or weaken competitive dynamics beyond what is necessary (OECD, 2020[151]).

[12] Illustrative cases reflect this institutional boundary. In Chile, the competition authority cleared the acquisition of CGE by State Grid after assessing competitive effects, while emphasising that national security concerns articulated by the government regarding foreign ownership fell outside the scope of merger control (FNE, 2021[128]; Irarrázabal, 2022[129]). In the US, the FTC closed its investigation into GenCorp's acquisition of Pratt & Whitney Rocketdyne despite identifying competition concerns, following support from the Department of Defence based on national security considerations (FTC, 2013[127]).

Subsequent statements by US agencies, however, have reaffirmed that preserving competition in defence markets is itself a national security objective (USDOJ and FTC, 2016[153]; US DoD, 2022[80]).

[13] For example, in 2026, the US FTC and DOJ launched a public consultation on updated guidance for business collaborations, aiming to clarify how antitrust rules apply to co-operation in response to evolving technologies and market conditions while maintaining clear boundaries against anticompetitive conduct (USDOJ and FTC, 2026[152]).

[14] These measures have been imposed in telecommunications infrastructure markets that are already concentrated and characterised by entry barriers (UK Department for Science, 2024[142]). In radio access network (RAN) equipment, participation requires not only manufacturing capability but also access to intellectual property, interoperability and involvement in standard-setting. These features are reinforced by high switching costs, long investment cycles and complex integration requirements. As a result, exclusion of a supplier on security grounds may reduce the set of feasible competitors and increase dependence on a smaller number of remaining vendors, at least in the short to medium term (3GPP, 2022[144]; LexisNexisIP, 2025[145]; Dell'Oro Group, 2026[141]). Public programmes such as the US "rip and replace" initiative illustrate the scale and cost of such transitions, underscoring that substitution between suppliers may be limited even where alternatives exist (FCC, 2022[143]).

[15] In the Meta litigation, the court heard evidence showing increased usage of Facebook and Instagram following India's 2020 TikTok ban and during TikTok's temporary unavailability in the US in January 2025 (D.D.C, 2025[75]; Library of Congress, 2025[146]).

[16] That said, some standard quantitative indicators may be less informative in cases involving potential or nascent competition, where firms may have limited or no current in-market sales (Hemphill and Wu, 2020[131]). This is particularly relevant in defence and advanced-technology sectors, where firms compete not only through current sales but also through R&D and bids for future procurement programmes. In such cases, other forms of evidence may be particularly important, including firms' capabilities and incentives, internal innovation programmes, specialised assets, intellectual property portfolios or bidding behaviour.

[17] This was reflected in the EC's assessment of the proposed Tata Steel/ThyssenKrupp joint venture, which emphasised competition on delivery conditions that were important for downstream industrial production (CJEU, 2024[130])

[18] Measures such as degree centrality or betweenness centrality can help identify firms that function as critical nodes within these networks. Degree centrality" refers to the number of incoming and outgoing connections (edges) of a node with other nodes of specific agents. "Betweenness centrality" refers to how often nodes in a network lie on the shortest path between all combinations of network node pairs (Li et al., 2020[134]; Deutscher, 2022[83]).

[19] For example, in its ongoing in-depth investigation into MMG's proposed acquisition of Anglo American's nickel business, the EC expressed concern that the transaction could enable the diversion of ferronickel supply away from European customers. Combined with limited alternative sources of supply, this could adversely affect the price and quality of a substantial share of European stainless-steel production and diminish the ability of European producers to compete (EC, 2025[132]). This underscores how control over critical inputs may give rise simultaneously to foreclosure risks and broader dependency concerns in strategically important supply chains.

[20] In 1998, the US DOJ challenged Lockheed Martin's proposed acquisition of Northrop Grumman, arguing it would substantially lessen competition in markets for advanced defence systems such as airborne early

warning radar, military aircraft electronics, and missile-defence technologies where few firms could supply the US DoD. The DOJ warned the merger would eliminate direct competition in future procurement, reduce innovation incentives, and risk government dependence on a single supplier. Lockheed abandoned the deal after the DOJ filed suit (USDOJ, 1998[148]).

[21] Most jurisdictions limit efficiencies to the affected market, and out-of-market efficiencies are only rarely considered; where they are, this may in principle allow broader consideration of national security-related benefits (OECD, 2023[150]).

[22] The European Commission's draft revised Merger Guidelines similarly recognise scale, investment, innovation, resilience and security of supply as possible merger benefits, while reiterating that such benefits must be verifiable, merger-specific and passed on to consumers (EC, 2026[32]).

[23] For example, in Boeing/McDonnell Douglas, the FTC accepted a failing firm argument based on the absence of competitive constraint, while emphasising that the assessment rested on competition analysis. However, subsequent assessments have debated the merger's longer-term effects on competition and innovation in aerospace markets, and concerns that the merger led to geopolitical vulnerabilities have also been raised (FTC, 2024[18]; FTC, 1997[149]).

[24] See *supra* note 8 and Section 1.3 for a discussion of how statutory exceptions differ from case-specific authorisation mechanisms.

[25] "When the purpose to restrain trade appears from a clear violation of law, it is not necessary that all of the untraveled roads to that end be left open and that only the worn one be closed" (SCOTUS, 1947[135]). Remedial "action is not limited to prohibition of the proven means by which the evil was accomplished, but may range broadly through practices connected with acts actually found to be illegal. Acts entirely proper when viewed alone may be prohibited" (SCOTUS, 1950[136]).