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National Security Considerations in Competition Enforcement – Summaries of contributions

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This document reproduces summaries of contributions submitted for Item 2 of the 143rd meeting of Working Party 3 on 23 June 2026.

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BIAC

Renewed debate surrounds whether and how national security considerations should be incorporated into competition enforcement. Two developments appear to be primarily shaping the discussion: the trend toward opening merger control to wider societal objectives, reflected in the Draghi Report and ongoing revision of the EU Merger Guidelines, and the proliferation of parallel security review regimes that impose delay, duplication, and inconsistency on cross-border transactions. Both converge on a fundamental business concern, predictability, which modern merger control has built through the convergence around transparent standards, defined timelines, and reviewable decisions.

A key point is that national security is not merely another public interest ground. It is qualitatively different from environmental, employment, or regional development considerations, and demands distinct treatment. Five characteristics of national security render it generally ill-suited to competition enforcement mechanisms. First, definitional elasticity, with "economic security" steadily expanding the perimeter of reviewable transactions. Second, classified reasoning that defeats transparency and undermines meaningful judicial review. Third, intelligence and defence establishments operating under different evidentiary standards and accountability structures. Fourth, geopolitical and state actor dynamics compounding the burden of parallel regimes. Fifth, the political weight of "security," which insulates decisions from challenge in ways that other public interest grounds do not.

These characteristics impose costs across the M&A process: longer timelines, higher transaction costs, restructured or abandoned deals, and post-closing restrictions. They also threaten competition enforcement when security inputs flow into the analysis, producing decisions driven by political judgment instead of competitive effects.

On this basis, institutional separation between national security review and competition enforcement is warranted, a conclusion the Secretariat's Background Note also reaches: where concerns rest on geopolitical assessments, intelligence inputs, or nationality-based distinctions, they fall outside competition law's analytical reach and are more appropriately addressed by governments or specialized bodies. BIAC's eight recommendations set out the institutional and procedural architecture needed for the principle to operate effectively in practice. They span institutional design (purpose-built security agencies, bounded definitions, protection of competition enforcement independence), due process (transparency, effective judicial review, fair market value compensation for security-based divestiture), and international architecture (advocacy applying the OECD Competitive Neutrality Recommendation, coordination guidance, and time-limited accommodations).

The pace of development is accelerating, making these safeguards urgent. Competition and security are complementary objectives. Competitive, innovative markets are a primary source of national resilience, and the erosion of competition enforcement independence and predictability in the name of security harms both. The OECD is well placed to articulate norms recognizing this complementarity.

European Union

Public security is a legitimate interest that is recognized in EU law as potentially warranting a derogation from the standard application of EU Law. Measures that are otherwise unlawful under EU law may be justified on the ground of public security.

EU Member States are, in principle, free to determine the requirements of public/national security in the light of their national needs. However, according to well established case-law of the EU courts, public security must be interpreted strictly. This means that its scope cannot be determined unilaterally by each Member State without any control by the Union institutions, to avoid the circumvention of the application of EU law. Public security may be relied on only if there is a genuine and sufficiently serious threat to a fundamental interest of society, and cannot be relied on to serve purely economic ends.

Competition law aims at protecting undistorted and effective competition in the internal market of the European Union. Effective competition drives market players to deliver the best outcomes for consumers, ensures that markets remain open and dynamic, spurs innovation and ultimately makes it possible to have strong and diversified supply chains, all of which contribute to EU public security and resilience. Merger control and the enforcement of the prohibitions against anti-competitive agreements (Article 101 TFEU) and abuses of dominant position (Article 102 TFEU) ensure that markets also function properly in strategically sensitive sectors, such as defence, cybersecurity, energy and critical infrastructure, where competition is no less important than elsewhere. In this way, competition law contributes to public security and resilience.

The EU competition law framework contains specific mechanisms through which public security concerns can be taken into account.

Merger control takes into account public security, chiefly under Article 21(4) of the EU Merger Regulation (EUMR), which allows Member States to take appropriate measures to protect legitimate interests—including public security—that fall outside the scope of the EUMR. Security considerations have also played a role in the procedural or substantive assessment of individual merger cases in some instances.

Antitrust also factors in security and resilience considerations, including through the Commission's enforcement practice and through the publication of guidance to industry cooperation in security sensitive sectors.

Indonesia

The evolving global landscape has shifted the intersection of competition law and national security toward a focus on "economic resilience," where strategic sectors like energy, digital infrastructure, and supply chains are now treated as vital state interests. While global powers like the US and EU have formalized security screenings for mergers, Indonesia currently lacks an explicit "national security exception," relying instead on Article 33 of the Constitution and sectoral regulations to balance market efficiency with state control. The Indonesia Competition Commission (KPPU) plays a unique role as a guardian, ensuring that the "national security" narrative is not exploited to justify anti-competitive protectionism or protect incumbents. To navigate this transformation, Indonesia must move toward a more transparent, coordinated framework between the KPPU and strategic ministries, utilizing principles of necessity and proportionality to ensure that competition continues to serve as a cornerstone of national resilience rather than an obstacle to it.

Japan

In January 2026, the Japan Fair Trade Commission (JFTC) published a statement entitled "Proactive Development of Competition Policy for the Promotion of Innovation," which sets out its policy direction for the operation of competition policy going forward. In this statement, the JFTC expresses its commitment to steadily implementing various measures based on three pillars: (1) ensuring "a fair trading environment" by ensuring fair transactions; (2) "promoting a competitive market environment" through dialogue with stakeholders, etc.; and (3) "strict law enforcement" against violations. Furthermore, it outlines initiatives related to economic security as part of its efforts toward "promoting a competitive market environment" as follows:

While strengthening of economic security is required in Japan, supporting the creation of products and services that help ensure Japan's autonomy and indispensability by promoting innovation by various enterprises through competition will also contribute to strengthening of economic security. When strengthening economic security, it is also important to clarify cases where an enterprise's initiative does not pose a problem under the Antimonopoly Act (AMA). For that purpose, the JFTC published "Basic Approach to the Antimonopoly Act for Business Activities Related to Economic Security" and the "Casebook on Economic Security and the Antimonopoly Act" in November 2025 and will proactively respond to consultations from enterprises, etc. Through these initiatives, the JFTC will facilitate consultations with it, resolve compliance concerns of enterprises through individual consultations, etc., and support efforts of enterprises toward strengthening of economic security.

This contribution paper outlines both the "Basic Concept Under the Antimonopoly Act on Activities of Enterprises Related to Economic Security" and the "Casebook on Economic Security and the Antimonopoly Act." These were compiled based on opinions presented at the Expert Meeting convened by the Ministry of Economy, Trade and Industry (METI) in April 2025, reflecting concerns that inter-company dialogues can be discouraged by vague concerns that actions undertaken by enterprises from the perspective of economic security—such as information exchange, collaboration, and restructuring—may violate the AMA. In addition, the following concerns were expressed by industry in the expert meeting:

(1) Although there is a growing need for domestic companies to pursue business combinations in order to make large-scale, long-term investments to counter concerns such as excess supply and the monopolization of supply chains by foreign states, companies are often reluctant to place business combinations on the table for consideration due to vague concerns that such actions may violate business combination regulations; and

(2) Vague concerns that "the content of information exchanged between companies may, in some cases, raise the risk of cartel violations," combined with the tendency of corporate legal departments and attorneys to take conservative positions on the AMA, lead companies to hesitate to engage in inter-company dialogue.

Lithuania

National security considerations have become an integral part of the Lithuanian Competition Council's work in recent years, reflecting significant changes in the geopolitical environment and corresponding shifts in state policy priorities.

The Competition Council's mandate has neither been amended nor broadened to encompass national security considerations, and no exceptions to the application of competition law based on national security have been established at the national level. Nevertheless, in response to growing significance of the defence sector, the Competition Council has increasingly focused on this area, both by responding to policy makers' needs and by taking proactive measures to safeguard effective competition in the defence field.

Both in 2025 and 2026 the Competition Council designated the defence sector as one of its sectoral priorities. In the Competition Council's view, fair competition in this area helps to ensure that the State obtains the goods and services needed at the best possible price and that the quality of the latter meets the required standards. The Competition Council seeks to intensify its cooperation with the Ministry of Defence (Ministry), to assess the impact of legislation and draft legislation on competition, and to pay particular attention to public procurement processes in order to prevent possible anti-competitive agreements.

The Competition Council's activities in the defence sector predominantly consist of advocacy efforts, consultations with policy makers on competition law and State aid matters, as well as active measures aimed at preventing bid-rigging and other anticompetitive agreements. This Note presents specific examples of the Competition Council's activities in the defence sector, including cooperation initiatives with policy makers and other institutions. These examples demonstrate that the preservation of effective competition supports, rather than undermines, the achievement of defence policy objectives.

Portugal

National security considerations have become increasingly central to policymaking and their interaction with competition policy has attracted growing attention.

Competition authorities must ensure the effective application of competition law in defence and other strategic sectors, while developing a deep understanding of these markets.

The defence sector presents distinctive economic features, including high concentration, reliance on public procurement, significant barriers to entry, and long investment cycles. After a period of reduced defence spending in Europe, recent geopolitical developments have led to increased investment, renewed industrial policy concerns, and efforts to strengthen domestic and European defence capabilities.

A key challenge lies in designing industrial policy measures that are targeted, proportionate, and preserve contestability, while avoiding long-term distortions of competition.

Beyond enforcement, competition authorities have a role identifying structural vulnerabilities and promoting competitive and transparent procurement practices.

Competitive markets may contribute to resilience and defence readiness by strengthening incentives for technological development, promoting innovation, diversification and reducing strategic dependencies.

Romania

This contribution examines the increasingly complex relationship between national security considerations and competition enforcement, using Romania's experience to argue that competition law and foreign direct investment (FDI) screening should be understood as **parallel mandates rather than competing or overlapping ones**.

The paper begins from the premise that national security has evolved significantly beyond its traditional military and defence dimensions. Contemporary understandings of national security increasingly encompass economic resilience, supply-chain continuity, critical technologies, energy security, cybersecurity, sensitive data, and strategic dependencies. Recent developments — including the COVID-19 pandemic, Russia's war of aggression against Ukraine, geopolitical tensions, and disruptions to global supply chains — have accelerated this evolution and reinforced the growing importance of economic security considerations.

Against this background, FDI screening mechanisms have become one of the most visible legal and institutional responses to the expansion of national security into the economic sphere. While such mechanisms are not new, recent years have witnessed a substantial increase in their scope, sophistication and political relevance, particularly within the European Union following the adoption of Regulation (EU) 2019/452.

The Romanian experience illustrates how national security concerns may evolve from an adjacent element of competition-related procedures into a dedicated policy field supported by specialized institutional and legal tools. Historically, Romania addressed national security concerns through a mechanism institutionally linked to merger control procedures before the Romanian Competition Council, with parallel national security assessment taking place at the level of the Supreme Council of National Defence (CSAT). However, this mechanism lacked many features associated with modern screening systems, including procedural safeguards, structured information requests, clear deadlines and mitigation measures.

In response, Romania established in 2022 a standalone FDI screening mechanism through the creation of the Commission for the Examination of Foreign Direct Investments (CEISD), an interinstitutional body bringing together national authorities with relevant expertise in security, economy, infrastructure, technology and resilience matters. The Romanian model reflects the understanding that contemporary national security risks are rarely one-dimensional and therefore require coordinated, cross-sectoral expertise.

The paper further argues that competition enforcement and national security review pursue distinct objectives and should not be expected to produce identical outcomes. While merger control and FDI screening operate through separate legal procedures, practical coordination remains important. A transaction that raises no competition concerns may nevertheless generate unacceptable national security risks, just as a transaction free of national security concerns may still warrant intervention under competition law.

Romania does not treat national security as a traditional exemption from competition law. Instead, national security concerns are assessed through dedicated screening procedures, preserving both legal certainty and institutional clarity. This distinction is particularly important in avoiding mandate expansion or institutional confusion.

The paper also emphasizes the importance of maintaining institutional discipline as national security concepts continue to expand. FDI screening should remain a tool designed

to protect national security and public order, rather than becoming an all-purpose instrument used to compensate for regulatory gaps or broader economic policy concerns. Preserving predictability, proportionality and clarity of purpose remain essential to the legitimacy and effectiveness of screening frameworks.

Finally, the contribution highlights the growing importance of international cooperation. As economic security risks increasingly transcend national borders, meaningful cooperation between Member States, the European Commission, strategic partners and international organizations have become indispensable. Romania's experience under Regulation (EU) 2019/452 demonstrates how structured cooperation, information sharing and best-practice exchanges can strengthen national screening systems while preserving sovereign decision-making.

The Romanian experience suggests that the challenge is no longer whether competition enforcement and national security interact — they already do. The real challenge lies in ensuring that this interaction remains principled, predictable and institutionally disciplined.

Ukraine

Russia's full-scale military invasion of Ukraine has required the state to address unprecedented security, economic, and governance challenges. In these circumstances, Ukraine has sought to maintain an appropriate balance between national security considerations and the effective enforcement of competition law.

Despite the introduction of martial law, the core principles of the market economy and competition policy have remained applicable. While certain temporary and targeted adjustments were introduced to address defence and security needs, Ukraine's competition law framework continued to operate, reflecting the importance of competitive markets for economic resilience, transparency, and long-term recovery.

One area where this balance became particularly relevant is merger control. Ukraine introduced several temporary exemptions and procedural simplifications designed to facilitate the functioning of strategically important sectors, strengthen the defence-industrial base, and ensure the uninterrupted operation of critical infrastructure. At the same time, the overall merger control regime remained in force, preserving safeguards against undue restrictions of competition.

The interaction between competition policy and sanctions legislation has also become increasingly important. Sanctions-related considerations, including ownership structures, ultimate beneficial ownership, and links to sanctioned persons or entities, now play a significant role in the review of certain transactions.

Public procurement has become another area where competition enforcement and national security objectives intersect. Wartime conditions have required the introduction of simplified procurement procedures for defence and security needs. At the same time, maintaining competition in procurement remains essential to ensuring the efficient use of public resources and safeguarding public trust. In this context, the Antimonopoly Committee of Ukraine has continued to prioritise the detection and enforcement of bid rigging, including in defence-related procurement.

Ukraine's experience demonstrates that competition policy and national security objectives are not mutually exclusive. Rather, the wartime experience highlights the importance of ensuring that any deviations from ordinary competition rules remain targeted, proportionate, and limited in duration, while preserving competitive markets, transparency, and regulatory predictability. These principles are essential not only for economic resilience during wartime, but also for Ukraine's long-term recovery and reconstruction.