

A Changing Battlefield **Reforming Competition Law to Boost European Defence?**

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The European defence industry is undergoing profound strategic transformation. Just last week, the Commission has published its [White Paper for European Defence Readiness 2030](#), attesting “changes of a magnitude not seen since 1945” and boldly stating: “History will not forgive us for inaction.” This shift has also been felt in competition law. Recent policy discussions suggest that the traditional approach to competition enforcement — focusing primarily on market dynamics and consumer welfare — may evolve to incorporate additional considerations, in particular defence interests.

This Briefing explores recent calls for changes that resound louder across Europe with each day the war on Ukraine continues. It examines the fragmented status quo of the industry as the backdrop for such calls and presents reform ideas for merger control and cooperation agreements that are currently being discussed.

EU Defence: A Fragmented Market

Last week’s White Paper described the European defence sector as “too fragmented with dominant national players catering mostly to domestic markets“. This draws from the much-discussed Draghi Report on EU competitiveness, which the former president of the European Central Bank was tasked with by the Commission. The Report covers a vast range of industries and policy areas and has sparked discussions on the need for regulatory changes in competition law in various aspects.

Concerning the European defence landscape, Draghi described a patchwork of comparatively small, national players operating mostly in domestic markets. This is contrasted with the US defence sector shaped by consolidation strategies implemented after the end of the Cold War: Since the 1990s, the US industrial base has shrunk from 51 to merely 5 main players with the Department of Defense now opposing further consolidation.

The Draghi report directly links the fragmented state of the European industry to a lack of standardisation and interoperability of equipment - problems which have been felt on the ground in Ukraine, e.g. with artillery: EU Member states provided Ukraine with ten different types of howitzers, some even in different variations. Regarding battle tanks, EU Member States operate a total of twelve different types, while the US produces only one.

Adapting Merger Rules to Defence Interests

So far the diagnosis – but what’s the solution? Draghi encourages cross-border integration and alleges that EU competition enforcement could inhibit consolidation for the

defence sector. The report encourages the Commission to place more weight on new criteria, such as "the innovation-enhancing potential, security and resilience, needs for coordination and co-deployment". Against this backdrop, ideas have been put forward to adjust the merger control framework for the defence sector, both at European and at national level.

One way to include the criteria identified by Draghi into merger assessments could be to establish a dedicated body *outside* the Commission. The report proposes this not only for defence, but more generally for strategic sectors. This body could review a proposed merger in parallel, and the Commission could take its assessment into consideration as an additional public interest criterion. Draghi also suggests the Commission should pay more consideration to security interests when designing remedies, which it can introduce to address competitive concerns raised by a merger.

The German Ministry of Economics has recently put forward similar ideas in its [proposals for modernising EU competition law](#) of December 2024: Competition law should, in the Ministry's words "facilitate consolidation in key sectors", among them: defence. One way to achieve this could be to include security directly in the merger control assessment to be performed by the competition authorities. While concerns could be voiced that this could increase dependency on fewer companies and ultimately drive up prices for European states as customers, the German competition authority (*Bundeskartellamt*) does not seem opposed to such ideas in principle. However, a legislative change appears necessary to provide the required legal basis. In light of the current geopolitical dynamics, the urgency of such action cannot be overemphasised.

Another potential avenue for reform could involve the introduction of a sector-specific exemption for defence mergers – similar to the existing one in the healthcare sector: In Germany, hospital consolidations are exempt from merger control under certain conditions, namely where the competent state authority for hospital planning approves the merger with the aim of strengthening healthcare provision. However, such an exemption would be quite a substantial change and face stronger political backlash, making it a less promising path for swift adjustments.

It is important to note that Draghi also draws the fragmented landscape back to "insufficient and non-coordinated public spending geared towards national players typically operating only in their domestic markets". Thus, public procurement surely has a role to play. In the past, joint procurement has repeatedly been on the Commission's agenda, with limited results. Last week's White Paper reinforces such ambitions, even proposing the Commission as a Central Purchasing Body on behalf of member states. Given the extent and urgency of the intended overhaul of the industry landscape changes to public procurement and competition law should not be understood as mutually exclusive. Rather, changes to public procurement could facilitate inter-European collaboration, while merger control could pave the way to consolidation.

“Teamwork makes the dream work”

Another way competition law could contribute to boosting Europe’s defence capabilities would be the facilitation of cooperation between companies in the industry. Such cooperation could enable stronger R&D investments and serve as a boost.

Draghi explicitly asks the Commission to “provide clear guidance and templates on novel agreements, coordination and co-deployment between competitors.” Companies should be provided with legal certainty when concerned about their competition law compliance. Of course, while it may prove difficult to come up with templates considering the wide variety of possible agreements and their specificities, the call for clear guidance certainly meets ample support by the business community.

Rheinmetall-Leonardo Joint Venture

The *Bundeskartellamt* has demonstrated first signs of increased awareness for the industry needs in its [recent clearance of a Joint Venture between Rheinmetall and Leonardo](#), where the agency reasoned:

“The fact that neither company would have been able to fulfil the expected orders from the Italian Ministry of Defence on its own also played a role in the project’s competitive assessment. Leonardo does not have the necessary platforms for the production of main battle tanks and Rheinmetall would not have been able to meet the requirement to carry out 60% of the value-adding work in Italy.”

However, President Andreas Mundt made it clear that the absence of competition concerns was the key reason for the swift clearance of the Joint Venture. So, while the press statement may signal general openness to the industry’s interests, the community should not overlook that, without the proposed legislative changes, there is limited scope to consider such interests in more complex cases.

Outlook

Although momentum for reform is building, the outcome remains uncertain. The defence sector is evolving at an unprecedented pace, shaped by geopolitical shifts, increased defence spending, and the push for greater European strategic autonomy. Against this backdrop, competition authorities and policymakers are navigating uncharted territory. Lawmakers must now show agility and provide the legal framework needed to steer the way. The proposals are on the table.

BLOMSTEIN will continue to monitor developments closely and keep you informed. If you have any questions, please do not hesitate to contact [Anna Blume Huttenlauch](#), [Julia Lotze](#) or the BLOMSTEIN [defence team](#).
