

EUROPEAN CHAMPIONS VS. REAL CHAMPIONS: WHAT WILL IT COST YOU?*

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1. INTRODUCTION

There is a rising trend in talking up the promotion of so-called “European champions” at the expense of the enforcement of competition rules. This call for “European champions” echoes past national industrial policies whereby governments would prop up specific firms or sectors supposedly to enable them to lead on the international stage and thereby bring somewhat undefined benefits for their home country.

This short article will recall the industrial policy initiatives underpinning this most recent drive for government to champion certain firms, why they have been directed at competition enforcement and the cost to European consumers of heeding these calls to loosen competition rules.

2. BACKGROUND

2.1. Franco-German Manifesto and the German industrial strategy

In early February, the German government published a new industrial plan called “Industrial Strategy 2030”¹ and, some weeks later, a joint “*Franco-Ger-*

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1 Available at https://www.bmwi.de/Redaktion/DE/Publikationen/Industrie/nationale-industriestrategie-2030.pdf?__blob=publicationFile&v=24.

*man Manifesto for a European industrial policy fit for the 21st Century*² was unveiled.

Although they ostensibly manifest adherence to the principles of open and free markets as well as investment in innovation, these initiatives ultimately call for the review and reform of existing European state-aid and competition law, the message being that competition law and its application should be relaxed to make way for the creation of European companies with a global dimension.

It is not the purpose of this communication to debate or take a position in what regards European trade policy and on what (if any) pan-European industrial policy is necessary and adequate to meet the stated challenges, nor will it dwell into the proposals and discussions surrounding the screening of non-EU investments or the call for a relaxation of state-aid rules. Its primary focus is to assess whether the calls for changes to EU competition law are warranted and how to react to their growing prevalence.

2.2. Prohibition of the Siemens/Alstom merger

It is hard to ignore that the aforementioned German and Franco-German initiatives come on the back of the failed merger between Siemens and Alstom.

The projected merger, notified in June 2018, was ultimately blocked by the Commission precisely in February of 2019. The European Commission had previously concluded, in Phase-I of its merger review procedure, that the intended tie-up raised competition concerns as it would have significantly reduced competition specifically in the markets for very-high-speed trains and railway signalling systems.

The companies argued that potential competition from competing suppliers located outside the EU, especially China, would counterweigh the effects of the merger. However, this argument was not accepted by the Commission as it concluded that whereas it would take a very long time before Chinese signalling systems suppliers can become credible competitors in the European market, in the market for very-high-speed trains, an entry of competitors into the European was highly unlikely in the foreseeable future.

² Available at both https://www.bmw.de/Redaktion/DE/Downloads/F/franco-german-manifesto-for-a-european-industrial-policy.pdf%3F__blob%3DpublicationFile%26v%3D2 and <https://www.gouvernement.fr/en/a-franco-german-manifesto-for-a-european-industrial-policy-fit-for-the-21st-century>.

One does not have to agree with the reasoning of the Commission in this case in order to oppose the suggestion that its analysis should stray towards anything else than the prevention of distortions to competition.

The job of a competition agency is to make a determination as to how the relevant product and geographical markets should be defined in order to carry out its analysis of the prospective consequences of the intended concentration between undertakings and, subsequently, carry out that analysis. It may of course legitimately be criticized in how it makes that determination, on how it conducts its analysis, and for its ultimate decision. It is wrong however to expect any of these crucial steps to take into consideration the competitiveness of local companies in the world economy or any other consideration other than the preservation of competition.

To be fair, the aforementioned Franco-German proposals accept that the purported disadvantage at which European companies operate in the World markets does not stem from an erroneous interpretation of the law by the Commission but are very explicit in concluding that it is European competition law (both hard and soft) that must change.

What they seem to overlook – or possibly discard – is that the primary single goal of competition law is not ensuring a level playing field between companies, but consumer welfare arising from the competitive process.

It is the wellbeing of consumers that lies at the centre of Competition Law, not that of corporations.

The policy choice before us can be boiled down to whether the gains *to EU citizens* of shielding large EU companies from competition rules will offset the corresponding losses they would suffer in terms of the lost benefits from competition.

Measuring these gains and losses is admittedly a tricky proposition and one best left to economists but if one were to admit, for the sake of argument, that they evened each other out, it would still be extremely difficult to see how the alleged benefits to Europe would be spread homogeneously within the Union and how they would not be detrimental to the European Single Market.

3. ADVOCATING FOR COMPETITION

In order to push back against these initiatives which try to protect large European companies at the expense of consumer welfare and competition

rules, it is important that both public and private stakeholders within the competition community actively engage in promoting competition.

The benefits of competition and why it is necessary to ensure that the enforcement of competition rules is impartial, objective and independent need to be explained to the public at large.

Although advocacy efforts must keep stressing the how competition between companies ensures lower prices, more choice and innovation, they must also make the wider case that competition policy has a positive impact on the economy as a whole.

The role of competition policy is to ensure that markets work without undue interference. This in turn leads to an increase in productivity, economic growth, innovation, and consumer welfare.

Ultimately, the goal of competition policy is to prevent the excessive concentration of economic power and the abuse of such power which leads to a rising sense of inequality that threatens the very foundations of liberal democracy.

Because protecting consumer welfare is at the heart of competition rules, promoting competition is about protecting our citizens as consumers, their freedom of choice and prosperity. When we promote “European champions” and protect only companies according to their size or sector, we are not ensuring that there will be any benefits for consumers, the economy or society.

On the contrary, using competition as an industrial policy tool in order to bestow corporate giants with huge power in their home markets comes at the expense of consumers in those markets as well as the competitiveness of other firms within the champion’s supply chain.

There may of course be exceptions, situations in which market failures require regulation from the State, but, as a rule, allowing political interference in the activities of competition authorities would jeopardize the independence and the tried-and-tested technical assessment of competition law enforcement.

Furthermore, allowing exceptions to the Commission’s powers to block mergers on the basis of industrial policy considerations³ carries an enormous risk that these powers would be wielded mostly in the interest of the larger

³ For instance, the abovementioned Franco-German proposal referenced in footnote 3 above proposes to “consider whether a right of appeal of the Council which could ultimately override the Commission decisions could be appropriate in well-defined cases, subject to strict conditions”.

Member States to the detriment of other countries, thereby undermining the principles of solidarity at the heart of the European project.

Competition is the best way to create real champions in the market, domestically and abroad. Protecting companies from fierce competition annuls incentives for efficiency and innovation. European companies must be allowed to succeed, but to succeed on their merits and not through the coddling effect of preferential treatment.

Competition agencies in Europe should remain agnostic regarding nationality and play no favourites. The ensuing competition will provide the real champions the resilience they need to be the most efficient and most innovative in their respective markets. By incentivizing them to provide their European customers with the benefits of that innovation and efficiency, they will be all the more competitive as they grow to geographic markets further afield.

Therefore, public policies should rather seek to deepen integration within the European Single Market and support the initiatives that its several competition agencies undertake to promote the worldwide adoption of Europe's best practices in competition law enforcement.

4. CONCLUSION

In a well-functioning economy, industrial policy ought to be as neutral and non-distortionary of competition as possible.

This does not mean that the relevance of industrial policy should be disregarded by the EU, merely that the rivalry with other economic blocs should not be solved by lowering the standard of competition rules for a few chosen firms.