



Competition Policy and Industrial Policy: Towards a new era?

COMPETITION FORUM
LAW & ECONOMICS

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To quote this paper: B. DEFFAINS, T. PERROUD, “Competition Policy and Industrial Policy: Towards a new era?”, *Competition Forum*, 2021, n° 0022, <https://competition-forum.com>.

This paper is inspired by the following report: Bruno Deffains, Olivier d’Ormesson, Thomas Perroud, Competition Policy and Industrial Policy: for a reform of European Law, Robert Schuman Foundation, January 2020 ([https://www.robert-schuman.eu/en/doc/divers/FRS For a reform of the European Competition law-RB.pdf](https://www.robert-schuman.eu/en/doc/divers/FRS_For_a_reform_of_the_European_Competition_law-RB.pdf)).

In Europe the recent period has been marked by the emergence of a debate regarding the modalities and objectives of competition policy. This debate has been triggered by three observations: on the one hand, the failures of certain projects such as Alstom/Siemens and, on the other hand, the observation made by a number of experts that existing measures are inadequate or even outdated; finally, the success of institutions such as DARPA in the United States in promoting innovation

Recent positions taken by leading figures reflect the issues at stake in this debate fairly well. In particular, it is interesting to note developments in the discourse of Margrethe Vestager, Commissioner for Competition. In a speech in 2016, "Competition in a big data

world", she stated that: "... I hope it makes clear that we don't need a whole new competition rulebook for the big data world". In a speech in 2019, "Defining markets in a new age", she stated that: "The challenges we're facing, at the start of this new decade, mean that we need to look again at the tools we use to enforce the competition rules", concluding that it was necessary to "Keep the rulebook up to date".

On the occasion of a conference organised by the OECD in December 2019, "Competition Under Fire", Jean Tirole, Nobel Economics Prize winner, discussed the relationship between industrial policy and competition policy and raised the issue of "participatory" antitrust.¹

¹ Jean TIROLE. "Competition policy at a crossroad" (Video online). YouTube, 28 novembre 2019.

Philip Lowe, former DG for Competition insisted on the fact that, *“the economic and political environment in which competition law is enforced and applied has changed extensively over the last decade. Globalisation and a renewed focus on industrial policy have generated calls for more flexible competition policy”*. In particular he concluded that: *“There are strong arguments in favour of an active industrial policy at European and national level. Both state aid control and competition policy need to take account of the international dimension of markets, and a dynamic assessment of competitive pressures in markets is essential...”*²

The observations made by many experts are in line with the analysis made of the challenges raised by the digital economy, in particular the power of the GAFAs, and with the observation that when Europe decides to open its market, other regions of the world are not subject to the same constraints and often have more room for manoeuvre to support the implementation of industrial policy projects.

The decision in the Alstom-Siemens dossier appeared to some to be the product of European economic law that ignores the fact that, in globalised markets, not everyone plays by the same rules, not everyone has the same interests, not everyone has the same tax system. To think that the WTO will be the

place where China, the United States, Japan or Korea will submit to European rules seems totally improbable, especially at a time when multilateralism is giving way to American trade policy or the Chinese Silk Routes. We should therefore start from the realistic observation, shared by many players, that the WTO is no longer in a position to fulfil its role, and will not be able to do so for a long time to come. Therefore, some proposals for the WTO to sanction regulatory dumping by certain States are simply not realistic.

It must also be stressed that "DG COMP" has become the main - if not the only - instrument of economic regulation at European level. The financial crisis of the late 2000's-early 2010's illustrated this perfectly. The issues raised by the regulation of the digital economy only reinforce this trend further. One of the important consequences is that DG COMP - and no doubt this is also true of most competition authorities in Europe - is overloaded with work and is forced to deal not only with competition but also with many other subjects sometimes far removed from its core business.

In such a context, the question also arises of the objectives of competition policy in terms of consumer welfare and of a more global reflection regarding the concept of general interest. If competition law rightly excludes

² Philip LOWE. "Competition and industrial policy in Europe: how can they work together?" Oxera, October 2019.

other general interest objectives from its purpose and reasoning, the political decision-maker cannot do the same. The final political decision must be informed by an expert reflection on the overall well-being generated by the competition decision by integrating industrial, employment, innovation and environmental policy concerns. This is Philip Lowe's opinion: "assessment cannot be based on hunch or fantasy; it must be rigorous and realistic. And it needs to be carried out by an administrative authority that is subject to control by the courts but is free from political interference and independent of business interests³."

Legitimate protection of the competitive process sometimes seems to take precedence over the issue of the outcome of the competitive process and other legitimate public policies goals such as innovation, environment, employment. These observations raise questions about the relationship between market authorities and political power.

In this respect, it is no doubt useful to consider the European project as it was conceived a few decades ago. What is the European model, if it really exists? How does it assert itself both in relation to national models and in relation to those of the

globalised economy? The main stages of legal construction can clarify the following points for us.

During the last few months, the question of industrial policy has been making a comeback in economic and political debates in Europe, including at the European Commission. The imperative of sovereignty in strategic sectors was undermining the dogma according to which the market and competition were sufficient to maintain Europe in the global dynamics of innovation and growth.

In addition, the sudden and violent COVID 19 crisis forced the States, the Commission and the European Central Bank to intervene quickly and powerfully to minimize the impact of the sudden and almost complete shutdown of the economies. The European Commission has thus relaxed its rigid doctrine on the control of state aid in order to encourage massive public support for sectors hit hard by the crisis. It still has the right to approve aid that is compatible with the European treaties, but within the framework of a relatively loose procedure. This particular context accelerates the implementation of industrial policy measures, at least in France, where the independence of the productive and financial system has never

³ Philip LOWE. "Competition and industrial policy in Europe: how can they work together?" Oxera, October 2019.

really been achieved. There is no question here of discussing the merits of supporting a strong productive system, especially in sectors that are essential to the nation's security or to ensure its long-term development. However, we must question the relevance of ad hoc arrangements imposed by the state apparatus to provide assistance to certain companies, arrangements that are clearly inadequate to meet the "post-crisis challenges". The exit of crisis will reveal the deficiencies of this "bad" industrial policy, those which precisely pushed to doubt the utility of this essential instrument to be inserted in a world economy where competition is often only a mask with which the States adorn themselves to establish their economic and political power.

Abusively assimilated to centralized planning, industrial policy is often considered as antinomic to the market economy. The economic doxa fully legitimizes two parts of the State's intervention on the markets: the research policy, upstream, the competition policy, downstream. Between these two, industrial policy would have no more use. It is at best an outdated Colbertism, at worst a dangerous Sovietism. On the contrary, we plead for an industrial policy in the market economy and not against or outside the markets, especially international ones. Far from wanting to give a content to the notions of strategic independence or economic sovereignty, it is a question of finding the

foundations of public intervention in the productive sphere without repeating the errors of the past which made lose its legitimacy to this instrument of economic policy for France, country of average size, not very specialized and without exceptional factorial endowments.

In addition, industrial policy anticipates the state of the future: which needs, for which markets, in which sectors, with which technologies? Its objectives are distant, its results by essence uncertain. On the economic level, the intervention of the State is justified by its role to ensure the long-term future of the society. In the same way that an individual must redouble his efforts to avoid seeing his potential and his economic and social future restricted, a country must constantly redouble its efforts to remain among the great nations. It is not a question of palliating an identified and circumscribed market dysfunction, it is the role of the competition policy. The industrial policy positions at best a competitive productive system in the future to ensure the prosperity of the nation, it is not the role of the competition policy even if the decisions of the competition authorities as regards concentration and State aids sometimes interfere with the objectives of industrial policy.

Institutional Propositions

A good industrial policy accelerates the process of destructive creation à la Schumpeter. Its first objective is to create jobs, not to save them. Any industrial policy must, if need be, be accompanied by a social policy, which proceeds from the redistribution and from the national solidarity and not from a burden having to fall on the sectors targeted by industrial policy. A good industrial policy must be efficient and implement in the best way the resources which are assigned to it. It must also be effective and achieve its objectives. Efficiency and effectiveness impose that the budgets assigned to industrial policy are under the close control of an independent third party having the power to stop the committed programs which would be in deadlock. In France, the Cour des comptes is a good instrument for this purpose.

Pragmatism and realism are required. The French State, which is over-indebted, has limited resources. This implies realistic and targeted objectives identified on the basis of public expertise validated by mechanisms such as the Strategic Sectors Committees within the framework of the National Council of Industry. The decisions of a good industrial policy are decided transparently: that proscribes too much meddling by political power, high administration and companies. The general intervention of the State in the economy (CICE or CIR) and

instruments deployed in times of crisis as the one linked to the Covid-19 must not be assimilated to an instrument of industrial policy. One thinks here of the State Guaranteed Loans to Air France or Renault.

Industrial policy must necessarily be part of an economy open to international trade. It should not impose constraints that expose companies to additional costs that would downgrade them in the domestic market or in international competition. For example, decarbonization of the production of goods and services? Yes, of course, but on condition that the additional costs associated with this objective do not constitute a competitive handicap for national companies. It is easy to implement in the building sector where standards and production are national, it can also be implemented in domestic air transport, but certainly not in international air transport if foreign companies do not have the same eco-responsible constraints. At the end of the chain, the consumer chooses. And experience shows that they still massively choose the less expensive airlines, and not the climate-friendly ones. Additional decarbonization costs for sectors exposed to international competition should only be imposed if the foreign companies that bear them are subject to ad hoc taxation to restore fair price competition. De facto, this limits the room for maneuver of a national policy: only the European level will be relevant here.

Industrial policy should not be confused with the upstream research policy known as pre-competitive. It is a downstream involvement of research to encourage and help companies to industrialize and market innovations. This authorizes the State to interfere in production choices, provided that it does not pervert the projects. In case of success, it is logical that the State recovers a part of the fruits of the risk it has taken. The instruments are to be invented (royalties, participations, etc.). The State can also push the tool of the public order, provided that it does not waste public money. For the goods and services for which the surface of the national public order is not sufficient to reach the critical size and whose specifications do not correspond to the needs of the consumers, the public order as a tool of industrial policy is expensive and even harmful. Only certain clearly identified goods and services falling under the sovereign power should escape this rule of conduct:

national defense, health, internal security, education, media, culture.

No one is bound to do the impossible, and the State should not push chimeras: is it realistic to think that we will compete with Google in search engines? The only way to counter Google or Facebook would be to ban them (China but it has a domestic market of more than 1.2 billion people): such a ban is not compatible with our international commitments, nor with our law, nor especially with our values. Thus, a good industrial policy is not to catch up with trains that have already started and are going much too fast to be caught up with, or those that are much too big to be stopped. A good industrial policy chooses the right trains from among those that are already in the station thanks to an efficient research policy.

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