

# Europe's competition policy – or extending the domain of integration

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The principle of “fair competition” was set out in the general principles of the Preamble to the Treaty of the European Communities (TEC) in 1957, as was the commitment that the Member States will enact policies to ensure this fairness. Competition policy – overseen by the Competition Directorate – is the benchmark policy for market regulation, but also for industrial strategy and, more recently, for fiscal regulation.

The need for a competition policy flows directly out of Europe's project to establish a common market, and numerous attempts at industrial policy have come to grief on the altar of Articles 81 to 89 of the TEC (and now Articles 101 to 109 of the Treaty on the Functioning of the European Union), which establish the framework for competition. In practice, the two policies are clearly complementary in the European Union, and the space granted to the former develops thanks to the set of exceptions to the latter.

## **Competition as a general framework in the European Union**

As a foundation of the common market, respect for and controls on market competition is a general principle underlying all European policy. More fundamentally, competition can be considered a *constitutional* principle of the European Union. It makes it possible to define the European space, the common space whose existence depends on controls on competition between States. Europe's competition law is therefore developed first of all to control economic competition between the States. The aim is to prevent the States from adopting policies that create benefits for companies in their own

territory and discriminate against companies from other States.

Within the European Commission, the Competition Directorate therefore has a significant role and responsibility. Supervision of competition is exercised through the control of mergers and cartels on the one hand, and the control of State aid on the other. To monitor cartels or any other abuse of a dominant position, competition law is exercised *ex post* to protect consumers and competitors from predatory behavior and abusive pricing. Control over concentration developed generally from the second half of the 1980s, in synch with the increase in the size of mergers and the opportunities for European rapprochements, which resulted from the success of the single market. Moreover, mergers and acquisitions are increasingly the subject of negotiations between the companies involved and the European Commission and conclude with a transfer of activity. For example, the acquisition of Alstom's energy division by General Electric in 2015 was accompanied by the sale of part of the gas turbine business to the Italian company Ansaldo Energia. This control has given the Commission an active role in the structuring of the market, which amounts to a super power, but since the 1990s, fewer than 1% of notifications concerning concentrations have led to a veto by the Commission.

European supervision of aid has been relatively continuous since it presupposes a permanent exercise of supervision of "undistorted competition" in the European area. It is a tool both to control any distortions of competition created by a Member State granting advantages to its companies and to fight against a race to "who grants most" in terms of subsidies. Thus, Article 87 (1) of the Treaty establishing the European Community states that State aid is considered to be incompatible with the common market, and Article 88 gives the Commission a mandate to monitor such aid. But Article 87 also specifies the criteria the Commission uses to investigate aid.

Business subsidies are subject to the Commission's authorization if they exceed 200,000 euros over three years and they are not included in the set of exemptions decided by the EU. The majority of aid investigated is authorized (almost 95%). As for France, the percentage of aid disallowed out of the amount granted is in line with the European average. There have of course been some noteworthy decisions, such as when EDF was required to repay 1.4 billion euros in 2015 following tax assistance dating back to 1997. But the Commission also recently allowed the French State to acquire an interest in the capital of PSA Peugeot Citroën (2015). Similarly, the Commission authorized the public-private partnership underpinning the construction of the Hinkley Point nuclear power plant in Great Britain.

Some recent developments in the exercise of this control should be noted. The regulation of State aid has been used to examine the provisions of tax agreements negotiated by companies with certain governments such as Ireland, Luxembourg and the Netherlands. By favouring some companies to the detriment of their competitors, these tax agreements create not only distortions in competition but also competition between States to attract the profits and jobs of the large multinationals. For example, in October 2016, the Commissioner for Competition, Margarethe Vestager, described the tax agreement that Apple had received in Ireland as unauthorized State aid, and accordingly required the Irish government to recover 13 billion euros from Apple. This use of the regulatory power over State aid constitutes a turning point in competition policy, in that it recalls that the object of competition policy is to ensure that competition between States does not go against the notion of "a common market."

### **Industrial policy is expressed in the exceptions to competition policy**

Note that while competition policy is well defined at European level, there are many meanings of industrial policy in Europe,

almost as many as there are members. This makes it more difficult to find policy compromises prior to the definition of such a policy. Moreover, the institutional logic and the economic logic are not the same. As already noted, competition policy has a strong institutional anchorage, which is not the case with industrial policy. Even though the European Coal and Steel Community was at the origin of the European Community, industrial policy is not at the heart of the European project. Moreover, the economic logic is different: competition policy is defined with reference to space (the relevant market), whereas industrial policy can be understood only by integrating the life cycle of companies and industries, and therefore in reference to each country's industrial history. In a shared sense, industrial policy can be defined as policy that is aimed at orienting an economy's sectoral and / or technological specialization. It is therefore easy to grasp the dependence of industrial policy on national preferences. The tool favoured by the States to express this policy is aid to companies, whether directly or indirectly.

State aid is classified according to 15 objectives, ranging from "preservation of the heritage" to aid for "research and development and innovation". For the EU as a whole, the three categories that are largest as a percentage of total aid are: environmental protection (including aid for energy savings), regional aid, and aid for R&D and innovation. The amounts involved are far from negligible: in 2014, for example, 15 billion euros for France and 39 billion for Germany. A higher amount of aid in 2014 was due largely to an increase in aid for renewable energy as a result of the adoption in 2014 of revisions on the rules on this type of aid. Germany is the country that contributed the most to this increase. Support for renewable energies is indeed at the heart of its industrial policy.

European industrial policy develops as exemptions to the application of control on aid and hence to competition policy.

These exemptions are set out in the general regulations on exemptions by category. There are many Block Exemptions, which revolve around the following five themes: innovation and R&D, sustainable development, the competitiveness of EU industry, job creation, and social and regional cohesion. It can be seen in this set of exemptions that supervision is also the expression of Europe's policy choices on orienting public aid, and thence directing public resources towards uses that are in line with these choices. These choices are the result of a relative consensus on the future of the European economy which shapes industrial policy. The largest categories of aid are research and development and environmental protection. In a word, the European economy will be technological and sustainable. This is a policy of orientation and not a policy of resources, and it takes shape within the overarching framework of the policy on competition.

### **What future for Europe's competition policy?**

It seems that, given the primacy of competition policy and its foundational role for Europe's union, competition policy is the conductor of microeconomic policy. It has, up to now, proved capable of adapting. Thus, in compliance with the European project, economic constraints and societal orientations have led to changes in the definition of exemptions on the control of aid, which have allowed for the expression of industrial policy. Similarly, it has seized upon the fiscal hyper-differentiation between certain States, which sharply contravened European integration and the common market.

Competition policy must not be weakened in authority or scale, but it must retain its capacity to adapt both to industrial orientations and to the deployments of Member States' strategies on competition with each other. It is also an essential counter-power to the growing strength of the multinationals, and governments must support it in this sense rather than becoming the mouthpieces of their national

champions.