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Concurrences NewAntitrust Webinars Series #6 Industrial policy and competition policy in the post-Covid context

Webinar - 15 May 2020*

Webinar organised as part of the #NewAntitrust Webinars Series by Concurrences. The speakers discussed the approach of the competition authorities when considering industrial policy issues in the aftermath of the Covid-19 crisis.

Antoine Winckler

Antoine Winckler introduced the discussion by emphasising the tension between competition policy as embedded in the treaties of the European Union and the laws of the Members States and the notion that Members States should intervene in the economy to reach an optimal state of efficiency for the functioning of markets. The covid-19 crisis has shed a new light on this tension; there has been an unprecedented collapse of the economy, associated with a striking increase in unemployment, which requires rethinking the economic analysis. It remains to be seen how

Member States will react individually and whether the scope of competition policy will be reduced or whether competition law enforcement will be revised and informed by the current economic constraints.

“THE COVID-19 HAS BEEN AN UNPRECEDENTED COLLAPSE OF THE ECONOMY, ASSOCIATED WITH A STRIKING INCREASE IN UNEMPLOYMENT, WHICH REQUIRES RETHINKING THE ECONOMIC ANALYSIS.”

ANTOINE WINCKLER



Philippe Aghion

Philippe Aghion started by emphasising its belief in the virtue of competition, reminding his past work on the role of competition in fostering growth through the creation of incentives to innovate. According to Mr Aghion, the Covid-19 crisis calls for significant change. He stressed three remarks: some countries have been performing better than others

in dealing with the pandemic; a critical challenge is to reduce the scope and duration of the economic recession that ensues from the measures that have been implemented to cope with the pandemic; and the core objective is to reshape the organisation of society in the long term.



“INDUSTRIAL POLICY, ALTHOUGH BEING A SOLUTION, SHOULD NOT BE IMPLEMENTED AT THE EXPENSE OF ENTRANTS ON MARKETS; THE SUPPORT TO INCUMBENTS REQUIRES TO SUPPORT POTENTIAL ENTRANTS ALSO.”

PHILIPPE AGHION

Mr Aghion focused on value chains and outsourcing. He first compared France and Germany, noting that countries with low ratios of death performed testing on a large scale and had a higher number of beds with respirators available. France did not have an advantage in that regard. A study revealed that its export / import ratio for anti-Covid-19 products (pharmaceutical components and especially active components, medical instruments, protection equipment, etc.) was really low; most imports came from the United States and China. Apart from trade flows, Germany increased its domestic production of pharmaceuticals, while France increased its foreign production through affiliates and foreign holdings. The results of the study clearly indicate that France, contrary to Germany, has outsourced the production of anti-Covid-19 goods, especially pharmaceuticals. Mr Aghion further explained that a trade-off between outsourcing and robotization was found; investment is a resource for reducing the balance of value chains.

Philippe Aghion drew conclusions from these findings. First, he noted that industrial policy, although being a solution, should not be implemented at the expense of entrants on markets; the support to incumbents requires to support potential entrants also. Furthermore, regaining control over value chains in strategic sectors should not be done through protectionism. Relocalisation is not a solution either; the division of labor and competition advantages justify outsourcing. Instead, exercising control over life-maintaining sectors should be done through investment and innovation, especially artificial intelligence and robotics.

Finally, regarding the antitrust policy, Mr Aghion stressed the excessive emphasis on market share and market division, which is a static concept, rather than on innovation and market entrance. Pro-innovation competition policies should be preferred over market share-based and market division-based competition policies. Philippe Aghion elaborated on the example of the Defence Advanced Research Projects Agency in the United States, presenting it as a successful instrument of industrial policy.

Emmanuel Combe

Emmanuel Combe reminded that, before the Covid-19 crisis, the relationship between competition policy and industrial policy was already the subject of much debate, especially after the prohibition of the merger between Siemens and Alstom by the European Commission in 2019. The notion that the implementation of competition policy thwarts that of industrial policy, however, is simplistic. The debate is more subtle.

According to Mr Combe, the Covid-19 crisis will justify a return to interventionism, which is critical and urgent. However, antitrust policy is in itself a form of industrial policy. For example, fighting against cartels amounts to fighting against participants which undermine the competitiveness of European industries. Antitrust stifles the emergence of new, efficient firms. It would thus be a mistake to put aside competition policy to conduct industrial policy. Furthermore, competition policy may not be an obstacle to the implementation of an industrial policy, depending on the specific objectives of the industrial policy. The aim may be to help sectors with overcapacities to restructure. A strong downturn and a wave of consolidation in many sectors can be expected after the Covid-19 crisis, through bankruptcy and mergers. Firms will be successful in invoking the failing firm defence argument. The aim may also be to foster research and development (especially since the length of the process to get a patent in Europe is lower than in the United States or South Korea, for example). Competition policy will not stand as an obstacle to the implementation of such policy, as semi-collusion (the upstream cooperation of firms competing downstream) for the purpose of research and development activities in relation to vaccines against Covid-19 some pharmaceutical firms may be authorised to cooperate in order to speed up the discovery process. Also, the aim of the industrial policy may be to ensure the independence of Europe with respect to key products. In this case, comparative advantages must be developed; competition, which fosters efficiency incentives, is thus a tool to promote productivity within the

targeted sector. However, Mr Combe warned about the importance of ensuring competitive neutrality. Finally, should the aim be to develop European champions, merger control, which tends to avoid market concentration and dilute high market power, could be regarded as an obstacle. Nevertheless, Emmanuel Combe criticised the objective of promoting the development of champions, noting that: the size of firms does not mirror their efficiency; the rate of merger failure is high; and the presence of champions on the markets does not solve the issue of market access to China, which relates to trade policy rather than competition policy. The presence of champions on concentrated markets with strong entry barriers may actually have some undesirable effects. Mr Combe concluded by stressing that

competition policy should not be sacrificed on the altar of industrial policy. Europe is suffering from a lack of industrial policy and trade policy, not an excess of competition policy. According to him, competition policy is not the key issue and the main obstacle to a proactive industrial policy.

“COMPETITION POLICY MAY NOT BE AN OBSTACLE TO THE IMPLEMENTATION OF AN INDUSTRIAL POLICY, DEPENDING ON THE SPECIFIC OBJECTIVES OF THE INDUSTRIAL POLICY.”

EMMANUEL COMBE



Frédéric Jenny

Frédéric Jenny agreed with Philippe Aghion on the relationship between competition and innovation and with Emmanuel Combe on the importance of competition policy. He then focused on the impact of the Covid-19 crisis on the debate on competition policy and industrial policy. First, the faith in the robustness of international competitive markets to deliver the desired products — reasonably priced or competitively priced goods and services that are needed — has been shaken by the fact that we have been the victim of shortages. Those shortages were quite important as they imposed a huge social cost in regard to vaccines, medicines, masks, respirators, etc.; there was a market failure. Furthermore, the globalisation of value chain in an uncontrolled way had a cost, which we paid during the crisis in terms of ability and flexibility to react to crisis situations. Globalisation means interdependence between countries and economies, that is, a lack of self-sufficiency and national sovereignty. Also, many governments did not have much choice with respect to the policy to adopt and implement due to insufficient stocks. The lockdown was the only strategy that they could apply.

Mr Jenny then emphasised that cooperation may be more desirable than competition, for example with respect to vaccines and medicines. Also, considering the economic depression ahead, competition may not be as important as in times of economic expansion. Mr Jenny stressed that knowledge externalities – firms learn from other firms around them and adapt some of their techniques, thus increasing their competitiveness – have been undervalued by most competition economists, who have been focusing on other types of market externalities. Outsourcing results in a loss of knowledge externalities, and thus has a critical social cost. Relocalisation and coordination are important functions of industrial policy and should be facilitated. Moreover, international competition has revealed to be uneven, as some countries follow different rules.

Frédéric Jenny then dealt with the tools: revising the competition analysis to accept some anticompetitive agreements (such as the agreement in relation to the broadcasting of sport rights in Germany, or the *Amazon/Deliveroo* transaction); changing the applicable criteria for assessing public-interest efficiencies; exempting some conduct; etc.

Mr Jenny focused on the granting of aid, both to remedy the liquidity crisis and to recapitalise firms. He noted that aid allows governments to increase their leverage over the economy and therefore to advance their industrial policy objectives, such as the promotion of new technology and the ‘greening’ of economic activities. The granting of aid illustrates that reallocation of resources, which the market does not perform fast enough, is needed, together with coordination. Furthermore, control of foreign direct investment and public procurement are also important dimensions of industrial policy. Mr Jenny observed that public procurement rules are quite different from one country to the other. Mr Jenny concluded that both competition and industrial policies inform each other. Industrial policy corrects the insufficiencies of the most static approaches of competition law enforcers, while competition policy ensures that industrial policy instruments are not used in a way which needlessly reduces competition. Adjustments are going towards more intervention and cooperation; competition will have an important role to play in keeping this change from getting out of hand. Before handing over the microphone to the participants, Antoine Winckler asked the

panellists their views on regulatory capture, noting that it has been shown that the alliance of various interests and political lobbies greatly influenced the policies adopted and maintained in the United States over the decade that followed the 1929 crisis, in a very anticompetitive way.

“THE GLOBALISATION OF VALUE CHAIN IN AN UNCONTROLLED WAY HAD A COST, WHICH WE PAID DURING THE CRISIS IN TERMS OF ABILITY AND FLEXIBILITY TO REACT TO CRISIS SITUATIONS.”

FRÉDÉRIC JENNY



Mr Jenny made the observation that there is a risk of regulatory capture whenever a government intervenes in the field of economics. The focus is also on the GAFAN, as there has been capture by their competitors against them. Frédéric Jenny advanced that having checks and balances, competition policy together with industrial policy, may be the best way to minimize the risk of a massive attempt to capture one or the other institution in charge of competition policy or industrial policy. Mr Aghion stressed the importance of not preventing creative destruction.

Mr Winckler also raised the issue of the granting of aid to incumbents in the air travel industry on a gigantic scale. Mr Combe stressed that while antitrust authorities are independent and thus immunized from political pressure, the same cannot be said with respect to industrial policy makers. Some small but efficient firms suffer from the support given to bigger incumbents because they do not have access to the political decision-making process.

Questions & Answers

A participant asked the panellists their views on the creation of European champions considering the debates spurred by the refusal of the *Alstom/Siemens* merger and the recent calls for industrial reallocations and sovereignty. Mr Jenny expressed distrust in the policy consisting in developing “champions”. Industrial policy may be useful to facilitate the transition of inefficient firms that are not competitive, not to pick winners. He also stressed that the development of champions is associated with a different agenda than the promotion of technology. Mr Combe explained that the relationship between the development of champions and innovation depends on each case, considering the pipelines of innovation of merging firms. Furthermore, the assessment of the effect on innovation in the long term is particularly difficult.

A second question related to the relevance of loosening up intellectual property protection to encourage access to proprietary knowledge. Mr Aghion highlighted the complementarity of competition policy and patent protection policy.

Answering a question about crisis cartels, Mr Combe reminded the prohibition and the absence of exemption, before raising the debate about the relevance of crisis cartels from a strictly economic point of view. He distinguished between different kinds of crisis cartels: cartels to set a fair price for the purpose of avoiding that some inefficient firm leaves the market; cartels to restrict output; and cartels to reduce capacities by encouraging inefficient firms. Regarding the latter kind of crisis cartels, he explained that inefficient firms are firms with very high costs but a whole technology and considered that it may be relevant to exempt such agreements as they contribute to promote economic progress. Inefficient firms will eventually leave the market unless, as Mr Jenny stressed, sunk costs and exit costs are exceptionally high. The lack of incentive to leave the market results in overcapacity. Subject to this limit, Frédéric Jenny agreed that there is a convincing rationale for exempting some crisis cartels.

A participant raised that, back in the 1980s, a merger between Enimont and ICI to create European Vinyls Corporation led to the consolidation of the PVC industry. The parties put together a joint venture that was initially supposed to be only for a limited period of time — initially three years — and subsequently changed into a permanent structure. The Commission agreed to lift the limitation on duration and the vehicle became a “concentrative joint venture”. In this case, Enimont and ICI could not operate separately because investment was required; the operation was approved simply because of the economic conditions prevailing at the time. Thus, this case reveals that regulators pick and choose which operations fall within the scope of the prohibition on cartels. ■