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Key Contacts



Alberta Laschena

Partner, Competition

t.: +32 495259646

e.: alberta.laschena@kreab.com



Theodoros Birmpoutsoukis

Associate Director

t.: +32 499920649

e.: theodoros.birmpoutsoukis@kreab.com

How could Competition rules contribute to an EU industrial policy?

The role of politics

In her new dual portfolio as EVP and Competition Commissioner, Margrethe Vestager has been working extensively on assembling a Strategic Plan on Competition Policy for the next 5 years.

This Plan will consist of policy measures that, in line with Von der Leyen's political agenda, aims to boost the competitiveness of European industry. But establishing the direction of EU competition policy for the next 5 years will doubtless entail the search for an elusive equilibrium. She will have to reconcile differing views between the European Commission and some Member States – and also amongst national governments – on the role that competition policy should play in strengthening the EU's industrial base. This will be no easy task.

The Commission's strategic agenda was shaped by a combination of factors including:

- the ambition to boost European industry and make it more globally competitive;
- globalisation and the rapid evolution of the digital economy; and
- the political pressure that several Member States placed on the EU.

These ambitions were central to the much debated and awaited New Industrial Strategy published on 10 March 2020, intended to help Europe's industry lead the twin transitions towards climate neutrality and digital leadership. The strategy outlines a roadmap of legislative and non-legislative initiatives to be taken by the Commission over the course of its mandate. In particular, the Commission outlines how a revision of competition rules will be key to underpinning the achievement of the aforementioned objectives.

Ensuring a level playing field

Critical objective of the Commission is to ensure there is a level playing field. It must also make the EU competition rulebook fit for purpose, in line with the new challenges posed by the digital economy and the European Green Deal. **The Commission is already prepared to carry out its assessment.** In particular, the Commission has announced the review of:

- the Market Definition Notice (Public consultation in Q2 2020).
- the Vertical and Horizontal Block Exemption Regulations.
- Evaluation of merger control.
- State aid guidelines, including those on Energy and Environment (by 2021); and the
- Use of the sector inquiry tool in new and emerging markets that are shaping our economy and society.

To promote investments and fund the decarbonisation process, the Commission will expand use of Important Projects of Common European Interest (IPCEIs) with a strong focus, for instance, on the first IPCEIs on batteries and microelectronics. The Commission will also review **State Aid rules for IPCEIs**, including energy transition projects, **in 2021.**

The announced review of the **Market Definition Notice** will consider the emergence of global markets and the scope of transactions in this respect. We understand that the **review of the State Aid modernisation package** will be adjusted to boost the approval of IPCEIs, such as the recently approved support to the **European Battery Alliance**. Moreover, a number of initiatives in the digital sector such as AI legislation and a European Data Strategy aim to transform Europe into a leading player in the global digital economy.

In addition, to secure a level playing field for European companies vis a vis foreign, state owned companies in the EU and globally, the Commission announced that by mid-2020 it will explore how to strengthen anti-subsidy tools. It will address this in the **White Paper on an Instrument on Foreign Subsidies**, which will target distortion caused by foreign subsidies within the Single Market. It will follow up with a proposal for a legal instrument in 2021. The White Paper is also expected to tackle the issue of access for these companies to procurement markets and EU funding.

The "big four" Member States

The publication of the Industrial Strategy comes as some EU Member State governments, in particular France and Germany, have mounted increasing political pressure on the Commission to revise its policy approach to the support of European industry. This comes from growing competition from third countries and the growing challenges of protectionism and populism globally.

Following the European Council Conclusions of March last year inviting the Commission to present a long-term vision for the EU's industrial future by the end of 2019, Poland and Italy joined the Franco-German proposal for modernising EU's competition rulebook. The Joint proposal aims to:

- more closely review deals involving foreign state-owned companies as well as the financing model of such non-EU companies.
- evaluate and modernise current guidelines on the assessment of horizontal mergers and on the definition of relevant market in order to introduce more flexibility.
- provide companies with guidance to promote the creation of European Joint Ventures to reinforce cross-border European value chains and competitiveness in the global market.

The other Member States

In recent months however, other Member States have taken contrasting positions from those of the "big four". Some fear that the creation of European champions might jeopardise Foreign Direct Investments in their countries, and would impede the growth of smaller European competitors within the Single Market. How often would European champions be chosen from the less politically and economically powerful states, versus the big four?

Some Member States have expressed individually the need to modernise EU competition rules to make them more in line with the evolution of modern economy. However, they have declared their disagreement to a possible change of the legal framework based on the French-German proposal.

In July 2019, for example, five Nordic Director-Generals for Competition jointly supported stricter merger controls in a June 2019 online article. They defended the current regime's preservation of consumer welfare, legal certainty and transparency, depicting the Franco-German proposal as leaving EU merger control vulnerable to political decision-making. Furthermore, they stated current rules enhance intra-EU competition amongst EU firms, which allows them to compete better globally; softer rules would damage smaller member state domestic markets such as the Nordics.

Ultimately, some Member States will adhere to the view that protecting competition from politics is paramount. At the beginning of March this year, just ahead of the adoption of the Industrial Strategy by the Commission, 15 Member States, among which Austria, Finland, the Netherlands, Poland, Portugal, Spain, and Sweden argued against allowing too much interference in competition policy. They stated that: "A fair, open and competitive home market needs to remain a starting point for promoting the level playing field globally as well as within the EU. This goes hand in hand with maintaining a strict and independent competition policy fit for the digital and climate transitions. In other words, some work will be needed to get everyone on board."