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Europe's long road to recovery – what impact will the crisis have on the direction of policy?

As Europe begins the long process of recovery from the devastating COVID-19 crisis, industrial strategy looks set to take centre-stage

This weekend, EU leaders are physically meeting in Brussels for the first time since February. They will discuss the unprecedented COVID-19 recovery plan and new long-term EU budget. It is unclear if EU leaders will ultimately reach a consensus on Next Generation EU's €750 billion package, along with the expanded EU budget for 2021-2027 that boosts the total to €1.85 trillion. German Chancellor Merkel warned that "the road we have to tread is still rocky ... I don't know if we will reach an agreement." Nonetheless, Merkel urged for a "massive" recovery package to be secured, given the enormity of the task at hand.

This context presents a defining moment for the EU. Effective and well-coordinated policymaking with a holistic strategy will be more critical than ever. The Commission is determined to accelerate progress on flagship programmes, including the European



Green Deal and the Digital Strategy and intends to make the two strategies central to the recovery - as President von der Leyen stated:

“The recovery plan turns the immense challenge we face into an opportunity, not only by supporting the recovery but also by investing in our future: the European Green Deal and digitalization will boost jobs and growth, the resilience of our societies and the health of our environment. This is Europe's moment.”

President of the European Commission Ursula von der Leyen, 27 May 2020

A central goal of the Commission’s [revised 2020 Work Programme](#) is a twin transition to a green and digital economy in Europe – to make the bloc more resilient and sustainable. Indeed a number of initiatives deemed essential to the recovery will be adopted as initially planned – including the Digital Services Act and [White Paper on an Instrument on Foreign Subsidies](#).

With such ambitious digital and green recovery strategies, how the Commission reviews and reforms competition policy will have significant bearing on the progress of the recovery proceeds – at the same time, the recovery will likely influence the development of the EU competition rulebook and its enforcement in coming years.

The far-reaching and complex impact of COVID-19 has already led to certain novel applications of EU competition law, that helped optimise supply chains and delivery of essential products and services at the outset of the global lockdown. Unprecedented state aid exemptions have also been put in place, with the [Temporary Framework](#) now extended until the end of December 2020 at least, to encompass liquidity and recapitalisation measures that Member States may take to avoid the unnecessary



demise of non-financial firms that were viable pre-Covid-19, and aid in the form of subordinated debt.

Now, it is increasingly apparent that the COVID-19 crisis is adding pressure on EU legislators to use competition rules to directly bolster EU competitiveness, boost its technological sovereignty, and creates an assertive EU industrial policy.

This view has been endorsed publicly by several prominent European figures in recent times. This week, incumbent French Prime Minister Jean Castex urged for enhanced economic sovereignty at EU-level, announcing to the French national assembly that *“we will make sure EU competition rules are adapted to favour the emergence of European champions.”* Castex’s statement largely chimed with previous statements by Macron and Merkel, the latter stating in May that:

“The EU’s competition law is too narrowly focused on Europe and not enough on global issues.”

German Chancellor Angela Merkel

German Chancellor Merkel and French President Macron had at that time urged EU lawmakers to protect EU technological sovereignty and adapt the EU competition rulebook in light of emergent global threats. Merkel said the bloc “needs to have the courage to create global champions,” while Macron remarked that the present rulebook “... is too focused on consumer rights and not enough on EU champions’ rights.”

Of course, some analysts might argue that competition law *should* be focussed on optimising consumer choice, rather than political or strategic objectives. In any case,



it is clear the COVID-19 crisis is magnifying questions of the interplay between EU competition and industrial policy, the growing protectionist trend worldwide, and the perceived need to level the playing field between the EU and third country companies.

Is it possible that the long-term impact of the crisis could be a more lenient Commission approach to competition to favour EU industry? At least for the duration of the crisis, we are likely to see continued leniency with state aid. The sheer scale of state aid packages that have been approved under the Temporary Framework demonstrates the enormity of this crisis and also the need for rapid action to allow Member States to deploy assistance where needed to save faltering sectors and enterprises.

Even after the worst of the COVID-19 crisis is behind us, antitrust enforcement will take into account the exceptional circumstances the companies will have to deal with. However, it is worth noting that even during the ongoing crisis, companies are still barred from restricting competition by agreement or other forms of coordinated behaviour as laid out in Article 101 TFEU. Equally, the Commission will hardly permit Member States to carry out extensive domestic subsidisation in the long-run, given the distortive effects this will have in the Single Market. Rather, the Commission will likely direct the ongoing review of state aid rules to set guidelines promoting the restructuring of distressed industries and take a stronger stance on foreign subsidies – for which the [White Paper on foreign subsidies in the Internal Market](#) is an important first step.

With mergers, there had already been mounting pressure on the Commission to reassess its approach before the crisis. The “[Franco-German Manifesto for a European](#)



[industrial policy fit for the 21st Century](#)” had been a high-profile call to update merger guidelines to better account for global competition, and importantly, to give the Council a right of appeal under certain conditions. The debate as to creation of “European champions” therefore predates the crisis. Nonetheless, in coming months and years we may see a wave of consolidation across numerous European sectors, particularly those most adversely affected – such as the hospitality sector. This could both boost EU competitiveness but also prevent EU companies from exiting the market.

Merger review thus looks to be a particularly thorny issue, as undertakings face unparalleled challenges. It is likely the Commission’s merger review will take industrial strategy into consideration, but this was also a pre-crisis likelihood. Indeed, Vestager has herself modified her position on this since her first term, with her stating last year that she would “balance” Franco-German merger demands against “other voices.”¹ The current review of the market definition notice might be a first step in this regard.

Looking forward, it will be interesting to see how the Commission’s accelerated work on the digital-competition nexus is put into practice. To recall, the Commission is still considering feedback on public consultations on future regulation of the platform economy, both ex-ante controls via the Digital Services Act, and also the New Competition Tool, which aims to prevent tipping markets in the digital economy, in particular large online platforms that can behave as “gatekeepers.” The New Competition Tool has already been criticised for having protectionist ambitions – by curbing the influence of US large platforms and promoting an EU digital model – but

¹ “Vestager will ‘balance’ Franco-German merger demands against ‘other voices’” (10 September 2019), MLex



others have argued that successful use of the tool could be an important first step in opening up digital markets to smaller competitors.

It is therefore clear that the COVID-19 crisis is, in many ways, magnifying existing imbalances, and drawing greater attention to perceived problems in the current rulebook. Nevertheless, on the whole, rather than establishing new competition trends, the COVID-19 crisis is largely accelerating action at EU-level, and amplifying previous calls from the political world for a stronger defence of EU strategic interests by the bloc’s competition legislators.

All in all, it remains to be seen how the Commission will ultimately react to these different stances and how they will balance political pressure with industry’s need for legal certainty and enhanced predictability in competition enforcement.

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