Global Counsel

EU merger control and the industrial policy arms race

Blog post by Head of Europe Tom White, 14 February 2019

French finance minister, Bruno Le Maire, called this week for political oversight of the quasi-judicial commission merger control process, creating a new tool to help European industries compete internationally. With the European Parliament and European Commission entering a period of transition next month, national leaders will have space to set the agenda for an EU response to the unorthodox industrial and trade policies of the USA and China. How serious are the renewed calls for European Champions from Paris, and the idea that merger policy should be a political tool for creating them? They have found strong support from Berlin and from the current frontrunner to be next commission president, Manfred Weber.

The basic problem is clearly defined: the EU produces few genuinely world-beating firms in 'new' digital industries, and its best opportunity to rival Tencent or Google in areas such as artificial intelligence lies in modernising traditional champions in manufacturing industries or banking. This can only happen if those companies have sufficient scale to secure higher returns on investment and to enter challenging overseas markets. Le Maire's proposal for national finance ministers to have the final say over decisions by the EU competition commissioner, even where this inhibits competition within the EU, is politically attractive for several reasons. First, this type of intervention can be targeted more precisely than industrial policy tools with sector- or economy-wide impacts, such as tax breaks for business R&D, investing in workforce skills or introducing tariffs. Second, the costs of any mistakes are shared (almost) invisibly among consumers, unlike *grands projets* such as Concorde, Galileo or Quaero, which appear on government balance sheets and can incentivise ongoing subsidy dependence. Third, allowing a merger is harder for another country to retaliate against, in contrast with reactions to more explicitly protectionist measures. Competition policy is also an area where France and Germany see potential to set the EU agenda – with an eye on Germany's 2020 EU presidency – after failing to win support for their proposals for euro zone reform and common EU taxes.

The challenges, however, are equally clear. National politicians like the idea of European champions when the company is one of their own. France and Germany were horrified by the commission's recent decision to block a merger between their respective rail industry champions, Alstom and Siemens, on the grounds that it would create dominance in the market for rail signalling. Other countries – whose consumers (or government agencies) would have less choice and higher costs – were less keen on the merger. Le Maire's own enthusiasm would be tested if policy were to favour making an Italian or Polish company into a European champion, with the prospect of then dominating the French market and enjoying more bargaining power with French firms in their supply chain. This makes it less likely that sufficient consensus can be found ahead of the new commission taking office, especially as neither the current Romanian presidency, nor the incoming Finnish presidency, have shown appetite for convening a debate on the subject.

Much will therefore depend on the identity of the next commission president (the two favourites, Weber and Michel Barnier, are German and French) and the next competition commissioner. The latter is now seen as a top prize in the forthcoming top jobs negotiations, after Margrethe Vestager's success in using it as a political platform to take on corporate tax avoidance and Google. A commissioner from a smaller member state will normally be more reliant on their services, and consequently support the strong views within the Directorate-General for Competition (DG COMP) that independence is non-negotiable. They may also seek political protection from other sources, such as the European Parliament, for their consumer protection mandate. Alternatively, a commissioner from a large member state may be more open to a degree of political oversight, in the knowledge they will have support from their national government in any council decisions. What is certain is that Alstom-Siemens has established a precedent for a new level of pressure on EU merger officials, just as they are about to lose their strongest champion with the end of Vestager's term and with calls from across the political spectrum to review aspects of their methodology in other areas such as state aids and market definition.