

Unclassified

English - Or. English

17 May 2024

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Procompetitive Industrial Policy – Note by Sweden

12 June 2024

This document reproduces a written contribution from Sweden submitted for Item 7 of the 143rd OECD Competition Committee meeting on 12-14 June 2024.

More documents related to this discussion can be found at
www.oecd.org/competition/pro-competitive-industrial-policy.htm

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1. Introduction

1. The interplay between industrial policy and competition policy is a common theme in the advocacy work by the Swedish Competition Authority (SCA), usually in relation to consultations by the government on proposals containing industrial policy elements or strategies. To the extent that the SCA deems that such proposals have adverse effects on markets, it will typically submit detailed competitive assessments and, where appropriate, present alternative solutions to mitigate such effects. Through this consultation mechanism, the opinions submitted by the SCA can be taken into account in the final design of industrial policy instruments by the government.

2. There are many policy areas besides industrial policy that may distort or foster competition, including, for example, policies for crime prevention and trade. The SCA uses its advocacy toolbox to address competition problems that stem from all policy areas, not only industrial policy, whenever they merit attention.

3. The remainder of this note therefore contains observations and conclusions that may apply to other policy areas, which is unavoidable given the intentionally broad definition applied for the purposes of the roundtable and does not alter any of the conclusions in this note.

4. This note begins by briefly outlining how the SCA has up to now dealt with the interrelationships between industrial policy, competition policy and competitiveness. The two latter terms are often confused with each other among policymakers and the note presents a clarification of the distinction that the SCA regularly uses.

5. The next section briefly describes the SCA's direct experience with enforcement and advocacy relating to industrial policies in Sweden. It then comments on the nature of the most likely conflicts between the two policy areas, proposing that the typical situation is not about general objectives or goals, but rather about instruments and their implementation. The note uses here the taxonomy for industrial policies recently proposed by the OECD.¹

6. The note concludes by reflecting on possible implications for what competition authorities can and should do in the area.

2. Industrial policy, competition policy and competitiveness

7. In the SCA's experience, the interplay between the two policy areas and competitiveness often needs to be clarified to stakeholders and policymakers.

8. The set of possible objectives and goals that underpin an industrial policy are in practice very wide, ranging from growth, competitiveness, strategic autonomy, resilience, environmental concerns, equity and security, and many more. Such objectives are

¹ OECD (2022a), An industrial policy framework for OECD Countries: old debates, new perspectives, OECD SCIENCE, TECHNOLOGY AND INDUSTRY POLICY PAPERS, May 2022 No. 127, page 6

commonly achieved by increased economic performance of private and public undertakings.

9. In contrast, the objective of competition policy is narrower: the protection of competition in order to make markets work efficiently. All elements that typically belong to competition policy, be it reducing entry barriers, antitrust enforcement, merger control, sector regulation, consumer protection, public procurement, transparency, and so on, can be regarded as subordinated objectives in support of this overarching goal.

10. An efficient market is a testing ground for entrepreneurs to test ideas and for customers to compare alternatives. In this process of free selection, the best and most apt firms survive and grow whereas the lesser successful stagnate and eventually exit.

11. The critical interplay between industrial policy and competition policy concerns how this works in practice: if competition policy is successful, those elements of industrial policy that are reliant on the market mechanism will also be successful. Absent efficient markets, most industrial policies risk failure.

12. If the two policy areas complement each other in this way, the participating enterprises can improve productivity and eventually become competitive on markets in other countries.

13. Competitiveness is therefore a measure of relative performance of domestic versus foreign firms. For a small and export-dependent economy such as Sweden, competitiveness has always been an integral component of most industrial policies.

14. Competitiveness is therefore the litmus test of the success of the combined outcome of both industrial and competition policy.

15. This perspective defines the relationship between competition and competitiveness: the former is one of the drivers of the latter. Industrial policy is another driver.

3. The experience of the Swedish Competition Authority

16. Industrial policy has generally not had any material impact on the *enforcement* of competition rules by the SCA. Nor have such considerations been raised as relevant circumstances by the courts.

17. One possible exception to this general observation is a case involving a reduction of a fine for an anticompetitive agreement between two firms.² The reduction was motivated by the potential disruptive effect on the dairy industry in Northern Sweden, subject to various regional support programmes.

18. Industrial policy considerations have had considerably more material impact on advocacy activities pursued by the SCA. When considering these activities, it is useful to distinguish between *reactive* and *proactive* advocacy.

19. Reactive advocacy contains all situations where the expertise of the SCA is consulted on the initiative of an external party. The typical situation is when the government refers the output from a public inquiry for consultation on the findings and proposed solutions or reforms to be implemented in the future. Along with other relevant authorities and stakeholders, the SCA is therefore regularly consulted on policy proposals

² Case No. 718/2021, para 391, 393 and 394.

by the government containing industrial policy elements or strategies. This is the most common form of advocacy by the SCA in the area of industrial policy.

20. Reactive advocacy may also contain the participation by the SCA as experts in public inquiries commissioned by the government. Similar requests are sometimes also made by other government agencies and local authorities. Most reactive advocacy activities contain *ex ante* consultations, referring to policies not yet in place or to changes in current legislation in the future.

21. To the extent that the SCA finds that proposed reforms would have adverse effects on competition, it will present this view in its consultation response, and may express the opinion that a proposal should not be implemented unless revised to eliminate identified concerns. In this respect, the SCA applies principles aligned with the OECD Recommendation and Toolkit on Competition Assessment. Such opinions are usually acknowledged by lawmakers and the government alongside other consultation responses as part of the legislative process, although the SCA has to date not systematically evaluated the extent of the correlation between the views it expresses and the outcome of legislative proposals.

22. Advocacy relevant for industrial policy can also be *proactive*, where the initiative emerges from the authority itself. These activities may take many forms, including, for instance, reports or memorandums addressed to the government proposing amendments to current legislation. Recent examples include proposals to introduce a market investigation regime in Sweden as a complement to the competition rules, and a revision of the rules on competitive neutrality between public and private undertakings in the marketplace.³

23. Other examples include market studies on the SCA's own initiative, organising conferences, or informing other regulators of market distortions related to the enforcement or policies under their responsibility. Some examples also include descriptions in enforcement decisions of competition problems which cannot be properly addressed by competition law, including the design of public procurement.⁴

24. Such advocacy mainly concerns current situations, after the market distortion has materialised. In contrast to reactive advocacy, proactive advocacy is more often conducted *ex post*.

25. The forms of advocacy in relation to industrial policy can therefore be summarised in a simple matrix:⁵

| Type of Advocacy | Ex ante | Ex post |
|------------------|-------------------------|---|
| Reactive | Referrals on new policy | |
| Proactive | | Making the government aware of market distortions |

³ The need for a market investigation tool was expressed in a number of reports by the SCA during 2021 and 2022. On 7 November 2023, the SCA sent a memorandum (Case No. 744/2023) to the government with a request to revise the rules on anti-competitive sales activities by public entities (Chapter 3, Section 27 in the Swedish Competition Act (2008:579)).

⁴ In a merger case (No 205/2021), the SCA found that the competitive situation in larger public procurements of the products in question was limited and adverse effects might arise as a consequence of the merger unless the public procurement contracts were designed in a more pro-competitive way. These findings were detailed in the decisions and forwarded to the contracting entity after clearance of the merger.

⁵ The distinction between *ex post* and *ex ante* assessment is also considered in the OECD Competitive Assessment Toolkit.

26. The Swedish experience in the area thus mainly contains reactive advocacy, responding to referrals from the government on proposals, and making decision-makers aware of market distortions.

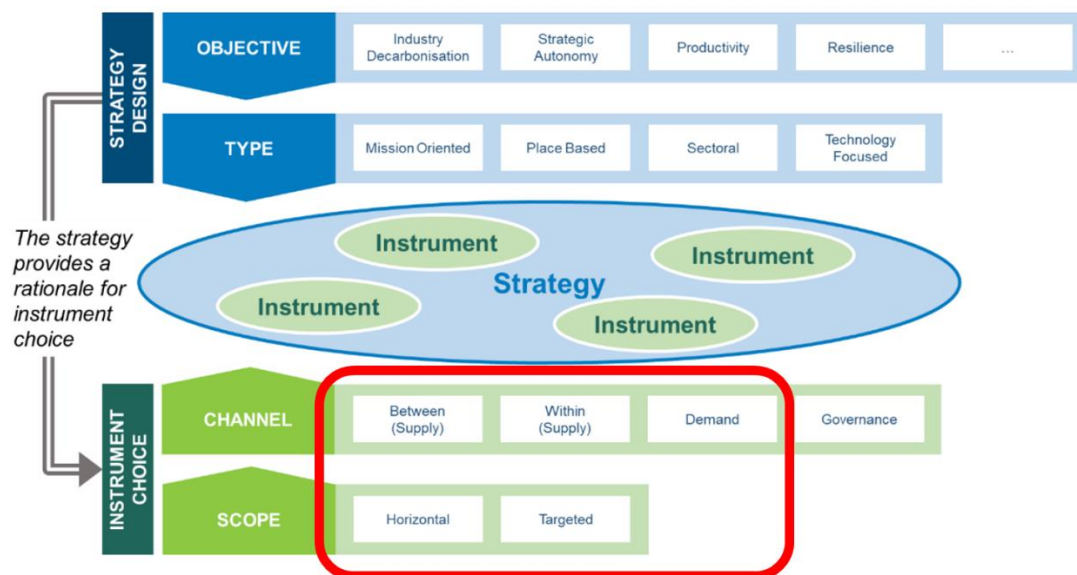
27. Two cells in the matrix are empty – reactive advocacy ex post and proactive advocacy ex ante – which, as experienced by the SCA, are rare. In other words, the SCA is not often consulted on industrial policy that already has been launched. It seldom takes initiatives on industrial policy that are in the planning stage and not yet implemented.

28. These two types of advocacy forms may represent new opportunities for competition authorities in relation to better contributing to procompetitive industrial policies, which is addressed in the concluding section.

4. Are the goals of competition policy and industrial policy consistent?

29. The question of whether industrial policy and competition policy are in conflict with each other is a critical one. Analysing the reasons for potential conflicts also raises new questions, such as “does the absence of conflicting goals imply that the industrial policy in question is truly procompetitive?”, and “in case of a conflict, which policy area should alter its goals?”.

30. Any tentative resolution to a conflict need be careful about semantics and concepts. For that purpose, it is useful here to adopt the OECD taxonomy⁶ of industrial policies outlined in a recent report, reproduced below.



Source: OECD.

31. The taxonomy distinguishes between strategy design and instrument choice. The basic elements of the strategy contain its objective, which can be decarbonisation, autonomy, productivity, resilience or any other objective. Strategies can be of various types, focussing on sectors, places or technology. It can also be mission-oriented, sometimes labelled as “Moonshot”.

⁶ See footnote 1

32. Depending on the objective and the type of industrial policy strategy, the best-suited instruments are chosen by the policymaker. Such instruments can either be directed to conditions that affect the performance *within* firms, such as incentives for investment or access to inputs, or *between* firms, that relate to the conditions in the market place, including IP, taxes and trade, and so on. The demand side and governance are also included as important components in the instrument-channel category in this taxonomy.

33. In the experience of the SCA, the overall *goals* of industrial policy and competition policy seldom collide with each other.

34. Efficient markets and sound competition are generally not in any obvious and unavoidable conflict with an objective of achieving autonomy, resilience or productivity. Also, the type contained in the strategy design, at this overarching level, does not have any built-in conflict with a procompetitive industrial policy.

35. The potential inconsistencies between the two policy areas are much more prone to emerge in the formulation of *instruments*.

36. For example, *within*-instruments such as tax exemptions, public venture capital, preferable loans, guarantees, and privileged access to inputs firms, and so on, may represent competition problems if they distort the level playing field for the entrepreneurs. Further, *between*-instruments may represent similar problems if not adequately designed in order to preserve the market selection mechanism. Demand side instruments are no exception. These instruments are marked with a bold red line in the figure above.

37. The challenge for industrial policy to ensure pro-competitiveness, therefore, is to design instruments in a way that does not distort the market mechanism. The right mix and design of instruments can avoid conflicts between industrial policy and competition policy. It also promises the best chance to reach the overall goal of the industrial policy itself, which appears to be supported in current research.⁷

38. In conclusion, it is the *instruments* of industrial policy that represent the principal source of inconsistencies with competition policy, not the goals themselves. The right mix and design of instruments is the prerequisite for a procompetitive industrial policy.

5. What can and should NCAs do?

39. The discussion above has implications for what competition authorities can and should do.

40. *First*, focus should typically be on instruments, not on goals per se. Competition authorities should focus their expertise on how efficient markets can foster better performance among enterprises and vet instruments to ensure they are consistent, appropriate and not distorting competition in the market place.

41. *Second*, competition authorities may reconsider the mix between being reactive and proactive in their advocacy work. In the experience of the SCA, there is a significant potential in prioritising proactive advocacy as an important complement to reactive

⁷ Industrial policy is more likely to be successful when it is implemented in markets of some optimal degree of competition according to Srivastava, S. (2023), “Briefing paper: Interaction between Competition and Industrial Policies”, CUTS Centre for Competition, Investment & Economic Regulation. Also, Aghion, P. et al. (2015), “Industrial Policy and Competition”, *American Economic Journal: Macroeconomics* 2015, 7(4): 1–32 shows that industrial policy in China was more successful in sectors with more competition.

advocacy. Further, as explored in the OECD Competition Assessment Toolkit, the distinction between ex post and ex ante advocacy is also worthwhile to consider. There may be a strong case for competition authorities to devote more resources to proactive advocacy ex ante, or in other words, to address industrial policy at the planning and formulation stage as early as possible.