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Procompetitive Industrial Policy – Summaries of contributions

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This document reproduces summaries of contributions 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

Antonio CAPOBIANCO
Antonio.Capobianco@oecd.org, +(33-1) 45 24 98 08

JT03545572

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BIAC

The term “industrial policy” is broad, encompassing pro-competitive, non-discriminatory policies as well as those that have the intention or effect of seeking a particular market outcome, often promoting special national interests.

BIAC agrees with the position adopted by the OECD Secretariat in the Background Note on Pro-competitive Industrial Policy that “well-designed government programmes or strategies, can be supportive and respectful of competition, or even create or facilitate it. Moreover, competition policy (through advocacy and enforcement) can support industrial policy by ensuring markets are as competitive as possible.”¹ The Background Note does however stress that, in recent years, views on industrial policy and its effects on competition policy have shifted, and there may be instances in which potential negative (intended or unintended) consequences may result.² BIAC’s contribution will focus on two principal issues: (a) industrial policies that are discriminatory and distort market dynamics; and (b) possible mechanisms to address the impact of anti-competitive policies.³

BIAC’s main submission, set out in this paper, emphasizes the need for objectivity and transparency in industrial policies that have the aim or effect of influencing competition dynamics or competition policy, and to preserve legal certainty as a critical rule-of-law element for business confidence and incentives to invest.

¹ OECD, Pro-competitive Industrial Policy – Background Note, DAF/COMP(2024)3, ¶¶ 3, 50 (May 14, 2024), [https://one.oecd.org/document/DAF/COMP\(2024\)3/en/pdf](https://one.oecd.org/document/DAF/COMP(2024)3/en/pdf) [hereinafter OECD Industrial Policy 2024 Background Note].

² *Id.* ¶ 4.

³ Pro-competitive or competitively neutral industrial policies will not be discussed in this contribution.

Colombia

In Colombia, the economic model operates within a social market framework where freedom of competition is recognized as both an individual and collective right. This concept extends beyond individual prerogatives to encompass social functions and responsibilities that legitimize economic freedoms. The Constitutional Court emphasizes that freedom of competition serves not only to protect entrepreneurs' interests but also to safeguard the public interest and contribute to broader economic and social development.

In this sense, pro-competitive industrial policies refer to how the State develops strategies to promote economic development while maintaining free competition. Industrial policies, in general, are designed and executed from four perspectives: (i) business productivity, (ii) productive transformation of sectors and regions, including promoting productive associations, (iii) internationalization of businesses and consumers, and (iv) free competition. By promoting fair competition, pro-competitive industrial policy aims to prevent monopolistic practices, level the play field for businesses of all sizes, and stimulate dynamic forces in the market in pursuit of the general interest.

Colombia's legal framework empowers the competition authority to consider industrial policy considerations. This includes a preventive approach through functions such as prior control of mergers and acquisitions, competition advocacy, and compliance management. The authority also plays a corrective role by investigating and addressing restrictive competition practices, aligning its actions with public policy objectives aimed at advancing national reindustrialization efforts. Balancing industrialization goals with competition norms presents challenges, highlighting the need to promote growth, innovation, efficiency, and consumer welfare while addressing issues such as gender biases in market regulations and the impact of existing rules on concentrated markets like spectrum auctions.

The cases analyzed illustrate the complexity of striking a balance between industrialization policies and competition norms in Colombia. While it's important to foster industrialization to drive growth and job creation, it's equally essential to ensure a fair competitive environment that promotes innovation, efficiency, and consumer welfare. For example, industrial policies governing a market may, albeit not overtly, be tainted by gender stereotypes, as seen in the investigation of the women's professional soccer market. Other example is how established rules could impact competition in a concentrated market as seen in the spectrum auction case.

European Union

The competitiveness, growth, and fairness of the EU economy in the years to come relies on deploying the right set of economic policies to grasp the opportunities offered by the digital and green transitions in an increasingly challenging geopolitical context. A strategy for industrial competitiveness in the EU economy must combine structural reforms and competition policy enforcement with procompetitive industrial policies that leverage the potential of the EU economy, addressing market failures in cost-efficient ways, without undermining market competition.

Active policies in support of the EU industry and competition policy enforcement in the EU single market complement each other. The dual green and digital transitions, as well as the objectives of open strategic autonomy, economic resilience, and cohesion in the EU, require the mobilization of public and private resources. Public support must be properly designed, accounting for trade-offs: achieving efficiencies by effectively addressing well-identified market failures and minimising unintended competition distortions. Industrial policies must be designed ensuring that overall, their benefits exceed their costs. The EU State aid control framework reflects this approach and enables the design and deployment of pro-competitive industrial policies.

Policies in the EU are formulated in a globalized economy and must consider the interdependencies through global supply chains, capital flows, trade relations, and policy responses in other jurisdictions. Protectionist policies merely trying to support domestic firms to the detriment of foreign firms, or to attract investment not based on comparative advantages, but on fiscal capacity, would trigger global subsidy races, undermining economic openness and trade, and producing suboptimal outcomes for all. Instead, pro-competitive industrial policies can contribute to realize potential efficiencies according to the comparative advantages of each economy without undermining the economic openness and international trade that support long term economic development and growth.

Effective antitrust and merger control enforcement in a more integrated EU single market, together with procompetitive industrial policies and regulatory reform, are key drivers of future EU competitiveness. Procompetitive industrial policies in the EU today need to be designed with an EU-wide mindset, because the challenges are common and markets more integrated. This requires EU policy instruments, including EU-level funding and effective enforcement of EU State aid control, to meet shared competitiveness challenges efficiently while preserving internal cohesion in the EU.

France

France's strategic autonomy, securing its supply of raw materials, supporting strategic sectors, and the competitiveness of its national companies are now sovereignty issues underpinning French industrial policy. France has been more profoundly affected by deindustrialization than its main partners, leading it to implement a competitive industrial policy. In the face of the ambitious industrial policies of the United States and China, France is adapting to these profound imbalances that could ultimately weigh on the country's international competitiveness. Concurrently, the growing consequences of ecological crises caused by climate change and disruptions from the digital transition pose a challenge to competitiveness and call for intensified industrial policies. Support for industrial policy has recently resulted by the creation of numerous mechanisms (France Relance plan in 2020, France 2030 plan in 2021) based on two main issues: increasing competitiveness and reducing dependence on strategic inputs. While such sovereignty issues fall within the scope of industrial policy, competition policy also plays a role in achieving these objectives while ensuring adherence to essential competition principles. Indeed, industrial policy and competition policy aim for the same goal of economic efficiency and competitiveness and must be formulated and implemented in a complementary and coordinated manner. In this respect, the relationship between competition policy and industrial policy raises less a problem of compatibility and more a challenge of balancing support for strategic industrial hubs with compliance with competition law.

In this regard, the French competition authorities, namely the Directorate-General for Competition, Consumer Affairs, and Fraud Control (DGCCRF) and the Competition Authority, have already adapted their analyses and tools to the new industrial policy challenges.

Greece

The Hellenic Competition Commission has undertaken advocacy work focusing on the relationship between public policy and competition policy and following a recent legislative amendment is able to decide in specific cases to take no action based on public interest considerations.

To the extent that industrial policy is part of a wider public policy underpinned by public interest goals, this submission may contribute to the current discussion on a procompetitive industrial policy and the role that National Competition Authorities may play to support this.

In this context, this note sets out the advocacy work by the Hellenic Competition Commission to central government bodies and other public bodies to ensure the protection of competition in the context of public policy making.

Further, this note sets out the legislative provisions included in 2022 in national competition law, whereby the Hellenic Competition Commission may issue no action letters on the basis of public interest goals, including business plans of companies focused on achieving sustainable development goals.

Indonesia

The article discusses the role of the Competition Authority, particularly the Indonesia Competition Commission (KPPU), in advising the government on competition policy within industrial regulations. It highlights how government policies aimed at industry development can inadvertently create competition issues, such as monopolies or cartels, and the importance of the KPPU's proactive stance in addressing these challenges. The KPPU carefully applies Indonesian Competition Law, providing recommendations to revise regulations when necessary to foster fair competition. Two case studies, one regarding broiler production and another on cooking oil sales, illustrate the KPPU's interventions. In both cases, the KPPU identified anti-competitive practices, such as price-fixing agreements and market manipulation, and recommended policy improvements to protect consumer welfare and prevent market concentration.

The article emphasizes the meticulous process of providing policy recommendations, including case-by-case analysis and adherence to guidelines like Regulation N. 4 of 2023, which adopts the OECD Competition Assessment Toolkit. Furthermore, it highlights the KPPU's advocacy efforts through letters of policy advice to the government, aiming to improve market conditions and ensure fairness for all business actors. In conclusion, the article stresses the importance of pro-competitive regulations to ensure fairness, consumer benefits, and legal certainty in the market. It underscores the ongoing efforts of the KPPU in monitoring and analyzing industrial policies to strengthen fair competition in Indonesia, calling for the awareness and collaboration of all stakeholders, including policymakers, to uphold competition values.

Italy

The Autorità Garante della Concorrenza e del Mercato engages in competition enforcement and advocacy to preserve and restore open, dynamic markets and promote a "competition-based" industrial policy. This approach is crucial to address Italy's economic structural bottlenecks and support a more resilient long-term development path. The Authority acknowledges the importance of a holistic interplay between competition and contemporary industrial policymaking to cope with market, system, and capability failures.

To this end, the Authority annually puts forward proposals intended to provide guidance to the Italian Government and Parliament in drafting the *Annual Law on Pro-competitive Reforms* or regulations, to eliminate regulatory barriers to market entry, promote competition development, and ensure consumer protection. The 2021 post Covid-19 Italian National Recovery and Resilience Plan (NRRP) made the receipt of certain EU funds conditional upon the timely approval of the *Annual Law on Pro-competitive Reforms*. The NRRP's agenda, explicitly endorsing competition as a driver of recovery to enhance efficiency, economic growth, and social cohesion, supports the Authority's proactive advocacy role in areas deemed strategic for the Italian economy such as communication, energy, transport and port, waste and water cycle. This complements the Authority's traditional advocacy effort, focusing on the main supply-side instruments such as public investment, incentives and direct public ownership of economic activities.

To enhance the system's overall ability to evolve, the Authority has followed a key limiting principle: measures should not result in supporting special interests at the expense of the competition process. In this respect, competition and industrial policy can effectively coexist as complementary instruments, where industrial strategies avoid undue distortions to benefit from market incentives and competitive dynamics. The Authority will continue to assist policymakers in making comprehensive and well-informed decisions that harness the beneficial effects of competition. By a coherent setting of its enforcing priorities, the Authority can complement the pursuit of non-economic public interests, contributing to the overall social cost of industrial policies efforts to promote structural adjustments in Italy.

Japan

The Japan Fair Trade Commission (JFTC) has conducted case investigation and advocacy activities, considering the aspects regarding industrial policy as necessary.

Firms sometimes violate competition laws in order to restrict competition when pro-competitive industrial policies are implemented. The Electricity Cartel case was such an example, where some incumbent electricity suppliers formed cartels and the JFTC took legal measures against them in 2023. The JFTC also informed the regulatory authority about the violation, etc., and the authority issued business improvement orders based on the regulatory law. In the Niigata Taxi Cartel case, in which the cartelists alleged that their conducts were in accordance with administrative guidance by the regulatory authority and therefore justified. The Tokyo High Court rejected the argument, stating that the Court found no coercion beyond a request or general guidance in the administrative guidance. In the NTT East case, the incumbent telecom company argued that, when the regulatory authority didn't order to change the conduct in question based on the regulatory law, no violation of the Antimonopoly Act should be found. However, the Supreme Court rejected the NTT East's argument.

The JFTC has also been making recommendations regarding industrial policy through advocacy activities such as issuing guidelines or conducting market studies. The revision of the Green Guidelines by the JFTC in April 2024 can be considered as an example of collaboration and coordination between competition policy and other policies including industrial policy. Also, the JFTC conducted the market study of fintech businesses in 2020 and the follow-up study in 2023. Based on the results, the JFTC recommended the regulatory authorities and other relevant entities to improve the competitive environments and some of them were realized after the recommendation. In addition, considering that the EV charging service sector is expected to grow rapidly and the market environment should go through dynamic change, the JFTC conducted the market study on the sector and published the report in 2023. In the report, the JFTC made recommendations to promote new entry of EV charger installers and encouraged the relevant ministries to discuss policies for promoting competition, expressing the intention that the JFTC would also participate in the discussion. In light of the recommendation, the major expressway companies are working in the direction of inviting new entrants to the market.

Kazakhstan

The contribution highlights the importance of a competitive industrial policy for sustainable economic growth in Kazakhstan, aiming to reduce reliance on raw material exports and promote high-tech industries. Government programs support industry development, focusing on enhancing competition through various measures.

Key directions of the competition policy include reducing market entry barriers, supporting small and medium-sized enterprises (SMEs), demonopolizing markets, and protecting competition through antimonopoly legislation. Successful initiatives include recent measures to reform state support processes, aiming to standardize procedures and eliminate favoritism through the establishment of a digital ecosystem for streamlined support services.

Korea

Korea achieved remarkable economic growth over a short period of time, owing mainly to government-led industrial policies. However, the problems that followed the rapid growth prompted the government to adopt a market-oriented economic policy approach, which paved the way for the advancements in competition policy. Tensions between industrial and competition policies have existed since their birth, stemming from the contradictory nature of these two policies. Despite changes in industrial policies' implementation and management processes, policy tensions between industrial and competition policies still persist.

However, policy harmonization, or striking a balance between the two policies, seems viable in that the two are both rooted in fair competition within the market under the rule of law and that improving regulations became a strong priority for those government ministries in charge of industrial or competition policies.

To begin with, the Korea Fair Trade Commission (hereinafter the "KFTC") is actively carrying out competition advocacy efforts for promoting pro-competitive industrial policies. For example, other government bodies are mandated to hold pre-consultation with the KFTC when legislating or revising law and issuing administrative action that includes anti-competitive elements. Moreover, the KFTC effectively prevents newly established or strengthened policies from being introduced to the market by conducting preemptive analysis and evaluation of their impact on competition, as the KFTC is in charge of conducting the Competition Impact Assessment. As for existing regulations that raise anti-competition concerns, the KFTC seeks measures for improvement through consulting with relevant ministries.

Furthermore, the KFTC legislates concrete guidelines necessary for competition law judgments on conduct that conforms to administrative guidance used in an industrial policy in order to enhance predictability for the parties involved by clearly stating the cases that are allowed exemptions from competition law. In addition, the KFTC is relentlessly striving to expand the knowledge on specific industries by annually conducting an in-depth market analysis of them and is working to devise policy alternatives with a higher possibility of gaining endorsement from relevant ministries.

Mexico

Since the 1980s, the modernization of the Mexican economy saw the State retreating from key economic activities through privatization and market-oriented reforms. However, recently there has been a tendency to rethink the role of the State in the economy, trying to increase the participation of State-Owned Enterprises (SOEs) in the economy. The former, has had an impact on competition conditions and the participation of economic agents, mainly in energy markets.

This contribution presents a case regarding industrial policy in Mexico. Specifically, it provides an example regarding a recent merger review case in which the electricity SOE filed the proposed acquisition of several power plants, and how Cofece and the Mexican State collaborated to modify the terms of the transaction to strike a balance between the Mexican state industrial policy and competition policy Cofece and the Mexican state industrial and competition policy and the Mexican state industrial policy.

New Zealand

In this paper the New Zealand Commerce Commission (NZCC) provides background on its approach to participating in the policy-making process in New Zealand. It explains how, despite being an Independent Crown Entity, it is actively involved in policy-making in New Zealand, and explains the reasons why it is important for competition agencies to engage in the policy process.

It outlines three ways in which it has effectively engaged in the policy process, which has, at times, directly led to the New Zealand Government implementing pro-competitive policies:

- Ad-hoc input into specific policies led by other Government agencies. These are through formal avenues, such as submitting on public consultations, and informal avenues, such as regular catch-up meetings with policy-making agencies.
- Market studies, where the NZCC has the ability to make policy recommendations to the Government as part of its findings.
- By publishing Competition Assessment Guidelines, which promote consideration of competition by policymakers generally.

Sweden

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.

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.

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

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

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

Chinese Taipei

This report clearly states that the statutory basis upon which the Fair Trade Commission of Chinese Taipei (CTFTC) intervenes to advocate competition policy during the formulation and deliberation of industrial policies is grounded in Article 46 of the Fair Trade Act (FTA). Industrial policies or special laws may only exempt the application of the FTA under the premise that they do not contravene the legislative intent of the FTA. This reveals the relationship between the FTA and other laws regarding the application of competition-related behaviors by enterprises.

The CTFTC is empowered to publish thresholds for the combined sales amount of enterprises based on the assessment of factors related to industrial policies and the scale and competitive conditions of individual industries. When reviewing merger cases, it evaluates whether the benefits to the overall economic interests outweigh the disadvantages of restricting competition, serving as a basis for clearance or objection. Furthermore, the CTFTC is also authorized to assess relevant factors of industrial policies and may permit the application for exemption if it deems that concerted actions among enterprises are beneficial to the overall economy and public interest.

In cases such as those related to the decision by the Chinese Goose Association to determine gosling purchase prices, the establishment of commercial fire insurance additional fee rates by the Non-Life Insurance Association, and the proposed establishment of a single ticket window for passenger boats by the Nantou County Government, the CTFTC has examined possible conflicts between competition policy and industrial policies. In accordance with Article 46 of the FTA, the CTFTC has deliberated on whether the provisions of industrial policies or special laws contradict the legislative intent of the FTA before making decisions.

Furthermore, in recent years, the CTFTC has actively participated in advocating competition policy in response to the initiatives to the establishment of a Fixed Book Price, the opening of sports lottery operations to multiple issuance agencies, and the formulation of regulations related to regenerative medicine preparations.

Ukraine

Currently, the formation of an updated industrial policy in Ukraine, which would take into account, among other things, trade, science and technology, competition policy, and other instruments of economic regulation, is a key element of further reforming the national economy and ensuring sustainable economic growth in Ukraine. Moreover, the coordination of industrial and other policies cannot be postponed until the postwar period.

According to the data on the results of industrial enterprises' activities in 2023, which was obtained from the Ministry of Economy of Ukraine, the industrial production index was 105.9% compared to the previous year. In 2024, according to the forecasts of the Ministry of Economy, GDP growth is expected to be no less than 4 percent. Of course, due to the economy's fall by almost a third, we cannot talk about recovery to the pre-war level, indicating that the economy continues to need active support from the state.

Pursuant to the Law of Ukraine “On the Antimonopoly Committee of Ukraine” (Article 20-1), the AMCU, including using the methodology based on the OECD Competition Assessment Toolkit, constantly examines draft legislative acts related to industrial policy that may affect competition, including those submitted by members of parliament.

In 2023 the AMCU provided several Recommendations and proposals to the industrial policy initiatives. For instance, to ensure equal (non-discriminatory) participation of both resident and non-resident legal entities in all stages of the tender for the selection of a private partner, the Committee proposed to amend the draft law, which is aimed at improving the mechanism for attracting private investment using the public-private partnership mechanism to accelerate the restoration of war-damaged facilities.

Also, the AMCU has prepared proposals that will increase the efficiency of the use of the mechanism of production localization in public procurement system, taking into account competitive aspects in the public procurement system, and sent them to members of parliament for consideration.

In accordance with the Decree of the President of Ukraine No. 31 as of January 26, 2024, the All-Ukrainian Economic Platform “Made in Ukraine” was launched under the patronage of the President of Ukraine for constant communication and coordination of interaction between government agencies, representatives of relocated enterprises, domestic business (large, medium, small), public associations of entrepreneurs, foreign investors, politicians, scientists, and experts. The purpose of the platform is to strengthen economic ties, constant communication between the state and Ukrainian business, and to assist Ukrainian producers.

In Ukraine's current circumstances, the policy of developing domestic production, supporting non-resource exports and attracting investment in the real sector is the only possible way to ensure sustainability and development.

It is important to note that only effective, transparent and fair competition can ensure the stability of the Ukrainian economy in difficult times of war. Moreover, it is the key to successful post-war recovery. The AMCU will continue to contribute to the development of an updated industrial policy, including by developing and submitting to i) members of parliament on draft laws, and ii) the Government on government acts, proposals for pro-competitive approaches for the recovery and economic growth of Ukraine - preventing restrictions on competition and ensuring free access to relevant markets.