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Procompetitive Industrial Policy – Note by France

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

JT03545632

France

1. 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 (Direction générale du Trésor, 2023)¹. 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 (France Stratégie, 2020)². Support for industrial policy has recently resulted by the creation of numerous mechanisms based on two main issues: increasing competitiveness and reducing dependence on strategic inputs (Méjean and Jaravel, 2021; Méjean and Rousseaux, 2024)³. While such sovereignty issues fall under industrial policy, competition policy still contributes to achieving these objectives by ensuring compliance with 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 than a challenge of balancing support for strategic industrial hubs with compliance with competition law.

2. 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.

1. The Relevant Balance between Pursuing Industrial Goals and Respecting Competition Law

1.1. An essential industrial policy to ensure the competitiveness of national companies

3. After a period of industrial decline, France has experienced a significant turnaround in recent years. To reorient its industry, France has implemented strategic industrial policy plans. On the one hand, the industrial recovery of France has been based on a "vertical" industrial policy aimed at supporting sectors or technologies identified by public authorities as priorities due to their economic, environmental, societal impact, or associated sovereignty issues, characterized by direct support measures (subsidies, customs duties,

¹ Direction générale du Trésor, « Enjeux contemporains du contrôle des concentrations », Séminaire Nasse, 2023

² France Stratégie, « Les politiques industrielles en France. Évolutions et comparaisons internationale », Rapport, 2020

³ Jaravel X., Méjean I., « Quelle stratégie de résilience dans la mondialisation », Focus du CAE, n° 064-2021, 2021 ; Méjean I., Rousseaux. P., "Identifying European trade dependencies", ITCEI Paris Report, CEPR, 2024

public participation in a company's capital, etc.). Recent successive crises (the 2008 financial crisis, the 2020 health crisis, the 2021 energy crisis) have also highlighted the importance of maintaining industrial activities for better resistance to both endogenous and exogenous economic shocks. On the other hand, French industrial policy is also conducted through so-called "horizontal" industrial policies aimed at creating a favorable environment for the development of all businesses: support for R&D, workforce training, tax and regulatory adjustments, improvement of financing conditions, infrastructure development, intellectual property protection (France Stratégie, 2016)⁴.

4. Recent support for industrial policy has been materialized by the creation of numerous mechanisms. Following the "France Relance" plan (2020), which aimed for a more sustainable and competitive industrial recovery, the "France 2030" plan (2021) aspires to elevate French industry to the rank of a leader in the world of tomorrow. With a budget of 54 billion euros, it aims to support primarily industrial strategies to address economic and societal transition challenges by targeting high-growth-potential players. The ten societal objectives and six levers of the plan are cross-cutting and cover the entire value chain, from fundamental research to innovation and industrialization (Direction générale des entreprises, 2022)⁵. Unlike the "France Relance" plan, the "France 2030" plan is a targeted industrial policy focusing on strategic areas such as semiconductors, biotechnologies and health, batteries, hydrogen, and the decarbonization of industry. The plan focuses precisely on the activities most likely to generate sustainable activity in which France can acquire a technological lead conducive to creating champions capable of positioning themselves at the forefront of global players. The plan's goal was "*to identify sectors that contribute to reducing vulnerabilities and for which it is credible for France to maintain or achieve a technological frontier to produce competitively*" (Méjean and Jaravel, 2021; Méjean and Rousseaux, 2024)⁶. When sectoral policies are targeted at competitive sectors or allocated to preserve or increase competition, such policies increase productivity growth (Aghion et al., 2015)⁷. The most effective industrial policies are those that support competition (Aghion et al., 2015; Nahm, 2021)⁸.

5. Just as the relationship between competition and innovation can be represented by an inverted U-curve (Aghion, 2005)⁹, competition and productivity maintain a non-linear relationship: competition favors productivity gains up to a certain threshold, beyond which the relationship becomes negative (Aghion et al., 2015)¹⁰. Although productivity gains may not necessarily translate into price competitiveness gains, they remain a major issue for industrial policy and "*a necessary condition, although not sufficient, to sustainably improve a country's competitiveness,*" namely its ability to balance its resource flows with the rest

⁴ France Stratégie, « Quinze ans de politique d'innovation en France », Évaluation, 2016

⁵ Direction générale des entreprises, « France 2030 : une réponse économique aux enjeux de demain », Les Thémas de la DGE, n°5, 2022

⁶ Jaravel X., Méjean I., « Quelle stratégie de résilience dans la mondialisation », *op cit.* ; Méjean I., Rousseaux. P., "Identifying European trade dependencies", *op cit.*

⁷ Aghion P. et al., « Industrial Policy and Competition », *American Economic Journal: Macroeconomics*, 2015

⁸ *Ibid* ; Nahm J. « Collaborative Advantage: Forging Green Industries in the New Global Economy », Oxford University Press, 2021

⁹ Aghion P. et al. « Competition and Innovation: an Inverted-U Relationship », *The Quarterly Journal of Economics*, President and Fellows of Harvard College, vol. 120(2), pages 701-728, 2005

¹⁰ Aghion P. et al., « Industrial Policy and Competition », *op cit.*

of the world (France Stratégie, 2019)¹¹. Increasing competition would thus boost productivity in less competitive sectors but would have no effect on the most competitive sectors. Thus, the effect of competition on productivity gains varies by sector type. Rather than opposing each other, competition and industrial policy prove complementary. If industrial policy is designed to improve the competitiveness of national industry, intensifying competition supports and ensures the pursuit of French industrial goals. When industrial policy is associated with competition policy, it must still respect competition law principles.

1.2. A necessary competition policy to ensure the proper functioning of markets for the benefit of consumers.

6. Industrial policy can conflict with competition policy. When based on the creation or development of large state-supported groups, i.e., "national champions," the issue arises of balancing value gains from size and concentration with the drawbacks of reduced competition (decline in innovation, increase in prices, reduction in quality and diversity of products/services). In the name of greater external affirmation, the development of national champions is likely to disrupt the national economic order, which relies on strict competition rule application and governance structures that support markets while minimizing competition distortion risks (Zettelmeyer, 2019)¹². The "France 2030" plan's goal of creating future champions in French excellence sectors can indeed create tensions between industrial policy and competition law.

7. In this context, the European Commission's prohibition of the proposed acquisition of the French company Alstom by the German branch Siemens Mobility in 2019 highlights the difficult balance between fostering the emergence of European champions capable of competing with Chinese and American companies in the railway sector, which are subject to less stringent constraints, and applying competition law that benefits European railway companies and, ultimately, consumers (European Commission, 2019)¹³. The European Commission's prohibition decision sparked a debate on the need to adapt competition law to issues other than purely competitive ones, particularly industrial concerns. A similar discussion arose in France with the announcement of the merger between TF1 and M6, on the grounds that this merger would have created a leading French champion in the broadcasting and financing of audiovisual content to resist American digital platforms. However, the Competition Authority considered that the operation could have posed significant competitive risks, particularly in the television advertising and television service distribution markets (Competition Authority, 2022)¹⁴. Competition policy does not prohibit the creation of industrial champions but prohibits concentrations that harm competition and ultimately consumer interests. Once again, the relationship between competition law and industrial policy raises a challenging balance with the new issues related to digital technology.

¹¹ France Stratégie, « Productivité et compétitivité : où en est la France dans la zone euro ? », Rapport, 2019

¹² Zettelmeyer J., « The Troubling Rise of Economic Nationalism in the European Union », Peterson Institute for International Economics, 2019

¹³ Communication de la Commission européenne sur l'interdiction du projet d'acquisition d'Alstom par Siemens, JO C300 du 06 février 2019

¹⁴ Décision 22-DCC-126 du 15 juillet 2022 de l'Autorité de la concurrence relative à la prise de contrôle exclusif des sociétés TFX et M6 Génération par le groupe Altice

8. A 2019 Franco-German manifesto titled "For a 21st Century Industrial Policy," jointly drafted by the French Ministry of Economy and the German Ministry of Economy, gave a major impetus to European industrial policy by advocating for strengthening Europe's innovation dynamics, the emergence of globally significant European companies, and the protection of European strategic interests in a context where other countries directly support their companies. In this regard, the European Regulation on Foreign Subsidy Control of December 14, 2022, for which the DGCCRF is one of the administrations responsible for its implementation in France, combats competition distortions originating from third-country subsidies granted to companies operating or producing within the internal market. The manifesto has significantly contributed to the increased use of Important Projects of Common European Interest (IPCEI) in recent years, with several large-scale projects undertaken in strategic technologies and products. France is currently engaged in seven IPCEIs supporting its industrial policy in electronics, batteries, hydrogen, and cloud computing, co-led by France and Germany before the European Commission (Direction générale des entreprises, 2024)¹⁵. An IPCEI aims to promote innovation and industrial project realization in strategic and future-oriented fields, subject to state aid rules. Due to difficulties in constraining other major global actors from using national state aid, a more active industrial policy seems relevant in the short term to maintain the competitiveness of European companies worldwide. However, the relatively larger public subsidies that can be mobilized within the framework of IPCEIs can also disrupt the functioning of the single market in the long term. This is why IPCEIs are only authorized if market failures are identified and if they lead to an economically inefficient situation in the absence of public intervention, in order to limit disparities at the European level, avoid distortions of competition in innovation, and promote equal access to IPCEIs, given the differing budgetary capacities of member states.

9. While competition authorities cannot disregard the fundamental principles of competition to favor industrial policy objectives, they must nevertheless incorporate the inherently evolving nature of markets into their analysis (2).

2. Competition Policy, a support for Industrial Policy

2.1. Competition policy, a driver for national industry competitiveness

10. Competition policy can address many of the challenges typically considered within the framework of industrial policy. On one hand, the existence of measures strongly favoring competition ensures the elimination of inefficient companies from the market, the renewal of the French productive fabric, and the productivity and competitiveness of the industrial sector. By combating abuses of dominant positions, the French competition authority allows emerging companies to fully exploit their potential and contributes to the development of new markets. The development of a sector is also facilitated by the arrival of new companies that produce disruptive innovations and exploit new sources of productivity. The entry of new firms, in turn, exerts a 'contestability effect' on established firms, encouraging them to become more productive and to renew themselves (Bartelsman et al., 2004)¹⁶. Therefore, the challenge of an industrial policy today is not only to support existing champions, allowing them to achieve critical mass on a global scale, but also to be

¹⁵ Direction générale des entreprises, « Les projets importants d'intérêt européen commun, un outil de politique industrielle européenne », Les Thémas de la DGE, n°17, 2024

¹⁶ Bartelsman E., « Microeconomic evidence of creative destruction in industrial and developing countries », Document de travail, 2004

able to create new ones. Merger control allows competition authorities to protect the competitive structure of markets upstream before a dominant position is established. Moreover, due to a recent development, predatory or consolidating acquisition operations that escape national and European control thresholds but are potentially harmful to competition, particularly in innovative fields, can be referred to the European Commission under Article 22 of Council Regulation No. 139-2004 of January 20, 2004. For example, in 2021, the Competition Authority submitted a request to the European Commission to examine the proposed acquisition of Grail by Illumina under Article 22. The Authority considered that such a merger would hinder innovation in the emerging market for early cancer detection blood tests, consolidate the market power of already dominant companies, and significantly affect competition. In September 2022, the European Commission prohibited the operation.

11. On the other hand, competition policy enhances the efficiency of companies by encouraging them to innovate. Competition policy supports innovation by lowering entry barriers and opening markets. Economic literature has highlighted that market access naturally increases the available market size for a company and, furthermore, that “*larger markets will encourage innovation*” (Griffith, 2021)¹⁷, as a larger market allows companies to spread fixed costs over a greater number of units. Besides the effect on prices that can be induced by increased supply, market opening also provides an entry point for new players who may present different, sometimes more efficient, business models. The European Commission's guidelines fully recognize the role of innovation, notably by providing the possibility to exempt, under certain conditions, research and development agreements between competitors. In this context, competition authorities must allow innovations to emerge by enabling actors to invest, without allowing their positions to remain immutable or be exploited to prevent tomorrow's innovators from succeeding (Note from the French authorities, 2023)¹⁸.

2.2. A competition policy adapted to industrial challenges.

12. Through the publication of numerous opinions on key sectors such as transport, energy, telecommunications, and more recently, the new 'green' and digital markets, the Competition Authority incorporates new economic challenges, including industrial ones, into its analysis. Whether in the sector of public charging stations for electric vehicles (Competition Authority, 2021)¹⁹, or soon in the sector of generative artificial intelligence (Competition Authority, 2024)²⁰, the Competition Authority has leveraged its consultative competence to explore new sectors related to activities or products that significantly impact the environmental and digital issues at the heart of French industrial policies.

13. By considering potential competition (the competitive pressure that could influence the behavior of a company from a firm not yet present in the market) and the analysis of conglomerate effects (impacts on different markets by companies involved in a merger operating in several distinct sectors), the Authority has already considered the specificities

¹⁷ Griffith, R., « Product market competition, creative destruction and innovation », 2021.

¹⁸ Note des autorités françaises, « La relation entre la concurrence et l'innovation », Table ronde, Comité de la concurrence de l'OCDE

¹⁹ Décision n° 21-DCC-172 du 1er octobre 2021 relative à la création d'une entreprise commune par les sociétés AGI, EDF PEI, Genak et SAFO

²⁰ Communiqué de presse de l'Autorité de la concurrence relatif à son autosaisie pour avis et au lancement de sa consultation publique », 2024

of certain sectors with significant industrial stakes in its merger control. For instance, in January 2021, the Authority examined the hydrogen production and distribution markets, as well as the market for the development, construction, and installation of hydrogen stations. Considering the existence of potential competitors and the conglomerate effects of the operation, particularly in the retail electricity supply market, it concluded that this situation did not raise competition concerns.

14. The forward-looking analysis conducted in the context of merger control allows the Competition Authority to consider “*ongoing or anticipated developments within a reasonable timeframe, depending on the sector's specificities*” (Competition Authority, 2020)²¹.

15. Structural and/or behavioral commitments are one of the tools available to the Authority to correct, in the context of anticompetitive practices, or prevent, in the context of merger control, violations of competition law. The flexibility in their formulation and the speed with which they can address competition issues make them an effective solution. Commitments can always be adjusted if new events alter the market's competitive dynamics. For example, the Competition Authority modified the commitments that the Canal+ Group made during its merger with TPS and later during the acquisition of Direct 8 and Direct Star channels, to account for the arrival of audiovisual content platforms such as Netflix and Amazon (Competition Authority, 2017)²².

16. French competition authorities have successfully integrated new industrial challenges into their analysis, with competition thus contributing, alongside industrial policy, to helping France regain its path to competitiveness.

²¹ Lignes directrices de l’Autorité de la concurrence relatives au contrôle des concentrations, 2020, pt. 518

²² Décision 17-DCC-92 du 22 juin 2017 portant réexamen des injonctions de la décision n°12-DCC-100 du 23 juillet 2012 relative à la prise de contrôle exclusif de TPS et CanalSatellite par Vivendi SA et Groupe Canal Plus ; Décision n° 17-DCC-93 du 22 juin 2017 portant réexamen des engagements de la décision n° 14-DCC-50 du 2 avril 2014 relative à la prise de contrôle exclusif des sociétés Direct 8, Direct Star, Direct Productions, Direct Digital et Bolloré Inter média par Vivendi SA et Groupe Canal Plus