

Competition – Antitrust: **Franco-German Manifesto on a European Industrial Strategy – Is a Change to the Competition Regulatory Framework Required?**

Following the European Commission's announcement of its decision to prohibit an acquisition, despite political pressure to permit the transaction from France and Germany, France and Germany were quick to state that "there is an increasing awareness that a reform is necessary" and set out proposals to change the EU competition merger framework.

On 19 February 2019, these proposals were further bolstered by the publishing of a "Franco-German Manifesto for a European industrial policy fit for the 21st Century" (Manifesto), which sets out three pillars for the future of European Industrial strategy, including, as the second pillar, the need to "adapt our regulatory framework".

Merger Control

France and Germany, by way of the Manifesto, recommend examining different options in order to bring about the changes to existing European competition rules they deem necessary in order to pursue a regulatory global playing field. The following are the four points that are raised in the manifesto.

"Greater consideration of state control of and subsidies for undertakings within the merger framework"

Securing funding and investment are key elements to any business. This will ensure that wider economic growth can be achieved in the long term within the economy and internal market, as well as the global economy. However, consideration needs to be given to avoid circumstances that would result in distorted competition and subsequently create subsidised European monopolies.

"Updating current merger guidelines"

French finance minister Bruno Le Maire and German finance minister Olaf Scholz have proposed that mergers intended to create European champions should be afforded "dynamic solutions". A dynamic approach would see the approval of mergers intended to create European champions in industries that are experiencing, or may in the future experience, competition from global competitors, with conditions imposed on the relevant entities by the European Commission after the fact, should competition problems start to occur.

Le Maire has also called for a more systematic consideration of the relevant market in a merger analysis to be on a global scale, as opposed to with reference to the European market alone. The European Commission claims that it pays attention to the competitive landscape across the rest of the world. However, the European Commission ultimately gave substantial weight to the fact that global competitors were not currently present in the European market at the time of the proposed merger and that the European Commission deemed it highly unlikely that competitive constraints caused by new entrants to the European market would have been felt by the merged entity. Arguably, this demonstrates that whilst the European Commission appears willing to comment on global players currently affecting the European market, little thought is given to how that market may change and the benefits of pre-empting those changes by permitting the creation of European champions.

"Consider whether a right of appeal to the Council, which could ultimately override Commission decisions could be appropriate in well-defined cases, subject to strict conditions"

Le Maire has stated that there is a need for a "right of evocation", opining that where the European Commission decides that the creation of a European champion should be prevented and national governments dispute such a decision, national governments through the Council, should be able to intervene in the EU merger review.

"European State Aid Rules"

Whilst the Manifesto notes the ability of member states to finance major research and innovation projects is a "very positive development", France and Germany state that it may be beneficial to revise the implementing conditions to ensure it is more effectively implemented.

Vestager's Response

Margrethe Vestager, the current Commissioner for Competition, has commented that her block on the merger does not provide grounds for a major overhaul of EU competition rules and that discussions should not be consumed by how competition rules work as a result of a very specific decision.

Further Down the Line...

Vestager also stated that protecting European companies should be effected by means other than Competition, for example trade defence mechanisms and procurement rules. Certainly, for the rules to be rewritten, unanimity amongst the member states is required and this inevitably raises questions as to whether this would be achievable. Furthermore, Germany's small business federations, *Die Familienunternehmer*, has warned against the overhaul proposed in the Manifesto, as such a move could undermine the stability of Europe's internal markets. However, with European elections right around the corner and political pressure supported by industry backing, could it be that the rewriting of the rules is closer and more likely than it would seem?

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