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EUROPE IN THE FACE OF AMERICAN AND CHINESE ECONOMIC NATIONALISMS (1)

COMPETITION POLICY AND EUROPEAN INDUSTRY

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is a French think tank for European integration and free economy.

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SUMMARY

Following the European Commission's prohibition of the Alstom-Siemens merger, many voices pretended to have found the cause of Europe's industrial decline: an overzealous European competition policy hindering the emergence of "European champions". Without denying the existence of prospects for improving merger control policy, it would be counterproductive to blame Brussels for the application of rules whose economic virtues in terms of defending purchasing power and incentives to innovate are clearly demonstrated. A comparison with the United States invites us to beware of theories that view competition rules as obstacle to economic development.

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GENERAL INTRODUCTION

At a time when the Sino-American trade war is raging, no one doubts the resurgence of national and non-cooperative logics in the conduct of economic policies anymore. The main trading partners of the European Union resolutely engage in mercantilist strategies and neglect international multilateral trade governance bodies.

Multilateral rules are challenged by the United States. In November 2016, the election of Donald Trump, driven by his "America First" agenda, marked a turning point in this regard. Under his presidency, the United States introduced significant tariff barriers, particularly on aluminium and steel. The compatibility of these decisions, based on texts intended to protect national security, alongside agreements with the World Trade Organization (WTO) is highly contested. In addition, the Dispute Settlement Body of the WTO will be paralysed starting at the end of 2019 due to the refusal of the United States to nominate judges to its Appellate Body. The safeguards that guarantee the proper application of multilateral rules will then be blocked.

Chinese industrial ambitions. China, for its part and in light of the financial resources mobilised, does not hide its objective of eventually achieving its status as the number one economic power. The mercantilist agenda "Made

* The authors of this study are responsible for its content, which does not hold responsible the institutions for which they work. This document is a translation of the French version published in November 2019.

in China 2025" or the "Belt and Road" initiative, designed to bring about the emergence of new trade networks and infrastructure between Asia and Europe, testify this will. These desires are not surprising: the development of the manufacturing industry has been the driving force behind China's economic catch-up. Between 1991 and 2012, the share of Chinese domestic industry in the global manufacturing value added has grown six-fold, from 4% to 24%. This expansion is the result of an assumed strategy of the Communist State, including its indisputable omnipresence in the conduct of business. Western countries do not consider China a market economy and suspect that public authorities may grant massive and varied subsidies to sectors exposed to international competition. President Trump's trade war has the merit to draw attention to Chinese mercantilist practices, while some still blame Europe for being complacent towards these policies and ignore the immediate consequences on our industrial base (destruction of exposed jobs, increasing territorial division) and long-term economic challenges (control of key technologies and value chains).

Is Europe losing its foothold on the international scene as a result of its internal divisions? At a time when European industry seems to be caught in between the increasing concentration of American companies and Chinese giants actively supported by national authorities, concern is growing among European leaders regarding a form of "powerlessness" of the continent. In this turbulent international context, Europe tends to appear weakened because it is deeply divided. For example, the February 2019 ban by the European Commission of the merger between Alstom and the railway activities of Siemens has aroused strong opposition up to the highest political level between on one side those in favour of a competition policy attentive to the interests of European consumers, and on the other advocates of an industrial policy sensitive to the interests of certain producers. Europeans are also divided on the subject of industrial policy and state aid control. These debates are fuelled by a sense of economic disengagement. In 2008, of the 500 leading global companies (by turnover) listed by *Fortune magazine*, 171 were European, 150 American and 28 Chinese; ten years later, only 122 European companies are listed in the same ranking, against 126 American and 110 Chinese ones. Between 2004 and 2017, Europe's share of manufacturing value added has dropped from 29% to 19%¹ compared to 22% to 16% in the United States during the same time period. A particularly striking fact is that in the digital field, Europe does not have any technology company of a similar size to the so-called "GAFAM" in the United States or the "BAT" in China².

1. See graphs with historical data in appendices.

2. "GAFAM" is the acronym of the American tech giants Google, Apple, Facebook, Amazon, Microsoft; BAT is the acronym of the Chinese Baidu, Alibaba and Tencent.

International trade in 2018 [flows in billions of dollars and as a percentage of GDP]

	Exports		Imports	
	Goods	Services	Goods	Services
European Union (EU 28)	2,310 12%	1,085 6%	2,337 12%	860 5%
China	2,494 19%	267 2%	2,135 16%	525 4%
United States	1,666 8%	828 4%	2,612 13%	559 3%
Japan	738 15%	192 4%	748 15%	200 4%

Source: Fondation pour l'innovation politique; data International Trade Centre, Eurostat.

What has been the European reaction? These elements support the idea that the EU would no longer have the necessary weapons to secure its place as a leading economic power on the world stage. Many also consider that the European preference for internationally coordinated solutions is outdated, as the multilateral framework has become notoriously dysfunctional and ineffective. In this context, Europe is looking for an appropriate response. Some proposals are already on the table, such as those of the Bundesverband der Deutschen Industrie (BDI, Federation of German Industry) published in January 2019³ or the "Franco-German Manifesto for a European Industrial Policy for the 21st Century", co-signed in February 2019 by the Ministers Bruno Le Maire and Peter Altmaier⁴. However, these proposals were also criticised on the grounds that they are inspired by a nationalist discourse and would lead to protectionist policies that risk to do more harm than good by jeopardising achievements such as the European competition policy⁵. In any case, the need for Europe to design an intelligent response to its current challenges is no longer a matter of debate. The challenge is to find the right balance between the need, for some, to remove themselves from a certain form of naivety disconnected from the reality of economic power relations, and, for others, not to yield to the sirens of economic nationalism whose ready-made solutions are generally counterproductive. Indeed, a strategy of withdrawal

3. [<https://english.bdi.eu/publication/news/negotiations-with-the-united-states-on-a-transatlantic-trade-agreement/>] and [<https://english.bdi.eu/article/news/china-partner-and-systemic-competitor/>].

4. <https://medium.com/@BrunoLeMaire/manifeste-franco-allemand-pour-une-politique-industrielle-europ%C3%A9enne-adapt%C3%A9e-au-xxi%C3%A8me-si%C3%A8cle-48516593465e>.

5. See Jeronim Zettelmeyer, "The Troubling Rise of Economic Nationalism in the European Union", piie.com, 29 March 2019 [www.piie.com/blogs/realtime-economic-issues-watch/troubling-rise-economic-nationalism-european-union], and Patrick Rey and Jean Tirole, "Keep Politics Out of Europe's Competition Decisions", projectsyndicate.org, 4 March 2019 [www.tse-fr.eu/keep-politics-out-europe-s-competition-decisions].

from international trade would not be beneficial for the European Union as a whole, which exports as much merchandise as it imports (\$2,310 billion in exports versus \$2,337 billion in imports in 2018), and exports more services than it imports (\$1,085 billion in exports versus \$860 billion in imports). It must be recognised that the EU is benefiting fully from globalisation and that it would have much to lose economically from a contraction in international trade. In short, our study is intended to provide some answers to the following question: in a world where economic affairs are increasingly guided by political strategies, what can the European Union do to protect its economy from predatory foreign practices that may harm the presence of jobs, expertise and decision-making centres on its territory?

We have chosen to focus on the two major aspects of the exclusive competences of the European Union, namely competition and trade policy. At the end of this analysis, we propose to strengthen the European trade defence policy, instead of loosening EU competition law and enforcement. Concrete proposals that can be acted upon at the political level are formulated in this sense. Of course, the stakes are neither limited to competition and trade policy. But according to the treaties, the European Union only has a coordination mandate in the field of industrial policy. We have deliberately chosen not to focus on this policy, which would deserve a development in its own right. This study is therefore not intended to address all aspects of the problem, but rather to provide selective insight on issues that we believe are key.

Currently, critics of European industrial strategy rely mostly on EU competition law. Before studying these criticisms in detail, it is important to recall that, in the countries of the Organisation for Economic Cooperation and Development (OECD), competition policy covers two different areas of intervention: antitrust and merger control⁶. Antitrust consists of intervening *ex post* to correct or sanction anti-competitive cartel practices or abuses of dominant positions⁷. Merger control, on the other hand, aims to control *ex ante* a proposed concentration to ensure that it does not significantly hurt competition.

Europe has a very active antitrust policy that is not very controversial *per se*⁸. In the case of the fight against cartels, between 2015 and 2019, the Commission imposed no less than 8 billion euros in sanctions, which did not provoke strong objections. It must be said that this policy puts an end to practices whose

6. The European Union has a third component: State aid control.

7. In Europe, this is done respectively under Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU).

8. This activism of the Commission on the front of the fight against abuses of dominant positions and cartels contrasts with the “dormancy” of antitrust policy in the United States since the early 2000s, the negative effects of which on industrial concentration are now denounced by several empirical studies [see in particular Thomas Philippon, *The Great Reversal. How America Gave Up on Free Markets*, Harvard University Press, 2019].

implementation is difficult to justify, and whose first victims are often other companies⁹. For example, in March 2019, the European Commission imposed a fine of €368 million to three suppliers of security equipment for vehicles. The direct victims of these practices were European car manufacturers, who were suffering from an increase in the price of components such as seatbelts, airbags or steering wheels.

Similarly, the fight against abuses of dominant positions by the European Commission and national competition authorities is rather accepted in principle: it aims to repress practices (such as exclusivity agreements, refusal of market access, coercive tied selling, denigration, etc.) whose primary purpose is to exclude an effective competitor from the market (often smaller in size but perceived as a threat because it is more agile or more innovative) or prevent it from developing on its own merits. Thus, in 2017, the European Commission sentenced Google to a 2.4 billion euro fine for "favouring" its own Google shopping price comparison to the detriment of smaller European competitors. In 2018, the European Commission once again concluded that Google had engaged in an abusive practice by requiring mobile phone manufacturers to pre-install the Google search application and its Chrome browser as a condition for licensing its online Play Store application: the European Commission's sanction amounted to €4.3 billion. In 2019, it imposed a third penalty of €1.49 billion on Google for abusive online advertising practices. In this study, we will mainly focus on the merger control system, which is currently subject to the most criticism.

I. CREATING INDUSTRIAL CHAMPIONS TO BOOST EXPORTS? BEWARE OF THE "PSG SYNDROME"

Alstom-Siemens as a catalyst. The Alstom-Siemens affair, fuelled by pre-existing and widespread concerns about Europe's progressive downgrading on the world economic stage, has revived in the public arena and up to the highest political level the debate on the need to encourage the formation of "European champions" to weigh in on global competition against, among others, Chinese

9. Thus, at European level, in 2012, an empirical study by Emmanuel Combe and Constance Monnier on 111 cartels detected and condemned by the European Commission during the period 1969-2009 shows that more than two thirds of the cartels took place in sectors such as metallurgy, chemicals, machinery and equipment manufacturing or materials that are inputs used by other industries. If the ten largest fines imposed by the European Commission are retained, none of them directly concern products purchased by consumers (trucks, car glazing, etc.). See Emmanuel Combe and Constance Monnier, "Les cartels en Europe, une analyse empirique", *Revue française d'économie*, vol. XXVII, n°2, October 2012, p. 187-226 (https://emmanuelcombe.fr/wp-content/uploads/2017/09/RFE_122_0187.pdf).

and American competitors. For proponents of industrial concentration, the size of firms is essential because it allows them to take advantage of economies of scale and take more risks, which ultimately translates into more investment, research and development (R&D) spending, and exports. Some even put forward extra-economic arguments. According to them, we would have entered a new phase of globalisation in which the international balance of power would be less politically and militarily oriented than economically driven, in which the major powers wage a latent war behind their "national industrial champions¹⁰".

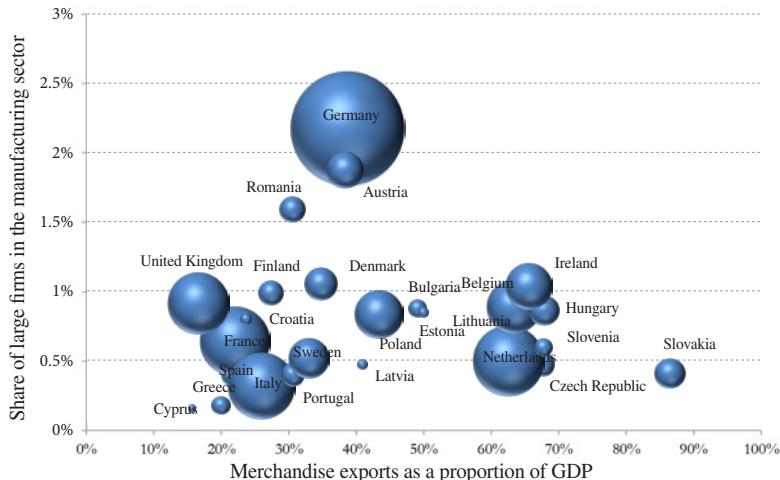
The difficulty of defining a "European champion". Yet what exactly are we talking about when we discuss "European champions" or "national champions"? In a world where industrial value chains are increasingly globalised, it is clear that determining the origin of a company is not an easy task.

What criteria should be used between, for example, the headquarters, main production site and the nationality of shareholders or management teams when they differ?¹¹ The distinction between domestic and foreign companies can quickly become blurred. In a globalised economy where the geographical fragmentation of decision-making and production sites tends to increase, the notion of a company's "origin" or even "nationality" is becoming less and less relevant and operational. Secondly, what meaning should be given to the notion of "champion"? Could it be assimilated to that of a "large group"? In reality, the size of a company measured by all its employees or the book value of its assets is neither a necessary nor sufficient condition for its performance. Let us think, for example, about companies in niche markets that generate very high margins and export massively, such as those that form the famous German "Mittelstand". Conversely, what about the many conglomerates that regularly underperform the world's leading stock market indexes? The preconceived notion that the export performance is mainly based on "large" companies is not empirically based. A simple analysis of European data shows that there is no positive correlation between the size of manufacturing companies (defined here by the number of employees) and their export performance.

10. See Jean-Louis Beffa, *Les Clés de la puissance*, Seuil, 2015.

11. Mathew Heim and Catarina Midoes, "European champion-ships: industrial champions and competition policy", bruegel.org, 26 July 2019 (www.bruegel.org/2019/07/european-champion-ships-industrial-champions-and-competition-policy/).

The relationship between the size of manufacturing firms and export performance



Source: Fondation pour l'innovation politique; Eurostat data.

Note: The share of large firms in the manufacturing sector corresponds to the percentage of firms with more than 250 employees in the sector.

Competition for performance. In addition, several academic studies have highlighted the existence of a positive relationship between companies' export performance and the degree of competition they face in their domestic market¹². If we equate both notions of a "champion" with that of a "monopoly" or concentrated market, then there is no guarantee that a "champion" in their home market will be more competitive internationally than a company exposed to competition locally. In fact, on average, the opposite observation has been verified, as local competition encourages a continuous quest for performance and innovation. The economist Philippe Aghion also finds a positive correlation between the intensity of competition on the product market and the productivity of firms¹³. He stresses the essential role of free entry, and therefore of opening up to competition, in order to boost innovation. Similarly, John Van Reenen argues that a weakening of competition undermines productive efficiency. In particular, he highlights the positive impact of competition on productivity through improved managerial performance¹⁴. Finally, Justus Haucap and his team note the negative effects of concentration on technological innovation in the pharmaceutical sector.

12. See Aidan Hollis, "Industrial Concentration, Output, and Trade: An Empirical Exploration", *Review of Industrial Organization*, vol. 22, n°2, p. 103-119, March 2003.

13. See Philippe Aghion, Richard Blundell, Rachel Griffith, Peter Howitt and Susanne Prantl, "The Effects of Entry on Incumbent Innovation and Productivity", *Review of Economics and Statistics*, vol. 91, n°1, p. 20-32, January 2009 (https://dash.harvard.edu/bitstream/handle/1/4554222/aghion_incumbent.pdf).

14. John Van Reenen, "Does Competition Raise Productivity Through Improving Management Quality?", *International Journal of Industrial Organization*, vol. 29, n°3, p. 306-316, May 2011.

The mergers analyzed in their study translate into reduced R&D expenditure and the number of patents, both in the merged entities and also in their competitors¹⁵.

To use an expression from the economist Thomas Philippon, these results invite us to beware of the "PSG syndrome¹⁶". Thanks to investments estimated by the newspaper *L'Équipe* at more than 1.5 billion euro in April 2018 since the takeover by the Qatar sovereign fund in 2011, the Parisian club has won six French Champion titles over the last seven seasons, five League Cups and four French Cups. However, during this period, despite its overwhelming domination of the French championship, the club has never been able to rise beyond the quarter-finals of the Champions League competition. When they found themselves confronted with the best European teams playing all year round in more competitive championships, the club systematically lost.

It is therefore clear that the stalling of the EU competition policy would risk generating a high level of industrial concentration, with an artificial increase in margins and ultimately in prices for consumers as a result - whether they are individuals or companies. In such a context, there would be not more but less of capital expenditures and R&D throughout the economy, which would eventually result, all other things being equal, in a slowdown in productivity and thus of the per capita income growth.

However, it cannot be ignored that in some specific market segments where, for example, increasing returns to scale (e.g. large industrial assemblers) and network effects (e.g. digital giants) prevail, the size of companies can be an essential comparative advantage. Concentration then tends to become a guarantee of success and the *sine qua non* condition of performance. We will now ask ourselves whether European competition policy - at least in its merger control aspect - currently constitutes an obstacle to the development of such companies on European territory, which would likely undermine Europe's position in the global economic competition.

15. Justus Haucap, Alexander Rasch and Joel Stiebale, "How Mergers Affect Innovation: Theory and Evidence", *International Journal of Industrial Organization*, vol. 63, p. 283-325, March 2019.

16. Thomas Philippon, "Concurrence : le syndrome du PSG", *lesechos.fr*, 24 April 2019 (www.lesechos.fr/idees-debats/cercle/concurrence-le-syndrome-du-psg-1013691).

II. EUROPEAN INTRANSIGENCE IN MERGER CONTROL: AN IDEA TO BE PUT INTO PERSPECTIVE

The idea that merger control would harm the development of European industry does not date back to the Alstom-Siemens case. In 2004, Jacques Chirac already declared: "It is a question of better integrating the imperative of developing our industries into the objective of free competition. [...] We must therefore encourage the emergence of great European industrial 'champions' capable of competing in the world market¹⁷". In 2007, Nicolas Sarkozy also stressed: "I want competition to stop being a religion, so that the quest for perfect competition stops being the only horizon of European policies [...] so that national and European champions can emerge¹⁸." François Hollande, for his part, in 2013 called to "redefine a competition doctrine to facilitate mergers, and not to dissuade them, so that we have champions in the interest of Europe¹⁹".

However, the available data suggest that this statement should be strongly qualified. First of all, the number of transactions notified to the European Commission has grown steadily in recent years, reaching an average annual growth rate of +8.5% over the period 2014-2018. These operations have enabled the formation of European giants in many sectors, such as in the brewing industry, with the acquisition of the British SABMiller by the Belgian Anheuser-Busch InBev; in the eyewear industry, with the merger between Essilor of France and Luxottica of Italy; or in the field of new technologies, with the acquisition of Gemalto by Thales. On average, 90% of transactions notified to the European Commission are authorised unconditionally as early as the preliminary investigation phase (known as "phase 1").

Of the 7,443 concentrations notified to the European Commission since the implementation of the European Merger Regulation in 1989²⁰, only 30 transactions have been prohibited, including 12 in the manufacturing sector. Although it is premature to draw conclusions on the operations banned in 2017 and 2019, a study of the eight previous industrial bans is revealing: there is no evidence that they have prevented the industries concerned from flourishing in Europe and beyond; quite the contrary. ATR Aircraft, whose acquisition of its main competitor De Havilland of Canada in 1991 was the

17. Speech delivered by the French President Jacques Chirac, presenting his well wishes to the Forces vives [Palais de l'Élysée], Paris, 6 January 2004 [www.jacqueschiracasso.fr/archiveselysee.fr/elysee/elysee.fr/francais/interventions/discours_et_declarations/2004/janvier/fi001564.htm].

18. Statement by Nicolas Sarkozy on his commitments to European integration, Strasbourg, 2 July 2007.

19. Statement by François Hollande on France's industrial policy priorities, Paris, 12 September 2013.

20. Replaced in 2004 by a new regulation [Regulation [EC] N° 139/2004], still in effect today (see <https://ec.europa.eu/competition/mergers/statistics.pdf>).

first transaction blocked by the European Commission, is now enjoying very significant commercial industrial success. The Toulouse-based company is a world leader in its turboprop aircraft segment. Legrand, which could not merge with Schneider Electric in 2001, following the refusal of the European Commission²¹, is a flourishing company at the forefront of electronic equipment worldwide.

Industrial concentrations prohibited by the European Commission since 1989

1991	ATR/De Havilland du Canada
1996	Saint Gobain/Wacker-Chemie/NOM
2000	Volvo/Scania
2001	Schneider Electric/Legrand
2001	Tetra Laval/Sidel
2001	CVC/Lenzing
2001	General Electric/Honeywell
2001	SCA Mölnlycke/Metsä Tissue
2017	HeidelbergCement and Schwenk/Cemex Croatia/Cemex Hungary
2019	Wieland/Aurubis Produits laminés/Schwermetall
2019	Siemens Mobility/Alstom
2019	Tata Steel/ThyssenKrupp

Source: European Commission.

A common and frequent argument is that the U.S. administrative authorities would be more lenient on merger control than the European Commission. Three elements seem to fuel this idea. Firstly, the European Commission's 2001 ban on General Electric's takeover of Honeywell, which had just been approved by the U.S. Department of Justice²², had a strong impact on the business community. Secondly, the American institutional functioning implies a greater interference of political power in the application of competition law²³. Finally, economists have recently documented a significant increase in concentration levels in many segments of the U.S.' economy²⁴, which could suggest that the U.S. authorities are lenient in assessing concentrations.

21. Schneider Electric held 98% of Legrand when the European Commission decided to prohibit the merger and force Schneider to sell its shares. Following Schneider's appeal, the court quashed the European Commission's decision in 2002 because of procedural flaws and economic models adopted by the Commission that were found to be biased. The court subsequently referred the decision back to the European Commission, but Schneider then indicated that it no longer wished to acquire Legrand and that it was selling its shares to Wendel and KKR, thereby closing the case.

22. The awareness of the lack of coordination between global competition authorities led to the creation of the International Competition Network, an informal forum for exchange between authorities.

23. In Europe, the examination of mergers and the fight against anti-competitive practices are carried out through administrative decisions, while in the United States the authorities [Department of Justice or Federal Trade Commission] or individuals enforce antitrust law before civil or criminal courts. The Department of Justice is headed by the U.S. Attorney General, appointed by the President of the Republic.

24. See Germán Gutiérrez and Thomas Philippon, "How EU Markets Became More Competitive than U.S. Markets: A Study of Institutional Drift", NBER Working Paper, n°24700, June 2018 (www.banque-france.fr/sites/default/files/investment-less_growth_paper.pdf); Matëj Baigar, Giuseppe Berlingieri, Sara Calligaris, Chiara Criscuolo and Jonathan Timmis, "Industry Concentration in Europe and North America", *OECD Productivity Working Papers*, n°18, January 2019 (<https://pdfs.semanticscholar.org/2d47/c038b6bcd948f7754fc6099d0af9568c66be.pdf?ga=2.119667009.853890730.1574788173.1209177517.1574788173>); as well as Thomas Philippon, *op. cit.*

Here again, the data suggest that this supposed greater firmness of the European Commission must be put into perspective. Indeed, data from the law firm Dechert, considering among the mergers and acquisitions notified in the United States those comparable in size to the ones meeting the European threshold in the EU (the so-called "community dimension"), reveal that over the past five years the Federal Trade Commission and the U.S. Department of Justice Antitrust Division have not only initiated more in-depth investigations (148) than the Commission (121), but have also shown greater severity in concluding their investigations. While only three concentrations were banned by the European Commission over the period 2014-2018, U.S. administrations have tried to have twenty-two of them annulled at the same time in court. Thus, major takeover attempts such as those of Time Warner Cable by Comcast in the cable operator sector, Tokyo Electron by Applied Materials in semiconductors or Humana by Aetna in the health insurance market have not been successful in the United States.

Results of in-depth merger control investigations (average 2014-2018), all sectors combined (%)

	United States	European Union
Authorisation	4	7
Conditional authorisation(s)	75	86
Prohibition (or attempts to)	15	2
Abandonment of the transaction	6	5

Source: Fondation pour l'innovation politique; Dechert LLP (DAMITT) data.

Nevertheless, procedural differences between the United States and Europe could partly explain these statistical differences. For example, the pre-notification period for transactions that exists in Europe - but not in United States - probably has an upstream sorting effect: even before the deposition of a file, if the initial exchanges with the European Commission suggest risks of prohibition or overly strict remedies, some of the operations can be abandoned. We therefore wanted to complete this quantitative study by a qualitative analysis. To do this, we have studied the remedies imposed in the case of industrial transactions that are subject to conditional authorisation concurrently in the United States and in Europe since 2000. In the sample of the 48 industrial operations we studied²⁵, the European Commission imposed stronger remedies than its American counterparts in eight cases, while the opposite occurred in five cases. In the overwhelming majority of transactions, the competition authorities have therefore achieved identical remedies, or have imposed remedies that are impossible to compare. It should also be noted that in 70% of the cases of these operations, the European and American authorities explicitly mentioned having worked closely together.

25. List available in appendices.

**Comparison of remedies imposed during industrial concentrations
(on a sample of industrial transactions with a global impact, from 2000 to 2018)**

Out of 48 transactions reviewed	
Similar Remedies	14
Local remedies not allowing for comparison	21
Firmer European Remedies	8
Firmer American Remedies	5

Source: Fondation pour l'innovation politique.

This analysis is in line with another older study that focused on 75 cases from the period 1993-2004 wherein the authorities on both sides of the Atlantic had to make decisions and shows that most (68%) of these decisions converge²⁶. In 5% of cases, the European Commission imposes remedies where U.S. authorities unconditionally authorise the same transactions. Yet, the opposite is true in 24% of cases. Although refusing to categorically proclaim the utmost firmness of the American authorities, this study and ours reverse, as a minimum, the burden of proof.

Regarding the recent increase in concentration levels in the United States mentioned above, it should be noted that this is also observed in Europe, though to a lesser extent, particularly in market services²⁷. In addition, many factors other than a possible differential severity in the application of the merger control policy could explain this difference in the evolution of concentration levels. Among them, we can mention in particular the lesser regulatory fragmentation of the service markets in the United States, the persistence of national logics in the defence and strategic sectors in Europe and, finally, a smaller capacity of European companies to seize new technologies in order to generate scale efficiencies and network effects²⁸.

In short, the analysis of the available data invites to refute the idea of the European Commission's extreme firmness in terms of merger control compared to its American counterparts.

26. François Lévéque, "Le contrôle des concentrations en Europe et aux États-Unis: lequel est le plus sévère?", *Concurrences*, n°2, p. 20-23, May 2005.

27. See Matěj Bajgar, Giuseppe Berlingieri, Sara Calligaris, Chiara Criscuolo and Jonathan Timmis, art. cit. These researchers use the share of turnover of the top eight companies in the total turnover of a given sector as a measure of concentration. They find an increase in this measure concentration of +4% and +6% respectively in the European and American manufacturing sector between 2000 and 2014. In the non-financial services sector, the increase is about +4% in Europe and +10% in the United States.

28. See John Van Reenen, "Increasing Differences Between Firms: Market Power and the Macro-Economy", CEP Discussion Papers dp1576, Centre for Economic Performance, LSE, August 2018 (www.kansascityfed.org/~media/files/publicat/sympos/2018/papersandhandouts/jh%20john%20van%20reenen%20version%2020.pdf), and David H. Autor, David Dorn, Lawrence F. Katz, Christina Patterson and John Van Reenen, "The Fall of the Labor Share and the Rise of Superstar Firms", Working Paper, October 2019. (<https://economics.mit.edu/files/12979>).

III. NECESSARY INCREMENTAL ADAPTATIONS TO MERGER CONTROL IN A RAPIDLY CHANGING ENVIRONMENT

Is merger control in Europe, however, exempt from any room for improvement?

It can be seen that most of the criticisms made are based on two statements that seem paradoxical. On the one hand, European law would be too strong because it would prevent the realisation of certain supposedly beneficial mergers, such as the Alstom-Siemens merger. Merger control is criticised for taking into account time horizons too short in assessing the probability of entry on the market of a new competitor. Some also consider that European merger control is focusing too much on the consumer surplus, thereby omitting efficiency gains of the producers' side. On the other hand, the very same merger law would be powerless to control operations that do not fall within the notification requirements, even though some transactions may affect competition. We are thinking in particular of the takeover by the new technology giants of promising start-ups.

As a preliminary point, it should be recalled that the purpose of merger control is to ensure that mergers and acquisitions do not create or strengthen the power of merging parties, which would have the effect of increasing prices or reducing the variety or quality of products. Any company of a certain size, whatever its nationality, is subject to this control from the moment it operates on European soil and the parties' turnover involved in the transaction exceeds certain thresholds. As a result, the control also applies to non-European companies with activities in the European Union. Thus, in June 2013, the Commission subjected to conditions the proposed merger between American Airlines and US Airways, two American airlines operating in Europe, in order to preserve minimal competition on several transatlantic routes from London.

Notification thresholds and *ex-post* control. Certain concentrations may have the purpose or effect of reducing competition, while escaping merger control, if the notification thresholds are not met.

Let's take the example of a start-up in the digital or pharmaceutical sector whose services or products are promising but which do not yet realise sufficient turnover to meet the European notification thresholds. In the event of a takeover by a competing company, the operation passes under the radar of the authorities even though it could potentially be structuring for markets, particularly when it allows a large firm in a dominant position to increase its market power or potentially "kill" the competitive threat and therefore innovation.

Perhaps the best known example is Facebook's takeover of WhatsApp for an amount of nearly 22 billion euros. This operation was not auditible in most EU Member States, as the target was not generating revenue. Its control by the Commission was only possible because of the referral mechanism which allowed Spain and the United Kingdom to transfer the case to the European authorities. Many voices consider that the approval of the operation by the European Commission, without any remedy, was a bad decision, especially since Facebook has hidden key information on the possibility of coordinating access to data identifying users of both platforms. This behaviour has cost Facebook a sanction of 110 million euros *a posteriori* from the European Commission. The authority did not, however, wish to call into question the previously approved operation. Other examples of transactions with highly competitive stakes that went unnotified to Brussels may be mentioned: the acquisitions of YouTube (2006) and Deepmind (2014) by Google, or those of Instagram (2012) and Oculus (2014) by Facebook²⁹.

These operations that are not subject to merger control may have a significant impact on competition, despite the limited size of the target. An extreme case is one in which a dominant operator acquires a small company likely to launch an innovative product on the market, with the sole aim of preventing future competition: this is called a "killer acquisition". This risk of pre-empting future competition can be illustrated by a simple example. Suppose that company A is in a monopoly position on market X and makes a profit of 50 euros. Company B has developed a product Y that competes with X and plans to enter the market: in the absence of any reaction from company A, the market situation will evolve into a duopoly, with a decrease in total profits from 50 to 30 euros, distributed equally between the two companies. In order to avoid the entry of competitor B, company A has a strong incentive to buy it: it is even willing to spend the difference between the monopoly profit and its profit in a duopoly (i.e. 50 euros - 15 euros = 35 euros). The purpose of B's acquisition is then only to prevent the entry of a potential competitor into the market. This type of strategy has been highlighted retrospectively in the pharmaceutical sector. A research³⁰ showed that 6% of acquisitions in this sector had the effect of stopping the R&D efforts of the acquired company on competing projects of those led by the acquiring company.

The problem is that this type of strategy is very difficult - if not impossible - to be detected by the competition authorities acting *ex ante*, especially when the transactions are intended to take the control of innovative companies with

29. See Paul-Adrien Hypolite and Antoine Michon, *Big Tech Dominance (1): The new financial tycoons and Big Tech Dominance (2): A barrier to technological innovation?*, Fondation pour l'innovation politique, November 2018. (www.fondapol.org/wp-content/uploads/2019/07/136-GEANTS-NUMERIQUE_I_ENG_2019-07-11_w.pdf) and (www.fondapol.org/wp-content/uploads/2019/07/136-GEANTS-NUMERIQUE_II_ENG_2019-07-11_w.pdf).

30. Colleen Cunningham, Florian Ederer and Song Ma, "Killer Acquisitions", Working Paper, June 2019.

low turnover. In order to solve this problem, a first solution, implemented in particular in Germany, is to lower the merger control's notification threshold. The risk is however to end up with a large number of notifications of operations that do not pose any competitive problems. This would result in a waste of public resources. A second solution is to create another threshold not in terms of turnover but in terms of the transaction value. Indeed, innovative start-ups are often bought out for a very high transaction amount, while they have little or no turnover, with buyers integrating in their price the potential of the target company's development. However, this solution is hampered by the fact that the value of a transaction is a data that can be manipulated through financial arrangements that enable the acquirer to ensure that the purchase price is different from the final price. A last solution, which already exists in countries such as the United Kingdom, Sweden or the United States, consists in introducing a form of control *a posteriori*. In this case, the competition authority may review a concentration even if it is below the notification thresholds and has already been carried out.

The United States is probably the country in which ex-post control is most often implemented. Indeed, Article 7 of the *Clayton Act* allows the Department of Justice (DOJ) and the Federal Trade Commission (FTC) to control mergers on a discretionary basis, even if they do not meet the notification requirements of the *Hart-Scott-Rodino Act (HSR Act)*. This control can be done before or after the operation has been implemented. The main sources of information for the U.S. authorities on these transactions are, on the one hand, the economic press and, on the other, complaints from competitors or consumers. Moreover, the control without prior notification does not seem to be limited in time. For example, in 2011, the FTC challenged Cardinal Health's acquisition of three nuclear pharmacies in 2009, following allegations of restrictions of competition³¹. The FTC order required Cardinal Health to reconstitute and resell the acquired companies to an FTC-approved purchaser, as well as the intellectual property rights attached to them.

Without going as far as the American system, it would be useful for the Commission to be allowed to review a transaction that falls below the notification threshold but which nevertheless raises competition concerns, including if the transaction has already been completed. This system should be strictly time-bound, with a relatively short intervention time after the announcement or completion of the transaction, in order to reduce the inherent legal uncertainty. Similarly, it would be intended to be surgical (and therefore not systematic), on the basis of competitive intelligence or by the creation of a list of "systemic" companies with an obligation to inform the Commission of any acquisition.

31. See Federal Trade Commission, "Cardinal Health, Inc, In the Matter of", 18 April 2012 (www.ftc.gov/enforcement/cases-proceedings/0910136/cardinal-health-inc-matter).

Recommendation n° 1

Grant the European Commission the right to review mergers that do not fall within the notification thresholds, either before or after the completion of the transaction, within a fixed and limited time period.

Synergies and efficiency gains. A second criticism is that the European merger control would not take sufficiently into account efficiency gains claimed by the parties to the operation. From an economic standpoint, taking into account the efficiency gains is an essential aspect of the analysis of any operation of concentration. Indeed, a merger-acquisition is likely to have two opposite effects: on the one hand, by restricting competition, it can lead to a price increase; on the other, it can result in reduced production costs through the realisation of synergies between entities that merge, which is likely to lower prices.

Economic analysis, following Oliver Williamson's pioneering work (1968), calls for a comparison of efficiency gains and the impact on competition to determine whether or not a concentration is beneficial to aggregate welfare. If this reasoning is applied, a concentration should be accepted if it has the effect of increasing welfare and rejected if it does not. This means that a merger which would penalise consumers (following the price increase) but would lead to efficiency gains that more than compensate for the loss of competition should be authorised (see table below). This analysis, based on aggregate welfare analysis, does not exactly correspond to the one implemented by the competition authorities today.

Implications of Oliver Williamson's analysis

Effect on surplus of consumers	Efficiency gains	Antitrust decision
Price decrease or unchanged price	Positive or null	Acceptance without conditions
Price increase	Null	Refusals
Price increase	Positive	Conditional acceptance, if the efficiency gains more than compensate for the infringement of competition

Source: Fondation pour l'innovation politique.

In practice, in Europe as in elsewhere, competition authorities use the consumer surplus and not aggregate welfare as the main criteria for analysing concentrations. Hence, efficiency gains are not considered if they trigger a price increase and therefore a deterioration of the consumer surplus. For example, in the United States, the *Horizontal Merger Guidelines* recall that a concentration

with a negative impact on competition can be saved by efficiency gains, but that a party of these gains must benefit consumers. Efficiency gains must be "sufficient" to offset infringements of competition³².

A similar approach is adopted in Europe: the Regulation on concentrations³³ states that the European Commission assesses the impact of a concentration on competition, taking into account in particular "the evolution of technical and economic progress provided that it is to the benefit of consumers and does not constitute an obstacle to the competition". These efficiency gains must also be specific to the concentration and their existence must be verifiable. In addition, it can be seen that in taking into account any efficiency gains, competition authorities often remain very cautious. This is because efficiency gains are difficult to demonstrate *ex ante*, particularly in a context of asymmetric information between the parties and the antitrust authority. This prospective and hypothetical dimension is even greater when it comes to taking into account the dynamic gains of a concentration. The time horizon being very distant, the impact of a merger on the incentive to innovate is difficult to appreciate. Thus, in Europe, while the guidelines mention dynamic gains, the Commission recalls that "the further in time the projected efficiency gains will be, the less weight the Commission will be able to give them³⁴". The European Commission's caution is also explained by a well-known observation: empirical studies show a high failure rate of mergers and acquisitions and an overestimation of the efficiency gains expected from a merger. Regardless of the methodology used, the studies in question achieve a merger failure rate - measured by the lack of value creation - of between 50% and 83%. For example, a McKinsey study measured the difference between estimated cost reductions at the time of an operation and the cost reductions actually achieved at the end of the concentration, based on a sample of 92 transactions. If 66% of the operations achieved more than 90% of expected cost synergies, we also note that in 27% of cases, the cost reductions achieved are at least 20% lower than what was anticipated.

However, even if the merger failure rate is high on average, a company wishing to buy or merge with another company cannot, as a matter of principle, be accused of not being able to reduce production costs as a result of the operation. In this respect, a desirable development would be for the European

32. "The Agencies consider whether cognizable efficiencies likely would be sufficient to reverse the merger's potential to harm consumers in the relevant market [...]. When the potential adverse competitive effect of a merger is likely to be particularly substantial, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive" *Horizontal Merger Guidelines*, U.S. Department of Justice and Federal Trade Commission, p. 30-31, August 2010 [www.ftc.gov/sites/default/files/attachments/merger-review/100819hmg.pdf].

33. Council Regulation (EC) N° 139/2004 from 20 January 2004 on the control of concentrations between undertakings.

34. "Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings", *Official Journal of the European Union*, No.031, 5 February 2004, p. 0005-0018, § 83 ([https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004XC0205\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004XC0205(02)&from=EN)).

Commission to at least clarify the methodology for analysing efficiency gains, in particular by publishing guidelines on this subject so that companies can make their arguments on this point as effectively as possible. It is striking to note that the merger control guidelines remain rather laconic, with only a few paragraphs detailing the types of efficiency gains that can be taken into account³⁵, and without giving any methodological details. This clarification could be made with a constant analytical framework: without calling into question the objective of maintaining the consumer surplus, the European Commission could consider with greater interest the parties' arguments on efficiency gains.

Recommendation n° 2

Better take into account efficiency gains in concentrations by clarifying the methodology for assessing these gains in the guidelines.

Assessment of potential competition. A third criticism of merger control concerns the insufficient consideration of potential competition in a context of market globalisation and the rise of new operators from countries such as China. This criticism was particularly present during the transaction between Alstom and Siemens, the parties to the transaction considering that the Commission had underestimated the possible entry of Chinese competitors in the near future, on the grounds that they had yet to win any tenders on the European continent.

This question refers more fundamentally to the question of the assessment of barriers to entry. Taking into account the entry probability of a new player in the competitive analysis of a transaction means that the European Commission has to check whether three conditions are cumulatively met.

First of all, the Commission assesses whether entry is likely. The qualitative estimation of this probability in practice means assessing the extent of barriers to entry on the market. Factors such as the presence of economies of scale, costs or market developments are taken into account.

Then, the Commission estimates whether entry can take place "in due time". The Commission must assess whether competitors' entry will be swift and sustainable enough to thwart the exercise of market power. This means that it must take place before the potential anti-competitive effects of the operation are realised. The guidelines indicate that in this respect, "the precise timing of such entry depends on the characteristics and dynamics of the market, as well

35. *Ibid.*, § 80 and 81.

as the specific capacities of potential entrants. However, market entry is usually only considered to take place in a timely manner if it takes place within two years." The debate on this point was particularly heated in the Alstom-Siemens case: the parties considered that the entry of the Chinese giant CRRC over a five to ten-year period was possible and that, given the low frequency of tenders on high-speed trains, a ten-year time frame was appropriate. For its part, the European Commission considered in its decision that the parties themselves, in their internal documents, felt that the entry of CRRC was unlikely in the near future, as CRRC was not yet a sufficiently credible competitor to win tenders in Europe.

Finally, the Commission assesses whether entry is sufficient in preventing or counteracting the potentially anti-competitive effects of the transaction. The European Commission looks here at the size of the entry, analysing in particular the size of the potential entrant: the larger the potential entrant, the more the input can exercise a significant effect on competition.

Two proposals for improvement could be made on the subject of the entry of new competitors, aimed at improving the predictability of the reading grid used by the European Commission when assessing a case. First of all, it should be noted that the guidelines do not explicitly mention the fact that a foreign competitor receiving subsidies like certain Chinese companies may find it easier entering the market. It would be useful to explicitly mention this. Then, if the text already authorises the European Commission to depart from the criteria of two years in particular cases, taking into account the specificities of a market, it would be useful for the European Commission to be more explicit on this issue of deadlines. What criteria would allow, for example, to take into account a timeframe greater than two years?

Recommendation n° 3

Amend the guidelines for assessing the probability of the entry of new competitors on the market, to specify:

- the possible inclusion of public subsidies received by an operator which is not yet present on the European market;
- the rules for extending the standard frame for analysing the entry of a competitor, usually set at two years.

Among the ways to improve merger control, the possibility of granting an appeal right to the Council has been mentioned several times, particularly following the prohibition of the Alstom-Siemens operation. This solution would allow political power to override a decision of the European Commission on the basis of competitive analysis, to invoke grounds other

than compliance with competition law. It should be noted that such a system already exists at the national level, as in France under Article L. 430-7-1 of the French Commercial Code. The French Minister of the Economy may, in fact, invoke arguments such as industrial development, the competitiveness of companies or the creation or preservation of employment, to override a decision of the Competition Authority to prohibit or authorise a transaction subject to commitments. This so-called "evocation power" has the merit of strictly separating roles and responsibilities: the political decision-maker does not redo a competitive analysis but intervenes on other reasons, thus avoiding the confusion of objectives.

Despite its attractiveness, we will not go into the idea of a political appeal right in this study to the extent that it seems unlikely to work at the European level. Taking into account the number of Member States and the multiplicity of potentially divergent interests, the likelihood that the European Council reaches an agreement on a concentration is very low. There is also a risk of a form of "political bargaining" between Member States, which could consist, for example, in making support conditional on a concentration authorisation banned by the European Commission in exchange for support on another case.

IV. EUROPEAN STATE AID CONTROL, A THORN TO BE REMOVED AS SOON AS POSSIBLE?

If the European merger control policy does not constitute a real obstacle to the competitiveness of European industry, what about the European state aid control regime? Let's start with the reminder that the control of State aid is a specific part of the European competition framework³⁶, which stipulates the prohibition of "aid granted by States [...] which distorts or threatens to distort competition by favouring certain companies or certain productions". Established since the Treaty of Rome in 1957, this system is intended to avoid distortions of the internal market and subsidies escalation between Member States which would be harmful to both public finances and European competitiveness.

36. See Articles 107 and 108 TFEU.

In practice, four criteria must be met in order to characterise State aid:

- the aid must be granted from public resources;
- the aid provides a selective advantage to one or more undertakings (for example, the industrial sector);
- the aid distorts competition;
- the aid is capable of affecting trade between Member States³⁷.

Except in special cases, any aid which simultaneously satisfies these four conditions must be notified to the European Commission before its introduction. The latter then assesses the compatibility of the aid with the exceptions provided for in European law, and then gives its possible agreement to the implementation of the aid policy. Among the types of assistance that can be authorised include, for example, those aimed at promoting culture and heritage conservation, or those targeting the economic development in areas of low economic activity. The European Council also has the right to unilaterally authorise State aid, which is a right Member States can only exercise unanimously.

A frequent criticism of this system is that it would prevent Member States to put in place industrial policies for two reasons. On the one hand, it drastically limits the opportunities for industry support: since sectoral aid is prohibited, a Member State may not decide on a discretionary basis to subsidise an industrial sector which it would consider strategic. On the other hand, Brussels' control adds, even in the case of State aids which would ultimately be authorised, delays and procedural complexities that could hinder the deployment of industrial policies.

In the light of these criticisms, the European Union began work in 2012 to modernise the State aid framework³⁸. In concrete terms, this reform has reduced Member States' notification obligations by adding categories of aid exempt from notification (e.g. certain aid for innovation, the deployment of network infrastructure, or environmental transition), by increasing some notification thresholds, and by relaxing control regimes in certain sectors.

37. See "Vade-mecum des aides d'Etat", Legal Affairs Directorate, 2016 edition (www.economie.gouv.fr/files/files/directions/services/daj/publications/vademecum_aides_etaf-2016/pdf-vade-mecum-aides-etat/Vademecum_aides_etaf-2016_complet.pdf).

38. This reform had three objectives: to facilitate communication between Member States and the European Commission, to focus the European Commission's control efforts on the most important cases of aid, and to better support European growth (https://ec.europa.eu/competition/state_aid/modernisation/index_en.html) and (https://ec.europa.eu/competition/publications/cpb/2014/011_en.pdf).

The European Commission also wished to support the development of ambitious projects involving several European countries through the mechanism of “Important project of common European interest” (IPCEI)³⁹. This system now allows a group of Member States to support large-scale pan-European projects, provided that they are co-financed by the companies concerned. This is the mechanism being used for the European plan on microelectronics⁴⁰, which totals €1.75 billion in French, German, Italian and British subsidies over five years for research and innovation in the sector⁴¹. ST Microelectronics and Infineon are among the 29 beneficiary organisations which will add about six billion euros of private investments to public subsidies, in order to increase the overall R&D effort in the field to around eight billion euros. This industrial IPCEI, the first to be set up since the modernisation of State aid, will likely soon be joined by other projects. In May 2018, the European Union created a Strategic forum on IPCEI to identify "key strategic value chains of specific importance for industrial competitiveness"⁴². Nine channels have been identified by the group of experts: they include the battery value chain - receiving media attention since the launch of the European Battery Alliance in May 2019 -, connected, clean and automated vehicles or even hydrogen technologies.

To further simplify the State aid control regime, a recent report by the French Inspectorate General of Finance (Inspection générale des finances) and the General Council for the Economy (Conseil général de l'économie)⁴³ proposes several ideas that we find interesting. In particular, it suggests that the Commission's *ex-ante* controls should be reduced to a minimum in the case of research grants, development and innovation activities; that a maximum recommended duration of one year should be established for the examination of State aid cases (an instruction which today, due in particular to the informal pre-notification regime, often exceeds two years) or to reduce the eligibility criteria for the IPCEI system on the basis of feedback from the microelectronic IPCEI.

39. Communication de la Commission. Critères relatifs à l'analyse de la compatibilité avec le marché intérieur des aides d'État destinées à promouvoir la réalisation de projets importants d'intérêt européen commun, *Official Journal of the European Commission*, 20 June 2014

[[https://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:52014XC0620\[01\]&from=EN](https://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:52014XC0620[01]&from=EN)].

40. See Directorate-General for Enterprise, “Présentation du plan Nano 2022”, entreprises.gouv.fr, 26 August 2018 (www.entreprises.gouv.fr/numerique/presentation-du-plan-nano-2022).

41. See European Commission, “State aid: Commission approves plan by France, Germany, Italy and the UK to give €1.75 billion public support to joint research and innovation project in microelectronics”, Press release, 18 December 2018 [https://ec.europa.eu/commission/presscorner/detail/en/IP_18_6862].

42. European Commission, “Report from the Commission to the European Parliament, [...] on the implementation of the Strategic Action Plan on Batteries: Building a Strategic Battery Value Chain in Europe”, 9 April 2019, Annex 1 [<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52019DC0176&from=EN>].

43. Anne Perrot, Victor Blonde, Axel Ropars, Serge Catoire and Hervé Mariton, “La politique de la concurrence et les intérêts stratégiques de l'UE”, Inspection générale des finances-Conseil général de l'économie, de l'industrie, de l'énergie et des technologies, 19 April 2019 [https://www.economie.gouv.fr/files/files/directions_services/cge/Rapports/Rap2018/CGE_Rapport_M-105-03-UE_English.pdf].

It is clear that State aid control's exemption regimes are allowing more and more support for strategic industrial sectors⁴⁴. However, the fact remains that European State aid control framework rightly introduces significant constraints for European producers which are not faced by their foreign competitors. The current situation, marked by massive public investment in China and in the United States towards advanced technologies, may therefore expose European industrial producers to unfair competition. In this context, Europe must establish appropriate trade policy rules. This is the fair counterweight for the strict competition regime that applies within the internal market.

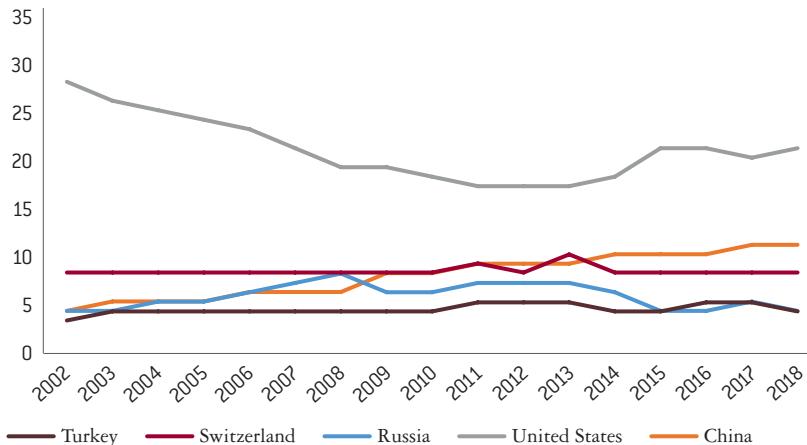
In summary, a review of the data showed that the European merger control policy as such does not constitute an obstacle to the development of an efficient European industry, quite the contrary. Nevertheless, this observation does not answer the initial questioning: what can be done to ensure that European companies can exist in the global competition against foreign companies, particularly Chinese ones, which are suspected to be heavily supported by public subsidies?

44. The results of the modernisation of State aid seem to be conclusive, so that the European Commission has announced its intention to extend the validity of schemes that had an expiry date. In addition, it has launched a comprehensive review of State aid modernisation measures (see European Commission, "State aid: Commission to prolong EU State aid rules and launch evaluation", Press release, 7 January 2019, https://ec.europa.eu/commission/presscorner/detail/en/IP_19_182).

APPENDICES

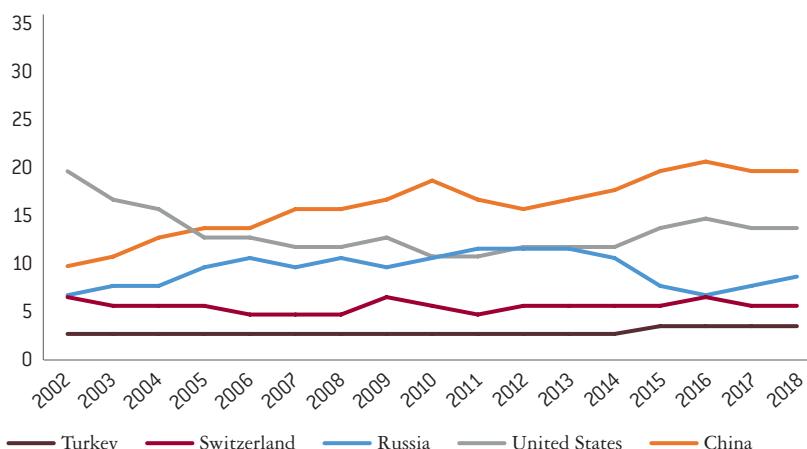
MAIN EUROPEAN TRADING PARTNERS

European exports destination, as a % of total EU exports



Source: Fondation pour l'innovation politique; Eurostat data.

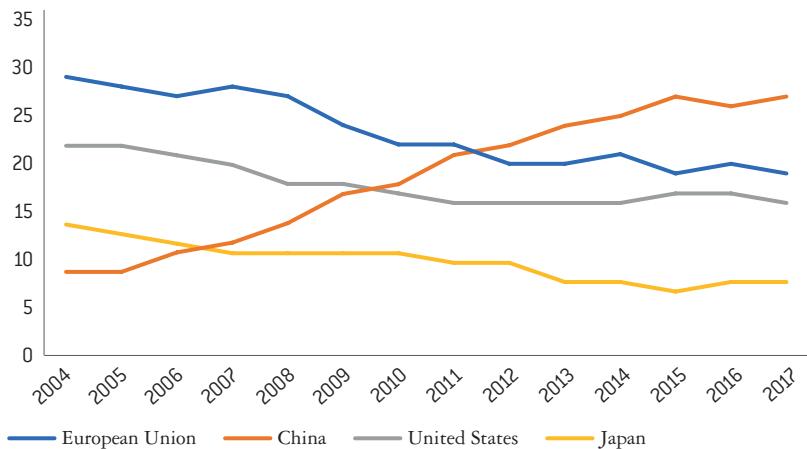
Origin of European imports, in % of total EU imports



Source: Fondation pour l'innovation politique; Eurostat data.

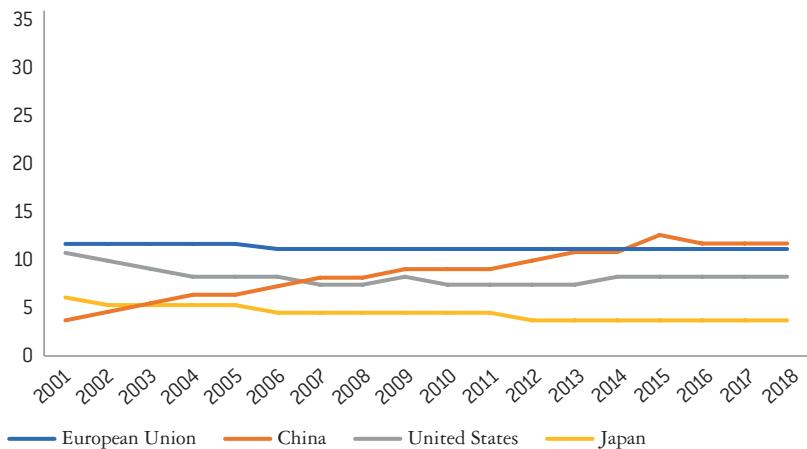
GLOBAL PERFORMANCE OF EUROPEAN INDUSTRY

Share of domestic value added in the global value added of manufacturing industry



Source: Fondation pour l'innovation politique; World Bank data.

Share in value of world exports of goods (excluding intra-EU exports for the EU 28)



Source: Fondation pour l'innovation politique; International Trade Centre data, European Commission (Ameco).

Comparisons of remedies imposed in the United States and Europe in the case of concentrations for which conditional authorisations have been granted concurrently on both sides of the Atlantic

Date	Transaction	Firmest Remedies	Collaboration between the United States and the European Union mentioned in press releases
2000	Novartis/AstraZeneca	European Union	Yes
2001	Metso/Svedala	United States	Yes
2002	Bayer/Aventis	Comparison impossible	Yes
2003	GE/Instrumentarium	United States	Yes
2004	Syngenta/Advanta	Equivalent remedies	No
2005	Novartis/Eon Labs	Comparison impossible	No
2005	Procter & Gamble/Gillette	United States	Yes
2006	Guidant/Abbott/Boston Scientific	Comparison impossible	Yes
2006	Inco/Falconbridge	Equivalent remedies	No
2006	Mittal/Arcelor	Comparison impossible	No
2006	Johnson & Johnson/Pfizer	Comparison impossible	No
2007	Thermo/Fisher	Equivalent remedies	Yes
2007	Owens Corning/Saint Gobain	Equivalent remedies	Yes
2007	Schering-Ploughs/Organon Biosciences	Comparison impossible	Yes
2008	Hexion/Huntsman	European Union	Yes
2008	Manitowoc/Endis	Equivalent remedies	Yes
2008	Cookson/Foseco	Comparison impossible	Yes
2008	Pernod Ricard/V & S	Comparison impossible	Yes
2008	Teva/Barr	Comparison impossible	No
2008	Anheuser-Busch InBev/SAB Miller	United States	No
2009	BASF/Ciba	European Union	No
2009	Panasonic/Sanyo	European Union	Yes
2009	Pfizer/Wyeth	Comparison impossible	Yes
2010	Agilent/Varian	Equivalent remedies	Yes
2010	Alcon/Novartis	Comparison impossible	Yes
2011	Teva/Cephalon	Comparison impossible	No
2012	UTC/Goodrich	United States	Yes
2013	General Electric/Avio	European Union	Yes
2013	Thermo Fisher/Life	European Union	Yes
2014	Medtronic/Covidien	Equivalent remedies	Yes
2015	Alstom/GE	European Union	Yes
2015	Lafarge/Holcim	Comparison impossible	Yes
2015	Novartis/GSK	Comparison impossible	Yes
2015	TRW/ZF	Equivalent remedies	Yes
2015	Pfizer/Hospira	Comparison impossible	No
2015	NXP/Freescale	Equivalent remedies	Yes
2016	Teva/Allergan	Comparison impossible	Yes
2016	Sanofi/Boehringer Sohn	Comparison impossible	No
2016	Mylan/Meda	Comparison impossible	No
2016	Abbott/St Jude	Comparison impossible	Yes
2017	Dow/Dupont	European Union	Yes
2017	Abbott/Alere	Equivalent remedies	Yes
2017	Broadcom/Brocade	Equivalent remedies	Yes
2018	Bayer/Monsanto	Equivalent remedies	Yes
2018	Quaker/Global Houghton	Comparison impossible	No
2019	Tronox/Cristal	Equivalent remedies	Yes
2019	Thalès/Gemalto	Equivalent remedies	Yes
2019	Praxair/Linde	Comparison impossible	Yes

Sources: Department of Justice, Federal Trade Commission, European Commission.





TOWARDS PERSONALISED PRICING IN THE DIGITAL ERA?

Emmanuel COMBE

December 2019

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LA POLITIQUE DE CONCURRENCE : UN ATOUT POUR NOTRE INDUSTRIE

Novembre 2014

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By Emmanuel COMBE, Paul-Adrien HYPPOLITE and Antoine MICHON

Following the European Commission's prohibition of the Alstom-Siemens merger, many voices pretended to have found the cause of Europe's industrial decline: an overzealous European competition policy hindering the emergence of "European champions". Without denying the existence of prospects for improving merger control policy, it would be counterproductive to blame Brussels for the application of rules whose economic virtues in terms of defending purchasing power and incentives to innovate are clearly demonstrated. A comparison with the United States invites us to beware of theories that view competition rules as obstacle to economic development.

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