

Geopolitics and EU Competition Law

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On February 4, 2020 the Ministers of Economy of Germany, France, Italy and Poland published a [letter](#) addressed to European Commissioner for Competition, Margrethe Vestager. The signatories stated that due to developments in global competition it was necessary to reform the European competition law. According to the letter, the European enterprises competed with foreign companies, which benefited from substantial support from their States and from protected domestic markets. Therefore, the European competition policy had to take into account these markets, the companies operating there and the potential competition. Moreover, it was necessary for EU to have proper instruments to address these challenges.

A year before the publication of the letter significant events took place on the European market. On February 6, 2019, the European Commission [prohibited](#) the merger of Europe's biggest rail companies, German Siemens and French Alstom. The merger would have created the second biggest railway company in the world with total revenues of EUR 15 billion. The merged entity would compete with the world's biggest rolling stock manufacturer, Chinese CRRC Corporation. For comparison, CRRC Corporation made up to 230 high-speed trains in a year, whereas Alstom and Siemens competed for 35.

The proposed merger of Alstom and Siemens was the manifestation of French new initiative – “Europe which protects”. The purpose of the initiative was to protect the European jobs from Chinese companies, which posed threat to European enterprises due to their size and access to cheap capital. According to France's President Macron, the Europe, therefore, required big companies, the so-called European champions to compete effectively.

According to the European Commission, the merger of Alstom and Siemens would have created the biggest rail company in Europe, which would have significantly reduced competition on the European

market and it would have limited the access of other train operators to the products and suppliers. Besides, the prices on rail transportation would increase for millions of European consumers.

Deciding on merger, the European Commission investigates, among others, which market the consumers may switch to if a rival increases the price, reduces the quality, and restricts the choice and innovation. In this case, the European Commission determined that Chinese companies did not operate on the European market, could not exert competitive pressure on the European companies and therefore, were not feasible alternative providers for European consumers.

The prohibition of the merger of Siemens and Alstom was met with harsh criticism by the French and German officials. Both countries declared that Europe's competition policy was inadequate in the face of the global challenges and that European competition law indirectly favored the Chinese and other companies at the expense of European undertakings, which was unacceptable.

Soon after the decision of the European Commission, the Germany and France issued a [joint manifest](#), which called for the reform in number of important areas, in particular, the manifest urged EU to increase funding for innovative projects, to adopt the pre-screening program of foreign investments in the European market and to reform of Europe's competition law. The authors of the manifest demanded to update the merger regulation to grant EU bodies the adequate powers for considering the potential (future) global competitive risks.

According to the manifest, the European Council (comprising of the heads of State and government of EU members States) should be given the powers to revise, if necessary, the decision of the European Commission on the matters of competition. If this is to happen, the initiative would substantially upend the balance of powers between EU bodies and substitute legally confined in-depth expert analysis with political expediency.

The political pressure on European Commission as well as the statements that it should take into account political realities when applying European competition law is not new. The European Commission is often the object of criticism that it disregards the industrial policy or political realities such as the social welfare and level of employment. The answer of the European Commission to critique is the following: the assessment of competition cases requires taking into account the factors relevant for competition, which includes the analysis as to what extent the European consumer may switch to other provider if a rival increases prices, reduces choice or innovation.

Nevertheless, the situation is somewhat different now and the chances of reform have never been higher. The joint manifest of Germany and France was published at a time when populism is high in Europe, the appeal to free market has become less attractive, especially after Brexit, and there is a challenge, whether Europe's industrial complex would withstand the competition from China and other parts of Asia.

In light of the foregoing, on December 9, 2019, Margrethe Vestager issued an unexpected [statement](#) in which she explained the rules of definition of the relevant market, noted that there were certain developments on global market and stated that she would start working on revising the rules concerning the definition of the relevant market. The European Commissioner for Competition did not specify either timeline or content of the reform.

The purpose of the joint declaration of Germany, France, Poland and Italy was to “remind” Margrethe Vestager that the reforms were needed and as fast as possible. It was unexpected to see Italy as of the signatories to the declaration, which was actively involved in China's One Belt One Road initiative. However, due to the latest developments, Italy decided to join the call for the reform.

At the same time, the confrontational tone against the Commissioner for Competition is very unusual from EU's top countries. It is unlikely that this will have any influence on Margrethe Vestager. The independence of the officials in Brussels is embedded in EU's structure and is based on a ‘healthy skepticism’ among EU countries – since it is not in the member States' interest to elect an official, who would be biased for or against a particular country, they frequently end up selecting an independent candidate. Margrethe Vestager is one of the best examples in that regards.

In the circumstances at hand, certain changes in EU's competition policy is to be expected. It is not clear to what extent Margrethe Vestager will consider the statements of the European countries that European Commission should take into account Europe's broad strategic goals and long-term implications of geopolitical challenges. At the same time, it is evident that the development of Europe's market would be influenced by the global competition risks and there will be calls for more protectionist approach.

If European competition law will be reformed, it will effect EU-Georgia association agreement agenda as well. In this case, Georgia will have to decide whether to approximate its enforcement practice with European standards, which, as of today, is more focused on the State aid and is less invasive in the market processes not involving the dominant undertakings.

Despite the regional competition risks (for example Iranian steel producers financed by Iran) the guiding principle of competition law enforcement should be consumer welfare, which is inconsistent with protectionism and short-term political gains at the expense of competitive markets.