Competition policy and European firms' competitiveness

Massimo Motta, Martin Peitz 20 February 2019

Massimo Motta and Martin Peitz ask whether merger control obstructs or promotes European firms' competitiveness, whether there is room for public policy considerations beyond competition policy goals when dealing with competition-related issues, and what can be done to promote the competitiveness of European firms both within and beyond Europe.

18 A A

Related
Google Android case: Milestone or millstone?
Hal Varian
Merger policy in the age of Facebook
Andrea Prat, Tommaso Valletti
Deterrence in EU merger policy
Joseph Clougherty, Tomaso Duso, Jo Seldeslachts

On 6 February, the European Commission prohibited the merger between Siemens and Alstom, the leading European firms in the rail industry. A merger prohibition is such a rare occurrence in Europe that this is breaking news by itself. But the reason why it has attracted a lot of public attention has been the fact that the German and French governments had lobbied for the merger (arguing it was necessary to create a European champion able to stand up to the powerful China's CRRC) and, after the prohibition decision, they have openly criticised the European Commission for it, and announced initiatives aimed at relaxing competition rules with a view of creating European champions.

As we wrote in an open letter ("More, not less, competition is needed in Europe") with a number of colleagues who – like us – are competition economists, we find it extremely worrying that European competition enforcement might be relaxed and subject to considerations that may have little to do with competition policy goals, that is, economic efficiency and the protection of competitive process.

In the current debate triggered by the Siemens/Alstom case, there are several intertwined but conceptu worth public attention and are the object of this post. First, is merger c an firms' competitiveness, or does it rather promote it? Second, sity) for public policy considerations beyond competition policy goals wh elated issues? Third, what can be done to promote the ti Europe and international markets outside Europe?

r and firms' competitiveness

Massimo Motta
Research Professor, ICREA-Universitat Pompeu Fabra and Barcelona Graduate School of Economics

Martin Peitz
Professor of Economics, University of Mannheim

Blogs&Reviews
Competition policy and European firms' competitiveness
Motta, Peitz
A world with central bank digital currencies
Mancini-Griffoli, Martinez Peria, Agur, Ari, Kiff, Popescu, Rochon, Jakab
The ECB has reached its political limits. Its consequences in eight charts
Mody
Hard Brexit ahead: Breaking the deadlock and restarting customs cooperation in Europe
Felbermayr, Fuest, Gersbach, Ritschl, Thum, Braml
A new expert survey on bank capital requirements
Ambrocio, Hasan, Jokivuolle, Ristolainen
more

Don't Miss
Real exchange rates for economic development
Guzman, Ocampo, Stiglitz
Brexit and the Irish border issue
Marongiu Buonaiuti, Vergara Caffarelli
Negative interest rate policy and the bank lending channel
Eggertsson, Summers

There is nothing in European merger control that prevents the creation of European (or, for that matter, national) champions, provided that the merger brings about sufficiently strong synergies and complementarities. But in the Siemens/Alstom case, there is no public information that points to such synergies, and the European Commission stated that the parties have not substantiated any such efficiency claims.

Absent efficiencies from the merger, the elimination of competition between two firms has likely anti-competitive effects both in the short and in the long term. In the short term, because it would inevitably lead to higher prices and less choice for direct customers and ultimately final consumers; in the long term, because lower competitive pressure is likely to translate into lower incentives to innovate, invest, improve product offerings. Therefore, in cases like Siemens/Alstom where the merger does not entail efficiency gains, it is hard to see how it could have promoted a more-competitive ‘European champion’, whereas it is straightforward to see it would have harmed customers (which, unsurprisingly, strongly opposed to the merger).

Based on the findings of the European Commission, the Siemens-Alstom merger appears to be a clear-cut case of a merger that hurts final consumers in Europe. However, both firms also compete in international markets and the claim has been made that a merged company would be more competitive in those markets.

The only case where European merger control may conceivably be in contrast with the objective of creating a European champion who is more successful in international markets could be one where the merger entails some efficiency gains – thereby making the merged entity more competitive in world markets – but not sufficiently strong to outweigh harm for European consumers. In other words, due to the merger, prices of the products of the merged entity would increase in Europe, and more units would be sold in international markets (with positive effects on European profits and, possibly, employment). We are not aware of a case where this has ever happened (and based on the findings of the European Commission, Siemens/Alstom could have definitely not been one such case), but theoretically it may occur. It would be important to clarify in the policy debate that we are only concerned about such cases. However, we fear that under the cover of enabling the forming of anti-competitive ‘European champions’, short-term political goals that enjoy quick popular support would guide decision-making. Further, under European competition law firms could also pursue less anti-competitive avenues to obtain efficiency gains without impacting negatively upon European consumers. For instance, European firms may form a joint venture (or other agreement) allowing them to coordinate foreign production and sales, thereby attaining most of the efficiency gains that the merger could have achieved. Provided that the joint venture does not have an impact on the European market, it would be approved by the European Commission.

Competition policy and public policy considerations

Public policy considerations other than economic efficiency may be present in any competition law, and the EU is no exception. After all, one of the pillars of the EU Treaty is the objective of 'economic integration', which has been interpreted by the EU Courts in such a way as to prevent firms from applying different trade conditions in different EU countries. The prohibition of price discrimination across countries would not otherwise be prohibited on standard competition policy or efficiency grounds.

Furthermore, the Merger Regulation itself (at article 21) allows EU countries to invoke some specified policy considerations (public security, plurality of the media and prudential rules) in merger control. This would allow them to block mergers that the Commission would otherwise allow.

We might also think of other situations where policy relying uniquely on efficiency criteria may lead to undesirable outcomes, such as cases affecting security of supply, or military, or otherwise strategic considerations: it might well be the right thing to do, in some situations, to prohibit particular non-European firms from taking over a European firm operating in the energy, defence, or other strategic sectors. However, these are reasons to prohibit mergers that may not be anti-competitive. We would find it much harder to make the opposite case, that is, to allow anti-competitive European mergers because of these policy goals.

Beyond mergers, competition policy may lack the possibility to intervene (or to intervene in a timely fashion) against unfair practices by non-EU firms. Suppose for instance that a non-EU firm (possibly, a state-controlled enterprise) is engaging in below-cost pricing in some EU market. If that firm is no[...]nce provisions (article 102 of the Treaty) may not allow the European[...]f it was dominant, the Commission could intervene, but for various r[...]efore the case is decided, and long-lasting damage may have occurred[...] exit or to underinvestment by affected European firms.

Competition rules may not be enough to deal with such cases, then. In some markets, this may leave us with either some preventive intervention – such as excluding from tenders non-EU firms suspected of engaging in such behaviour – or with having to resort to anti-dumping provisions. But facilitating the use of such instruments carries the risk that they are used for protectionist aims rather than for dealing with unfair practices by non-EU countries. With a public policy intervention in place that eliminates non-EU competitors, strong competition among European firms becomes essential to avoid harm to European consumers and European competitiveness. Otherwise, firms operating in European markets would be insulated from competitive pressure, leading to higher prices in the short term and likely less innovation in the long term.

To sum up, there may well exist instances where public policy considerations could play a role in competition enforcement in general and in merger control in particular, but they should be exceptional, very precisely defined, and taken from a precise set of rules. Above all, they should obey the principle of proportionality – namely, they should achieve the stated objectives and should not go beyond what is necessary to attain them. Allowing anti-competitive mergers are unlikely to pass the test.

What can be done to make European firms more competitive in international markets?

The to-do list of possible initiatives that EU institutions and national governments may undertake to improve competitiveness of European firms is long and not novel. It includes the removal of all remaining barriers which still prevent the existence of a truly integrated market in so many sectors. It includes a fight against red tape and the nurturing of a culture of innovation. It includes providing a framework that leads to a world-class infrastructure, an effective education and training system, and well-functioning financial markets. This may be achieved through a mix of state-supported activities and schemes that align private investment incentives with those of society.

European firms will be successful in international markets if the costs of doing business are lower and if new ideas have the chance to succeed. This also requires vigilant and independent competition authorities that intervene whenever established firms do not compete on the merit, engage in anti-competitive agreements, and plan mergers which would harm customers and final consumers.

As we concluded in our open letter: "Europe needs more efficient, competitive, and innovative firms. Sponsoring mergers which remove competition would achieve the opposite." We would find it more fruitful if EU governments focused their attention on addressing the structural challenges of the European economy, rather than thinking of ways of weakening competition enforcement.

Topics: Competition policy EU policies

Tags: firm competitiveness, mergers, competition laws

Related

Google Android case: Milestone or millstone?
Hal Varian

Merger policy in the age of Facebook
Andrea Prat, Tommaso Valletti

Deterrence in EU merger policy
Joseph Clougherty, Tomaso Duso, Jo Seldeslachts