

The recent Franco-German proposals to potentially soften and/or politicize competition enforcement in the EU continue to generate debate. The European Council conclusions of 22 March suggest that some, as yet unclear, change will be included in future competition policy to reflect “global market developments”. Although the Council conclusions are neutrally presented, to the extent that they would implement some of the Franco-German proposals, the undersigned, writing in a personal capacity, believe that they risk benefiting only a small number of large EU companies, would undermine competitive markets in the EU, make EU citizens worse off and put the legal certainty that businesses demand at risk.

The undersigned are all lawyers or economists, many practising competition law and advising companies - national, EU and global – on merger enforcement. While no system is perfect, and updates to improve any system must be considered, companies value the fairness and predictability of the current EU system. Improving European competition law should not mean abandoning tried and tested sound legal and economic analysis. Weakening this system - a system that has been admired and copied by many newer competition regimes around the world - will not lead to “a fairer and more effective global level playing field”.

At a time when many countries continue to struggle with the aftermath of the financial and economic crisis, we do not believe that shifting the emphasis of European competition law bargaining power away from European consumers and other economic operators and applying different rules to European champions is the right policy or economic approach. Effective and transparent competition policy enforcement, and judicial review, creates an environment for more efficient and innovative businesses to emerge and thrive. Undermining free and fair competition would do the opposite. Although sometimes individual companies may benefit from weaker competition enforcement, most companies, most of the time, would not. European democracies are not based on protecting the interests of the few.

Commissioner Vestager has admirably faced down political intervention in merger assessment; we hope that in the coming months and years the European Commission will continue its strong defence of fair, even-handed and fact-based competition enforcement.

Yours sincerely

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