

Political Position 2025/161

# Competition Rules and Practices: an industrial trade union approach

Brussels, January 2025

IndustriAll Europe believes that promoting our greatest asset as a global region – our people – and ensuring a well-educated workforce with access to good quality jobs, and the up- and re-skilling needed to anticipate industrial transformation, is both vital for reindustrialising and strengthening the European economy long term, and should guide all European economic policies. Fundamentally, competition between companies should take place on the basis of quality and efficiency, not on the basis of depressed wages/salaries/labour conditions. Well-trained, productive, healthy employees who feel safe are the most important production/success factor for European industry. They produce efficiently and have the ideas needed to create innovations and generate revenue. This must be financed in Europe in a spirit of solidarity so that companies in all member states/regions and of all sizes can build on excellent personnel in order to compete on the markets with the best, sustainable products.

Europe urgently needs to rebalance the economic framework to create a real industrial policy capable of responding to the major social and ecological challenges we face, including the scale of public and private investment needed (as set out in the Draghi report on European Competitiveness), recognising the importance of public goods and services and the limits of market liberalisation. Currently, this is not the ethos of EU competition law and it is time for a deep reform.

Setting out the Commission's political priorities for the next five years in July 2024, Commission President von der Leyen stated: *"I believe **we need a new approach to competition policy, better geared to our common goals and more supportive of companies scaling up in global markets - while always ensuring a level playing field.** This should be reflected in the way we assess mergers so that innovation and resilience are fully taken into account. We will ensure competition policy keeps pace with evolving global markets and prevents market concentration from raising prices or lowering the quality of goods or services for consumers<sup>1</sup>".*

We see this commitment from the new Commission as offering new opportunities to correct the current imbalances and blind-spots in the EU competition policy framework.

This political position sets out industriAll Europe's priorities for such a new approach to competition policy.

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<sup>1</sup> [https://commission.europa.eu/document/download/e6cd4328-673c-4e7a-8683-f63ffb2cf648\\_en?filename=Political%20Guidelines%202024-2029\\_EN.pdf](https://commission.europa.eu/document/download/e6cd4328-673c-4e7a-8683-f63ffb2cf648_en?filename=Political%20Guidelines%202024-2029_EN.pdf) pp7

## **Bridging the gap between competition policy and industrial transformation: the need for a real industrial policy**

Competition law must be in line with the EU industrial strategy objectives to successfully manage the twin transition while making the EU more resilient with the open strategic autonomy as a compass. It must also respect and protect social, workers' and trade union rights, and support the creation of quality employment, fairness, Just Transition and upward social convergence.

The global economic landscape is changing fast. We are seeing the rise of a multipolar world, where geographical tensions and protectionism are mounting. European competition law does not yet take sufficient account of the competition that EU companies face from third countries that do not play by the same rules, although the Foreign Subsidies Regulation is an important new tool. Companies outside the European single market are not subjected to the same constraints and often have more room for manoeuvre to be supported by public authorities in the implementation of industrial strategies.

European industry is embarked on a radical transformation (digitally and environmentally) towards climate neutrality, zero pollution and a circular economy. This transformation brings opportunities, but demands colossal public and private investment, including state aid, especially because Europe struggles with a competitive disadvantage on energy cost compared with many of its competitors. European states and regions have different conditions for energy production. Affordable and clean energy across Europe is necessary, to create high-quality and well-paid jobs in all regions. Moreover, there are more general and systemic regional challenges to creating good quality jobs and competitive industries across Europe, like the concentration of head offices, research, finance, etc., which collectively lead to a brain drain and regions left behind. This is socially unacceptable but also a challenge for European competitiveness that not all our potential is realised.

These regional disparities are accentuated by governments' fiscal capacity, with not all of them able to attract industrial investment through large-scale state aid. This is exacerbated by the new fiscal constraints being applied through economic governance rules. There's a big risk of widening territorial inequalities in Europe between regions that will be able to attract tomorrow's industrial investment thanks to the quality of their infrastructures and the state aid granted and those left aside.

State aid should be transparent and democratically defined, while bound with social conditionalities underpinning good jobs in Europe, social and regional cohesion.

In the transformation underway, competition policy needs 'to get with the programme' – European strategic industrial interests and infrastructure assets must be factored into state aid, with decisions on mergers and acquisitions safeguarding strategic industrial capacity and autonomy.

Beyond the social and economic consequences of lost industrial capacity, competition policy also questions the EU's drive towards open strategic autonomy. A pure *laissez-faire* approach would significantly deteriorate the trade balance in a series of sectors that are instrumental to Europe's industrial and technological sovereignty, including the clean technologies championed in the Green Deal that all depend on foundation industrial value chains. An industrial policy must not only be about rolling out the red carpet for 'clean tech' investors, but also supporting the transformation of existing industrial assets in the less attractive parts of the strategic value chains, which are necessary to ensure our autonomy in different sectors.

EU law and governments at all levels must be much more demanding of companies that receive state aid. The use of social conditionalities across a wide range of internal market policies, from funding instruments, state aid through to public procurement and lead markets initiatives, would help to create triple wins for the economy, good jobs and the environment.

As the 2024 Letta report recommends, “To achieve the European Union's strategic goals, conditionalities must be tailored to these specific ambitions. They must be operational, measurable, verifiable, and enforce consequences in instances of non-compliance. National state aid schemes should adhere to a uniform set of conditionalities applicable across all Member States to prevent 'state-aid shopping', thereby ensuring the integrity of the Single Market. Certain conditionalities, such as wages, workers’ rights and support for less developed regions, could be applied across different types of State aid logics and help to ensure that industrial policy projects support convergence and fair competition within the EU<sup>2</sup>”.

In June 2024, the ETUC’s Executive Committee concluded that “Social conditionalities should promote quality jobs. According to ETUC definition, this means (i) collective bargaining, (ii) full respect for workers’ and trade union rights, (iii) fair wages, (iv) work security and social protection, (v) training without costs and during working time, (vi) good working conditions, (vii) health and safety at the workplace, (viii) work-life balance, (ix) equality and non-discrimination. Social conditionalities should include:

- Ensuring the full respect for workers’ and trade union rights and other human rights
- Promoting collective bargaining and ensuring the respect of collective agreements
- Guaranteeing participation, information and consultation of trade unions and workers’ representatives
- Ensuring quality jobs creation, including fair wages, good working conditions, health and safety at the workplace, job security and social protection, work-life balance, while promoting direct employment
- Supporting upskilling and reskilling and the creation of high-quality apprenticeships
- Guaranteeing anticipation and management of change and ensuring a Just Transition in practice, in particular by avoiding redundancies or the deterioration of working conditions
- Limiting subcontracting chains and ensuring that where sub-contractors are in place, the same social conditionalities apply
- Banning extraordinary dividend payments and increasing the share of profit that is re-invested in the company and shared equitably with workers
- Contributing to eliminate the pay gap between men and women
- Ensuring that beneficiary companies do not relocate their activities to countries with lower standards, including to tackle tax dumping practices
- Ensuring that public money does not support employers that undermine workers’ and trade union rights<sup>3</sup>

## Making competition policy work for people: the missing social dimension of competition law

Competition law has a deep impact on the workforce. More socially responsible competition policies are needed, with enforcement priorities more attentive to the needs of workers and the public interest. This is not simply a question of tinkering change. Currently, competition policy suffers from a model of analysis and calculation of market concentration that is in many respects obsolete. The lack of qualitative criteria

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<sup>3</sup> [https://www.etuc.org/en/document/industrial-policy-quality-jobs-social-conditionalities-social-progress#:~:text=According%20to%20ETUC%20definition%2C%20this,workplace%2C%20\(viii\)%20work%2D](https://www.etuc.org/en/document/industrial-policy-quality-jobs-social-conditionalities-social-progress#:~:text=According%20to%20ETUC%20definition%2C%20this,workplace%2C%20(viii)%20work%2D)

in the competition policy toolbox prevents an assessment of the societal problems entailed by some market concentrations<sup>4</sup>.

Competition law should play its full role in ensuring quality jobs and labour markets by asserting fair employment contracts and labour relations, notably by taking on no-poach or exclusivity clauses, monopsonies, abuse of dominance, and self-preferencing.

All too often, most trade unions' direct experience of EU competition authorities relates to merger rules. These encounters are often not positive experiences. Most mergers and acquisitions result in restructuring, job losses, divestments and transfer of activities. As workers and their representatives are directly impacted by mergers and acquisitions, they should be actively and systematically informed and consulted but they rarely are. Worker representatives should have a place at the table on strategic decisions. A stronger say for workers in corporate strategies would ultimately also benefit corporate long-term sustainability, as well as socially-responsible anticipation and management of change, in full compliance with workers' rights. Companies with stronger worker participation tend to have stronger economic foundations and sustainability strategies<sup>5</sup>.

Increased union involvement can be a win-win situation. From the point of view of Commission officials, trade unions can bring much needed information to ongoing investigations thanks to their unique insight into the functioning of the company, its business model and the sector in which it operates, and prevent shadow remedies. Thanks to their presence in the whole value chain, trade unions can provide information about consequences of the mergers on other related markets. From a trade union perspective, the objective of these interventions would be to increase the understanding (by the competition authorities as well as by trade unions) of the impact of corporate power on employment.

However, the involvement of workers' representatives remains in many cases purely symbolic, as they are too often presented with a *fait accompli*. To ensure efficient and effective rights to information, consultation and participation, the existing European 'acquis' needs better implementation, as well as strengthening, based on a model of corporate governance in which workers and their different expertise are proactively involved in strategic decisions at a very early stage, underpinned by social dialogue and collective bargaining.

## Putting the public good front and centre

For many years, the aim of competition law has been to guarantee the correct functioning of the Single Market and ensure that companies are able to compete on equal terms, promoting a head-to-head competition, on all the markets of the Member States. In this way, competition policy is expected to be a driver of an efficient internal market that delivers low-price products and fosters innovation and competitive companies in the European Union. On the other hand, competition policy has also been used to serve a neoliberal agenda. Indeed, while presented as offering consumers benefits, 'competition' has often really been a cover for driving down costs (labour costs included and squeezing supply chains), deregulation of labour markets, not taking into account externalities (environmental impact of economic activities) in the price mechanism, and the privatisation of public monopolies in network industries. The EU key political objectives, such as reaching net-zero by 2050 or strengthening its industrial sovereignty on clean technologies in a volatile geopolitical context, clearly are at odds with a solely consumer-centred competition law. The deep transformation Europe must go through in the immediate future demands that

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<sup>4</sup> The examples of this include the French publishing and banking industries in which effective monopolies have been allowed to develop due to little qualitative analysis of market concentration.

<sup>5</sup> The ETUI [European Participation Index](#) or the Hans-Böckler-Stiftung [Mitbestimmungsindex \(MB-ix\)](#)

competition law is subject to a better regulatory coherence in line with all the objectives written in the TFEU. European competition rules should allow reindustrialisation of Europe and ensure European international competitiveness.

Furthermore, liberalisation in a growing number of sectors raises equity and social fairness issues when universal access for citizens to quality public services is no longer guaranteed. In a society that is highly polarised around very marked social inequalities and faced with an immediate ecological transformation, the ‘free competition’ model is not able to reconcile social justice and environmental efficiency while securing universal access to clean water, sustainable energy, or mobility, and ensuring strategic autonomy.

With the transition underway, a reinforcement of the right of public authorities to provide quality public services and a strengthening of universal rights to essential services (e.g. electricity, water, public transport, digital networks) should be asserted and protected within the internal market. For instance, the right to energy for all, at home and at work, must be delivered through European energy policies that secure access to decarbonised, affordable energy, and a deep reform of energy sector regulation that guarantees the needs of households and our industries.

Indeed, competition policy has to also integrate the many new challenges related to the data- and algorithm-driven economy, the concentration of added value (to the detriment of the real economy) in digital platforms and in the shadow economy, the development of more sustainable business models, the complexity of supply chains and the need for a fair global level-playing field.

More powerful and democratic regulation will be needed in the digital sphere, e.g. by classifying digital platforms as private utilities, whose functioning is based on licences, public service obligations and democratic accountability.

Private monopolies deserve more scrutiny. While former public monopolies have to fulfil extensive obligations, this is not the case for private monopolies (only abuse of a dominant position is considered to be harmful, not the mere existence of a monopoly). Therefore, in order to avoid monopolistic rents, private monopolies should be subject to rules regarding universal service obligations, non-discrimination, unbundling, access of competitors to essential assets, regulated prices, etc.

Competition policy must contribute to the further economic and social integration of the EU. Therefore, it should not only apply a purely consumer-welfare approach to competition, with a focus on the simple price effects of market power and the possible stifling of competition. Attention also has to be paid to the environmental and social impact of competition policy: the impact on employment, avoiding mass redundancies, the risk of relocation of production to places (in or outside the European Union), with less stringent social and environmental standards. Competition policy must also aim at strengthening the European industrial basis and the EU strategic autonomy.

**Therefore, industriAll Europe calls for a reform of competition rules and practice that:**

1. **Supports the twin transition and the transformation and creation of good quality jobs.** According to the Commission, €650bn will be required annually for the twin digital and green transition and for Europe’s economic resilience. Filling this investment gap and enabling a Just Transition requires a state aid framework that drives well-designed investment programmes, reinforces instruments that help de-risk strategic private investments, fosters public-private ecosystems, and industrial collaboration (industrial alliances, joint undertakings, IPCEIs), and creates lead markets for

sustainable products, and completing the capital markets union. To avoid a subsidy race, Member States should better coordinate their efforts.

2. **Includes mandatory social conditionalities as an integral part of an ambitious European industrial policy**, through the revision of public procurement legislation, the different rules covering all EU funds and the state aid framework, ensuring that these conditionalities cover European, national, sectoral and regional/local support for companies. State aid rules need to also take developmental, cohesive, and territorial differences between countries and regions into account. To this end, the use of state aid must be complemented by an increased European investment capacity and solidarity mechanisms.
3. **Places the public good as an overriding objective** through a strengthening of universal rights to essential services (e.g. electricity, water, public transport, digital networks), and the protection of quality public services.
4. **Analysis of anti-competitive behaviour should be accompanied by a broader socio-economic and societal impact analysis**, that among other things take into account labour rights, environmental benefits, social benefits and so on. By promoting a more inclusive consumer welfare standard, EU competition policy can support sustainable quality production and more ethical and sustainable consumption. This will better safeguard quality jobs over time.
5. **Supports the efforts of the EU to strengthen Europe's industrial strategic autonomy** and the achievement of the objectives of the Net-Zero Industry Act and of the Critical Raw Materials Act and diversifying trade and supply lines for the European industry.
6. **Provides legal certainty and guidance to sustainability agreements between companies** (incl. with trade unions or other stakeholders) to pursue sustainability objectives (not only environmental, but also social objectives related to decent work and employment) in their supply chains. Cartel prohibition should, under certain conditions, not be applied to sustainability agreements between companies. Such sustainability agreements can take different forms: codes of conduct; agreements to sell more sustainable products and remove less sustainable products from the market; organising circular supply chains; promotion of more sustainable production processes; common creation of new products and markets. To provide legal security to companies, competition law (the Guidelines on Horizontal Cooperation Agreements) should provide specific guidance on where such agreements are compatible with competition law, while making clear that they are not (ab)used as a smokescreen for hiding cartels, for coordinated price increases, or for 'greenwashing' (with consumers paying higher prices in the name of dubious environmental objectives). They should also consider the social dimension of sustainability: distributional implications of such agreements, like the impact on jobs and the impact of higher prices on lower income groups.
7. **Modernises merger control rules** to allow the creation of global players ('European champions') in areas where size matters, and strong synergies and complementarities enable the merged companies to compete at international level, as long as this does not lead to anti-competitive behaviour on the internal market. Also the likelihood of employer monopsony power must be examined as part of merger control, ensuring socially fair outcomes without prejudice to the sustainability of the sector. If the merger in question would concentrate considerable power to a few undertakings, there is a clear risk of monopsony power which may result in downward



pressure on working conditions and wages – within the undertaking as well as in the sector. In merger processes, the way the right to collective bargaining is respected should be assessed.

8. **IPCEIs have a key role to play and should be subject to social conditionalities.** A ‘European champion’ is not necessarily characterised by one single company, but may consist of partnerships or networks of excellence in strategic sectors or value chains with a common European interest.
9. **Ensures efficient and effective rights to workers’ information, consultation and participation**<sup>6</sup>, through a strengthening of existing European ‘acquis’, and effective implementation, based on a model of corporate governance in which workers and their different expertise are proactively involved in strategic decisions at a very early stage: not only in the case when there is a merger or an acquisition, but also in case of a transfer of ownership between shareholders.
  - a. Proper information and consultation of workers at all stages of the process (incl. the design of remedies) should be assured on the basis of a broader analysis of the economic and social consequences of a merger or acquisition.
  - b. There should be a mandatory consultation of TU/worker reps on those processes (e.g. if an EWC delivered an opinion on the M&A, this must be added to the file shared with the European Commission, e.g. when TUs request to be heard and or to be involved in the process, a positive reply should come automatically from the EC without unnecessary red-tape).
  - c. We call for an obligation on the European Commission to take them into account or explain why not.
  - d. Mergers’ approval should be conditional on the conduct of negotiations to set up transnational bodies of info-consult-participation in the merged entity (i.e. setting up of an EWC + Europeanised board-level employee representation).
  - e. Overall, we call for greater transparency, including easier access for TU reps to EC analysis of a COMP case.
10. **Builds on international best practice by including trade unions in competition authority governance** (e.g. South Africa) to ensure the employment consequences are considered and worker information and consultation are respected.
11. **Learns from the past and puts a stronger focus on behavioural, rather than structural, remedies.** In merger cases, the European Commission largely favours structural remedies, i.e. divestments. However, this creates uncertainties with the involved workers about their new owner, industrial and investment plans, future working conditions and the impact on jobs. Moreover, as experience shows<sup>7</sup>, divestments are not always successful. For example: European assets end up with owners that lack a long-term perspective or local engagement, the buyer is not always strong, non-viable businesses are difficult to sell, complicated take-over processes, breaking down internal synergies and economies of scope that made the companies efficient. Therefore, the Commission should change course and focus more on behavioural remedies (that regulate the future conduct of the merged entity, e.g. a requirement to licence intellectual property to competitors, prohibition to

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<sup>6</sup> [https://news.industriall-europe.eu/documents/upload/2021/1/637457033647276284\\_636892756957520657\\_iAll77AdoptedECDec15-RestructuringResolution-EN-2.pdf](https://news.industriall-europe.eu/documents/upload/2021/1/637457033647276284_636892756957520657_iAll77AdoptedECDec15-RestructuringResolution-EN-2.pdf)

<sup>7</sup> E.g. the case of ArcelorMittal remedies in 2018 which saw sites sold to GFG/Liberty <https://news.industriall-europe.eu/Article/270> <https://news.industriall-europe.eu/Article/1108> [https://klippe.substack.com/p/the-eus-inaction-on-liberty-steel?r=b7kh3&utm\\_campaign=post&utm\\_medium=web&triedRedirect=true](https://klippe.substack.com/p/the-eus-inaction-on-liberty-steel?r=b7kh3&utm_campaign=post&utm_medium=web&triedRedirect=true)

enter specific markets, or to observe a price cap). Although behavioural remedies require permanent monitoring, they are more flexible and can take into account changing competition conditions. In cases where groups must divest assets, responsible buyers must ensure a commitment to maintain industrial activities that respond to the needs of the regions concerned.

12. **Develops a clear and transparent follow-up process after European Commission decisions** (on state aids, on M&A especially when remedies are included) to monitor that everything is in order, i.e. that the Commission conditions are respected (e.g. conditions like the guarantee that a new owner has the financial ability to viably run the business).
13. **Creates new enforcement mechanisms/sanctions when stipulated conditions are breached**, including fines or exclusion of the new owner if it fails to run the acquired business properly, including the potential for clawback of state aid received. Furthermore, the European Commission should take its responsibility towards workers negatively impacted by remedies decisions. Greater accountability is needed to ensure worker trust in European competition authorities.

## Conclusion

Despite the efforts made over the last five years, competition law needs deeper reform.

This should prioritise the social dimension, be based on a broader stakeholder approach support the industrial policy strategy, the implementation of the Green Deal, and promote the preservation of strategic autonomy and sovereignty of the European Union in key areas (digital, defence, space, energy, mobility, health, etc.).