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Global Forum on Competition

COMPETITION POLICY, INDUSTRIAL POLICY AND NATIONAL CHAMPIONS

Contribution from Slovenia

-- Session I --

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Contact: H el ene CHADZYNSKA, Project Manager of the Global Forum on Competition
Tel: 33 1 45 24 91 05; email: helene.chadzynska@oecd.org

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COMPETITION POLICY, INDUSTRIAL POLICY AND NATIONAL CHAMPIONS

--Slovenia--

1. Introduction

1. The answer to the question why some countries are more successful than others in promoting their economic development is multi-dimensional and involves diverse aspects of the effects produced by advanced entrepreneurship and entrepreneurial culture and also by governmental industrial policy. Industrial policies differ across countries in terms of the aims they pursue and the measures and instruments they apply. They also vary in the achieved results. In any case, they should not overlap with competition policy aims and issues.

2. The outlines and goals of industrial policy are set in the frame of Slovenia's Development Strategy, including five development priorities with the corresponding action plans for the period of 2006-2013. The Strategy does not focus solely on economic issues but also involves social, environmental, political, legal and cultural issues. Due to such prioritisation of the objectives, it also serves as Slovenia's strategy of sustainable development. At the same time it integrates the Lisbon goals with the national settings, keeping Slovenia's specific development opportunities and setbacks in view.

2. History and evaluation

2.1 *To what extent does the industrial policy in your county target firms on the basis of other nationality (e.g. by granting state aids/subsidies to national firms only or by controlling their ownership)? If so, how is nationality defined?*

3. There is no specific legislation framework related to nationally targeted instruments of industrial policy. However, there seems to be an important restriction in controlling the ownership of state-owned companies. These restrictions derive from the fact that the State has, directly and indirectly via the two parastatal funds (Pension Fund and Restitution Fund), controlling shares in a number of important Slovenian enterprises.

2.2 *What economic conditions have been associated with governmental industrial policy and support for national champions in your nation and region? Has this changed over time as economic development advanced?*

4. Slovenia is a relatively young country. After independence and the period of privatisation, the country started the post-privatisation period with the key goal of economic growth. The EU accession strategy was created to define and outline a set of consistent medium-term economic policies required to complete the economic transformation and to prepare the economy for the accession to the EU.

5. To assist in accomplishing this aim, the state contributed towards creating a suitable climate for an accelerated development in the new private sector, facilitating the entrance of new enterprises on the market and improving the investment climate. Above all, the aim of economic growth asked for the strengthening of competitiveness in the enterprise sector.

6. High degree of internationalisation of the national economy requested considerable structural changes. Slovenia as a small market economy could hardly afford to provide the support of national industrial policy favourable to national champions. Foreign direct investment (FDI) deserved special attention in the reform of the enterprise sector which is a clear indicator of an open economy.

2.3 *Are there major success stories of industrial policy or national champions that are prominent in policy discussions? Are there any perceived major failures of industrial or national champions policies? How do you define “success” and “failure” in this context? Are successful national champions stories supported by vest practice competition policy standards?*

7. There have been no major success stories of industrial policy or national champions.

8. As regards competition policy standards, existing measures in the frame of competition legislation provide for effective prohibition or control of actions which could potentially affect competition by abusing a dominant position and market power or cartels and other restrictive agreements.

9. In general, Slovenian competition legislation applies to all undertakings active in Slovenia. Such activity may be performed through establishment in Slovenia or through marketing products in Slovenia. Therefore, even companies established and merging outside Slovenia are required to notify the concentration if they sell the products in Slovenia and meet the set thresholds. When deciding on the approval of such a merger, the CPO would take into consideration only the geographical market in Slovenia and would be concerned mostly with local effects.

2.4 *Does your competition agency use benchmarks to assess the economic costs and benefits of government intervention that promote industrial policy or national champions? Have you communicated benchmarks to other economic policy makers? Is there any dependable analytical approach that allows you to distinguish industrial policy from competition policy? Do you engage in competition advocacy in this policy area?*

10. In Slovenia there are no specific rules or practices related to using benchmarks to assess the economic costs and benefits of government intervention that promote industrial policy or national champions nor a dependable analytical approach that allows to distinguish industrial policy from competition policy. From this perspective, competition advocacy activities play an important role. Competition Protection Office (CPO) is entitled to providing comments in the mandatory review process with regard to legislative proposals.

11. Moreover, competition advocacy is an important tool in the promotion of competition principles and market methods. Successful advocacy may contribute to a higher quality of regulation or to accelerate deregulation processes in situations where new market conditions do not lead to increased competitiveness of the companies.

2.5 *Have merger review laws ever been suspended in your country? If so, why? Were concerns expressed either explicitly or implicitly about the way in which merger efficiencies are typically examined or in the way in which failing firms are analysed?*

12. Merger review law has never been suspended in Slovenia nor was any concerns expressed about the way in which merger efficiencies are examined.

2.6 *Have any of your decisions ever been overridden on grounds of Industrial policy? Are there any recent examples? What reasons were given? To what extent had the competition agency already considered the market characteristics or considerations that were the basis for the override? What have been the consequences of the override for consumers and competition policy?*

13. None of the decisions of CPO has ever been overridden on grounds of Industrial policy. According to the existing legislation such a possibility is not provided.

2.7. Does your government implement some policies directly dedicated to innovation? If so, could you specify the sectors that benefit from these policies as well as the instruments used to foster innovation?

14. The central strategic research and development document in Slovenia is the National Research and Development Programme 2006-2010 (NRRP) which was adopted in 2005. The priority measures encompass also “further changes in industrial policy and the system of financing research activities so as to encourage cooperation between research companies and industry¹. The important group of measures in the NRRP is included in the plans and documents related to the utilisation of EU Structural Funds resources.

15. Concrete measures to promote technical development and innovations are defined in the implementation programmes of the Ministry of Economy–Programme of measures to promote Entrepreneurship and Competitiveness. Measures are aimed at improving the ability to innovate of enterprises and for general support to innovations. Moreover, the importance of non-technological innovations is emphasised in addition to technological ones. The sub-program includes measures related to the innovation environment as well as direct incentives to enterprises to increase innovations in their operations. The measures are aimed at establishing and operation of an innovation environment and culture, promoting creativity and innovativeness of enterprises in all business areas, supporting growth of early-stage innovative companies and promoting various forms of linking.

16. According to the analysis provided in the Development Report 2008, innovation activity of companies increased significantly in 2004-2006 compared to the previous period, particularly in the services sector.

2.8. Did measures adopted in your country to deal with the recent economic crisis raise competition concerns? If so, could you describe the measures and the concerns? Have these competition concerns been taken into account, and, if so, how? In particular, have initial proposals been amended in order to comply with competition law? Have some of these measures been exempted from competition policy scrutiny?

17. Slovenia is facing the effects of the financial crisis and the cooling down of the economic environment both in the EU and globally. This affects the Slovenian economy in two ways: through the paralysis of the interbank market in the Euro zone and the decrease in export demand in all its key markets.

18. Economic policy measures, which follow the recommendations of the European Commission while considering Slovenia’s characteristic features as a small and open economy, apply to both aggregate demand and aggregate supply. The measures are intended for the financial and industrial sectors. In the financial sector, the Government seeks to maintain the trust of savers in the financial system and ensure credit activity and solvency. Measures with regard to industry are aimed at maintaining production facilities and jobs. So far, a key part of the measures was a subsidy scheme that would shorten working hours to below 40 a week in order to keep salaries unchecked and prevent the loss of jobs as a result of falling demand.

19. The adopted measures did not raise any competition concerns so far.

¹ Slovenia – Reform Programme for achieving the Lisbon Strategy Goals 2008-2010

3. Means and Goals

3.1 *Please specify whether any of the following are instruments of industrial policy in your country:*

- Government procurement
- Exemptions from antitrust laws
- Regulatory barriers to competition
- Access to credit
- Arranged mergers and acquisitions
- Control of acquisitions of national companies by foreign investors
- Other?

20. There are certain exemptions in the relevant public procurement laws provide for; however, they should not be attributed to the instruments of the industrial policy since they are related to public contracts which include classified information, or involving international agreements with other countries, financial services etc. Moreover, exemptions may be granted for entities operating in the water, energy, transport and postal services sector.

21. The provisions of PRCA-1 do not include any exemption from antitrust law. The only possible exemptions could be granted to agreements of minor importance which do not appreciably restrict competition (*de minimis*) and to agreements covered by the relevant EU block exemption regulations.

22. As regards control of acquisitions of national companies by foreign investors, existing measures in the frame of competition legislation provide for effective prohibition or control of actions which could potentially affect competition by abusing a dominant position and market power or cartels and other restrictive agreements. In general, Slovenian competition legislation applies to all undertakings active in Slovenia. Such activity may be performed through establishment in Slovenia or through marketing products in Slovenia. Therefore, even companies established and merging outside Slovenia are required to notify the concentration if they sell the products in Slovenia and meet the set thresholds. When deciding on the approval of such a merger, the CPO would take into consideration only the geographical market in Slovenia and would be concerned mostly with local effects.

3.2 *To what extent are industrial policies in your country motivated or rationalised as regional or national economic development initiatives? Has this explanation been used more sparingly over time as your economy expanded?*

23. According to the provisions of the Slovenia's Development Strategy, industrial policy measures are strongly motivated by national economic development initiatives. Among the key national objectives for the period of 2006-2013, the first priority is a competitive economy and faster economic growth, aiming at fostering entrepreneurship and increasing competitiveness.

24. The development issue was present more or less also in all the previous strategies, however, before they were more restructuring-oriented. For the time being, strategies are in line with the Lisbon Strategy goals as applied by the EU.

3.3 *To what extent are industrial policies motivated or rationalised as an effort to help domestic firms withstand the exercise of market power by foreign firms? How does this rationale square with*

rules against market distortions caused by state aids? How has your competition agency analysed these circumstances?

25. There were no formal circumstances where industrial policy would be motivated or rationalised as an effort to help domestic firms to withstand the exercise of market power by foreign firms.

3.4. Are industrial policies motivated or rationalised as a means to correct market failures in your country? If so, what types of market failures have been involved? How do you compare industrial policy or national champions with other policy approaches for correcting these market failures (such as taxes or subsidies on consumption of the product)?

26. Formally, industrial policy measures are not motivated as a means to correct market failures. Non-agricultural subsidies are gradually undergoing positive shifts – subsidies regarded as effective boosters of economic growth and development are gaining importance in the national budget (subsidies for technological development and small and medium-sized enterprises). The allocation of subsidies to recipients (especially for companies) was recently still problematic, mostly from the perspective of effectiveness of subsidies².

3.5. Do you think that one nation engaging in industrial policy or supporting national champions attracts retaliation from other nations? To what extent are projected gains from industrial policy and national champions dependent on other nations not pursuing these policies, too? Do industrial policy and national champions constitute a “prisoners’ dilemma” situation?

27. Engaging in industrial policy or supporting national champions is certainly a two-fold problem. In case of market failures, there is no guarantee that the industrial policy measures would provide the necessary results or better results as the market itself. However, one should have in mind that there are specific situations where such measures are inevitable, but in any case these measures should be compatible with competition rules.

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² Development Report 2008