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Global Forum on Competition

COMPETITION POLICY, INDUSTRIAL POLICY AND NATIONAL CHAMPIONS

Contribution from the United States

-- Session I --

This contribution is submitted by the United States under session I of the Global Forum on Competition to be held on 19 and 20 February 2009.

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COMPETITION POLICY, INDUSTRIAL POLICY AND NATIONAL CHAMPIONS

--United States¹--

Answers of the United States to Questionnaire Part II: “The Relationship between Competition and Industrial Policies in Promoting Economic Development”

“1. Does your country have a national industrial policy? What areas/sectors of the economy are covered by the national industrial policy? What are the key features of your national industrial policy? How is competition policy addressed in your industrial policy?”

1. Before answering these questions, it would be useful to define the term “industrial policy.” A paper by noted antitrust economist Lawrence White used the following:

“In current use, the term ‘industrial policy’ denotes the promotion of specific industrial sectors rather than industrialisation overall... Industrial policies are direct, micro, and selective; they are an attempt by government to influence the decision making of companies or alter market signals; thus they are discriminating... Industrial policy has sometimes sought to support the losers, delaying or retarding their decline; in other cases the goal is to succor or catalyse maturing sectors or to stimulate advancing sectors.”²

2. The United States does not have an industrial policy, as defined above. Rather, our broad policy is free competition and, concomitantly, vigorous antitrust enforcement. That policy necessarily co-exists with other government policies, such as those short term measures that are intended to ease the economic shocks that affect particular industries in troubled times. At various times, measures favouring specific industries have been implemented, at both national and sub-federal levels, that some might see as constituting industrial policy. Nevertheless, competition policy, not industrial policy, is the main organising principle of the United States’ economic policy, not just a special detail engrafted onto one form of industrial intervention or another.

“2. How are the competition principles embedded in the specific sectors of the industrial policy?”

3. N/A.

“3. In your opinion, are there any conflicts and/or complementarities/synergies between competition and industrial laws/policies? Please give at least two substantive concrete examples for each situation.”

4. We believe that there usually are more potential conflicts than complementarities or synergies. Hypothetical examples of the former could include regulatory rate setting for competing firms, applying policies that discriminate by nationality, and ineffective merger enforcement by sectoral regulators. Examples of the latter – synergies stemming from industrial policy writ large -- could include government infrastructure investment and government R&D programs. A number of U.S. Government agencies maintain important and useful R&D programs, including the National Institutes of Health (“NIH”), the National Aeronautics and Space Administration (“NASA”), and the Department of Defense’s Defense

¹ The attached document was prepared for a discussion on industrial policy at the Ninth Intergovernmental Group of Experts on Competition Law and Policy at UNCTAD, in July 2009.

² Robert Driscoll and Jack Behrman, eds., National Industrial Policies, Cambridge, Mass., 1984, at 5, quoted in Lawrence J. White, “Antitrust and Industrial Policy: A View from the U.S.,” Working Paper 08-04, Reg-Markets Center, January 2008.

Advanced Research Projects Agency (“DARPA”). Widespread provision of transport and other infrastructures and open advancement of basic and applied scientific knowledge ought to be quite compatible with competition policy.

5. Conversely, government efforts to “stabilise” industry sectors, for example, through pricing or output constraints, trade barriers, or encouragement of anticompetitive, inefficient mergers, obviously conflict with modern competition policy and are unlikely to promote industry competitiveness in the longer run. As former Federal Trade Commission Chairman Majoras described it:

“The fact is that competition in the domestic market, regardless of its origin, begets efficient, productive firms, which are better able to compete on global markets, which in turn increases economic growth and standards of living.”³

“4. To promote national champions as an industrial policy tool may be inconsistent with competition policy, whereas merger control as a competition policy tool may be inconsistent with industrial policy. In your opinion, which of the two policies should be prioritised and why?”

6. We believe that the latter (merger control) should be prioritised. Nor is merger control the only antitrust tool that should be prioritised -- the usual antitrust rules against cartels, other anticompetitive agreements, and monopolistic practices also need to be vigorously applied. For the reasons noted in our previous answer, these antitrust tools promote competition and efficiency, and long-term competitiveness.⁴

“5. Many countries’ competition laws have exemption provisions that favour some domestic economic sectors, such as agriculture, SMEs, and acceleration of technological progress, including intellectual property rights. What types of exemptions does your competition law include and for what policy purposes?”

7. Please refer to our Answer Number 4 to Part I of this Questionnaire for an identification of U.S. antitrust exemptions and immunities.

³ Deborah Platt Majoras, “National Champions: I Don’t Even Think it Sounds Good,” Remarks at the International Competition Conference/EU Competition Day, Munich, Germany, March 26, 2007, at 2. See also Lawrence White, “Antitrust and Industrial Policy: A View from the U.S.,” *supra*.

⁴ For a discussion of the empirical findings of the association between vigorous domestic rivalry and the creation and persistence of competitive advantage in an industry, see Michael Porter, *THE COMPETITIVE ADVANTAGE OF NATIONS*, Collier Macmillan, Inc., (1990) at p. 117, and the discussion of the failure of protectionist policies that protect “infant industries” or allow “breathing space” to allow an established industry to adjust at pp. 665-667.