Competition and industrial policy in the European Union

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Abstract: Business concentration matters for European social democracy because it has been correlated with increased income inequality, a declining income share for labour and increased corporate lobbying. Drawing inspiration from the history of social-democratic competition policy and from renewed interest in antitrust in the USA, this contribution calls for a revival of social-democratic ideas of mobilising competition policy in service of environmental, regional and social goals. As industrial policy experiences a comeback in the EU and abroad, it will be essential to ensure greater conditionality and accountability for private businesses that receive exemptions from competition policy. What is at stake is not only the protection of workers, consumers, and small and medium enterprises from monopolies and oligopolies, but the protection of democracy itself from concentrated private economic power.

Keywords: competition; industrial policy; state aids; mergers; ordoliberalism

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When the European Economic Community (EEC) was preparing to open in 1958, Heinrich Deist, chair of the Socialist Group's Economic and Social Working Group in the European Parliament, declared that business concentrations "are above all the accumulation of power [that] establishes relations of subordination of man to man".[2] A Dutch socialist, Gerard Nederhorst, along with others, shared Deist's perspective. Emphasising the "political danger of concentrations of excessive size aimed against democracy", he pointed to campaign finance, warning that "the conservative parties are under the financial dependence of the concentrated economy".[3] The Socialist Group took the hardest line of the party groups against cartels and restrictions on competition in the early European Parliament, supporting the European Commission's efforts to build a strong supranational regime to regulate competition.

This history is important not only for restoring social-democratic contributions to the early political economy of European integration *but also* for public policy in the EU today. Competition policy was the strongest area over which the Treaties of Rome granted supranational powers to the European Commission. It remains one of the most powerful supranational policies and has received a lot of attention recently due to the activist stance taken by Margrethe Vestager, Commissioner for Competition from the Renew Europe liberal group. Freiburg school ordoliberals, who developed a unique strand of right-wing economic thinking in the early-mid 20th century, have claimed hegemony over European competition law and, through it, of economic governance more broadly. During the Great Recession, and still today, advocates of austerity and market liberalism legitimise their policies by reference to ordoliberal traditions – which scholars have identified as a "justificatory fable" and an "abuse of Freiburg's ordoliberalism".[4]

Ideas and policies presented as ordoliberal today actually bear little relation to those of ordoliberalism's founding generations – in many respects, they run entirely counter to them. Unlike many market liberals today, ordoliberals like Walter Eucken and Franz Böhm likely would have agreed with Deist and Nederhorst's statements because they were concerned that accumulations of economic power (an ordoliberal phrase) destroy the market freedoms that they saw as preconditions for societal and political freedom. Unlike right-wing European discourses today, which often adopt Chicago school ideology to emphasise competition for competition's sake and limit competition policy to goals of *economic efficiency* and *lower consumer prices*, early ordoliberals focused on *constraining private economic and political power*.[5] The state would guarantee competitive markets through regulatory law to achieve goals of economic balance, including protecting small and medium enterprises, balanced regional development and, for some, even social welfare.[6] Certain elements of the ordoliberal view on competition were therefore attractive to socialists.

Cartels, mergers, vertical and horizontal integration, and cross-border subsidiaries have been a subject of interest for socialists since the second wave of industrialisation in the 19th century. At first, social-democratic thinkers tended to praise concentration as a sign of capitalist rationalisation and industrial modernity. This positive view began to change in the early 20th century, as socialists grew concerned that cartels and monopolies were fuelling dangerous forms of international competition driving countries to war. In interwar Europe, trade unions, consumer groups and socialists coalesced around the view that cartels had to be supervised and controlled internationally by the League of Nations.[7] During the Great Depression, the Labour and Socialist International and the International Federation of Trade Unions blamed the Great Depression partly on monopoly prices. "Monopolistic concerns of all kinds should be placed under public supervision and regulation" to defend consumers, they argued, but also because they "forc[ed] governments into an oppressive dependence on capitalist plutocracy".[8] This regulatory turn in interwar social-democratic competition policy created an important precedent for socialist economic policies after the war.

1. Postwar social democracy's competition and industrial policies in Europe

In postwar Europe, socialists adopted increasingly restrictive positions towards cartels and anticompetitive practices. They became the strongest advocates of supervising cartels in the UK and of banning them in France in the 1940s. Clement Atlee's government passed the Monopolies and Mergers Act in 1948, though industry and internal obstruction hobbled its effectiveness.[9] The French Socialist Party proposed antitrust legislation and continued advocating for strong antitrust enforcement after France's 1953 competition decree created a Competition Authority.[10] The most ambitious competition law in postwar Europe was the 1957 West German Act against Restraints of Competition. Scholarship has presented German competition policy as the work of ordoliberals, who broke from classical liberalism by insisting that a strong legal framework and state enforcement were needed to maintain competitive markets.[11] However, German social democrats voted against it in 1957 because *it was not strong enough* and frequently teamed up with ordoliberals in the Bundestag's Economics Committee to push for more forceful competition laws in the 1960s-1970s. The result of this informal coalition was Willy Brandt's 1973 merger control law, the first major merger law passed in continental Europe.[12] This new field of merger control was a potentially powerful means of ex ante control to constrain business concentration, especially to control the expansion of multinational companies.

Social-democratic concepts of competition policy differed from ordoliberal ones in largely exempting public enterprises and in permitting political discretion in the approval or banning of cartels and mergers, in contrast to the legal approach preferred by ordoliberals. Willy Brandt's merger law granted the Economic Ministry the right to overturn rulings by the German cartel office by referencing world market conditions or anticompetitive practices of foreign businesses. For socialists more broadly, competition policy was meant to be a tool, among others, for governments to coordinate macroeconomic programming to steer national and international economies towards goals of general welfare and balanced regional development. Not only would cartels and anti-competitive practices (foremost of which was abuse of dominant market positions) be banned, but national governments would be empowered to forbid private investments they deemed harmful, a powerful weapon for state economic steering.

German social democrats were inspired by US progressive economist John Galbraith's concept of *countervailing powers*.[13] The SPD argued that small and medium businesses should be exempt from much of competition law such that they could serve as checks on large businesses, joining public enterprises, trade unions, cooperatives and consumer organisations as countervailing powers against oligarchy. Of this list, ordoliberals also wanted to strengthen small and medium-sized businesses but were usually agnostic or hostile towards the others. The Socialist Group in the European Parliament supported the European Commission's efforts to expand European competition policy to include merger control in the early 1970s, but the initiative failed at this time.

Socialists were also not shy about using competition policy for the purposes of industrial policy. The largest competition case launched by the early European Commission was the prosecution of IBM, the US technology company. The case was the brainchild of Altiero Spinelli, a leading Italian social democrat, European federalist, and Commissioner for Industrial, Technological and Industrial Affairs (1970-1976).

He wielded competition policy as industrial policy to help nurture a homegrown European computer industry. Socialists supported competition policy *and* industrial policy as being complementary to one another. They called for supranational control of multinationals in the 1970s, arguing that their cross-national nature allowed them to slip past national regulatory controls. When the economic recession struck in the 1970s, socialist European commissioners thought that national state aid, ubiquitous at the time, should be limited to industries capable of surviving after rationalisation and coordinated at the supranational level to maintain fair competitive conditions between countries with different fiscal capacities within the common market. In the 1980s, socialists split between those supporting state aid to maintain employment, and those who thought the money was ill-used to prop up "dinosaur" industries that were fated to collapse.

2. Moving beyond neoliberal competition policy and subjecting industrial policy to conditionality and accountability

With this history in mind, how should we think about a social-democratic approach to competition policy in the 21st century?

If anything, the political and economic dangers of monopolies and oligarchy are even more potent today. Antitrust has re-emerged as a salient issue for the US left over the last decade, in the contexts of rising levels of business concentration and a proliferation of monopolies and oligopolies. It is an issue that resonates with both the left and centre left in the Democratic Party. Senator Bernie Sanders, the progressive leader, regularly emphasises links between economic and political power. Recently, he wrote, But firms that profit from advancements in artificial intelligence could grow exponentially faster than traditional corporations, and quickly obtain exponentially more power than the market-dominating behemoths about which Americans are already justifiably concerned. That's why I believe future presidents and Congresses must be prepared to govern as trust-busters and regulators in the public interest.[14]

Antitrust also has support among centrist Democrats. Senator Amy Klobuchar, who chairs the Senate Judiciary Subcommittee on Competition Policy, Antitrust and Consumer Rights, has been a forceful advocate of re-empowering US competition policy after a period dominated by Chicago school thinking. In her recent book, *Antitrust: Taking on Monopoly Power from the Gilded Age to the Digital Age*, she writes, "Mergers and anticompetitive behavior have increased the price of everything from cable TV and beer to health care, and we must stop admiring the problem and actually start doing something about it".[15]

In 2021, President Joe Biden nominated Lina Khan to head the Federal Trade Commission, charged with overseeing US competition policy along with the US Justice Department's Antitrust Division. Her confirmation was celebrated by progressives and centrists and even received support from some Republicans.[16] Khan came to prominence with a 2017 law journal article, "Amazon's antitrust paradox", which argues that a consumer-only standard "is unequipped to capture the architecture of market power in the modern economy".[17] In a promising experiment, Khan is attempting a wholesale revitalisation project to make US antitrust fit for purpose for the 21st century.

Business concentration also matters for European social democracy because, like in the USA, it has been correlated with increased income inequality, a declining income share for labour and increased corporate lobbying.[18] Recent studies have shown that concentration has increased in Europe over the last decades, though less so than in the USA. A 2019 OECD study found an average 4% increase in concentration of European industry from 2000 to 2014, while a 2023 update found that the concentration of the largest business groups grew at a much larger rate of 12% over the same period.[19] This concentration movement holds both for leading European countries and for the EU internal market as a whole, as well as across sectors, though concentration has been stronger in services than in manufacturing. European regional concentration has grown faster than national concentration movements but from a lower starting point, meaning that European-level concentration is catching up with national levels of business concentration. The consequences for workers are often stark: a 2020 OECD study demonstrates that concentrated businesses behave like buyers' cartels on labour markets, lowering wages and reducing workers' bargaining power.[20] As artificial intelligence revolutionises the workplace, competition policy must ensure that the resulting productivity gains are shared by workers and society, rather than gobbled up by tech firms' monopolistic prices. There is social-democratic historical precedent for this. In supporting a strong European competition policy in the late 1950s, socialists in the European Parliament expressed similar concerns that cartels and anticompetitive practices were consuming the benefits that came from economic growth caused by the opening of the Common Market.[21]

The policy choice today is typically posed erroneously as one between industrial and competition policy, with socialists preferring the former and liberals the latter, but, in reality, socialists have consistently supported strong competition policies.[22] We are living in a time of a renewal of European industrial policy, for example, the European Green Deal and a reconsideration of the role of competition policy in addressing high technology. Much of the impetus has come from geopolitics, as European governments and the European Commission become increasingly concerned by fragile supply lines and anticompetitive practices by China and other countries. The US Inflation Reduction Act (IRA) contributes to this impetus as well, as European businesses clamour for subsidies to match the IRA's. Public debates revolve around whether it is time to abandon the neoliberal era's consumer competition standard, in which low consumer prices and economic efficiency were the only justification for state intervention to ban mergers or breakup oligopolies. As Khan argues, the consumer standard is not sufficient to contain monopolistic behaviour. There are dangers though of bringing it into question. While the return of European industrial policy should be welcomed, it must not allow the consolidation of a new rentier class in its pursuit of increased European competitiveness on global markets. If we are not careful, vested interests may be positioned to capture Europe's industrial policy, channelling higher consumer prices into higher profits for themselves without enhancing collective welfare.

In 2020, the European Commission launched a public call for input concerning how competition policy can contribute to the European Green Deal.[23] The Austrian, Dutch and Greek governments have launched promising experiments to exempt certain forms of business collusion from penalties, if they pursue cooperation aimed at improving environmental sustainability, even if it leads to higher consumer prices[24] – but it is imperative to ensure that such collusion actually achieves measurable improvements in sustainability that compensates the public for consumer harm. *Conditionality*, which was heavily imposed on governments receiving money during the eurozone crisis, *should also be imposed on businesses accepting public assistance in the form of subsidies or tax write-offs*. Exemptions from competition policy must be subject to strict conditionality from the moment an exemption is agreed and to post facto *accountability*. Businesses that accept money but do not deliver their promises must return it to the public coffer and pay a fine for breaking their promises. Innovation in conditionality will be needed regarding public financing for risky private investments aimed at future global competitiveness, for instance, rare-earth mining. Appropriate forms of conditionality in such cases include profit sharing if a risky investment yields profits, or assuring high wages and working conditions and improving local infrastructure.

3. Striking the right balance

Using a narrow consumer and efficiency standard as the basis for deciding exemptions appears inappropriate for addressing monopolies and restrictive practices in the digital world. Consumer interests have always been core concerns for socialists and must remain an element of any social-democratic competition policy, but socialists generally balanced them with other policy goals, like employment and restraining the political power of corporate giants. How to strike this balance in the 21st century merits deep reflection given the challenge of remedying climate change, as well as problems of privacy and abuses of dominant positions by online platforms. Simply pitting industrial policy against competition policy skews the debate and eliminates alternative options that were previously important weapons in social democracy's policy arsenal.

Firstly, 21st century industrial policy rarely accords with social-democratic goals of fair distribution and well-paid employment. Europe's new industrial policy focuses on enhancing international competitiveness through internal devaluation, as marked by wage constraints and structural adjustment plans. European businesses, in this concept, should attract more foreign direct investment and increase their competitiveness by reducing labour costs, while national governments should assist them by making labour markets more flexible and cutting corporate taxes. This means competitive cost-cutting between businesses and European countries within the EU internal market. This policy has been promoted by the European Round Table of Industrialists.[25] Iratxe García, president of the Socialist & Democrats in the European Parliament, is surely correct in rejecting an industrial policy along these lines. She said about the European Commission's "Green Deal Industrial Plan for a Net-Zero Age" in early 2023:

> The plan presented is very vague with regard to any fresh funding for industrial policy – for new key sectors but also for traditional sectors to adapt. This plan has no added value and it will not help European industry if it is limited to a rebranding and relabeling exercise. And, any public money injection must be conditional to companies respecting workers' and social rights. If this is meant to be a reaction to the USA's Inflation Reduction Act (IRA), it fails to propose any concrete measure and it fails to level up the ambition. The relaxation of the State aid rules should not be the only answer to the detriment of the single market.[26]

Secondly, new industrial policy governance largely bypasses democratic institutions at national and European levels, and consigns organised labour either to the role of junior partner or leaves it out entirely.[27] The EU's major industrial policy programs, for example, the European Fund for Strategic Investments, Important Projects of Common European Interest, national productivity boards and others mostly fall under the Commission's purview and are linked to the annual macroeconomic policy rounds in the European Semester. Friends of the Earth have complained that fossil fuel and other lobby groups have dominated the Industrial Alliances and roundtables the EU has established since 2017 to promote hydrogen production and raw material extraction.[28] Recent Commission proposals, such as the Net Zero Industry Act and the Critical Raw Materials Act, also suggest a willingness to provide companies with more lenient regulatory environments through the use of "regulatory sandboxes" and fast-tracked permit procedures. Cohesion policy has largely abandoned its older goal of fostering economic convergence between highly developed and underdeveloped regions and, for instance, in its Smart Specialisation program, has transformed instead into another tool to push regions to compete with one another to obtain funding based on criteria of enhancing competitiveness, rather than regional living standards and well-being.[29] Even the Recovery and Resilience Facility in response to Covid largely reproduces these same dynamics by pursuing industrial policy under the cover of social policy.[30]

Contemporary forms of industrial policy are overwhelmingly supply-side oriented, aimed at stimulating business activity through subsidies and other financial incentives. *Redistributing money from taxpayers to corporations in this way runs counter to the ethos of social democracy*. In addition to state aid in the form of subsidies and tax breaks, public-private partnerships have proliferated, often without sufficient conditionality and accountability. Patents are an important vehicle for maintaining monopoly prices in Europe. Vaccine patents were an especially dramatic issue during the Covid pandemic. They relied on government funding and guaranteed purchase agreements but have zealously defended their exclusionary ownership, preventing their diffusion to people in need in the Global South. This is all taking place in a wider context of impunity, in which corporations prefer enriching their top management and stockholders through bonuses and stock buybacks, rather than reinvesting their profits to enhance productivity. The European Central Bank has acknowledged the significance of what is popularly known as "greedflation", that is, corporations taking advantage of the inflationary period to post record profits, thereby driving further inflation.[31]

4. Sketches for a social-democratic competition and industrial policy

Here, we propose *principles* for rethinking competition policy based on the history of social-democratic public policy, as well as *some measures* that can be fleshed out more fully in the future.

Firstly, *competition policy should not pursue competition for its own sake, but rather in service of socioeconomic and environmental goals*. Socialists should continue to seek inspiration from their history in targeting their competition policy in such a way that it is socially just and contributes to a social-democratic vision of environmental recovery and material well-being. The Austrian, Dutch and Greek experiments should be examined as potential models for the EU level, with an eye on whether they meet or fall short of their intended goals. Exempting business collusion aimed explicitly at improving social, regional or environmental sustainability can be supported, as long as it is subject to strict public supervision and a burden of proof be placed on businesses to demonstrate that the exemption results in the promised improvements.

Secondly, *taxpayer money should go to enhancing public goods, not lining private pockets*. State aid must be subject to strict conditionality and accountability to achieve environmental, regional development and social goals. Self-regulation like that in the EU's Industrial Alliances must not be allowed. Subsidising consumers during the recent energy crisis was necessary, but subsidising fossil fuel companies is disgraceful. Exemptions from competition law should be subject to strict *conditionality* agreed to at the time that the exemption is granted. Promises are not enough to ensure *accountability*; state aid must be returned if businesses do not meet their environmental, regional or social commitments. Flexible and creative solutions for conditionality can be found regarding state aid for risky investments like rare-earth mining, for instance, profit sharing if the investment turns a profit or by compensating workers and local societies in other ways. *Without conditionality and accountability, state aid amounts to little more than corporate welfare*.[32]

Thirdly, *public-private partnerships should be subject to stricter conditionality and accountability to ensure that they accomplish spe-*

cific public goals. *Public enterprises should be re-legitimised and state aid allowed* to the extent that they enhance environmental, welfare and employment goals, but this must be done *in a manner in which small countries can benefit from state aid by multilateralising aspects of state aid at the European level*.

Fourthly, socialists should support Commission efforts to *lower the length of medical patents* from ten to eight years (unless they are made available in all EU-27 member states within a two-year timeframe), though they should push to go further.[33] *Patents developed with public support should have shorter lifespans and be subject to strict criteria, including conditionality and accountability based on public well-being*.

Fifthly, social democracy should emphasise *that accumulations of economic power are dangerous to the health and future of democracy*, in line with older ordoliberal and social-democratic traditions. Democratic institutions and workers' representatives must regain control over industrial policy. Parliaments and trade-union federations should have veto power over industrial policy projects – and, as importantly, they should directly benefit from them both in terms of high wages and in fulfilling employment, welfare and sustainability goals.

Lastly, *socialists should develop a stronger voice on competition policy to contest hegemonic claims by neoliberals over European economic governance*. New developments in US antitrust can be taken as potential models, though socialists would have to adapt them to European conditions. Regaining an element of issue ownership over competition issues would be a worthy mission for the Socialists & Democrats group in the next European parliamentary legislature. In doing so, socialists would make clear their intent to protect people from excessive accumulations of economic power that establish unjust relations of economic and political subordination in the EU.

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1 My thanks and appreciation to Dr Vera Šćepanović for her valuable advice for this publication.

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